ISBN : 978-602-0860-11-4

PROCEEDING

INTERNATIONAL CONFERENCE
1ST SHIELD 2016

Bandar Lampung, Novermber 2-3, 2016

Post Graduate Program
University of Lampung

Institute of Research
and Community Service

BANK BRI
Melayani Dengan Setulus Hati

Proceeding of International Conference 1st SHIELD 2016

Bandar Lampung, November 2-3, 2016

ISBN: 978-602-0860-11-4

Publisher:

Post Graduate Program, University of Lampung

Institute of Research and Community Service

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WELCOME ADDRESS

Report by the Organizing Commitee

Dear distinguished guests and participant

In this globalization era, advancement in science and technology has led to remarkable gains in life. However, despite the remarkable gains, many countries particularly Asian countries face inequalities and uneven progress. Even worse, these countries are facing many problems such as poverty, terrorism, drug abuse, and other social issues. These problems are complex and multidimensional. We should give a real contribution to solving these problems. Because the problems are multidimensional, we need people from cross-disciplinary interests to work hand in hand with strong commitment, not only to face, but also to change these problems into opportunities.

Therefore, the Postgraduate Program in collaboration with Institute of Research and Community Service of University of Lampung provides a place for academicians, practitioners, policy makers, researchers and professionals from multi-disciplines related to Social Sciences and Humanities, Economics, Education, Law, and Sustainable Development to meet and interact with members inside and outside their own particular disciplines. All participants are challenged to give their real contribution to helping solve the real-world problems.

At this first international conference, 93 research articles were submitted from 4 countries. The authors are academicians, practitioners, policy makers, researchers and professionals. This conference aims to share information and discuss resent developments and innovations arising from research in a wide range of disciplines. Through this conference, it is expected that the research articles can be documented and communicated throughout the countries.

I would like to thank you for your participation and looking forward to having productive discussion among participants.

Sincerely yours,

Professor Muhammad Akib

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Remarks by the Director of the Graduate Program of University of Lampung

Honorable keynote speakers, committees, participants, ladies and gentlemen.

It gives me a great pleasure to welcome all of you and chair the Opening Ceremony this morning to the "to the First SHIELD International Seminar", jointly organized by Postgraduate Program and Institute for Research and Public Services, the University of Lampung. Also, we'd like to say how grateful we are to all the keynote speakers who have accepted our invitation. Also, we are delighted to have all of participants here to participate and share in the First SHIELD International Seminar.

Along with an increase in the activity of national development and the dynamic development of the international world due to globalization, then it will always be followed by the emergence of complex social, humanity, economics, education, law and sustainable development issues. Therefore, the University of Lampung (which has a vision to be the best 10 among public universities nationwide, a mission to be a world class research university, and as the third largest state university outside Java Island) feels compelled to draw up concepts and provide solutions to the various issues.

In relation to the issues, practically the University of Lampung through its Postgraduate Program in collaboration with its Institute for Research and Public Services organizes the first International Seminar with such themes as social, humanities, economics, education, law and sustainable development. This international seminar presents several speakers who come from leading universities in the world. These activities are held in Lampung, which is one area that has a nationally important role, because it is the gateway of Sumatra Island and is strategically located for the development progress.

As the arena for discussion, communication, and enrichment of the knowledge of participants; this seminar is expected to provide a significant contribution to capturing opportunities from the development of science today. This seminar is intended to function as a forum among the participants from various walks of life for dissemination of research results in the fields of social, humanities, education, economics, law and sustainable development. The participants include practitioners, researchers, academics, students, industrialists and science observers from various organizations such as industries, state-owned enterprises, research institutions, government agencies, and public and private universities.

To expand the horizons of thinking for the participants and to share the experiences of international research from world experts, this international seminar invites four keynote speakers from four countries who will present their main papers. These speakers are:

1. Prof. Ryohei Kada from Shijyonawate Gakuen University, Japan
2. Prof. Michael Reed from the University of Kentucky, USA
3. Prof. Dr. M. Reevanny Bustami from Universiti Sains Malaysia (USM), Malaysia.
4. Dr. Herlambang P. from Universitas Airlangga, Indonesia.

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We are honored to have you all the speakers here in this seminar, and thank you for being our keynote speakers in this seminar.

Finally, I do hope that this seminar can run well and all participants can participate actively.

Sincerely yours,
Rector,

Prof. Dr. Hasriadi Mat Akin

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TABLE OF CONTENT

Tittle and Writer	Page
PROTECTION OF HERITAGE BUILDINGS IN THE SEMARANG CITY AS NATIONAL CULTURAL HERITAGE THROUGH REVIEWS VARIOUS INSTRUMENTS CONSTITUTION Aristo Evandy A.Barlian	1-12
LEGAL PROTECTION OF THE VILLAGE OF NATURAL RESOURCES FORESTS Agus Surono	13-30
DISPARITIES ON THE CONDEMNATION Ade Kurniawan Muharram, Rini Fatonah	31-41
DEATH PENALTY ON INDONESIA CRIMINAL LAW Eddy Rifai , H.S. Tisnanta,Tomy Pasca Rifai	42-55
ISLAMIC OBLIGATION (SUKUK), BUDGETING ALTERNATIVE FOR NATIONAL DEVELOPMENT Nunung Rodliyah, Ade Oktariatas KY	56-65
AN EFFORTS TO CONTROL CORRUPTION THROUGH THE CONVENTION OF UNITED NATION CONVENTION AGAINST CORRUPTION (UNCAC) AND ITS IMPLEMENTATION IN INDONESIA Yunita Maya Putri	66-74
LABOUR WAGES STEVEDORING; ABANDONMENT OF LABOUR PROTECTION Satria Prayoga, Arief Triwibowo	75-85
THE IMPLEMENTATION OF THE PRINCIPLE OF PUBLIC INFORMATION FREEDOM ON CRIMINAL CASES IN THE COURT Maroni and Nenny Dwi Ariani	86-101

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THE OWNERSHIP OF GENETIC RESOURCES TRADITIONALLY UTILISED FOR HEALTH FROM THE PERSPECTIVE OF INTELLECTUAL PROPERTYRIGHTS 102-114
Efridani Lubis

STANDARD CONTRACT WHICH CONTAIN THE EXONERATION CLAUSE IN CONNECTION WITH EMPOWERING SMEs 115-128
Firmandes Sisko

MARINE ENVIRONMENTAL POLLUTION IMPACTS ON HUMANS AND OTHER LIVING CREATURES 129-141
Eka Intan Putri and Tita Hidella

LEGISLATIVE FUNCTION BASED ON DEMOCRATIC ECONOMY 142-154
James Reinaldo Rumpia

THE ROLE OF THE GOVERNMENT OF BANDAR LAMPUNG CITY IN THE MANAGEMENT AND DEVELOPMENT OF WASTEWATER SYSTEM ON MICRO, SMALL AND MEDIUM ENTERPRISES (SMEs) 155-161
Muhammad Akib, Fathoni

THE SHIELD OF TRANFORMATION OF CONSTITUTIONAL SOVEREIGNTY: THE JUGMENT OF CONSTITUTIONAL COURT 162-171
Utia Meylina, Rudy

POSTPONEMENT CASE OF IMPORTED GARLIC THROUGH AFFILIATE RELATIONS : TRADE CONSPIRACY 172-183
Rilda Murniati, Anggun Ariena Rahman

LAW AS AN INSTRUMENT TO PROTECT INDONESIAN DOMESTIC AGRICULTURE COMODITIES AGAINTS THE IMPORTED ONE TO CREATE ECONOMIC WELFARE AND SOCIAL JUSTICE 184-194
M Farid Al-Rianto

VILLAGE OF FINANCIAL MANAGEMENT 195-203
Siti Khoiriah

UTILIZATION OF INFORMATION TECHNOLOGY AND ELECTRONIC TRANSACTIONS OF INSURANCE 204-219
Sri Zanariyah, Indriyani

TAX AMNESTY AND FAIRNESS IN TAXATION BASED ON THE TAX AMNESTY ACT NO.11 OF 2016 220-227
Yuswanto, Marlia Eka Putri

THE REGULATION OF CABOTAGE PRINCIPLE IN THE UNITED NATIONS CONVENTION ON THE LAW OF THE SEA 1982 (UNCLOS 1982) AND THE IMPLEMENTATION IN INDONESIA 228-242
Desy Churul Aini

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DUE DILIGENT, TOLLS TO CORPORATE RESPONSIBILITY ON HUMAN RIGHT 243-254
Rehulina Tarigan

THE LEGAL STATUS OF PROCEEDING LAND RIGHT THAT IS OBTAINED BY AUCTION BASED ON COUNTRY'S PRECEDENCE RIGHT 255-264
Kurnia Martini Dwi Putri

THE URGENCY OF SANCTIONS FOR VIOLATORS OF CORPORATE SOCIAL RESPONSIBILITY (CSR) FOR IMPROVING OF THE WELFARE OF SOCIETY 265-282
Pujiyono, Jamal Wiwoho

FORUM NON-CONVENIENCE: CAN INTERNATIONAL ORGANIZATION BE SUED IN INDONESIAN COURT OF LAW? 283-291
Gunawan Widjaja

DIGITAL SHARING CASES AND JAPANESE COPYRIGHT ENFORCEMENT 292-308
Bayu Sujadmiko, Nobuhide Otomo, Ahmad Sopyan

JURIDICAL REVIEW OF INTERNATIONAL AND TRANSNATIONAL CRIME BASED ON INTERNATIONAL LAW 309-328
Desia Rakhma Banjarani, Desy Churul Aini

THE DECONSTRUCTION OF THE LAW ON THE VOTE GAP LIMITATION OF THE PARLIAMENTARY THRESHOLD IN THE PETITION FOR CANCELLATION IN THE DETERMINATION OF VOTE COUNTS IN CONSTITUTIONAL COURT 329-341
Anisa Cahaya Pratiwi, Darwin Yohanes Manalu, Dedi Putra, I Ketut Dharma Putra Yoga

IUU FISHING IN INDONESIA, ARE ASEAN MEMBER STATES RESPONSIBLE FOR? 342-352
Ema Septaria

INTERNATIONAL SALE AND PURCHASE AGREEMENTS ACCORDING TO CISG 1980 AND THE IMPLEMENTATION IN INDONESIA 353-363
Siti Azizah

REFLECTING THE ROLE OF INDIVIDUAL IN GLOBALIZED WORLD: A STUDY CASE ON JULIAN ASSANGE AND WIKILEAKS 364-376
Andi Windah

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THE DEVELOPMENT STRATEGY OF POTENTIAL MARINE TOURISM IN LAMPUNG SELATAN FOR FACING GLOBAL TORISM COMPETITION 377-386
Rahayu Sulistiowati, Endry Fatimaningsih, Devi Yulianti, Dewie Brima Atika

POLITICS CAMPAIGNS : CHALLENGE AND IDEALITY 387-397
Robi Cahyadi Kurniawan

PATRON-CLIENTS IN LAMPUNG GOVERNOR ELECTION 2014 398-411
Robi Cahyadi Kurniawan

A MANAGERIAL COMPETENCY MODELING: THRESHOLD AND DIFFERENTIATING COMPETENCIES AT VARIOUS MANAGEMENT LEVELS 412-422
Jeni Wulandari

ANALYSIS OF GENDER IN ACCESS, PARTICIPATION AND CONTROL OF FOREST RESOURCES, AND WATERSHED OF KECAMATAN KEBUN TEBU IN KABUPATEN LAMPUNG BARAT 423-427
Ari Darmastuti, Feni Rosalia, Dwi Wahyu Handayani

IBM FOR THE COASTAL WOMEN'S GROUP IN KECAMATAN PANJANG KOTA BANDAR LAMPUNG WITH PROBLEM OF WASTE RECYCLE PRODUCT MARKETING AND MINIMUM AWARENESS TOWARD COASTAL ENVIRONMENT 428-437
Dwi Wahyu Handayani, Yuni Ratnasari, Teuku Fahmi, Moh. Nizar

VOTING BEHAVIOUR IN 2014 LEGISLATIVE ELECTION IN LAMPUNG TIMUR REGENCY (CASE STUDY IN DESA GUNUNG MULYO SEKAMPUNG UDIK DISTRICT AND DESA RAJABASA BATANGHARI SUKADANA DISTRICT) 438-453
Himawan Indrajat, Darmawan Purba

THE COOPERATION DEVELOPMENT OF ONE STOP INTEGRITY ZONE SERVICES BETWEEN METRO AND LAMPUNG TENGAH 454-460
Dedy Hermawan, Dian Kagungan, Yulia Neta

POLICY IMPLEMENTATION ON CIVIL SERVANT RECRUITMENT BASED ON CMPUTER ASSISSTED TEST IN LAMPUNG (THE STUDY ON THE RECRUITMENT OF CPNSD METRO IN 2014) 461-468
Feni Rosalia, Dian Kagungan, Devi Yulianti

REFORM OF THE BUREAUCRACY AND LOCAL WISDOM: STUDY ON PRINCIPLES OF LAMPUNG CULTURAL VALUES 469-477
Yulianto, Nana Mulyana, Simon S.Hutagalung

GOVERNANCE AND EDUCATION ACCELERATION FRAMEWORK IN LAMPUNG PROVINCE 478-491
Simon S. Hutagalung, Nana Mulyana, Izzul Fatchu

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THE MOTIVATION LEVEL AND IT EFFECT ON AGRI-EXTENTION WORKER'S PERFORMANCE IN SOUTH OGAN KOMERING ULU (OKU) DISTRICT 492-505
Tiara A.P. Hernanda, Anna Fatchiya, Ma'mun Sarma

COOPERATIVE GAME THEORY APPLICATION IN THE BLACKBIRD BROODS FOOD ALLOCATION 506-528
Intan Sherlin, F. Thuijsman, JJM. Derks

STORE ATMOSPHERE DIMENSIONS EFFECT ON CONSUMER REPURCHASE INTENTION (STUDY IN CHANDRA SUPER STORE TANJUNG KARANG). 529-543
Faila Shofa

THE EFFECT OF FINANCIAL LEVERAGE, PROFITABILITY, AND COMMISSIONER BOARD ON ORGANIZATIONAL PERFORMANCE: MEDIATED BY CORPORATE SOCIAL PERFORMANCE 544-558
Wijaya Triwacananingrum

SWITCHING VALUE OF FEASIBILITY INVESTMENT ON PATIN AQUACULTURE BUSINESS IN KOTA GAJAH, CENTRAL LAMPUNG 559-570
Sutarni , Fitriani, Bina Unteawaty

CHILDREN RESPONSE TO CO BRANDED PRODUCTS (SURVEY ON BANDAR LAMPUNG MCDONALD`S HAPPY MEAL BUYER) 571-591
Dorothy Rouly Haratua Pandjaitan

ANALYSIS OF SOCIAL MEDIA ETHICS 592-597
Toni Wijaya

VALUE CHAIN SYSTEM OF ANCHOVY PROCESSING CLUSTER IN PULAU PASARAN, BANDAR LAMPUNG 598-612
Muhmammad zaini, Muhammad Irfan Affandi, Adia Nugraha

EROSION PREDICTION WITH SEDIMENT DELIVERY RATIO APPROACH OF SEKAMPUNG WATERSHED 613-625
Nano Suryono, Slamet Budi Yuwono, Melya Riniarti, Irwan Sukri Banuwa

UTILIZING GRAMMARLY IN TEACHING WRITING RECOUNT TEXT THROUGH GENRE BASED APPROACH 626-634
Erni Yulianti

THE MULTIPLE TECHNIQUES CORRELATED WITH STUDENTS' ENGLISH WRITING OUTCOME AND THEIR LEARNING PERCEPTION 635-643
Eka Pra Setiyawati

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THE EFFECTIVENESS OF CORE CONTENT-BASED INTEGRATED INSTRUCTIONAL DESIGN IN ELEMENTARY SCHOOLS 644-653
Een Y. Haenilah

INVESTIGATING THE EFFECT OF IMPLICIT LEARNING STRATEGY TRAINING ON STUDENTS' ENGLISH PROFICIENCY TEST ACHIEVEMENT 654-663
Fitri Agustin, Ag. Bambang Setiyadi, Muhammad Sukirlan

INFLUENCE OF NUMBERED HEADS TOGETHER (NHT) MODEL TO INCREASE LEARNING OUTCOMES 664-682
Edutivia Mardetini

LKPD DEVELOPMENT TO FASILITATE COMUNICATION DISPOSITION 683-692
Selvi Loviana, Tina Yunarti, Haninda Bharata

LKPD DEVELOPMENT IN TERMS OF CRITICAL THINKING DISPOSITION 693-701
Wiwin Eni Maryanti, Tina Yunarti, Sugeng Sutiarso

THE DEVELOPMENT OF MEDIA MIND MAP WITH FREEMIND APPLICATIONS ON COURSE INTRODUCTION OF MANAGEMENT IN ECONOMIC EDUCATION STUDIES PROGRAM FKIP SRIWIJAYA UNIVERSITY 702-713
Firmansyah, Fitriyanti

DEVELOPING COOPERATION ECONOMIC MODEL IN JUNIOR HIGH SCHOOL THROUGH THE ROLE OF SCHOOL COMMITTEE'S IMPROVEMENT IN BANDAR LAMPUNG 714-721
Erlina Rufaidah

DEVELOPING OF MATERIALS TEACHING IN CONOMIC MATERIALS ACTIVITIES CONSUMER AND PRODUCER IN SMA STATE 2 GEDONGTATAAN PESAWARAN DISTRICT 722-730
Erlina Rufaidah

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Protection of Heritage Buildings in the Semarang City as National Cultura Heritage through Reviews Various Instruments Constitution (Comparation of Heritage Law in Malaysia and UNESCO 1972)

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Abstract

Various Heritage buildings that existed in the days of Dutch may be found in Semarang Indonesia, but this time the old buildings such as buildings and cultural footprint significantly customized and converted by building owner with a variety of reasons so the loss characteristics of the cultural identity. The old building in the city of Semarang, which had stood for hundreds of years such as Taman Budaya Raden Saleh (TBRS) and Johor's Market has a history and a very high value to the nation's cultural heritage that must be protected immortality.

The objective of this research will explain about the various rules and regulations that can provide protection to historic old buildings in the city, by studying the factors that cause what makes adapters and switch function historic old building is an act of violation that can get rid of the old buildings from the list cultural heritage and how the role of society and the state to provide protection to the conservation of ancient buildings historic heritage.

The results showed that there were more than 300 of Dutch heritage of old buildings that are in the city, many of the old buildings that are in remodeling without seeing the benefits and value of cultural authenticity. The methodology of this study will look at the various cases and rules under review comprehensively such as Indonesia have the cultural heritage of Act No. 11 of 2010 Heritage and Local regulations that protect the cultural heritage and Malaysia has Act 645 of 2005 either the provisions of the Convention United nations Educational Scientific cultural Organization (UNESCO) to protect older buildings as cultural heritage.

The conclusions of this study, a little knowledge and awareness of the importance of cultural heritage by society and the state government makes a lot of historic relics neglected and lost. Law that existed at this time should be modified to provide strict penalties for violators and criminals cultural heritage because heritage is a priceless treasure for generations of people.

Keywords : *The Heritage building, the Cultural Heritage and legal instruments on the protection of cultural heritage*

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1. Introduction.

Indonesia is believed to be one of many countries that have cultural heritage in the world. Indonesia's cultural heritage as a legacy that can be visible and invisible, whether formed by nature or by human reason, or anything that has a value that can be preserved and protected. The diversity of the cultural heritage has a unique value, whether you grew up in a particular culture, or even the result of intercultural mixing in the past, present, and future, which is a source of inspiration, creativity and life. Cultural heritage not only in the form of artifacts, but also the form of buildings, culture, language and various art and any of the human mind. Valuable cultural heritage that can be scaled up to very large buildings such as historic heritage. Heritage which is the result of human invention, one of is the buildings that have significance for the history, culture and science either stand alone, or within a region such as the old town there are some cities that are located in Semarang city of Indonesia.[1]

Semarang city there are many old buildings of the Dutch colonial heritage, the building has historical value and cultural heritage which is born of the work of man. Buildings of colonial that has significance for science, culture, and civilization at this time, not because of the romance of the past or an attempt to preserve the historic development, but as a tool in the process of transformation and the importance of heritage so that it can provide the quality of life a better society based on the power of the old assets. The formation of a city can be seen from the development of culture. Inside there are the embodiment of ideology, social and technological developments that help construct an area into the city we know today. So the formation of the city is based on knowledge, norms, beliefs, and cultural values of the society in the past..[2]

In general, the values of cultural heritage in a city that can be seen from the shape of the building. The heritage building is located between the life of society, therefore the role of the community to protect and preserve heritage buildings is very important and necessary. The heritage building in general is referred to as heritage value such as history, culture, and science, whose existence is maintained. Under Indonesian law Number. 11 of 2010 concerning the Heritage Objects, it is said that the old buildings of historical value is a cultural heritage that must be protected and controlled by society and the state. Conditions similar to the provisions of the Convention United Nations Educational Scientific Cultural Organization (UNESCO) and countries like Malaysia that have Act 645 of 2005. Because of cultural heritage objects should be controlled by the state for his safety as the nation's heritage. There also stated that efforts to preserve the cultural heritage made to explore a sense of pride of the nation, strengthen its identity as a nation, historical significance, whether scientific or cultural use of other established national interest.[3]

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[1] Indonesian Institute of Architects, *Code Architects and Profession Code of Conduct*, MajelisArsitek IAI, Yogyakarta, 1992. page. 4

[2] Mundardjito, *Research Method For Historical Urban Heritage Area,* Paper presented at Three Days Partical Course On Planning And Design Method For Urban Heritage, USAKI-T.U. Darmstadt, Jakarta, 10 – 12 April 2002, page.1.

[3] Salmon Martana, *Preservation of Historical Cities in Indonesia in Perspective On Public Participation, Bandung* : Tourism Research Center -ITB. 2007 page.2.

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However it is established that the cultural heritage is a heritage that is very important so controlled and protected by the state, but the reality is still very pathetic / worse, the development of the old town to a metropolitan city is a threat to the establishment of the buildings or areas that have been designated as a cultural heritage. By reason of urban development should continue to run, some of the buildings to be damaged and modified that no longer correspond to the original form of revised or are left dirty, shabby and not well maintained, so it can be used as a reason for the changed, the dismantling, and finally destruction cultural heritage.

Semarang city has more than 300 historic buildings, some historic buildings that have been renovated and destroyed for city development. In this paper will given 2 issue which is the object of the study such as Taman Budaya Raden Saleh (TBRS), which will be transformed into a playground of the city and Johor Market will be transformed into a modern shopping center. This can be said if the development of the renovation of heritage buildings to the modern building can be eliminate the authenticity of the historic buildings either in conflict with any law or convention cultural heritage legacy of global development.[4]

2. Old Buildings in the City are Registered as National Cultural Heritage.

Many relics of historical buildings in the city of Semarang Indonesia former Dutch colony showed Semarang is a city that has value in the world heritage. By looking at the number of old buildings in city Semarang be taken into account that the building historic-building in Semarang must be listed as a national heritage, so that the building can be protected and cared for remain a precious legacy. Law Number 11 In 2010 the Republic of Indonesia stated that the building can be listed as a cultural heritage in Article 5, heritage is objects made human, such as object movable or immovable, that form unions or groups, or parts, or remnants object are aged at least 50 years, or represent a distinctive style at least 50 year and is believed to have an important value for the history, science, and culture. In Article
28 of this law states that the government has the power to list the heritage registration and manage cultural heritage, which was thought can be protected and cared for. registration of heritage buildings can also be done by those who have the care of historic buildings, but the list of cultural heritage must be subject to Article 5 of the law of Indonesia's cultural heritage.[5]

The provisions concerning the list of objects of cultural heritage can be seen also with allied countries such as Malaysia to comparative studies, in Act 645 concerning the Cultural Heritage of Malaysia in 2005, in section 6 is Pesuruh jaya has the power to determine and maintain the list of cultural heritage whether any what matters relating to cultural heritage. In section 23 of this act commissioners also determine any person who can list the cultural heritage which are considered as objects of value. Heritage list in this act it must have been aged 50 years and under section 67 the minister may consider any legacy that can be registered with the interests and the inheritance relationship with history, and look at the design of inheritance, social relations and cultural, scientific reforms or heritage discovery

[4] I.G.N. Sugangga, *Teaching materials Class Inheritance Law Customary*, MKN-UNDIP, Semarang, 2005, page. 8.
[5] Law No.11 of 2010 on the Heritage Indonesia.

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rarity, importance of national identity, and any matter that determine that it is a cultural heritage that is important. In the list of cultural heritage, pesuruhjaya and those who want to list the heritage must refer to this act.[6]

Law can be viewed Indonesia and Malaysia have in common in determining any heritage which is necessary to be registered as cultural heritage. Conditions in the list of objects of cultural heritage as required by international conventions UNESCO in 1972 because of the state such as Indonesia and Malaysia in this convention must provide to the UNESCO cultural heritage list.[7] In the article 11 of the UNESCO in 1972 states that each state party to this Convention shall also submit to the World Heritage Committee an inventory of property forming part of the cultural heritage, which is located in its territory and suitable for inclusion in the list of importance. The list is also a form of protection in keeping the country's cultural heritage. International and national terms have a same purpose in the protection of cultural heritage listed. The laws in each country and the international convention requires states to make a list of registered buildings, can be seen in the table below:

Table.1. Legislation in the state register of Cultural Heritage.

Act 645 on the Heritage Malaysia Year 2005	Indonesian heritage law number 11 of 2010.	Konvensi UNESCO 1972
S.6.Pesuruhjaya have the power to maintain a list of cultural heritage whether dealing with any matters related to cultural heritage. S. 23. Commissioner determine any person who can list the cultural heritage S. 67. The Minister may consider any heritage can registered	Article 28. The Government has the power to list the heritage registration and manage cultural heritage, which was thought to be protected and cared for. Article 5. Registration of heritage buildings can also be done by those who have the care of historic buildings, but must be subject to this act.	Article 11: Each State Party to this Convention shall submit to the World Heritage Committee, an inventory of property forming part of the cultural heritage, which is located in its territory and suitable for inclusion in the list of importance. List the purpose of state protection exists in maintaining the cultural heritage.

Almost all the old buildings in the Semarang city has been listed by the government as a cultural heritage, but even though they had registered and Recognise the cultural heritage that must be protected, the buildings are still many modified and transformed such as in the cases *building Marabunta, Arch Position Military Command VII / Diponegoro, region Abattoirs Kabluk, Regional Police Headquarters at street Pemuda, Kowal hostel in jalan Sultan Agung, home Gan Sing Bie at Gajah Mada street, Hotel Jansen, Permorin building, and the sugar building* in Semarang city, this buildings has been listed by the government as a cultural heritage, but the government has to damaged and eliminating the authenticity of cultural heritage. Currently government will be planning the renovation again and take place at the TBRS and market Johor which will be renovated into a modern market and destroyed

[6] The Heritage Act 2005, Act 645 Malaysia.
[7] Convention United Nations Educational Scientific Cultural Organization (UNESCO) in 1972.

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for urban development whether it is left broken and not maintained. This is evident from the circumstances that even already registered and enforced in the list of law, the old buildings of historical value that can not be protected.[8]

2.1 Taman Budaya Raden Saleh (TBRS) as a Cultural Heritage that must be Protected.

Taman Budaya Raden Saleh called TBRS is an old building that has been established in 1937 since the colonial period. This old building is located in the city center of Semarang and the building became the center of attention of tourists in the city of Semarang. This building used as a central collection of art and culture in the city by the members of the arts such as dance, theater, music, and movies are all gathered in TBRS and always displays creatifity that makes the city of Semarang called city of cultured and art , In addition to producing many valuable cultural arts, TBRS building has large trees are hundreds of years old that support clean water sources in the city of Semarang, therefore the building is included in the list of heritage buildings that are registered in the city of Semarang. TBRS has been registered as national heritage by the Government Regulation Number. 14 of 2011 about RTRW (building around), In Article 86, point g number 13 mentioned, in the District TBRS Candisari Semarang is an art market in the development and enhancement of natural and tourist cultural heritage. For the people, TBRS is an important building that has a high historical value and as building art that can make cities more cultured and knowledgeable
either this building have any tree as resource water for lifeblood in semarang city.[9]

TBRS is an important building in the Semarang city at this point to the attention of private investors due to the strategic location of the city center. TBRS is currently proposed to be evicted and replaced with a playground like Legoland park in Malaysia. Based urban development and urban finance income, the government approved a contract with a private investor and want to build a modern playground. In the case of the expulsion of the TBRS, this expulsion was blocked by the society and the culture minister who believes that the TBRS is a cultural heritage that has historical value for the city, because if TBRS damaged same by removing the identity and history in the Semarang city.[10]

Figur.1. Taman Budaya Raden Saleh (TBRS) Building Art and Culture.[11]

[8] Sanusi Bintang, *Copyright Law*, PT. Citra Aditya Bakti, Bandung,1998, page.90.
[9] Peraturan Pemerintah daerah / local regulations No. 14 of 2011 about RTRW (neighborhood).
[10] Newspaper in "suara merdeka" Indonesia 2015
[11] http://seputarsemarang.com/taman-budaya-raden-saleh-4228/ taken on 29-5-2016 at 09:00.

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2.2 Johor Market as a Building that must be Protected.

Johor market is the central market expenditure in the city of Semarang, Johor market has been in existence since 1860. The Johor in Semarang has a beautiful structure, many people believe and say this market is the most beautiful markets in Asia as Dutch heritage building and like as Europe building, because pole buildings are very magnificent, either the structure and shape of the building is very beautiful and magnificent among other buildings, the market building is listed in the register of cultural heritage. Johar Market is a registered cultural heritage and protected with Indonesian Law No.28 of 2002 about buildings and Semarang local government in Regulation Number.10 of 2013.

Johor market proposed to be demolished because it was no longer appropriate to the times. The reason from renovated Johar market to modern market, because johar market considered dirty, unhealthy, poor and unfit again prevail. Though, the bad market situation is because lack of awareness of the government in managing and maintaining the cultural heritage of the building in semarang. Until now, has repeatedly Johor market will be demolished but a lot of effort from the community culture lovers who protect and prevent the distortion of this cultural heritage.12

Figur.2. Johar Market Semarang city as Cultural Heritage Buildings.[13]

3. Protection of Cultural Heritage in Accordance with the Various Rules of law and Public Opinion.

In the protection and preservation of buildings of historical or nothing about the cultural heritage, especially in a city that has a long history such as a Semarang city, have traces of highly visible, such as in the form of old buildings. Some of the city still have old buildings are protected, while many more are left damaged and abandoned and lost in time.

[12] http://www.suaramerdeka.com/harian/0606/21/kot06.htm taken on 29-5-2016 at 09:00.
[13] http://www.bintang.com/lifestyle/read/2230002/mengenal-asal-muasal-pasar-johar-semarang taken on 29-5-2016 at 09:00.

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Among the remaining buildings, many of which will be omitted deliberately with various reasons, ranging from the thought that the building was no longer suitable to the times, or considered as an obstacle to modernization. The buildings of historical value is proposed to be removed and replaced with modern buildings.

While the removal of historic buildings is much prohibited and protected by the society and culture, which considers that such buildings is a treasure that is priceless, either can not be measured by money or economic interests, so that its existence must be protected and treated, The heritage buildings become a concern of many people which realizing conservation is problems to be solved for the many historic buildings that are abandoned and ignored in Indonesia.

Indonesian law No.11 of 2010 on the protection of cultural heritage in Article 59 of Indonesia said that the country and those who must protect, preserve, protect and prevent damage to the cultural heritage for the sake of history, science, and culture. In Article 83 was to use the building must pay attention to the history and authenticity of design and safety, the offense for anyone to destroy buildings enshrined in Article 105 is 15 years imprisonment and a fine of 500 million rupiah and in Article 110 of those people who changed the cultural heritage will be punished 5-year prison sentence and a fine of 100 million rupiah. Can be concluted to anyone is strictly prohibited to alter and damage the cultural heritage such as buildings with reason whatever, cultural heritage buildings are protected by state law and the state must be protect.[14]

Cultural heritage buildings in semarang city is also specifically covered in the Implementing Regulations of Law No. 28 of 2002 about Heritage Building, it say the restoration of the building, with protected and preserved such as the repair or restore the heritage building to its original form, and conservation is the care and maintenance of the buildings either environment to restore the state of the buildings in accordance with the authenticity and do not alter the characteristics of cultural heritage buildings.[15]

Government employees in city Semarang also create Decree No. 646/50/1992 about Conservation of Old buildings in Semarang with mentioning the names of historic buildings such as TBRS and Johor market which must be protected, the decree said for knowledge and the future generation either the values of its personality over time, it is necessary to heir cultural heritage and historical values of the real, which has to be acknowledged and appreciated the significance of the history of the city, and therefore the buildings must be protected.[16] It can be said that all laws and regulations in Indonesia prohibits modification and impairment of any cultural heritage buildings.

In accordance with Act 645 about Heritage in Malaysia that deserves to seen its advantages in the protection of heritage buildings. The Act states the protection and preservation of cultural heritage is conducted by commissioners and those who are related as in Section 33 Commissioner may, with the approval of the State Authority to issue an Interim Protection Order in relation to a site if in the opinion of the commissioner is necessary to do so for the purpose of protection and maintenance of the site. The Act also gives the role of the commissioner under section 46 to set a plan for managing the conservation of cultural

[14] Law No.11 of 2010 on Cultural Property in Indonesia.
[15] Law No. 28 of 2002 on Building in indonesia.
[16] Decree of Wali Kota/ Mayor Decree No. 646/50/1992 on Conservation of Ancient Buildings in Semarang.

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heritage. Mistakes on a heritage site in this act enshrined in sections 112-114 as defacing, burn, demolishing and renovating heritage buildings be sentenced to 5 years in prison and a fine of 50 thousand ringgit Malaysia whether compensation. Can be seen in the laws of Malaysia, which is also very protect and preserve the cultural heritage that is very good.[17]

Protection of cultural heritage recognized by the international community such as the UNESCO Convention of 1972, article / section 4 stipulates that each state party to this Convention have an obligation to make sure and do all it can to protect the cultural heritage of the country. For the purposes of this Convention, international protection of the world cultural and natural heritage shall be understood to mean the establishment of a system of international cooperation and assistance designed to support States Parties to the Convention in their efforts to conserve and identify that heritage listed. UNESCO has a committee of international cultural heritage that could help countries in protecting the cultural heritage of the country. Malaysia and Indonesia must comply with the provisions of this convention and to endeavor to[18] :

Adopt a general policy which aims to give the cultural and natural heritage a function in the life of the community and to integrate the protection of that heritage into comprehensive planning programs;

Setting up the territory, where the service does not exist, one or more services for the protection, conservation and presentation of cultural and natural heritage with an appropriate staff and possess the means to carry out its functions;

Develop scientific and technical studies and research and to work out such operating methods will make this country is able to compensate for the dangers that threaten the cultural or natural heritage;

Taking legal action, scientific, technical, administrative and financial necessary for the proper identification, protection, conservation, presentation and rehabilitation of this heritage; and

Encourage the establishment or development of centers of national or regional training in the protection, conservation and presentation of cultural and natural heritage and to encourage scientific research in this field.

The international community in creating the conditions for world heritage protection must be followed by countries that have registered cultural heritage.

There is no law that can give permission to make changes and damage to heritage buildings, the manner about the ability to change a heritage building that can do by the government is nothing in terms of government legislation Semarang, government does have the power to manage cultural heritage, but this power not for damage and change the culture in a heritage building, the power of the government is to care for and protect the building. All regulations and laws in Indonesia about heritage buildings have insisted that anyone either government must protect heritage buildings, not to change or to damaging this buildings . So the power of government have been conflict with the any law and international conventions protecting cultural heritage.

[17] Act 645, the Law on Cultural Heritage in 2005.
[18] Konvesyen United Nations Educational Scientific Culture Organization (UNESCO) 1970 artikel.5.

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In cases of city Semarang, government employees take off any old buildings that are not profitable for the city to be modified, so when the building was demolished and then replaced with a new building of the opinions of civil servants is more useful, nor even costs incurred for the conservation and maintenance of old buildings is greater than dismantle and change with the new building.[19] Government has the power to protect and regulate the conservation of cultural heritage, but on the fact that the government will change and destroy heritage buildings worth it. Many of the people who understand the importance of culture lovers of cultural heritage does not receive the kingdom and against any thing that will ruin old building, but it is the state-owned power and hard to do.

In fact the country is considered by the public did not pay attention to old buildings of historic with effective by people who love the cultural heritage and many people to reject the government's decision because not complying with the legal and cultural value to the community. This is because for urban development does not have enough money to do conservation. As a result, if not demolished, the building was left broken and given to private parties that alter the authenticity of the building and government get many profit. It is of course detrimental to the younger generation, who do not get the opportunity to enjoy the cultural diversity of the city and enjoy the history of its development. Efforts to provide protection and conservation of old buildings as heritage designated as a cultural heritage and is not only for business. Although listed and regulated in the provisions of national laws and regulations of the international community (UNESCO 1970) on the protection of cultural heritage, but in reality it seems protection still can not be done well.

In the case of the demolition of the johor market, government employees in the Semarang city plans to build a market with market which very modern and in the case of TBRS also will be demolished by substituting playground, different from the act of existing in Malaysia, Pesuruh jaya in Malaysia to provide protection for comprehensive and better than in Indonesia. Revitalizing the old buildings of historical value should not be done by dismantling the building, but can be done with building improvements and better organizing. Damages that occur in buildings must be repaired and restored to the original form and presumption as if it is not nice, must be crushed and be reason the government to build more profitable is not allowed, but the fact be obligation and duty of the government to repair and protect than those who can destroy buildings in accordance with the provisions of national laws and international conventions.

Demolition of old buildings that have historical value and effort to build again with the same building by government employees is a mistake because the construction will not be same with the original, this will result in the loss of value of its building because the building looks like a clone. Referring to the efforts of demolition by public opinion this plan better replaced with efforts to put a playground and a modern market in around old building without destroying the old building so the old building into a cultural heritage also preserved and plan government employees who want to build playgrounds and markets modern, will continue to same run, with the old buildings will beautify the playground or the modern market which

[19] Eko Budirahardjo, in the Satjipto Rahardjo, et.all, *Arsitek dan Arsitektur Indonesia,* Andi Yogyakarta, Yogyakarta, 1997, page. 116.

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made the government with introduced the beauty of the historical city of Semarang. Until the development of city and conservation of old buildings alike can do together.

4. Govenrment reason to make changes and distortion in a heritage building.

Johar Market and TBRS are heritage buildings registered or listed in the government and must be protected because it has important value for the history and science in the future. Actions and changes demolition of buildings of cultural heritage, it is an act that is against the law and must be punished, but a lot of private parties to obtain permission from the government office to make changes or demolition of buildings. In this case shows that even the rule of law and the international conventions already regulates the protection of cultural heritage buildings but still many buildings were damaged. This shows that the law of the country of Indonesia have yet to eradicate violations against the cultural heritage is caused due to the lack of coordination of cooperation between the public and government positions either incomplete laws enacted to protect the cultural heritage or even the lack awareness and the lack understanding of the heritage law by the public.

The basic law for the government to make modifications and distortion on heritage buildings is law number 23 of 2004 on local governments. In this law govenrment has the power to regulate all matters in its territory either has the power to control or manage the provincial finance and get finance from its own territory. The legal basis of this that makes government can modify any such existing heritage buildings of city Semarang to obtain financing for the region, because it is the regional a sudden counter. So this law can authorize the government as a leader to organize and manage such a heritage building to include financial interest in urban pest.

After that there is a basic law number 28 of 2002 on Building, in the law that allows the government to make use of the building by doing the renovation of the building in accordance with the function and usefulness, which is seen to favor regional arrangement. So the legal basis also can authorize the government to make building renovation in accordance with the wishes of government that exist in every region. Because the government has taken power to do modifications that can provide useful benefits for the pest. Whether the legal basis of the number 32 tahaun 2009 on environmental surroundings. In this law govenrment in action and powers must give priority and attention to the environment. So the government in this regard see the building is unhealthy and dirty for the environment must be modified to make the city clean and beautiful in its territory. Old heritage building that has been left untreated can be modified and replaced with another building that is useful to the interests of the area.

Reasons of the renovation of heritage buildings in the city of Semarang is for financial income areas and make urban area into a modern city, the heritage buildings that have been damaged is seen by the government as a building can not be used again and must be destroyed because it can make many of the poor in areas such as unhealthy environment, emerging diseases and could be a source of local crime. Conservation of heritage buildings that have been damaged can spend a very expensive cost of the building later. Therefore, the reason of the government in power to build a clean and healthy environment with regard to

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renovate a heritage building that has been damaged for the good of the province, although considered incompatible with the law on cultural heritage.

IV. Conclusion

It can be concluded that there are a lot of old buildings in the city of Semarang who have registered or listed in the law, but the government has the authority to modify buildings already damaged heritage considered whether govenment has set the basis for its territory. However govenrment in city Semarang still regarded not pay attention to better protect and manage the old buildings of cultural heritage, because although it has the power to govern its territory, but it can not destroy and eliminate the cultural heritage that has been registered and it must be to protect it. Act govenrment in renovating cultural heritage is already breaking the law cultural heritage and international (UNESCO) however, govenrment have the reason and the legal authority to make modifications in the interest of the region, therefore, although the government law and heritage law is overlapping it can be resolved by looking at the interest of the general good in the city.

The challenge in this paper is there should be special legislation and renovation of the old law in accordance with international conventions to protect buildings and objects of cultural heritage, There should be more policy support for building repair and conservation of cultural heritage. There must be specific information that is shared for public awareness about the importance of cultural heritage and there should be a list of registered for the building included in the characteristics of cultural heritage.

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Convention United Nations Educational Scientific Cultural Organization (UNESCO).

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"Legal Protection of The Village of Natural Resources Forests by Act No. 6 Year 2014 Concerning The Village"

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Abstract

Act No. 6 of 2014 concerning Villages provide new hope for Indonesia, which develops a different perspective and new concepts related about the village and village governance. The village law emphasizes the principle of subsidiarity recognition and villages as well as to develop the principles of diversity. The Village Law give recognition and respect for the village, giving clarity and legal certainty on the status of the village in the constitutional system of the Republic of Indonesia. The authority vested in the Village Law provides the foundation to the village to organize and manage, as well as having rights over natural resources, including forestry in the village scale. Although the normative, the village has the rights to manage natural resources, but in reality is still required great effort and thorough stakeholder village in order to be protected rights over natural resources management. Legal protection for the village on the management of natural resource, is an important factor because there are overlapping laws and regulations of the village with the legislation in the natural resources sector.

Keywords: *Rural Legal Protection, Natural Resources, Forest Resource Management*

1. Introduction

The genesis of Law No. 6 In 2014 about Desa (village Act) provides new hope for Indonesia, because the village is expected to step up a state economies. In contrast to the Local Government Act, Act Rural develop a different outlook and a related new concepts about the village and village governance. The village law provides recognition and respect for the village as it is diverse, and to provide clarity and legal certainty on the status of the village in the constitutional system of the Republic of Indonesia. The village law insists on: a) the organization of village government, b) implementation of the development, c) social development, and d) community empowerment based on Pancasila, the Constitution of 1945, the Unitary Republic of Indonesia, and Unity in Diversity.

One of the program launched in Nawa Cita and mandate of RPJMN 2015-2019 is to build Indonesia from the periphery to strengthen the regions up to the government and people in the village. Further objectives, policy and strategy of rural development in 2015-2019 RPJMN stated as follows: rural development objectives, policies and strategies towards rural development, policy and strategy of rural area development, policy and strategy of village governance, policy and strategy escort implementation of the Law on the Village.

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The provisions of the Act in the village, the village has the following powers[1]: authorized under rights granted origin, village-scale local authority, the authority of the appropriate duty of the government, the provincial government, or local government district / city, and other powers assigned by the Government, Provincial Government. Furthermore, the authority vested in the Village Law provides the foundation for the village to manage and regulate natural resources such as village scale: forestry, plantation, mining and other natural resources. The arrangement is still very centralized forestry sector is the highly centralized permissions are based on the Regulation of the Minister of Forestry following the laws derived from Act No. 41 of 1999 on Forestry, often overlapping with the legislation of the village as stipulated in Law No. 6 of 2014 concerning the village.

Based on the above background, this paper is to shed the emphasis on "Protection of Rural Law On Natural Resources Forestry Sector According to the Act NO. 6 Year 2014 About the Village. "To restrict the discussion in this article, identifying the problem can be stated as follows: First, whether the legislation relating about the village has provided protection to the villages to manage natural resources the village scale forestry sector? Second, how does the authority of the village on the village right to manage natural resources forestry sector under the provisions of the legislation about the village? Third, if there are overlapping paraturan legislation in the field of forestry with the legislation of the country in the management of natural resources forestry sector?

2. Authority of Natural Resources Upper Village Skala village

Law No. 2 Year 2015 concerning the Stipulation of Government Regulation in Lieu of Law No. 2 of 2014 on the Amendment to Law Number 23 Year 2014 About the Local Government Becoming Act, specifies that government affairs under the authority of the village include government functions that have No rights-based origins of the village, the authority of government affairs submitted by the district/city, assistant task of government and local government, as well as other government affairs by legislation submitted to the village.

According to Article 18 of the Law Village, village authority includes the authority in the field of administration of the village, the implementation of rural development, rural community development, and the empowerment of rural communities based on community initiatives, the right of origin, and customs of the village. Furthermore, Article 19 of Law Desa village authority include: authority based on the origin of the right, the village scale local authority, the authority assigned by the government, the provincial government, or local government district/city; and other powers assigned by the government, the provincial government, or the government.

Based on the authorization, the village has the right to carry out development by utilizing the potential of natural resources, including the forestry sector in the village. Village right over natural resources, is also regulated and reinforced in Article 371 paragraph (2) of the Local Government, the village has the authority in accordance with the provisions of the legislation regarding the village.

[1] Indonesia, Law No. 6 of 2014 About the Village of Article 19, the State Gazette No. 7 of 2014 State Gazette No. 5495.

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The principles village setting as stated in article 3 letter a and b of Law village there are two principles that are very important are2: recognition, namely the recognition of the right of origin and subsidiarity, namely the establishment of the authority of local scale and making locally for the benefit masdyarakat village. It said the two principles are important because, in addition to being the basis for other principles, the principles are also confirmed as an authority of the village, as the provisions of Article 19 of Law Village. Therefore, the two principles can be said as the two principles in the substance of the Village Act, and it is important to dipahamin specifically. The principle of recognition is closely related to the definition of a village as stipulated in Article 1 paragraph 1 of Law village, that village "... organize and administer based community initiatives, the right of the origin, or traditional rights recognized and respected in the government system the Homeland." recognition is a principle that is relevant in the context of the village as a unit of community has the right to exist and the origin of which each village has a variety of contexts.3

While the principle of subsidiarity defined in Article 19 letter b Law village, "Village Authority include: ... b) local authority-scale village ... ..". The existence of local authorities is a consequence of the recognition of the village as a unit of community has the right origins. As for the meaning of the subsidiarity principle is as follows4:

a. The use of authority and decision-making about the interests of the local community in the village.
b. Countries set a village scale local authority under the authority of the village through without going through the mechanism of the delegation and the delegation of business / authority of the district / city.
c. Governments do support and facilitation of the villages in developing initiatives to prepare and establish village-scale local authority.

3. Protection Law Regulation Legislation On Village In Management of Natural Resources Forestry Sector village

In Book I of the National Medium Term Development Plan (RPJMN) The period from 2015 to 2019 found a pattern to build Indonesia should be done through the outskirts to reinforce the areas and villages within the framework of a unitary state. In this framework, rural development and rural areas achieved through efforts to reduce the gap between rural and urban areas to accelerate the development of the villages self-reliant and build local economic linkages between rural and urban areas through the development of rural areas.

Direction and policy, is a program that should be the focus of attention for the government, provincial government and district / city in implementing rural development. In realizing this, the village government can create innovation and creativity to be able to utilize and manage the potential of Natural Resources (SDA) village scale in a sustainable manner, which is expected to improve the welfare of rural communities. The legal framework for the

[2] Ibid, p. 65.

[3] Ibid, p. 67.
[4] Ibid, p.68-69.

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protection of the village on the natural resources sector include scale forestry villages can be organized under the laws and undngan as follows:

First, the RI Constitution of 1945. The village has the right origin and traditional rights to regulate and manage the interests of the community and contribute to realize the ideals of independence by the Constitution of the Republic of Indonesia Year 1945. Therefore, need to be protected and empowered in order to become stronger , advanced, independent, and democratic so as to create a solid foundation in implementing governance and development towards a just, prosperous, and prosper. Article 18 paragraph (7) and Article 18B (2) of the Constitution of the Republic of Indonesia Year 1945. Furthermore, associated with the utilization of natural resources as the provisions in Article 33 paragraph (3) of the Constitution of the Republic of Indonesia in 1945, stated that: "Earth and water and natural resources contained in it are controlled by the state and utilized for the welfare of the people." The provisions in Article 33 paragraph (3) of the 1945 Constitution, makes basic policy of the State to regulate the control, ownership, use and exploitation of natural resources such as land, which the state is obliged to:

a. That all forms of utilization of land and water as well as the results obtained in it (natural wealth), should significantly improve the prosperity and welfare of the community;
b. Protecting and ensuring all people's rights contained within or on the earth and water can be generated directly by the people;
c. Prevent people not to lose or opportunity right over land, water and its contents;
d. Entitled to control and manage land.

Second, the Act No. 23 Year 2014 on Regional Government. The government through Law No. 2 Year 2015 concerning the Stipulation of Government Regulation in Lieu of Law No. 2 of 2014 on the Amendment to Law Number 23 Year 2014 About the Local Government Becoming Act, specifies that government affairs under the authority of the village include government affairs existing rights-based origins of the village, the authority of government affairs submitted by the district / city, assistant task of government and local government, as well as other government affairs by legislation submitted to the village. Autonomy owned by the village government is very different from the autonomy which is owned by the provincial and district / city. Autonomy owned by the village strongly influenced by the origins and customs istadatnya and not based on the transfer of power from the government. Village or other names, hereinafter referred to as the village is a community unit who has the authority to regulate and manage the interests of local communities based on the origin and the local customs are recognized in the national administration system and located in the area of the district. Furthermore, associated with the village authority over natural resources is also regulated and reinforced in Article 371 paragraph (2) of Law No. 23 of 2014 on Regional Government, the Village has the authority under the provisions of the legislation of the village.

Third, the Act No. 6 Year 2014 About the Village. According to Article 18 of Law No. 6 of 2014 on the village, the village authority includes the authority in the field of administration of the village, the implementation of rural development, rural community development, and the empowerment of rural communities based on community initiatives, the right of origin, and customs of the village. Furthermore, according to Article 19 of Law

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No. 6 of 2014 on the village, the village authority includes: authority based on the origin of the right, the village scale local authority, the authority assigned by the government, the provincial government, or local government district / city; and other powers assigned by the government, the provincial government, or the government.

Pursuant to the authority mandated in legislation above, gave authority to the village to be able to carry out rural development and regional perdesaaan by utilizing the natural resources in a sustainable manner village, including the rights to natural resources in the forestry sector skaladesa. The arrangement aims to create a source of livelihood in the village through the utilization of natural resources the village level to improve the welfare of society. Furthermore, Article 1 point 9 of Law No. 6 Year 2014 about the village, stated that "in Rural Areas are areas with major agricultural activities, including the management of natural resources with the composition as a function of the rural area, government services, social services, and economic activity. As for Article 78 paragraph (1) states that "Rural Development aims to improve the welfare of the people of the village and the quality of life and reduce poverty through the fulfillment of basic needs, infrastructure development for the village, the development of local economic potential, as well as the use of natural resources and environmentally sustainable manner.

Fourth, the Act No. 41 of 1999 on Forestry. Article 1 of Law No. 41 of 1999 on Forestry, stated in question:

a. Forestry is a system that has to do with the maintenance of forests, forest areas and forest products were organized in an integrated manner.
b. Forest is an ecosystem unity in the form of landscape with biological natural resources dominated by trees in their natural environment, one and the other can not be separated.
c. The forest area is a specific area that is confirmed by the Government to maintain a military presence as permanent forests, as the Constitutional Court Decision No. 45 of 2011.

Furthermore, Article 3 letter e of Law No. 41 of 1999 states that: "Forest governance aiming for the greatest prosperity of the people are equal and sustainable by: e. ensure fair distribution of benefits and sustainable. As for Article 23 of Law No. 41 of 1999 states that: "The utilization of forests as referred to in Article 21 letter b, aiming to obtain optimum benefit to the welfare of the entire community equitably while maintaining sustainability. Under the provisions of the legislation mentioned above, the implementation of government policy on village right on the management of forest resources and plantations to the village level can be based on the provisions of Law No. 41 of 1999 on Forestry, although not explicitly regulate what shape and mechanism, and how the foundation of the legal umbrella is enough to put in the form of Village Regulations for cooperation with the parties concerned with forestry and plantation sectors. Regarding the village right in the management of forest resources as a village scale implementation of Law No. ataas 41 of 1999 on Forestry, the Government has issued Regulation of the Minister of Forestry Number: P.89 / Menhut-II /
2014 on Forest Village.

Referring to the explanation of Law 41 of 1999 on Forestry, especially the explanation of Article 5, village forest is state forest that are within the territory of a village, used by the village, to the welfare of the community. Furthermore, in the Regulation No. 6 of

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2007 on Forest Management and Forest Management Planning, village forest is defined as a state forest that has not have a license or rights managed by the village and for the welfare of rural communities. The basic principle of the Forest Village is to open access to certain villages, forest village precisely, the state forests are included in its territory.

Granting the right of this village was first based on Regulation of the Minister of Forestry Number: p.49 / Menhut-II / 2008 on Forest Village, which is set on 28 August 2008. This regulation was followed by amendments (Regulation No. P.14 / Menhut-II / 2010 and of Regulation Np. P53 / Menhut-II / 2011), and last amended by Regulation of the Minister of Forestry No. P.89 / Menhut-II / 2014 on Forest Village. In the Forest Village, the rights management of permanently given by the Minister of Forestry / Local Government to institute the village with about 35 years and can be extended. Village Forest Permissions can be granted in the area of protected forests and also the production that are within the administrative area of the village concerned. Determination of village forest work area carried out by the Minister of Forestry based on proposal Regent / Mayor. In this case the right to use rights granted are non-proprietary Forest Village with permanent status in the state forest.

Related to the village right on the management of natural resources forestry sector, in accordance with the authority given to the village by the principle of recognition and subsidiarity as stipulated in Law No. 6 In 2014, the village has the authority to regulate the Village Regulations on the Rights of the village of Upper Management of Natural Resources Forestry Sector Village. However, the problem is related to the determination of the village forest area according to Law No. 41 of 1999 on Forestry, PP 6 Year 2007 regarding Forest Management and Forest Management Planning, as well as the Regulation of the Minister of Forestry Number: P.89 / Menhut-II / 2014, particularly governing the establishment of village forest areas are still under the authority of the Ministry of Forestry. This is still a good legal issues are also regulatory issues regarding the licensing authority in the management / utilization of large-scale forest villages as the authority given to the village by the principle of recognition and subsidiarity in Law No. 6 of 2014 concerning the village.

4. Overlapping Regulation Legislation Forestry Sector with Regulation Legislation On Village

The designation of forest areas by the Ministry of Forestry is also the root causes of forest conflicts with other sectors, both in the plantation sector, the mining sector and other sectors. This is because the implementation provisions of Law No. 41 of 1999 on Forestry and also government policy even in the forestry sector has always ignored the provisions of Article 14 and Article 15 of Law No. 41 of 1999 on Forestry jo Constitutional Court Decision No. 45 Year 2011 on Judicial Review Provisions Article 1 (3) of Law No. 41 of 1999 on Forestry, which ultimately resulted in many residential areas and agricultural communities, including in forest area simply because of the designation of forest areas by the Minister of Forestry. This practice has been going on so long until today.

Some of the issues relating to the village right on natural resource management forestry village scale, include the following:

First, the level of policy implementation, it appears there are some differences and policy conflicts that occur between the rules of implementation of Forest Village with PP # 6 in 2007 and No.41Tahun Act 1999, among others:

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a. The restriction of harvesting as stipulated in Article 23 letter b and Article 32 that the collection timber after IUPHHK-HD can only be as much as 50 m3 per year. This restriction is very detrimental to the right of the village if compared with the licensing process IUPHHK-HD is quite complicated, long, and high cost. Supposedly the use of wood in HPHD adjusted to the carrying capacity of the availability of forest and environment along the aspect of sustainable management.
b. There are differences in terms of NTFPs in Law No.41 of 1999 with Permenhut about Forest Village. In forestry, crops of coffee and chocolate is not included forest plants, while at the second Permenhut above may come in NTFPs (article 17, paragraph 5 P37 / 2007), which reads "Use of non-timber products referred to in Article 15 letter b number 4 in natural forests, which include the use of: (a). rattan, sago, palm, bamboo, which includes the planting, harvesting, enrichment, maintenance, security, and marketing of products; (B). sap, bark, leaves, fruits or seeds, aloes which includes kegiatanpemanenan, enrichment, maintenance, security, and marketing of products ".
c. After the establishment of village forest area, was issued a temporary permit in Government Regulation No. 6 of 2007 and the Forestry Law 41 of 1999, that the forest areas that have been approved in the entire facility and obligations by license holders as opposed to some articles, namely:
    1) In Article 9-10 of Regulation p.49 / 2008 mentioned that the facilitation HD must be done by the government, the province or regency / city government in accordance with its authority
    2) Article 21 P.23 / 2007 that the cost of coaching, supervision and control imposed on the government.

Second, in the process of harvesting Forest Village who received permission timber enterprises, the government has issued regulations P.51 / Menhut-II / 2006 and P.55 / MoF / 2006 regarding the origin of timber and verification based on the types of licenses obtained Forest Village. The spirit of the regulation is to simplify and streamline the administrative requirements of the origin of timber from the forests of HD, to give authority to the village head. The village head has the right to issue a transport document with the name of the forest KM Certificate of Origin Wood (SKAU). But unfortunately only involves only three types of wood is wood Sengon (Albazia falcataria), rubber and coconut wood. As for other types of wood in the transport still use SKKB (Certificate of Logs), accompanied by additional cap with code: KR (Wood People). SKKB document issued by the district, but it turned out to be more difficult to obtain because it is determined by the proof of tenure. Then the kind of wood that could be SKAU increased to 15 with the release P.33 / MoF / 2007.

Third, the problems associated with the process of establishing and licensing village forest is long and complicated impact on the high cost, still need simplification of the process to make it affordable and accessible to the public. Fourth, there are overlapping authority between the central government (the Ministry of Forestry sector with the Ministry of Rural, Transmigration and Disadvantaged Regions) and local governments in the facilitation and budgeting activities Forest Village.

Next will be described the authority of the Central Government in the management of forest resources, the authority of the local government in the management of forest resources, overlaps and conflicts of authority in the management of forest resources.

5. The authority of the Central Government in Forest Resource Management

The government through Law No. 2 Year 2015 concerning the Stipulation of Government Regulation in Lieu of Law No. 2 of 2014 on the Amendment to Law Number 23 Year 2014 About the Local Government Becoming Act, specifies that government affairs

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under the authority of the village include government affairs existing rights-based origins of the village, the authority of government affairs submitted by the district / city, assistant task of government and local government, as well as other government affairs by legislation submitted to the village.

Furthermore, Article 66 of Law Number 41 Year 1999 on Forestry, mandates partial handover of authority to local government. Handing the authority to manage part of the authority in the field of forestry can be seen under Regulation No. 38 of 2007 which is the mandate of Law Number 32 Year 2004 on Regional Government, instead of Regulation No. 25 of 2000 which is the mandate of Law Number 22 Year 1999 on Regional Government. Besides, in particular in the field of forestry can be seen under Regulation No. 34 Year 2002 on Forest Management and Forest Management Planning, Forest Utilization and Forest Area, which was later replaced by Regulation No. 6 of 2007, which is considered to have no contextual again according to Law No. 32 of 2004 on Regional Government.

Relating to the authority of the Central Government in the management of forest resources, can be seen under Regulation No. 6 of 2007 which is setting delegation of Act No. 41 of 1999 on Forestry. According to section weighing PP 6 In 2007, the substance of which is a charge coverage in the management of forest resources is, first, forest governance and forest management planning; second, use of forests and forest land use; third, devolution; fourth, compensation and administrative sanctions. Fourth content material can be made into two categories, namely the substance that fall within the scope of forest management and content material non forest management.

According to the Forestry Law, forest governance and forest management planning and use of forests and forest use, are two of the four forest management coverage in addition to the other two, namely: 1) rehabilitation and reclamation; and 2) the forest protection and conservation. Thus the material on devolution and compensation and administrative sanctions are outside the scope of forest management. Regarding the position of forest governance and forest management planning and forest utilization as part of forest management defined by the PP No. 6 of 2007. Article 2 mentioning that:

"Forest management planning and forest utilization is part of a forest management". In forest management, PP No. 6 Year 2007 authorizes the existence of forest management units that are not regulated in detail in Government Regulation No. 34 of 2002, which resulted in the formation of the implementation of the forest management area can not be run either as mandated under the Forestry Law. As a result, forest area is not managed properly. Because that is considered as the cause is not the passage of the implementation of the establishment of forest management areas, then the solution offered was to change the government regulations.

In PP No. 6 Year 2007 has introduced the concept of forest management unit (FMU) in accordance with the principles of sustainable forest development. Forest Management Units constructed a forest management unit in accordance smallest principal function and allocation that can be managed efficiently and sustainably responsible for the implementation of forest and forest management planning and implementation of forest management. To realize the sustainable management of the entire forest area is divided into forest management units (FMUs) in the form: Conservation Forest Management Units, Protected Forest Management Unit, as well as Forest Management Unit production.[5]

According to the provisions of Regulation No. 6 of 2007, some of the authority of the central government in forest management includes several things.

[5] Explanation of the PP No. 6 Year 2007 on Forest Arrangement and Preparation of Forest Management Plan and Forest Utilization.

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First, the Government set the boundaries of the forest management unit in accordance with their classification can be divided into Conservation Forest Management Units, Protected Forest Management Unit, and Production Forest Management Unit.[6]

Second, the government has authority to establish an organization of forest management units at the central level in coordination with the Provincial Government, especially to the areas surrounding some administrative areas in different provinces.[7]

Third, the government is authorized to establish the duties and functions of the organization of Forest Management Units, which include the following[8]:

a. Organizing forest management;
b. Outlining the national forest policy, provincial, and district / city;
c. Implement monitoring and assessment of the implementation of forest management activities in its territory; and
d. Investment opportunities.

Besides dealing with forest management, the Central Government also has the authority related to forest use. Before explaining about the authority of the Central Government with regard to the use of forests contained in Regulation No. 6 of 2007, it is the use of forests include[9]:

a. area utilization
b. Environmental services
c. Utilization of timber and non-timber forest products; and
d. Pemngutan timber and non-timber

Fourth utilization activities above can only be done using instruments permit. There are as many as six types of licenses in the utilization of forests that can be summarized by the term generic Forest Utilization Permit. The central government has the authority to give consent to activities that include:

a. Area utilization license (IUPK)
b. The business license of environmental services (IUJPL)
c. License for utilization of non-timber forest products (IUPHHK)
d. License for utilization of non-timber forest products (IUPHHBK)
e. Permits for harvesting timber (IPHHK); and
f. Permits collection of non-timber forest products (IPHHBK).

Regarding the permissibility and prohibition of granting more than one in one area, in Government Regulation No. 6 of 2007 distinguishes according to function. For the use of forests in protected areas, the requirements are:

First, the permit to use the area may include some more specific permission: 1) The activity permit the cultivation of medicinal plants; 2) The business license of ornamental plants; 3) license mushroom cultivation activities; 4) permit bee farming activities; 5) wildlife breeding business license.[10]

Second, the licensor is forbidden to give consent to other forest use on an area that has been granted the permit to use the area, except IPHHBK for certain commodities.[11]

As for utilization in production forest provisions are as follows:

[6] Article 6, paragraph (1) and the elucidation of Article 6 paragraph (1) PP No. 6 Year 2007.
[7] Article 8, paragraph (1) PP No. 6 Year 2007.
[8] Article 9, paragraph (1) PP No. 6 Year 2007.
[9] Rikardo Simarmata, Institutional and Community Participation in Forest Management, (Jakarta: Law Institute of Natural Resources, 2007), p. 13.
[10] Article 27, paragraph (1) PP No. 6 Year 2007
[11] Article 27, paragraph (2) PP No. 6 Year 2007

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First, it is prohibited to provide all forest utilization license on the working area SOE forestry sector has gained an abundance of forest management authority. Eg giving licenses in the forest area which is an area of Perhutani. Delegated authority in the management of the implementation of PP No. 6 Year 2007 set out in Article 4 paragraph (1). Second, prohibited from providing other permits in forest areas that have a license for utilization of forest. Third, be allowed to give IPHHBK on areas that have a license for utilization of forest, with different commodities.

Government Authority with regard to the management of forest resources, can be seen under Regulation No. 38 Year 2007 concerning Division of Government Affairs between the Government, Provincial Government, and the Government of Regency / City. According to Government Regulation No. 38 of 2007, the forestry affairs is the government affairs are managed jointly between the Central Government and Local Government, or sometimes referred to matters that are kongkuren, namely government affairs outside of government affairs which become the full authority of the Central Government, organized jointly by the Central Government, Provincial Government and the Government of Regency/City.

The authority of the Central Government with regard to the management of forest resources in Government Regulation No. 38 of 2007 includes some authorities as contained in the annex to the regulation.

First, in relation to the problem of conservation of biological resources and ecosystems, the central government has the authority to conduct the following activities:

a. Coordinating planning biodiversity conservation a national scale;
b. Determination OLICY conservation and sustainable use of biodiversity national scale;
c. Control policies control the deterioration of biodiversity national scale;
d. Utilization and supervision of the implementation of biodiversity conservation nasional.Pengaturan scale and resolution of conflicts in the utilization of biodiversity national scale;
e. The development of information management systems and database management of biodiversity national scale.

Second, the authority of the Central Government with regard to the utilization of forest and environmental services in production forest is set norms, standards, procedures, and criteria for granting license for utilization of forest and environmental services.

Third, the authority of the Central Government with regard to penataausahaan forest products is set norms, standards, procedures, and criteria, and the implementation of the regulation management of forest products.

Fourth, the authority of the Central Government with regard to the utilization of protected forest areas is set n Orma, standards, procedures, and criteria, and implementation of licensing commercial forest utilization and collection of non-timber products which are not protected and are not included in the annex (Appendix) Convention on International Trade of Endangered Species (CITES) and the use of environmental services nationwide scale.

Fifth, kewenagan Central Government relating to forest and land rehabilitation plan includes several activities such as:

a. Determination of common patterns, norms, standards, procedures, and criteria for critical forest and land rehabilitation;
b. Determination of critical land a national scale;
c. Preparation and adoption of forest and land rehabilitation plan Watershed;
d. Determination of forest management plans and land rehabilitation, the draft annual plan and forest rehabilitation on conservation land except nature reserves and core zones of national parks.

Sixth, the authority of the Central Government with regard to the implementation of forest and land rehabilitation, namely the activities of the rehabilitation and maintenance of

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rehabilitation outcomes conservation forest except nature reserves and core zones of national parks.

Seventh, the authority of the Central Government with regard to forest protection activities include:

a. Setting norms, standards, procedures, and criteria as well as the implementation of forest protection on a national scale state forests;
b. Facilitation, guidance and supervision in forest protection activities on forests and forest rights granted customary national scale.

Eighth, the authority of the Central Government with regard to the supervision of the forestry sector is to establish norms, standards, procedures and criteria and carrying out surveillance of deconcentration and assistance task, foreign loans and grants as well as the effective implementation of the development of regional governance in the forestry sector.

6. In the Regional Authority of Forest Resource Management

In the framework of regional autonomy and in accordance with the mandate of Law No. 32 of 2004 on Regional Government, as amended after the Government through Law No. 2 Year 2015 concerning the Stipulation of Government Regulation in Lieu of Law No. 2 of 2014 on the Amendment to Law Number 23 Year 2014 About the Local Government Becoming Law, specifies that government affairs under the authority of the village include government affairs existing rights-based origins of the village, governmental affairs authority submitted by the district / city, assistant task of government and local government, as well as government affairs more by legislation submitted the village, the local government held government affairs under its authority, except for governmental affairs government affairs. In the conduct of governmental affairs of the regional authority, local governments run the widest possible autonomy to organize and manage their own affairs based on the principle of autonomy and duty of assistance. Implementation of decentralization requires governmental affairs division between the Government and Local Government.[12]

Government affairs consists of government affairs was the full authority of the Government and government affairs are managed jointly between the level and composition of government or concurrent. Government affairs can be managed jointly between the levels and composition of the government or are concurrent affairs of government in addition to government affairs are entirely a matter for the Government. Thus, in every sphere of governmental affairs there is always concurrent affairs department under the authority of the Government, Provincial Government and District Government.

Affairs under the authority of the area consists of obligatory functions and affairs of choice. Mandatory government affairs is the government affairs shall be convened by the administration of areas related to basic services (basic services) for the community, such as basic education, health, environment, transportation, population and so on. Government affairs that are the choice was given priority by the government affairs of local government to be held concerning the efforts to develop the potential winning (core competence) that characterize the area. Government affairs beyond the obligatory functions and affairs of selection organized by the local government, all under the authority of the concerned region should still be held by local governments concerned.

Authority of the Provincial Government

Empowering communities in forest resource management and forestry affairs division in the annex to Regulation No.38 of 2007 on the Division of Government Affairs between the

[12] General Explanation of Government Regulation No. 38 of 2007 on the Division of Government Affairs between the Government, Provincial and Regional Government of Regency / City.

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Government, Provincial Government and District Local Government, Provincial Government has the authority are as follows:

1) Field of community empowerment and villages.
   Provincial Government has the authority for the establishment of provincial scale regional policy and the implementation of community empowerment in the management of natural resources and appropriate technology at the provincial scale.
2) Facilitation of Conservation and Environmental Rehabilitation
   Provincial Government has the authority to coordinate and facilitate environmental conservation and rehabilitation of the provincial scale, guidance, oversight and supervision of environmental conservation and rehabilitation of the provincial scale. Besides, the Provincial Government also has authority to monitoring, evaluation and reporting of the implementation of environmental conservation and rehabilitation of the provincial scale.
3) Forest Inventory
   Provincial Government has the authority for the management of production forest inventories, protected forest and forest reserves and watershed scale across districts / cities.
4) Designation of Forest Area, Production Forests, Protected Forests, Conservation Areas, Nature Reserve Area and Hunting Park
   Provincial Government provides technical consideration designation of production forests, protected forests, nature conservation, nature reserves and hunting parks.
5) Forest Area with Special Purpose
   Provincial Government Proposing and technical considerations forest management with the specific aim of indigenous communities, research and development, education and training of forestry, social and religious institutions to the provincial scale.
6) The administration of the Forest Area
   Provincial Government authorities give consideration to technical changes in status and functions of forests, land owned by the status change into forest areas, and the use and exchange of forest area.
7) Use of Forest Areas in Protected Forests
   Local Government provincial authorities gave permission forest utilization and harvesting of non-timber forest products which are not protected and are not included in the annex (Appendik) CITES, and the utilization of environmental services skal aprovinsi except on state forest areas in the working area of Perum Perhutani.
8) Local Community Empowerment in In and Around Forest
   Provincial Government has the authority to conduct the monitoring, evaluation, and facilitation of empowerment of local communities in and around forest areas.
9) Development of Private Forests and Forestry Aneka Usaha
   Provincial government has the authority to conduct the monitoring, evaluation and facilitation of private forest and various forest enterprises.
10) Forest Protection
   Provincial Government has the authority in the implementation of forest protection in production forests, protected forests are not burdened rights and indigenous forests and forest park provincial scale. In addition, the Provincial Government has the authority in the provision of facilitation, guidance and supervision in forest protection activities in forests and forests with rights granted provincial scale.

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7. Privileges Local Government District

Empowering communities in forest resource management and forestry affairs division in the annex to Regulation No.38 of 2007 on the Division of Government Affairs between the Government, Provincial Government and District Local Government, Local Government District has authority, inter alia as follows:

1) Empowerment and Development of Indigenous Peoples Cultural Social Life
   District Government has the authority to establish the district scale regional policy and establish guidelines, norms, standards, criteria and procedures in the field of indigenous empowerment and the development of social and cultural life of the district scale.
2) Empowerment of Indigenous Peoples in the Management of Natural Resources and Appropriate Technology
   District Government has the authority to establish regional policies and implementation of district-scale community development in the management of natural resources and appropriate technology district scale.
3) Conservation and Environmental Rehabilitation
   In the field of conservation and environmental remediation, the District Government has the authority to coordinate and facilitate the implementation of environmental conservation and rehabilitation of district scale. Besides it is also in charge of facilitating the implementation of environmental conservation and rehabilitation of the district scale, monitoring, evaluation and reporting of facilitating the implementation of environmental conservation and rehabilitation of the scope of the district scale.
4) Forest Inventory
   District Government has the authority in the organization of production forest inventory and forest and watershed scale in the district.
5) Forest areas for Special Purpose
   District Government has the authority to conduct forest management proposal for the specific purpose of customary law communities, research and development, education and training of forestry, social and religious institutions to scale district governor consideration.
6) Stewardship Forest Area
   District Government has the authority to conduct proposing changes to the status and functions of forests and changes in the status of the land owned into forest areas, and the use and exchange of forest area.
7) Use of Forest Areas in Protected Forests
   District Government have the authority to give permits the utilization of forest areas, the collection of non-timber forest products which are not protected and are not included in the appendix (Appendix) CITES, and the utilization of environmental services at the district scale except on state forest areas in the working area of Perum Perhutani.
8) Local Community Empowerment in In and Around Forest
   District Government has the authority guidance of the public, institutional and business development as well as the local community partnerships in and around forest areas.
9) Development of Private Forests and Forestry Aneka Usaha
   District Government has the authority to plan, development of forest management rights and various forestry.
10) Forest Protection
   District Government has the authority to implement the protection of forests in production forests, protected forests are not burdened rights and indigenous forests and forest park district scale. Besides, it also authorized untu provide facilitation, guidance and

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supervision in forest protection activities in forests and forests with rights granted district scale.

8. Overlapping and Conflict Management Resources Authority In Forest

Since the implementation of regional autonomy based on Law No.32 of 2004 on Regional Government, as amended after the Government through Law No. 2 Year 2015 concerning the Stipulation of Government Regulation in Lieu of Law No. 2 of 2014 on the Amendment to Law Number 23 Year 2014 About local government Being Act, specifies that government affairs under the authority of the village include government affairs existing rights-based origins of the village, governmental affairs authority submitted by the district / city, assistant task of government and local government, as well as other areas of governance which by legislation submitted to the village, the main problem encountered in the development of conservation in Indonesia is a division of the central and local authorities. Based on the applicable legislation, conservation authority is still in the hands of the central government, whereas there are many initiatives at the regional level regarding the conservation area management regulations that have not been accommodated by the central government.

Potential role of regions need to be understood, as are the de facto regions defined by the function of conservation (as well as other functions such as production and protection) are in the local administrative area. People at the regional level was very understanding actual conditions and the need for the best management. In addition, because of the conservation area in the past often not accompanied by sufficient data and information. In the absence of authority, then communicating biodiversity conservation with the interests of public life in and outside the region becomes difficult to be implemented by the regions.[13] Conservation of natural resources dakam Act No. 5 of 1990 is the management of natural resources which utilization is done wisely to ensure sustainability persediannya while maintaining and improving the quality and value diversity.

In Act No. 41 of 1999 on Forestry, stated that conservation regulations is still a central authority. It shows clearly that has not happened decentralization in the field of conservation, whereas many initiatives at district and community levels to complement the conservation regulations. Exacerbated by the centralized management of the planning process, structuring the region, protection and supervision and other activities related to the management of the convention area which is often not transparent developed by the central government. Support local governments and communities towards the conservation management is very low.[14]

Referring to the perspective contained in these regulations, there are a few things at the regional level and the community that need to be observed, especially for the central government to review the existing regulations, among others[15]:

First, rural communities around protected areas are still less involved in the management of the area. Second, the pattern of incentives developed for joint management is not clear direction and purpose, where the government just hope people can help maintain the area without any clear agreement. Third, there has been overlapping regulation center with the area, which arise with the area management, spatial planning and land use, as well as the

[13] Ciriacy Wantrup, "Common Property as a Concept in Natural resources Policy," Natural Resources Journal, 1975, p. 713-737.

[14] Dixon, J.A and Paul B. Sherman, Economic of Protected Areas: A New Look at Benefit and Cost, (London: East-West Center, 1990), p. 15-16.

[15] Ibid.

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overlapping of legislation in the field of forestry and legislation about the village, especially regarding the authority of the village on the right to manage forest resources. Fourth, the view that the absence of examples of conservation activities that can provide a real contribution to the local government and the community in the form of revenue (PAD).

Act No. 22 of 1999 amended by Act No. 32 of 2004 Regarding Regional Government, which subsequently amended by Act No. 2 of 2015 on Stipulation of Government Regulation in Lieu of Law No. 2 Year 2014 concerning Amendment No. 23 oF 2014 on Being local Government Act, the basis for autonomous regions to manage forestry at the local level. The Forest Service and the provincial and district cities can play an active role in cooperation with the relevant parties in the central, regional and community. The local government can issue regulations that support conservation activities undertaken by the community with reference to the central policy. Likewise can describe the policies according to the needs of the area required in this case conservation policy. The division of roles, the conflict resolution that occurs during these can be resolved.

In connection with the division of roles and coordination problems are the main obstacles faced by the Ministry of Forestry, local government and communities in conservation activities, we need a mechanism that can help resolve the problem. One mechanism that can diginakan by the Ministry of Forestry and the local government is public consultation mechanisms, namely a series of processes that are run by the government or other parties concerned as international institutions, nongovernmental organizations, kelangan colleges, communities and others who have similar initiatives in policy-making to the community, especially in the management of conservation.

While the policy direction in the management of agrarian resources include[16]:

a. "Doing reexamining the various laws and regulations relating to the management of agrarian resources in order to synchronize policies across sectors based on the principles referred to in Article 5 of this Decree" (paragraph 2 point a);
b. Expanding the provision of access to the public information regarding the agrarian resource potential in the region and promote social responsibility to use environmentally friendly technologies, including traditional technologies (paragraph 2 item c) and
c. "Resolving conflicts arising agrarian resource use for this as well as to anticipate potential conflicts in the future to ensure the implementation of law enforcement to be based on the principles referred to in Article 5 This provision (paragraph 2 point e)."

Although the direction of the agrarian reform and agrarian resource management is quite clear in the MPR, but in practice the government's consistency in realizing the mandate of MPR is still very weak, which tend to be of a political will to implement them. Forest management in general and specifically in the management of forest biodiversity in Indonesia is based on a variety of policies ranging from the 1945 Constitution, Law, Government Regulation, Presidential Decree, Ministerial Decree and the Decree / Circular of the Director General. The government's policy has been created is a platform for all stakeholders (government officials, entrepreneurs, NGOs, academia and the general public) in implementing forest management and biodiversity in it on an ongoing basis.

Various threats to the preservation of forests and biodiversity in them is increasing, both in quality and quantity. This can happen due to the following matters:

First, the dualism between the government policies to conserve and exploit forest resources, both inter and between departments, often resulting in conservation efforts often defeated by the attempted exploitation.

[16] Ibid, article. 5.

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Second, the strength of egosektoral (inter and inter-sectoral) has resulted in many forest areas (production and conservation) should change function for activities pembangungan in other sectors, for example the case of the Ministry of Forestry and the Ministry of Mines relation to the use of conservation areas that are mineral potential therein. Consideration of the economic value of minerals and inability to express the economic value of conservation areas, would be a threat to the integrity of conservation areas in which there are mineral potential.

Third, the policy in determining the area of production forests, forest conservation and protection is based on soil conditions (soil type, slope, rainfall) and not based on the potential and interests of biodiversity, so that the lowland forest has a rich diversity of the most high it allocated as production forest, even allocated for conversion to the development of other sectors (plantations, transmigration.

Fourth, forest management policies that resulted in the closing of the local community access to forest areas (production and conservation), has resulted in the ongoing conflict with local communities.

Fifth, Transfer of forest management authority to the region apparently has resulted in the rampant exploitation of forests that no longer heed the aspects of sustainability. This can happen because of the awareness of local government officials to conserve biodiversity and preserving forest resources are still low. The desire to raise revenue (PAD) to easily and quickly have mengkibatkan increasing exploitation of forest (as happened in Riau and East Kalimantan), without regard to sustainability aspects.

Sixth, the government's policy in providing license wood industry which permission is granted not by the Ministry of Forestry has resulted in demand for a national timber larger than the legal supply (Forest Concession, Industrial Plant Forest, License Management Area) so rampant theft of wood (supply of illegal timber) to meet the needs of the national timber.

Seventh, the government taking sides to conglomerates (employers) in forest management has created a 'revenge and heartache' for local communities who feel they are entitled to have the forest, so that after the reformation, some local people are competing to acquire his rights back to harvest forest products according to the needs they. During this time people are only treated as a spectator to the exploitation of forests in the region, which has provided enormous wealth for entrepreneurs.

Eighth, No assurance of business certainty in forest exploitation (for HPH) lead to exploitation it out (over eksplitasi) by logging companies to gain as much as possible in a short time and to compensate (pay) levies both its official and not official.

Ninth, forest wood is not defined as a fixed asset in forest management so as to obtain the maximum benefit concessions to exploit forest-out.

Tenth, policies issued by the government in assessing the performance of an HPH is not based on a post-exploitation of forest conditions is not based on forest sustainability but rather to forestry accounting. Performance is said to be good if high accountability. To obtain a high degree of accountability, the concessionaire will tend to increase exploitation.

9. Conclusion

Based on the description in previous chapters can be summarized as follows:

First, that legislation relating about the village as stipulated in Article 18 and Article 19 of Law No. 6 Year 2014 About the Village has been providing shelter to the village to manage the natural resources the village scale forestry sector. In fact, it is also guaranteed in Article 18 paragraph (7) and Article 18B paragraph (2), Article 33 paragraph (3) of the Constitution of the Republic of Indonesia Year 1945.

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Second, that the village authority over the village right to manage natural resources forestry sector in accordance with Article 18 and Article 19 of Law No. 6 of 2014 concerning the village. Pursuant to the authority mandated in legislation above, gave authority to the village to be able to carry out rural development and regional perdesaaan by utilizing the natural resources in a sustainable manner village, including the rights to natural resources in the forestry sector skaladesa. The arrangement aims to create a source of livelihood in the village through the utilization of natural resources the village level to improve the welfare of society. It also set up and reinforced in Article 371 paragraph (2) of Law No. 23 of 2014 on Regional Government, the Village has the authority under the provisions of the legislation of the village.

Third, there are overlapping paraturan legislation in the field of forestry as stipulated in Law No. 41 of 1999 on Forestry and its derivatives regulation to legislation about the village as stipulated in Law No. 6 Year 2014 about the village, in the management of natural resources especially the forestry sector governing regional authority over natural resources sector village by village-scale forestry, including on licensing for the management / utilization of forest village by the village council. In addition, the lack of legal certainty in determining an area as forest area or not forests should be done through a mechanism of affirmation of forest area as stipulated in Article 14 and Article 15 of Law No. 41 of 1999 on Forestry jo Constitutional Court Decision No. 45 Year 2011 on Judicial Review Provisions of Article 1 paragraph 3 of Law No. 41 of 1999 on Forestry, but until now the national government confirmed the new national forest area is less than 20%, including also associated with the village forest.

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Disparities on The Condemnation

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Abstract

Disparities are a gift in the imposition of criminal decisions that exist in the judicial decision. Criminal punishment is subject to the formulation of norms in accordance with the principle of legality. The formulation of norm relating to criminal threats essentially regulated with maximum punishment. This formulation raises the room for a disparity in the judicial decisions. The disparity often creates a feeling of injustice to the convict. This article discusses the disparity in the imposition of criminal use of normative and empirical methods in relation to substantive justice. These result indicate that in deciding cases judges are subject to the criminal codes procedures on the article 197 verse (1), that is the judge should have the sole discretion to determine the punishment which is severe or mild arrest to defendant,which obtained through material evidence at the trial to support the conclusion in consideration of the judge that aiming to determinate the defendant's guilt, which from the role of public prosecutor in the indictment have been outlining the fact and punishment on the basis of legal norm were violated. In the judicial progress to date in Indonesia are still using traditional methods or conventional methods, which is the method of the punishment still based on the court trial because the judge still assess subjectively to determine the punishment which is severe or mild arrest against defendant, this thing has often led to a court decision issued by the judge had a difference between each decision is commonly called the criminal disparities. One of the judge duties is to explore the values of justice in society, therefore the judge should be considered the aspect of disparity in sentencing to satisfy the values of substantive justice, with leaving off the method of sentences that are traditional or conventional.

1. Introdution

The criminal justice system of law having a position particularly central. This is because a decision on condemnation has broad consequences, both involving directly to the crime and the wider community. In the role of criminal law enforcement, by the function criminal justice system will involve at least three factors interrelated, which is the factor of legislations, law enforcer, and legal awareness.[1] In this things, the factor of legislation is the criminal codes, includes the materiel criminal law (substantive criminal law) and the formal

[1] Komisi Yudisial RI, 2014, *Disparitas Putusan Hakim:"Identifikasi dan Implikasi",Sekjen Komisi Yudisial RI*, Jakarta, page.83.

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criminal law (judiciary criminal law). It has two important aspects on law enforcement successes, which is the substantive justice and procedural justice.[2]

Indonesia is legal state who give freedom to the judge on deciding criminal cases, which means the judge can't have intervention from any party. The judges as judicial officials the state have authorities to receives, observes, and make a decision against the case that is faced to him. Essentially the duty of the judge in terms of adjudicating having two definitions, which is to justice enforcement and law enforcement.[3] The regulation of judge authority on the article 5 verse (1) said that the judge must be recognizing, following, and understanding values of law and the values who lived in the social community.[4] The article 8 verse (2) said that the judge must to determining the good habits on the defendant during the trial.

The criminal code that has been made no giving guidelines on the sentencing clearly that became the basis for the judge to dropped punishment to the defendant. The regulation that has been available is just used for to determine severe or mild arrest to the defendant. Because of that, the guidelines for sentencing supposed to be clearly stated in regulation, to avoid arbitrariness in judge decisions.[5] These things that often causes the disparity on condemnation done by the judge.

The disparity of sentencing is the difference punishment against same offence or against the criminal offense which has offences of comparable seriousness without clear justification. Furthermore, without referring to the legal category, the disparity of sentencing can happen on sentencing against them who have done the same case together.[6] The disparity of sentencing has a deep impact because there are constitutional in balancing between individual freedom and the state right to the sentencing defendant.[7]

There are a lot of factors that causes the disparity of sentencing. However, in the end, the judge who will determine the occurrence of disparities in sentencing. The problem about disparity will always happen because there is a distance on minimum punishment and maximal punishment. The processes formulation who be provided by a legislative as a legal forming has been influential in the disparity because there is the absence of standard to formulate legal sanctions.

The criminal codes procedure on the article 1 verse (1) that judicial decisions is the statement judge spoken in open court, which can be sentencing or out of all lawsuits which are regulated on the criminal code procedural. But there is a lot of decisions who gave from judge to the defendant still have not reached justice in the community because there is much incompatible in the judicial decision on sentencing.

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[2] *Ibid.*

[3] Sudikno Mertokusumo, 2007, *Hati Nurani Hakim dan Putusannya*, dalam Antonius Sudirman, Ed. , 2007, Bandung: Citra Aditya Bakti, page.78.

[4] Pasal 5 ayat (1) Undang-Undang Nomor 48 Tahun 2009 tentang Kekuasaan Kehakiman

[5] *Disparitas Pidana Dalam Perkara Tindak Pidana Pencurian Biasa Di Pengadilan Negeri Kota Semarang* oleh:Indung Wijayanto, Fakultas Hukum Unversitas Negeri Semarang. (web: http://journal.unnes.ac.id/nju/index.php/pandecta) accessed on 19-09-2016 at 13.50 AM.

[6] Muladi dan Barda Nawawi Arief, 1984, *Teori-teori Dan Kebijakan Pidana, Alumni*, Bandung, page. 52-53

[7] *Ibid.*

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Harkristuti Harkrisnowo[8] says :

The happening of disparity on law enforcement's because of the disparity of the reality, obviously if the public will question whether judge or court has done their job in enforcing law and justice. Seeing from the sosiologic aspect, the conditions of disparity perceptions by the public as an evident of social justice. Unfortunately, in judicial manner formal this condition cannot be considered had broken the law. Even so, the people often forget that the element of justice basically must have on the decision who give by the judge.

For the next Harkristuti Harkrisnowo say that the disparity can occur in several categories :[9]

a. Disparity against same criminal acts.
b. Disparity against same criminal acts who has the same seriousness.
c. The disparity of sentencing who gives by one judges.
d. The disparity of sentencing who gives by different judges for the same criminal acts.

From the opinion of the above can be understood that one of justification on disparity has led our law to the inconsistency condition in the purpose of law enforcement. The law which was intended to be the guardian of justice, social benefits and legal certainty no more could be achieved in their entirety, because in this things the element of justice which felt by the people never more be covered or given by judges in law enforcement.[10]

For the examples from the existence of disparity will be described the decisions of crimes traffic accident which caused death on the metro jurisdiction :

Tables 1.
The name of the defendant, The Number of judicial decisions and The Length of punishment which were researched the disparity.

No.	Defendant name	Judicial decisions	The length of punsihment
1.	Katiman	116/PID.B/2013/PN.M	8 Month
2.	M.Gozali	114/Pid.Sus/2013/PN.M	5 Month
3.	Mahfud Ryan C.	138/Pid.Sus/2013/PN.M	2 Month
4.	Rino Susiarto	94/Pid.Sus/2014/PN.Met	3 Month

This condition is very worst and demanded al of the parties, especially the law enforcement to improving their knowledge, comprehension, and ability in their profession so that they can undertake the duty in a fair manner and with as well as possible. In the implementation of judicial must using the measurement who has been acceptable in the legal world, namely the principle of legality. The principle of legality guaranteeing the people

[8] Harkristuti Harkrisnowo, "*Rekonstruksi Konsep Pemidanaan : Suatu GugatanTterhadap Proses Legislasi dan Pemidanaan di Indonesia",* dalam majalah KHN Newsletter, Edisi April 2003, (Jakarta:KHN,2003) page.28
[9] Komisi Yudisial RI, 2014, *Disparitas Putusan Hakim:"Identifikasi dan Implikasi",Sekjen Komisi Yudisial RI*, Jakarta, page.187.
[10] *Ibid.*

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especially defendant and convict to avoid the judge's arbitrariness in determining what can be described as a delict formulation.

Justice is a major requirement to maintain survival community, through judiciary as one of the pillars of law enforcement on the criminal justice system hopes to be the pillar of expectation of justice seekers. From the existence of disparity in the criminal justice system would cause trust in the judiciary weakening and would provoke a negative view of the sustainability of Indonesia Law. Therefore it is required law research to discuss further things about the factor of the disparity on condemnation.

1.1 The Problem's

Based on the background problems which were discussed before, so the writer interesting to make a journal with the title of "Thes Disparity of Sentencing" by identifying the problem of " what the causes of the disparity of sentencing conducted by judge and what is basis of consideration the judge in judges decisions on the criminal cases?".

2. Research Methods

A writing system in this journal used the normative juridical and empirical approach. As for type and data sources consisting of primary data comes from the field and secondary data sourced from literature. The data that has been obtained then analyzed with qualitatively basic subjects of end up into a conclusion with the inductive methods.

3. Research Results And Discussion

The sentencing can be defined as the determination of sanctions and also the phase of sentencing in criminal law. The word of "Penal" is commonly defined as a sentencing, whereas the "condemnation" is defined as a punishment. The doctrines distinguish between the materially criminal law and the formal criminal law. J.M. Van Bemmelen explained that things as the following :

The materially criminal law consists of a criminal offense are mentioned in a row, the general regulations who can be implemented against that act, and the sentencing which are the threat of the act. The formal criminal law regulated about the criminal procedural which should be achieved and determined the good step that must be considered on that occasion.

Mr. Tirtamidjaja describes the materially criminal law and the formal criminal law as the following :

a. The materially criminal law is a collection of rules which determining , about the penal sanctions. Set the terms for the criminal offense to punishable, pointing to the person who can be punished and set punishment for criminal violations.
b. The formal criminal law is a collection of rules which set the procedures how to maintain the materially criminal law which did by the certain peoples, or in the other words, sets

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how the materially criminal law can be exploited the decision and sets how to executed the judicial decisions.[11]

From the opinions, it can be concluding that the materially criminal law have a restriction and commands if that cannot be met will be treating sanctions, whereas the formal criminal law is the regulation about the procedure how to operates and executes the materially criminal law.

The purpose of sentencing is the part who very fundamental and important in the life of criminal law in Indonesian even across the country. According to Barda Nawawi Arief, the purpose of sentencing are for determining the punishment not separated from the purpose of the criminal policy. In the sense overall the community protection to achieve welfare. Therefore to answer the purpose and knowing the function of sentencing, and there would be in spite of theories about the sentencing.[12]

a. The absolute theory or Theory of judgment

According to this theory, setencing was dropped because of the people who committed a crime or criminal acts. The sentencing is an absolute result which exists as a punishment for the person who has committed a crime. As for on which to the base justification from the sentencing is located in existence crime itself,because of that, the sentencing has a function for removed that criminal acts.

b. The relative theory or The purpose theory

According to this theory, the sentencing is not just for the retribution or incentive. The sentencing itself not have a value but it is meant as the facilities which protecting the social interest. This theory unlike the absolute theory, but the essence of this theory is for pronouncing the punishment to the criminal act which means the sentencing have a particular purpose. For example to fix mental attitude or create the harmless that it takes a process guidance mental attitude.

c. The combined theory

Beside the absolute theory and the relative theory, there is also the third theory which called The Combined theory. This theory is raising from the reaction of previously theory which is unsatisfying to answer the purpose of sentencing.

The purpose of sentencing in the draft of procedural criminal code on the article 54 stating that sentencing aims :

a. Prevent the criminal act by enforcing law nor to protect the community.
b. Resocialization back the convict with a guidance so as to be a good person and useful.
c. Resolve of the conflict generated by the criminal act, and restoring balance and bring a peace in society.
d. And make a sense of freedom from guilt who raised up by the convict.

[11] Leden Marpaung, S.H., 2005. *Asas-Teori-Praktik Hukum Pidana,* Sinar Grafika, Jakarta, page.2.
[12] Muladi, 1995, *KAPITA Selekta Sistem Peradilan Pidana*, Penerbit UNDIP, Semarang, page.149.

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In the purpose of judge included on the criminal codes procedures , which said the judge is the officials of the judicial court that is given the authority by regulation to adjudicates. Whereas the purpose of adjudicating is a measure of the act of judges to receive, examine and make a judicial decision based on the freedom principle, honest and impartial in the court as arranged in the regulation. (article 1 verse (9) the criminal codes procedures).

The judicial decision or the judge decision basically having three different types of decisions will be given to the defendant at the end of the judicial court, as for the types of the three kinds of judicial decision are as follows :

a. Freedom decision
   It happens if the judicial court has the opinion that obtained from the court investigation, against the guilty raised up by the defendant which is the indictment giving to it said it cannot be proven legally and convincing. (the article 191 verse (1)).

b. The decision out of all charges
   It happens If the judicial court has the opinion how the criminal acts which indictments to the defendant was proven, but it was not indicated as a criminal act. (the article 191 verse (2)).

c. The criminal decisions
   It happens if the judicial court has the opinion that the defendant convicted doing a criminal act which charged to him, then the judicial court will give him punishment. (the article 193 verse (1)).

The aspect of consideration juridical charges that gave to the offender crimes was the important context of the judicial decision.[13] Basically, juridical consideration is the element of substantiation against crimes who made by the defendant has been meeting and match with the indictment which charged to him by the public prosecutor. So it can say that juridical consideration directly will make seriously impact the judicial decision.

Usually on the practice of the judical court in the judicial decision, before the judge makes the juridical consideration he will make a conclusion through the fact trial which gets the witness information, defendant clarification and the evidence which examined at the judicial court.[14]

The following will be explained judge consideration that is juridical and non-juridical :

1) The juridical consideration

[13] Lilik Mulyadi, *Seraut Wajah Putusan Hakim Dalam Hukum Acara Pidana,* Citra Aditya Bhakti, Bandung, 2010, page.219.
[14] *Ibid.*

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The juridical consideration which based on the fact from judicial court, and by the legislation it was appointed as the things which must loaded up on judicial decisions, so the juridical decision is :

a. The prosecutor indictment;
b. The witness information;
c. The defendant clarification;
d. The articles of regulation that related.

2) The non-juridical consideration

Besides the juridical consideration judge must have used the non-juridical consideration to being his consideration :

a. The impact of criminal act by defendant;
b. The condition of the defendant.

Besides the consideration juridical and no juridical which mentioned above, there is a thing which can incriminate and defense on the sentencing which give by the judge to the defendant, these things are as the follows :

1) The things incriminate criminal act:
   a. Disturbing to the community;
   b. The characteristic of defendant does;
   c. A result of what causes pf what the defendant did;
   d. The defendant has been convicted.
2) The things defense criminal act:
   a. Never been convicted;
   b. Regretted with it does;
   c. Admitting what it does;
   d. Be polite during the trial.

The things which always be a problem and the facts which affecting the judge on sentencing against the defendant, because of the regulations in Indonesia whether it general law or specific law not arranged the minimum punishment in criminal punishment for criminal acts. Because of the criminal law does not arrange the minimum punishment these matters giving the judge a freedom on sentencing.so that things often makes a gap or commonly called disparity of sentencing.

According to Cheang Molly[15], the disparity of sentencing or disparity on condemnation is different punishment against same criminal offense or against the dangerous characteristic of the criminal offense which can be compared without clear justification.

[15] Muladi dan Barda Nawawi Arief, 1998, *Teori-teori Dan Kebijakan Pidana, Alumni*, Bandung, page. 52.

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According to the previous chapter that on the judge decision are known a gap on sentencing or more known as a disparity. More specific from the meaning of disparity, Harkristuti Harkrisnowo said the disparity can happen in several categories :

a. Disparity against same criminal acts.
b. Disparity against same criminal acts who has the same seriousness.
c. The disparity of sentencing who gives by one judges.
d. The disparity of sentencing who gives by different judges for the same criminal acts.[16]

The factor which affects judicial decisions consisted of :[17]

a. Intern factor;
b. The factor on Regulation itself;
c. The interpretation factor of the law;
d. The political factor;and
e. The social factor.

The disparity of sentencing is allowed according to the article 12 (a) criminal codes procedure which said the punishment for the defendant as low as is one day and as long as is for whole life. The disparity can be interpreted as a different sentencing against same offense or against criminal act with the offence of comparable seriousness without clear justification.[18]

The factors which can raise disparity of sentencing because of the criminal law don't have sentencing guidelines to the judge to give a punishment. Sudarto ever said that the sentencing guidelines would ease judge in the setting of sentencing after the defendant was proved what charged to him.[19]

The sentencing guidelines must including the objective thing about the defendant and so with noticed that things the sentencing would more proportional and understood why the sentencing are given by the judge. Sudarto opinion was justified by muladi because the problem is not making the disparity disappear but the disparity must be rational.[20]

The factors of disparity can happen also can be reviewed from the juridical and empirical terms. From the juridical terms disparity caused by :

a. The existence of judge freedom and judge independent on 1945 Constitution of The Republic of Indonesia.
   The purpose of the freedom and independent in judge according to The Code Of Conduct which built by Supreme Court of Indonesia setting on the principle as the morality and

[16] *Ibid.*
[17] Loqman, Loebby. 2002. *HAM dalam HAP*. Jakarta: Datacom.page.100-101.
[18] Muladi dan Barda Nawawi Arief. 2005. *Teori-teori dan Kebijakan Pidana,* Alumni, Bandung. page.52-53
[19] Sudarto. 1981. *Kapita Selekta Hukum Pidana Indonesia.*Alumni Bandung.Bandung. page.9
[20] *Ibid.*

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responsibility which should be in stood for a high by a judge in Indonesia both inside or outside the judge duty.[21]

b. The regulation of judicial authority
The judicial discretionary power guaranteed fully on the regulation of judicial authority in article 1 which make the judge can be independent and cannot be intervened by another part.

c. The ratio decidendi theory
Ratio decidendi or rationes decidenci is the term in latin language which often meant as the reason of judge to given the decision. Black's law dictionary stated the ratio decidendi as the point in a case which determines the judgment or according to Barron's Law Dictionary is the principle which the case establishes.[22]

d. The dissenting opinion theory
According to H.F. Abraham Amos, The dissenting opinion theory is different from the judicial decision on the criminal cases. In the pluralistic and multicultural society, the disparity of sentencing has become an ordinary thing.[23]

e. The doctrine of Res Judicate Pro Verirate Hebetur
Res Judicate Pro Veritate Hebetur is commonly shortened as *Res Judicate* originates from the latin language which means as the thing has been decided. Black's law dictionary, sixth edition, formulating res judicata as *"A matter adjudged; a thing judicially acted upon or decided; a thing or matter settled by judgment. The rule that a final judgment rendered by a court of competent jurisdiction on the merits is conclusive as to the rights of the parties and their privies, and as to them, constitutes an absolute bar to a subsequent action involving the same claim, demand or cause of action".*

In the empirical terms , judicial decisions must be covered by personality, social condition, economic circumstances, and the social judgment also the judicial facts can make the judge consideration be affected. The judges are not may punishing in a doubt and must be principled on dubio proreo, because these things so disparity of sentencing has appeared.

4. Conclusion

According to the research and discussion on the previous chapter so the author drew conclusions that disparity of sentencing in every criminal case was being the serious problem of the case who became public interest especially in the case which has big losses. So it can be seen that disparity of sentencing is an injustice which done by a judge against of justice

[21] Mahkamah Agung R.I, *Pedoman Perilaku Hakim,* : Mahkamah Agung,Jakarta 2006, page.22.
[22] http://miftakhulhuda.com/2011/03/ratiodecidenci title Ratio Decidenci accessed in 20 September 2016 14:00 O'clock.
[23] http://id.shvoong.com/law-and-politics/administrative-law/2172112 tentang *Pengertian Dan Konsep Dissenting Opinion,* accessed in 20 September 2016 14:00 O'clock.

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seekers, and on the other side, the disparity is a discretion which has by the judge to give a punishment.

So many problems which can be the factor of disparity, as for the factor of disparity can be reviewed from the juridical and empirical theory. In term of juridical theory, the disparity can happen because of the existence of discretion and independent on the judge in 1945 The Constitutional of Indonesia and The regulation of judge authority which existed and also was caused by ratio decidendi theory, dissenting opinion theory, and the doctrine of res judicate pro varitate hebeteur. Besides the juridical problems , the criminal codes also being the problem in the juridical theory, because the criminal codes are not regulated minimum standard on punishment. In term of empirical theory the major consideration of the defendant by covered personality, social conditions, economic circumstances, and the social judgement also the judicial facts can make the judge consideration be affected, The judges are not may punishing in a doubt and must be principled on dubio proreo, because these things so disparity of sentencing has appeared.

The discretion of the judge is also the factor which caused the disparity of sentencing. In Indonesia, The judicial discretionary power guaranteed fully on the regulation of judicial authority in article 1. According to the Nulla Poena Sine Lege principle, the judge can only impose sanctions according to light and heavy the sanctions which set in criminal code. The other problems will be faced by the judge on given punishment is less completed material evidence which necessary fo evidence in the court, also the evidence processes which still used the traditional and conventional methods because the judgement is focusing what is on the court and because of the determination of the punishment is still conducted objectively by judge.

5. Suggestions

One of the judging duty is digging up the values of justice which live in society, therefore the judge should be considered the aspect of disparity in sentencing to satisfy the values of substantive justice and on makes decisions the judge not only hearing the victim witness but the judge must be hearing the defendant witness that judges can be fair, with leaving off the method of sentences that are traditional or conventional.

That things can be the efforts to minimized that disparity and to minimized that can use the logic law which will be the solution with using the methods of :

a. Formulating the substance of law accurately;
b. Understanding fallacies of law;
c. Uses reasonings induction and deduction accurately;
d. Make a discovery of law and application that.

However, the disparity of sentencing couldn't be eliminated in absolutely. Required guidelines for judges to give the punishment ti a defendant, hopefully with guidelines the judge can promote transparency and consistency to give the punishment that in accordance with the principle of presumptive sentencing.

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Death Penalty on Indonesia Criminal Law

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Abstract

This research using normative juridical approach to studies the implementation of death penalty executions and the legal policy of death executions in Indonesia. There are also delays on death executions for the convicted person since they entitled to using rights namely filing a judicial review (PK) or clemency. Further, the legal loophole in the execution of the death penalty by the publication of the Constitutional Court Number 107 / PUU-XIII / 2015 which assert that the Attorney as executor can ask the convicted person or his family whether to use their rights or not, which if the convict clearly does not want to use their rights, therefore the executions will be carried out. Legal policy on threats and the implementation of the death penalty in the draft of criminal code was agreed by draftsman of the bill with the solutions. The draftsman of the bill agrees that the death penalty will be an alternative punishment sentenced as a last resort to protect the society. The bill also regulates that the execution among others include that the execution can be delayed by 10 years probation. If the public reaction on the convict is not too large or convict has regret and could fix it or the role in the crime is not very important and there is a reason to reduce punishment, the death penalty may be changed. For pregnant women and the mentally ill convicts the execution can only be carried after the birth and the person has recovered from mental illness. The existence of this solutions is still keep putting the death penalty in criminal law nationaly, whereas the effectiveness of the death penalty is scientifically still in doubt to solve crimes and to prevent crimes by the death penalty punishment.

Keywords: *Legal policy, implementation of execution, death penalty*.

1. Introduction

The problem of the death penalty in Indonesia is not only arisen in the criminal *stelsel* as stated in Article 10 of the Criminal Code regarding the sentence of death and the other several criminal laws, but is also found in the process of executions. In the past, the execution as asserted in Article 11 of the Penal Code which states that: "*Death punishment run by the executioner is in the hanger with a rope attached to person's neck then drop the board to make convict standing*". This provision is considered incompatible with the development of sentencing in Indonesia, since one of its objectives is "*Punishment is not intended to make*

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suffering and not allowed to degrading", so that the new arrangements was held on the implementation of the death penalty i.e the Act 2 / PNPS / 1964 on Procedures for Execution of Criminal Death commanded by the Court in General and Military Courts. Executions carried out by a firing squad of the Police Mobile Brigade formed by the Chief of Police in the seat of the court that imposes the death penalty. The firing squad composed of an NCO, 12 enlisted men, under the command of an officer (Article 10, paragraph [1] Act 2 / PNPS / 1964).

The process of implementation of the death penalty in Indonesia apparently did not have a clear timetable for execution, since there is death penalty execution that is done faster, meanwhile there is also the execution that is very long since the verdict asserted to inmates. Further, the Head of the Legal Information Center of Attorney General's Office, Setia Untung Arimuladi, said that one of the reasons of why the execution of a death penalty has been delayed so long after the verdict, because they are given their rights as a convict. The convict is entitled to file legal clemency to the president in the form of application for the change, mitigation, reduction, or elimination of criminal enforcement against him, as for assert in Law No. 22 of 2002 on clemency. Hence, the rights have become a legal loophole to delay the death penalty execution. An example, the case decision that has been legally enforceable (inkracht van gewijsde) Case No: 1093 K / Pid.Sus / 2014 on behalf of Freddy Budiman were sentenced to death for a criminal offense of smuggling 1.4 million ecstasy pills from China to Indonesia. Smuggling was done in 2012, and although it was in Cipinang, East Jakarta, Freddy still controlling narcotics. Attorney General command a sentence for the death penalty punsihment twice, to Freddy Budiman, because they are playing for the time of submission Review (PK) and clemency to the President. Twice the subpoena was granted on April 20 and May 20, 2015. Freddy Budiman has sent a letter to present a judicial statement to the prosecutor and clemency to the President, but there is no deadline timeline written in PK and clemency. Therefore, the Prosecutor gave a deadline until June 20, 2015 to register a PK or a pardon, if until the time limit was not done, then the rights will be deemed void.[1]

According to Muladi, independent judicial power is closely related to the UN human rights charter and the 1948 Covenant on Civil and Political Rights of 1966, in particular, the recognition of the principle of Fair Trial. The definition of Fair Trial is the right to equality of

[1] Kompas Newspaper, 1 September 2015

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fair trials and open to the public and the courts, without delay and are independent, competent and impartial in determining the rights and obligations of a person, hence the criminal cases established under law, Further, the process of implementation of the death penalty which is uncertain is a violation of the Fair Trial closely related to human rights[2]. The death penalty can be imposed under criminal law in Indonesia. This is because the death penalty is still the principal criminal as stated in Article 10 of the Code of Criminal Law (Penal Code) Indonesia, such as Article 340 of the Criminal Code (murder) which states that "The person who with deliberate intent and with premeditation takes the life of another person, shall, being guilty of murder, be punished by capital punishment of life imprisonment or a maximum imprisonment of twenty years".

In addition to the Criminal Code, there are several laws that condemn the death punishment, namely Law 31 of 1999 jo. Law No. 20 of 2001 on the Eradication of Corruption, Law No. 15 of 2003 on Terrorism and Law No. 35 of 2009 on Narcotics and the Military Criminal Code, even in Government Regulation No. 1 Year 2016 on the amendment of Law No. 23 of 2002 on Child Protection assert the death penalty. In the practice of criminal justice in Indonesia, the courts have never imposed the death penalty in cases of corruption, it is only for the death penalty in a criminal case such as the intended murder[3], terrorism[4], and narcotics[5], as well as the Military Criminal Code[6]. Some of the issues which arise related to the threat of death penalty under criminal law in Indonesia is the effectiveness of death penalty to deter the perpetrator who wants to commit a criminal offense as threatened with the death penalty. Is the death penalty in accordance with the philosophy of Pancasila in Indonesia? Is capital punishment is not contrary to human rights?

[2] Kompas Newspaper, 20 June 2016

[3] Wawan alias Awing gets death sentence by the Appeal Panel of the Supreme Court (MA). The criminal case of Wawan alias Awing is the killing of Francisca Yofie Sisca in the city of Bandung, where acts of the perpetrator are deemed to comply as a crime of intended murder, http://news.liputan6.com/ accessed on June 17, 2016

[4] Amrozi, First Terrorist that has been Sentenced to Death, http://news.okezone.com/ accessed on June 18, 2016

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[6] Suud Rusli, Ex-Marine Convicted Death, wish to clemency, http://www.cnnindonesia.com/, accessed July 14, 2016

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In the connection with the effectiveness of death punishment against perpetrators of the crime of murder, terrorism, and narcotics, has not shown adequate results. It can be seen from the number of crimes of premeditated murder, terrorism, and narcotics in Indonesia. Studies on the death penalty with the philosophy of Pancasila as the nation of Indonesia until now still disputed by the parties that arise the pros and cons. The pro assumes that the death penalty in accordance with the philosophy of Pancasila, while the counter parties claimed that capital punishment does not fit with the philosophy of Pancasila. The death penalty is also a debate related to human rights. In Act No. 39 of 1999 on Human Rights, the right to life recognized as the most inherent in humans that can not be revoked or removed by anyone[7].
The practice which still applies regarding the death penalty in Indonesia in the criminal case of intended murder had been there since 70 years ago. Such as the criminal case of theft of sheep in Britain in the days of yesteryear. At that time in the 16th century, 17, and 18 in the UK not only sheep theft punishable by death, but also of petty larceny or pencopetanpun punishable by death. It is surprising that although the death penalty carried out before the public in a terrible atmosphere, the thief did not become a deterrent and fear. Conversely, at times during the executions running, the thief still in action. In other words, the death penalty is not an effective drug offenses in the past in the UK, because the sheep still were stolen, the thief still in action, anytime and anywhere in the UK.[8]

For the comparison in Indonesia, the imposition of the death penalty against intended murder, terrorism, and narcotics, there is increase of the perpetrator's number of criminal acts of intended murder, terrorism, and narcotics. Further, there the perpetrators who commit intended murdered by the reasons of customs for example as Madurese people, when the honor is violated then the only solution is intended murder, the death penalty threat did not deter the confidence and culture to do these things so that death punishment is meaningless as well as aspects of the retaliation and frightening aspect.[9] In relation to the criminal acts of terrorism, terrorism also did not feel afraid and threatened with the death penalty because the

[7] Article 4 Law Number 39 of 1999 regarding Human Rights assert that "the right to life, the right to not to be tortured, the right to freedom of the individual, to freedom of thought and conscience, the right not to be enslaved, the right to be acknowledged as an individual before the law, and the right not to be prosecuted retroactively under the law are human rights that cannot be diminished under any circumstances whatsoever."

[8] J.E Sahetapy, 1982. SA Special Study Concerning Death Threats Against Intended Murder, Jakarta, CV Rajawali.

[9] Ibid.

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people who commit such act usually have a religious faith and belief that his actions rewarded from the God, Hence, it did not deter the offender to committed a criminal act of terrorism. The threat of the death penalty against drug dealers also does not reduce the number of drug dealers.[10] That is because the narcotics business generating huge profits i.e easy money business, Hence there is a lot of drug dealers who still selling the narcotics, even if the threat of death punishment against perpetrators of drug dealers.

Enforcement of the criminal law is part of a criminal policy which is derived from the term *policy* (UK) or *politiek* (Netherlands). The term of *policy* can also be referred to as a political criminal. In foreign literature suggest that the term political criminals often known by various terms, including penal policy, criminal law policy or *strafrechtspolitiek*. Definition of policy or politics can be seen from a political criminal law and criminal politics. According Sudarto, political law are: (a) Efforts to realize the good of the rules in accordance with the circumstances and the situation at a time; (B) The policy of the state through the agencies authorized to assign the desired regulation rules are expected to be used to express what is contained in the community and to achieve what is aspired envisioned.[11]

Based on the said definitions, further, Sudarto stated that criminal conduct politics means to hold elections in order to achieve the result of criminal laws and the most greater good. Efforts and policies to make the rules of criminal law, which is good by nature can not be separated from the crime prevention goals. So the policy or political criminal law is also part of a political criminal. In other words, from the standpoint of criminal politics, politics is synonymous with the notion of criminal law policy of crime prevention. Therefore, it is often said that the political / criminal law policy is also part of the policy of law enforcement. The efforts to prevent crime through the enactment of legislation criminal law essentially an integral part of the business community protection (social welfare), it is only natural that a political policy or criminal law is an integral part of the policy or social policy (social policy). Criminal policies in the prevention and control of crime are one of policy, in addition to other development policy policies (social policy). Barda Nawawi Arief[12] stated "the prevention of

[10] BNN, http://indonesia.coconuts.co/, accessed on 18 June 2016.

[11] Sudarto, 1981. *Capita Selecta of Criminal Law*, Bandung, Alumni.

[12] Barda Nawawi Arief, 2002, Anthology Criminal Law Policy, PT. Citra Aditya Bakti,. Bandung.

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crime need to be taken with a policy approach, in the sense that there is coherence between political crime and social policy; No cohesion (integral) between crime prevention efforts with penal and non-penal. Social policy can be defined as any rational effort to achieve the welfare of society and also includes the protection of society. Thus, in the sense of "social policy" once covered in it "social welfare policy" and "social defense" policy.

The efforts to prevent crime can be broadly divided into two substance, namely via the "penal" (criminal law) and via the "non-penal" (outside the criminal law). The efforts to prevent crime through means of "penal" more focus on the nature of "repressive" (suppression / eradication) of the crime, while the "nonpenal" more focus on the nature of "preventive" (prevention / deterrence) before the crime occurred. Hence, the difference is hard to notice, because the repressive action can also be seen as a preventative measure in a broad sense. Furthermore, the use of criminal means in criminal policy, has suggested that every organized society has the criminal justice system which consists of: (the rules of criminal law, and sanctions; (B) a criminal law procedure, and (c) a mechanism for the implementation, the nonpenal is the use of measures outside the criminal law to prevent the crime. The politic of the death penalty in Indonesia has been regulated in the Criminal Code, the Military Penal Code and some criminal legislation. But it is still not clear the meaning of the death penalty. Further, the existence of the death penalty is associated with the philosophy of Pancasila and human rights, as well as the issue of capital punishment implementation process relating to Fair Trial and human rights.

Based on the above description regarding the problem in this research, hence we assert that:
(1) How is the implementation of executions in Indonesia?
(2) How is political death penalty law in Indonesia?

2. Research Method

2.1 Type of Research

This type of this research is descriptive analytical research that seeks to describe and elaborate on issues relating to the implementation of political executions and death penalty law in Indonesia. The approach used is a normative juridical approach that is based on legislation, theories, and concepts related to writing research.

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In relation to normative research, the approach used is:

1. The statute approach, which is an approach made to the rules of law relating to the Criminal Code, Military Code, Law No. 31 of 1999 jo. Law No. 20 of 2001 on the Eradication of Corruption, Law No 15 of 2003 on Terrorism and Law No 35 of 2009 on Narcotics, Government Regulation No. 1 Year 2016 on the amendment of Law No. 23 of 2002 on Child Protection, Law No.2 / PNPS / 1964 on Procedures for Execution of Criminal, Law No. 22 of 2002 on clemency, Law No. 39 of 1999 on Human Rights and the implementation of some regulations related to the object of research.

2. The conceptual approach is used to understand the concepts of: death penalty in Indonesian criminal law and the implementation of capital punishment which can lead to violations of the Fair Trial and human rights. It is expected that in the rule of law which no longer occurs understanding vague and ambiguous.

2.2 Type of Data

The source of data derived from literature data, whereas other types of data in the form of secondary data, ie data obtained by searching the literature as well as regulations and norms relating to the issues to be addressed in this study. Secondary data include:

a. Primary legal materials, namely: the Criminal Code, Military Code, Law No 31 of 1999 jo. Law No. 20 of 2001 on the Eradication of Corruption Law No 15 of 2003 on Terrorism and Law No. 35 Year 2009 on Narcotics, Government Regulation No. 1 Year 2016 on the amendment of Law No. 23 of 2002 on Child Protection, Law No.2 / PNPS / 1964 on Procedures for Execution of Criminal, Law No. 22 of 2002 on clemency, Law No. 39 of 1999 on Human Rights, as well as other rules relating to legal politics of capital punishment in Indonesia.
b. Secondary law, namely government regulation, Regulation and Decree of the Ministry, as well as other rules relating to legal politics of death punishment in Indonesia.

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c. Tertiary legal materials i.e scientific works, seminar materials and results of research scholars relating to the subject matter covered.

2.3 Data Collection and Processing Procedures

In the data collection, the authors take steps as follows: To obtain secondary data, carried out by a series of documentaries by reading, citing the books, studying the legislation, documents and other information related to the issues to be discussed.

Once the data is collected, the data processing methods are:

1. *Editing*, in this case, the incoming data will be checked completeness, clarity, and relevance to research.
2. *Evaluating*, i.e. to examine and scrutinize the data to be given an assessment of whether the data can be accounted for credibility and used for research.

2.4 Data Analysis

To analyze the collected data the author uses qualitative analysis. Qualitative analysis was carried out to delineate the realities that exist based on the results of research in the form of explanations, from the analysis, can be concluded inductively, that way of thinking in making a conclusion to the issues discussed in general based on facts that are special.

3. The Result Of Research

In early July 2016, as the President of Indonesia, Joko Widodo has prepared the execution of phase III. The information circulating among journalists there were 16 convicts in the list of executions.[13] In contrast to the execution of phase I and phase II which got the international spotlight, the execution of phase III is prepared with care by the government. Including constraints juridical delay the execution on death row for the convict to exercise their rights to apply for a judicial review (PK) to the Supreme Court (MA) and clemency to the President such executions against Freddy Budiman who was sentenced to death because it proved to smuggle 1, 4 million ecstasy pills from China in 2012, but remains in control of

[13] "Ahead of Execution, The Name of Drug Lord Which Will Be Shot to Dead", http://news.okezone.com, accessed July 14, 2016".

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narcotics business from his cell, hence it gives rise to pressure from society to executed the convict. However, the Attorney General has not been able to verify whether Freddy Budiman name on the list of convicts executed because Freddy still filed an extraordinary legal remedy reconsideration (PK) to the Supreme Court.

The above issues, has been anticipated by the Decision of the Constitutional Court (MK) No. 107 / PUU-XIII / 2015 dated June 15, 2016 pronounced overall grant the petition on death penalty Suud Rusli, hence Suud Rusli can apply for clemency to the President, the petition has over 1 (one) year that is based on Law No. 5 Year 2010 jo Law No. 22 of 2002 was likely he filed a request for clemency. Based on this decision, then the implementation of the death penalty will be more certain.[14]

In conclusion, according to the Constitutional Court Decision No. 107 / PUU-XIII / 2015 may be overcome by the prosecutor as the executor of the convict or his family asking whether to exercise their rights or not. Obviously if not, then the execution can be carried out. In fact, the problem is not only that, but the convict stated use rights, but did not specify a time to postpone the execution. Therefore, the decision of the Court above does not provide a solution to their death row inmate who delays the execution, when the death row inmates said they would use their rights to apply for a judicial review (PK) or a pardon, but did not specify when. Moreover, the decision of the Court also overturned the provisions clemency maximum of 1 year from the verdict which is legally binding stipulated in the Act pardon, so pardon the submission was not timed.

3.1 Criminal Policies Law Regarding Death Penalty in Indonesia

The existence of death punishment under criminal law in Indonesia has long raised the pros and cons. Rudi Satrio claimed that sociological benefits, punishment including the death penalty, are for:

1) Maintenance of public order
2) Protection of citizens from crime, loss, or hazards which do others; promote re-offenders (except for death penalty)

[14] Kompas Newspaper, 16 June 2016.

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3) To maintain and preserve the integrity of certain basic insights regarding social justice, human dignity, and justice individuals. Moreover for narcotics crime is an extraordinary crime, hence the death penalty should be retained. [15]

Further, J.E. Sahetapy stated that he rejected the death penalty, because the death penalty is contrary to *Weltanschauung* of Pancasila which is not only a "*Leitstar*" life of the nation, but also the source of all sources of law, so that the death penalty has no "*raison d'etre*" in the life of a nation and Indonesian state and the death penalty can not be explained in terms of criminal law, especially in legalistic positivistic, in terms of both retributive and "deterrent", but must be seen in terms of criminology and victimology that it will reject the "*raison d'etre*" the death penalty.[16]

The purpose of punishment is needed to determine the nature and basis of the criminal law. Franz Von List filed the problematic nature of criminal law which states that "*rechtsguterschutz durch rechtsguter-verletzung*" which means protecting its interests but the interests attacked. In that context be said Hugo De Groot "*malum passionis (quod ingligitur) actions propter malum*" evil befall the suffering caused by evil deeds.[17]

Hence, there is contradiction of the purpose of punishment, ie, between those who believe crime as a means of retaliation or theory of absolute (retributive / vergeldings theorieen) and those who claim that the criminal has a positive goal or theory of interest (utilitarian / doeltheorieen), as well as the view that combining the two objectives the criminalization (combined theory / verenigings theorieen).

Therefore, the objective of sentencing as a guideline in giving and convict, then the draft Criminal Code, Article 55 formulated as follows:

The purpose of punishment

(1) Punishment aims:

[15] Rudi Satrio, Minutes of Session Case Number 2 / PUU-V / 2007 and Case Number 3 / PUU-V / 2007, Jakarta, 30 October 2007.

[16] Ibid.

[17] Alf Ross, 1975. *On Guilt, Responsibility and Punishment*. Steven & Sons Ltd, London.

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a. prevent the perpetration of crime by enforcing the rule of law for the sake of the community shelter;

b. socializing convicted by conducting coaching so as to be good and useful;

c. resolve conflicts caused by a criminal act, restoring balance, and bring a sense of peace in society; and

d. relieve guilt on the convict

(2) Punishment is not intended to suffer and degrading

Furthermore, in the explanation, the punishment is a process. Prior to this process, the role of a judge is very important. Hence, this goal contains a dual purpose to be achieved through criminal prosecution. The first goal is the protection of public view (compare with social defense). A second goal had the purpose not only to rehabilitate, but also to re-socialize the convict and integrate them into the community. The third objective is in line with the views of customary law, in the sense of "indigenous reactions" was meant to restore the balance which disturbed by acts contrary to customary law. Hence, the sentence imposed is expected to resolve the conflict or disagreement and also bring a sense of peace in society. The fourth goal is spiritual reflected in the Pancasila as the foundation of the Republic of Indonesia.

Paragraph (2) gives meaning to the criminal law system in Indonesia. Although the criminal was essentially an evil, but the punishment is not intended to suffer and not allowed degrading. This provision will affect the implementation of a real criminal to be charged to the convict. To determinate that whether or not the threat of death punishment is essential in the penal code, the preparation of draft legislation (Bill) Criminal Code between the government and the House of Representatives (Shaping the Act), which in the end by using the approach of balance as the purpose of punishment above, forming Law reached an agreement with making the "middle way" solutions of threats and execution of capital punishment in the draft criminal Code Year 2015. Shaping the Law to be an alternative punishment imposed as a last resort to protect the public (Article 89 of the draft penal Code). The bill also regulates the execution of the Penal Code could be delayed by 10 years probation. If the public reaction on the convict is not too large or convict has regret and could fix it or the role in the crime is not very important and there is a reason to reduce punishment,

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the death penalty may be changed. For pregnant women and the mentally ill convicts the execution can only be carried after the birth and the person has recovered from mental illness. The existence of this solutions is still keep putting the death penalty in criminal law nationaly, whereas the effectiveness of the death penalty is scientifically still in doubt to solve crimes and to prevent crimes by the death penalty punishment. Regardless of the number of issues in an agreed draft Criminal Code, such an arrangement would be a middle ground or compromise measure between the pro and cons of the death penalty. However, the implementation of phase III executions to be carried out in July-August 2016 will still be carried out without using a middle way that the new application will be implemented after the passage of the Criminal Code into the Criminal Code. In addition, the middle solutions remained the death penalty in national criminal law, whereas the effectiveness of the death penalty is still in doubt scientifically to solve crimes and prevent crimes punishable by the death penalty.

4. Conclusion

4.1 Conclusion

Based on the above research, it can be concluded as follows:

a. The implementation of the executions in Indonesia phase I and phase II, which 14 people have been executed in 2015, amidst international pressure and raised opinions for death punishment. There are also delays on death penalty execution, since the convict has exercise their rights which filed reconsideration (PK) or clemency. In July 2016, the execution of the death penalty for a number of 16 people has prepared with caution and anticipate the legal loopholes the execution of the death penalty by the publication of the Constitutional Court Number 107 / PUU-XIII / 2015 specify that the Attorney as executor can ask the convicted person or his family regading the use of their rights or not, which if the convict does not want to exercise their rights, the executions will be carried out. The problem of executions not only that, but if the convict stated that their use the rights, but did not specify a time, hence it will postpone the execution. Therefore, the decision of the Court above does not provide a solution to their death penalty execution for the who delays the execution, when the inmates said they would use their rights to apply for a judicial review (PK) or a

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pardon, but did not specify when the time. Hence, the decision of the Court also overturned the provisions clemency maximum of 1 year from the verdict which is legally binding stipulated in the law, hence the submission was not timed.

b. Political laws against threats and implementation of capital punishment in the Criminal Code draft was agreed by the new law is "the middle way" solution. The draft agrees that the death penalty will be an alternative punishment imposed as a last resort to protect the public (Article 89 of the draft Penal Code). The draft also regulates the execution of the Penal Code, among others, that the execution could be delayed by 10 years probation. If the public reaction on the convict is not too large or convict has regret and could fix it or the role in the crime is not very important and there is a reason to reduce punishment, the death penalty may be changed. For pregnant women and the mentally ill convicts the execution can only be carried after the birth and the person has recovered from mental illness. The existence of this solutions is still keep putting the death penalty in criminal law nationaly, whereas the effectiveness of the death penalty is scientifically still in doubt to solve crimes and to prevent crimes by the death penalty punishment.

4.2 Suggestion

a. Constitutional Court Decision Number 107 / PUU-XIII / 2015 may not be a solution to overcome the death penalty execution for inmate who delaying the implementation of executions, since the problem is related to the issue of time on death execution, filed a judicial review (PK) or clemency, while the Constitutional Court's decision only regulates death row inmate who did not ask for their rights so that the death row inmate who filed their rights will still postpone executions. Therefore, there needs to be a new solution to overcome the death row inmate who delaying the implementation of executions.
b. Policy of criminal law who held the middle ground solution has put the death penalty as an alternative punishment remains essentially threatened the death penalty as a criminal threat in national criminal law. Therefore, basically, the death penalty punishment is still exists. Though based on a scientific study of the death penalty is

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not effective in combating crime and prevention against the perpetrators of crimes are threatened with the death penalty.

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Islamic Obligation (Sukuk), Budgeting Alternative for National Development

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Abstract

Financing system which burgeoned toward budgeting, can't be separated from much regulation aspects in a country. In Indonesia, the financing system use conventional and islamic (syari'ah) system. One of type with references to financing system is obligation (*bond*) published by a company or legal entity it has reason to raise funds for cover financing company and can be on sale to another. Along with development in company and public to make a better budgeting for them, Islamic obligation (*sukuk*) is the one of alternative which support financing activities. Budgeting transaction by means of *sukuk*, not only good for people, but also to financing development in country.

This paper discuss about Legal issues how important sukuk publishing in financing activity, which try to explain obligation generally based a applicable regulation. The importance applicable in sukuk, can't seperated from a problem how sukuk can be proposed as superior for the country developments. In the other side, this paper also explain about the mechanism to publish *sukuk*, based on the regulations.

In this reasearch, all issues to be discussed, needs structural method to produce theory and informations which suitable of scientific aspects and can easier to understand in public. This reasearch using, using normative methods norm by qualitative analytic technical.

In the final final analysis, is explain sukuk can be proposed as superior to supports contries budgeting based on importance, standing, and the publication mechanism.

Keywords: *Sukuk, Budgeting, Mechanism*

1. Introduction

Development of a country are always influenced by the strategy of the government in manage the regulation will applied to advancing the state. Forms of the strategy applied in various fields, according to the needs or strategic development plan that is determined based on the work program. The strategic plan is preferred in carrying out national development in the form of financial regulation are accommodated optimally so that they can be used by states to achieve the ultimate goal of public welfare according to the ideals set by Pancasila and the Preamble of the Constitution of the Republic of Indonesia in 1945.

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Law functioning as a tool that sets the limit economic activity for the purpose of, economic development , doesn't contradict to the interests of the rights that apply in the life of a diverse society. Positive law by the written form can support the realization of a clear legal, so that the subjects who were targeted were addressed by the applicable regulations can carry out activities with the limitations set for the achieve its interests.

Legal science as a balancing any activity related to human activity, have an important role in mapping out a problem that can be directed without conflicting with norms. This paper connects the science of Islamic law by economics, seen from the legal aspect. Legal and economic relationship are relations of science that have mutual with one another. The economic activity that is not supported by the science of law, would result in chaos on the economic actors in the pursuit of profit which is not founded by legal norms. Implementation of economic activities must have a legal background, which supports the realization of these activities wherever and whenever. As in a discussion, law and economics is one of the classic bond between law and social life.

Based on the view from the economy, needs to use the law as an institution in society also determine the economic policy to be taken. [1] Based on this, we remember that the main function of law is to achieve legal certainty so, the law has a role to provide protection and legal certainty to economic development.

An Islamic economic system which is a companion to the conventional economic activity, started to develop around the world. Consideration will be things that benefit a major factor in the development of an Islamic economic system. That's no doubt, some countries give priority to the economic system of Islam on the country's financial transactions, for example, Malaysia and the UK. British society using Islamic finance because Islamic finance is one of interest to those who disagree with the underlying principles of equity and fair trade.[2]

In Indonesia, the two systems are now still impose financial activities whether it be Islamic (sharia) or conventionally. However, people are free to choose the system they think is beneficial. But, should be know, the Islamic financial transactions in Indonesia now starting to grow and competitive with conventional finance. The system of Islamic finance in Indonesia activities was varied, for example in the form of bonds / securities in terms of Sharia, known as sukuk. Sukuk transaction into the limelight in recent years. The quantity activities in Indonesia was increasing every year. Study the science of law must pay attention to the development pattern of community life, as well as strategic impact associated with the economic aspects of this transaction-based sukuk Islamic financial system. Today, the global sukuk market, denominated in international currencies, is estimated to exceed USD 50 billion.[3]

[1] Mardani, 2015, Hukum Sistem Ekonomi Islam, Jakarta, PT. Raja Grafindo Persada, pg.3

[2] http://www.republika.co.id/berita/ekonomi/syariah-ekonomi/15/05/11/no5hz6-ini-alasan-bank-syariah-berkembang-pesat-di-inggris, takes on 12 September 2016, 23 : 04 WIB

[3] Noriza Binti Mohd Saad, Nor Edi Azhar Binti Mohamad, Sukuk In Malaysian Capital Market3rd International Conference on Business And Economic Research (3rd ICBER 2012) Proceeding, 12-13 March 2012, Golden Flower Hotel, Bandung, Indonesia, / www.internationalconference.com.my, pg.3

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Based on the short description, in this paper, we are interested in reviewing briefly, related to the position of sukuk, which is one of Islamic financial instrument that was developing in Indonesia based on the regulatory and legal issues that have an impact on national development.

1.1. Problems

1. What's the position of sukuk in the system of financing activities?
2. What is the advantage of sukuk so that it can be categorized into funding alternative national development?
3. How is the issuance mechanism of Sukuk in Indonesia?

1.2. Purpose of the Paper

1. Knowing the regulations set Sukuk position, so it can apply in Indonesia.
2. Describe the advantages of a funding sukuk in national development.
3. Describe the sukuk issuance mechanism under applicable regulations in Indonesia.

2. Discussion

Sukuk is an Islamic financial instrument, which have a beneficial competitiveness in the Islamic financial market, currently has grown quite rapidly to support economic growth in the country. Indonesia at first knows the sukuk with terms Islamic Bonds. However, since the regulations of the Capital Market Supervisory Agency and Financial Institution (Bapepam) No.IX.13.A regarding the issuance of Islamic securities and the enactment of the Act. No.19 / 2008 concerning Government Sharia Securities, the term sukuk becoming more commonly used.

Sukuk is actually a financial instrument that has long been known by the Muslims in the middle ages, in the form of securities representing financial obligations originating from trade and other commercial activities. [4] The growing use of sukuk in line with the growth of the Islamic finance industry in the last two decades. Sukuk become more innovative financial solutions for those who need financing and investment. Currently, the sukuk was issued by countries that are not a Muslim majority such as the United Kingdom, Saxony Anhalt (Germany), Japanese, and others. Up to the beginning of the month October 2015 the value of sovereign bonds (government bonds) which have been issued reached USD 37.31 billion. [5]

Sukuk is an Islamic securities, in theory, corresponded with the understanding of bonds in general. At a literature give explain about the obligation : *A bond is a debt*

[4] (Huda dan Nasution, 2007:122) dilihat di, *Reputasi Sukuk Global Indonesia* From: Eri Hariyanto, pegawai Ditjen Pengelolaan Pembiayaan dan Risiko Kementerian Keuangan RI*) takes on 14-Agustus-2016 9:44 WIB (web www.kemenkeu.go.id)

[5] *Ibid.*

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instrument requiring the issuer (also called the debtor or borrower) to repay the lender/investor the amount borrowed plus interest over some specified period of time.[6]

Bond is an engagement that contains a promise. Bonds are letters containing promises that involved (principal or issuer) may be a company or the government. Promises of the bond is a promise to pay a sum of money at a certain time, which is at the maturity date has been agreed.

As if the review of the term, the definition of sukuk can refer to some of the definitions has been formulated, for example, based on Fatwa AAOIFI (Acounting and Auditing Organization for Islamic Financial Institutions) (2009) (Institute international nonprofit that aims to develop and prepare a standardization in the field of Islamic financial) No. 17, sukuk are certificates of equal value which is evidence undivided ownership of an asset, the right to benefits and services or on the ownership of a project or specific investment activities. [7]

Government of Indonesia to ensure law enforcement sukuk transaction has been arranged with a form of legal products in the form of Law No. 19 of 2008 on the State Sharia Securities, and supported by a body formed by the Indonesian government in regulating the regulation of sharia in Indonesia, which is the National Islamic Council who issued provisions in the form of Fatwa No: 32 / DSN-MUI / IX / 2002 regarding Sharia Bonds.

The publication of Islamic bonds can be based on a wide variety of contracts (Akad), such as a business partnership contract profit sharing sale and purchase agreement, or lease. Fatwa of National Sharia Council (DSN) on Islamic Bonds provide that contract which can be used in the issuance of Islamic bonds, among others: [8]

1. Mudharobah
2. Musyarakah
3. Salam
4. Istishna
5. Ijarah

Since it was first published in 2002 the development of the total value of sukuk emissions has increased from year by year. The development of the Islamic capital market is marked by widespread public offering of sukuk Ijarah contract (Akad), and at that time the value of sukuk emissions grew by 92% to Rp 1,424 trillion. This is in line with the issuance of fatwa No.41 / DSN-MUI / III / 2004 regarding Sharia Bonds Ijarah. [9]

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[6] Frank J. Fabozzi,1993, *Bond Markets Analysis And Strategies*, United States of America, Prentice-Hall International Editions Pg. 1

[7] Nurul Huda dkk, 2015, *Ekonomi Pembangunan Islam*, Jakarta, Prenada Media Group, pg.150

[8] Nunung Rodliyah, Dita Febriyanto, Nunung Rodliyah, Dita Febriyanto, 2014, *Hukum Ekonomi Islam* (Tinjauan Yuridis Surat Hutang Berbasis Syariah Dengan Sistem Mudharabah), Bandar Lampung, Justice Publisher. pg.64

[9]http://www.konsultan-anp.com/2012/07/analisis-penguraian-masalah.html takes on 14 Auguust 2016 at 10:47 WIB

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2.1. ***Position of*** *Sukuk In the System of Financing* ***Activities***

Provisions of Fatwa No. 32 / DSN-MUI / IX / 2002, the National Sharia Council of Indonesian Ulama Council defines sukuk as long-term securities based on sharia principles issued by the issuer to the holders of Islamic bonds, which require the issuer to pay income to the holders of Islamic bonds in the form of profit sharing margin or fee, as well as repay the bond at maturity.

Sukuk may be interpreted by the Sharia Securities in the form of a certificate or proof of ownership of the same value and represent an integral part of the investment or does not consist of:

1. Owners of certain tangible assets;
2. The value of the assets of benefits and services of a particular project or activity of certain investments; or
3. Ownership of the assets of certain projects or certain investing activities.

The criteria for issuance of sukuk includes :

Firstly, there must not be any element of interest be it fixed or floating;

Secondly, its creation is based on an underlying permissible transaction whether a debt-based or an equity-based assets;

Third, utilising further shari'ah frameworks such as ijarah, bai' bithaman ajil, murabahah, musharakah mudharabah etceteras.[10]

Law on State Sharia Securities outline set things up as follows :

a. SBSN management transparency in fiscal policy framework and policy development SBSN market, with further regulate the issuance destination and type of Akad used;

b. The Government's authority to publish the SBSN, either carried out directly by the Government delegated to the Minister, or carried out through SBSN Publishing Company;

c. Government Authority for the use of State for using SBSN (underlying asset);

d. The Government's authority to establish and assign legal entity that will carry out the functions as SBSN Publishing Company;

e. The Trustee authority to act on behalf of the Holder SBSN;

[10] Mohd Nasir bin Mohd Yatim, 2009, Sukuk (Islamic Bond) : A Crucial Financial Instrument for Securitisation of Debt for the Debt-holders in Shari'ah-complaint Capital Market, International Journal of Business and Mangement, Vol. 4 No. 10 October 2009/www.ccsenet.org/journal.html, pg.166

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f. The Government's authority to pay all the obligations arising from the issuance SBSN, issued either directly by government or through SBSN Publishing Company, in full and on time until the end of the obligations; and The legal basis for further regulation on procedures and mechanisms for the mechanism of SBSN in primary market or secondary market trading SBSN order to the investor to obtain certainty to own and trade SBSN easily and safely.

2.2. Advantage of Sukuk Can be Categorized Into Funding Alternative National Development

The advantages sukuk at this point based on the discussion of the study of economics that classifies the following reasons:

1. According to Sharia principles

For publishers who carry out operations based on the concept of sharia, sukuk becoming an attractive option as a source of syariah-based financing. Not only for the publishers, Islamic investors also need sukuk as an investment instrument because they can not invest in conventional instruments.

2. Flexibility in the development of sukuk

Sukuk can be developed into a very varied range of products. That is because the sukuk issue by agreement-contract basis in sharia agreement concept of a polynomial. So sukuk has a flexibility that is diverse, to answer all the needs of investment as well as financing activities.

3. Potential Investor wider

Investors wider sukuk compared to conventional instruments where the investor is not only derived from Islamic investors, but also conventional investors both locally and internationally. Accordingly, investors sukuk market is not concentrated in the Middle East but in all of the world financial center, either institutional or individual investors.

4. The potential for Islamic financial

The growing demand for sukuk annually both inside and outside the country refers to the factors greatly increasing the number of funds of Islamic financial institutions, the still small market share of Islamic products over conventional, many conventional investors who use financial instruments sharia as one of the investment, repatriation of funds of the Middle East

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of the American and European markets after 9/11, as well as the limited amsih islamic financial instruments (less supply) compared to demand (more demands). [11]

Sukuk transaction must not be separated from the various opinions of actors activity, in this case the investor who is looking for a particular advantage. It could be considered by investors one of them, if the investor issued sukuk when the conventional bond market has been closed, it can still take advantage of demand for bonds over Islamic banks.

*2.3. **The Issuance Mechanism of** Sukuk in Indonesia*

The issuance of a sukuk can not be separated from aspects of the subject were published. Sukuk issued by the two subjects which are companies and governments (state). Sukuk issued by companies such as Corporate Sukuk, while the government called Shariah Securities (SBSN).

Based on these differences, then the appropriate regulations in Indonesia that its publication was categorized into two according to the subject issuer.

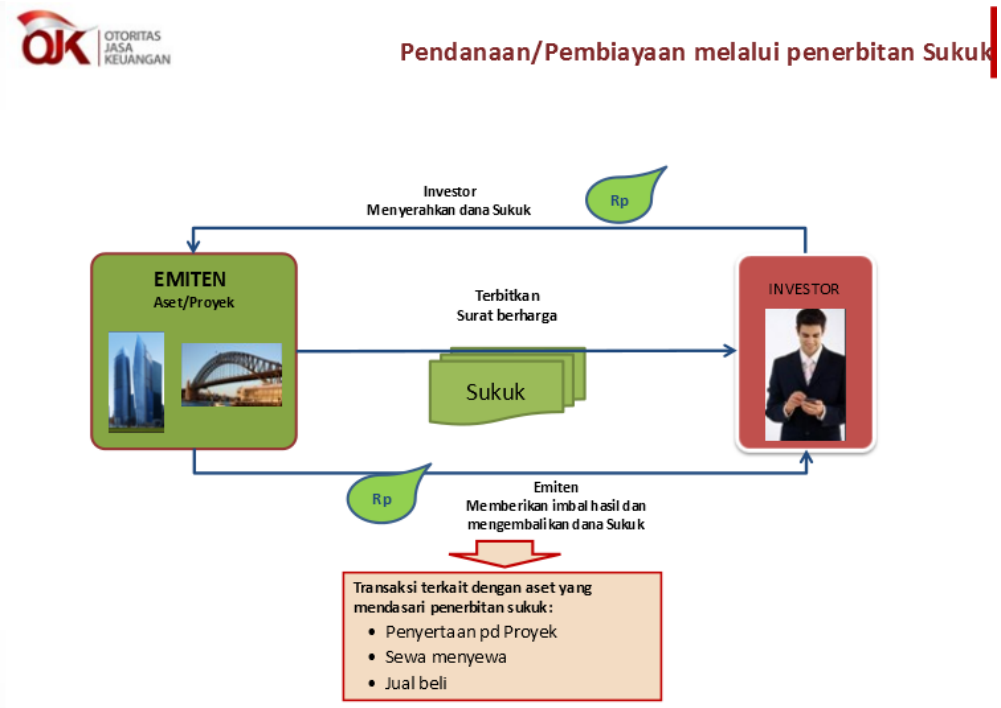

Figure 1 ; Mechanism Sukuk

[11] Nurul Huda, dkk, 2015, *Op.Cit.* pg.156

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Parties involved in the sukuk transaction, namely:

- Government / Corporate as obligor is entitled to payment of nominal and rewards sukuk issued.
- Special Purpose Vehicle (SPV) which is a special legal entity for the issuance of sukuk, or as trustee representing the interests of investors.
- Investors who are holders of sukuk which have a right to compensation, margin, and value of sukuk on the participation of each party involved.

Issuance of corporate bonds;

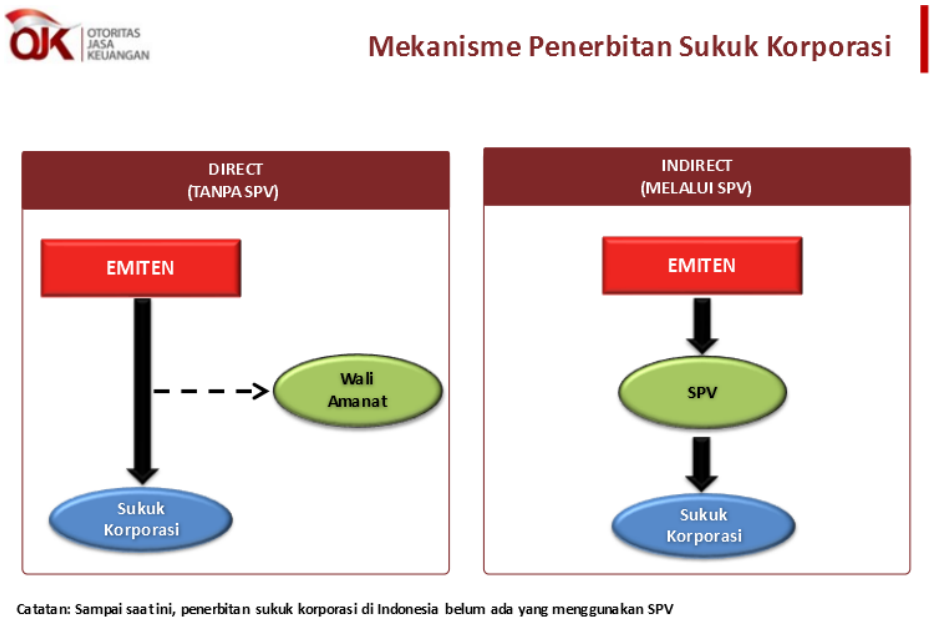

Figure 2 : corporate sukuk mechanism

Basically, corporate sukuk issuance conditions stipulated in the FSA Regulation No. 18 / POJK.04 / 2015 About Sukuk Issuance and conditions.
Issuers as a sukuk issuer determine which assets will be securities issued pursuant to Article 3 P.OJK 18 2015 (among others, tangible assets, have benefits, investment activity has been determined). Then issuer bid which must not conflict with Sharia Principles in Capital Market, POJK, and other related regulations. This activity is supported by supervision by the Sharia Supervisory Board pursuant to Article 4 paragraph (3) of this FSA regulation.

After stage deals have been done, then enter the next stage is to complete other administrative requirements in the form of a statement, and the contract will be determined (Article 6-9). And after it was issued, the Issuer shall make financial statements which have been audited regularly.

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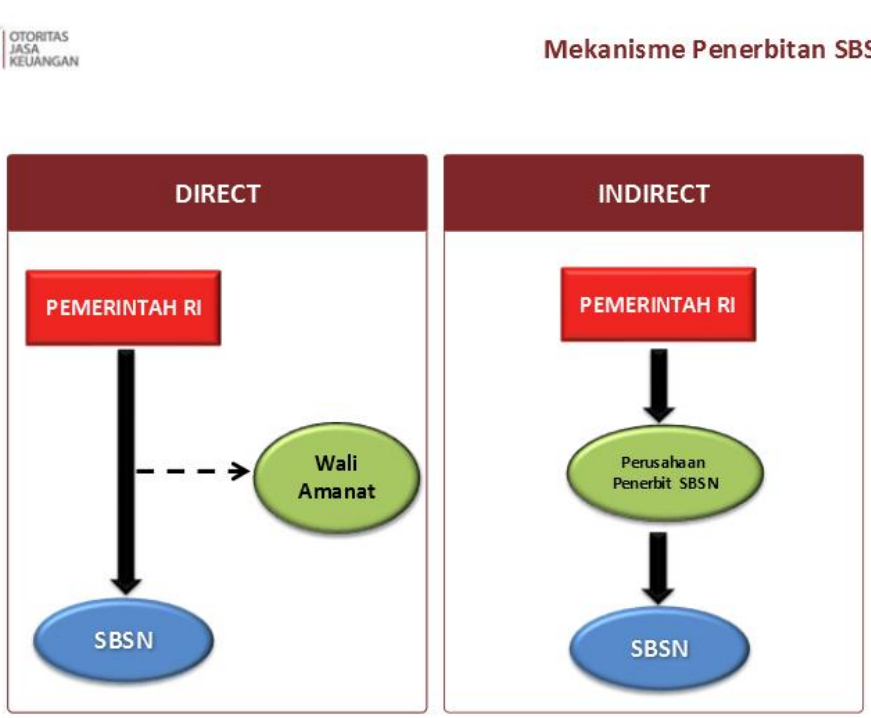

Figure 3 : Publishing SBSN

Publishing SBSN follows the mechanism prescribed under the provisions of Law Number 19 Year 2008 on the State Sharia Securities.

Under the provisions of Article 5 of this Act, the Government, the Minister has the authority to issue SBSN. The government with the authority to publish their own or designate a Publisher company SBSN approved by Parliament (Article 8 (1)). Parties that receive SBSN, in the conditions of use, which has been published SBSN called Asset SBSN to form of land and / or buildings, other than land and / or building specifications determined by the Minister.

3. Conclusion

With the position of sukuk that regulation is growing in Indonesia, then no doubt the sukuk will be a part in supporting national funding. This is also supported by several facts states that use Islamic financial system in the country such as the UK and Malaysia. In addition, the advantages in terms of its economy will also be an important consideration to make use of Sukuk as a development funding.

Mechanisms are classified between sukuk and SBSN any further facilitate variation election sukuk transaction by holders of prospective investors, in managing its strategy to benefit according to the needs and interests to invest in Islamic financial system. The government is currently trying to set conditions with the times in order to follow the sukuk is always evolving tastes and needs of investors, and strengthen performance related institutions to support the implementation of sukuk issuance and utilization of the competitiveness with the conventional financial system.

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Fatwa Dewan Syari'ah Nasional No: 09/DSN-MUI/IV/2000 Tentang Pembiayaan Ijarah

Fatwa Dewan Syari'ah Nasional No: 41/DSN-MUI/III 2004 Tentang Obligasi Syari'ah Ijarah

C. Others

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An Efforts to Control Corruption through the United Nation Convention against Corruption (UNCAC) and Implementation in Indonesia

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Abstract

The world began to view corruption as an important issue in the last two decades. Concern about corruption in various parts of the world is always more than the other crimes. Various initiatives to fight corruption starts from the national, regional and international level. Corruption is a serious problem. Crime may endanger the stability and security of societies, endangering the economic and social development as well as political and corrupt the values of democracy and morality as slowly deeds is like to be a culture. According to data from 175 countries in the world in 2014 by transparency.org. Indonesia was ranked the 12th most corrupt in Asia and ranks 107 countries free of corruption (from 175 countries). Corruption is now no longer recognize boundaries. In other words, corruption has become a transnational phenomenon. Corruption itself interact with various forms of transnational organized crime to another. Even in the Preamble of the Convention on anti-corruption explained that corruption is a plague that is very scary and have a strong impact on the international community. The UN Convention Against Corruption in the new made history in the international legal order. Because, for the first time, the mechanism of withdrawal of assets from corruption is comprehensively regulated in the Convention. Moreover, the process of international cooperation mandated by the United Nations Convention in opposing corruption, Indonesia can increase the capacity of national institutions and the formation of international cooperation in tackling corruption, such as asset tracking (tracing of assets), the recovery of assets (asset recovery), and extradition of corruption. By looking at these conditions, the researchers interested in conducting research with the title an efforts to control corruption through the convention of united nation convention against corruption (UNCAC) and its implementation in Indonesia.

Based on description above, in this study the problem formulated is How the reduction of corruption crime nation united by convention against corruption, implementation of the convention united nation What crime against corruption in Indonesia. This study uses the approach of juridical normative and empirical jurisdiction, where the primary data in this study is a field research supported by the literature, legal materials relating to these issues as secondary data.

The results of research and discussion concluded that the reduction of corruption through the convention united nation convention against corruption (UNCAC) and its implementation in Indonesia can bring changes and is able to suppress corruption. This is evidenced by the decrease of corruption in Indonesia based on survey results Institutions survey of anti-corruption both nationally and internationally as well as the withdrawal of assets to corruption from abroad into

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the country conducted by the corruptors who flee and save money by criminal proceeds of corruption abroad.

1. Background

The world began to view corruption as an important issue in the last two decades. Concern about corruption in various parts of the world is always more than the other crimes. Various initiatives to fight corruption starts from the national, regional and international level. Corruption is a serious problem. Crime may endanger the stability and security of societies, endangering the economic and social development as well as political and corrupt the values of democracy and morality as it slowly works as a culture. Corruption is a threat to the ideals towards a fair and prosperous.[1] According to data from 175 countries in the world in 2014 by *transparency.org. Indonesia* was ranked the 12th most corrupt in Asia and ranks 107 countries free of corruption (from 175 countries). It is unfortunate, compared to neighboring countries such as Malaysia (ranked 50 world countries free of corruption) or Singapore (ranked 7th world country free of corruption), corruption in Indonesia is very alarming. According to the survey results, the Corruption Perception Index (CPI) is a measuring instrument based on the perception of corruption levels in countries around the world issued by Transparency International. By looking at the ratio of GPA obtained, it can be reviewed whether the state of a country that is corrupt or not. Measurement index has a scale from 10 (highly corrupt) to 100 (very clean). In 2013 Indonesia, including ranks 114 out of 177 countries with a score of GPA 32 but in 2014 Indonesia can improve the GPA to 34 rose by 2 from the previous year which stood at 107 out of 175 countries, in 2015 the position of Indonesia has a GPA of 36 and position rise to 88 from 168 countries. The survey was carried out to be able to see as well as a benchmark for countries belonging to the corrupt country or not.[2]

Corruption is a criminal offense that is detrimental systemic and sustainable development of a country that requires preventive measures and eradication that is comprehensive, systematic, and continuous both at the national and international level including the return of assets derived from criminal acts of corruption.[3] Corruption is now no longer recognize boundaries. In other words, corruption has now become a transnational phenomenon. Corruption itself even interact with various forms of transnational organized crime to another. So bad impact caused by corrupt practices, so that the United Nations (UN) Convention specifically issued in opposing corruption. The convention stresses the need to increase the internal capacity of each country as well as efforts to strengthen international cooperation to prevent and combat corruption. Even in the Preamble to the Convention on anti-corruption explained that corruption is a plague that is very scary and have a strong impact on the international community. Corruption can weaken the democratic system and the rule of law (rule of law), lead to violations of human rights, undermining the international economic markets, erodes the quality of life, allowing the growth of organized crime, terrorism and other threats to the security of the human being.[41]

1. Wijayanto,Ridwan.2009.Korupsi mengorupsi.Jakarta:Gramedia
2. www.ti.or.id/index.php/publication/tags/indeks-persepsi-korupsi
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United Nations Convention Against Corruption (UNCAC) or the United Nations Convention which against corruption that are part of transnational crime, the Convention was signed by the participating countries Diplomatic Conference High Level in Merida, Mexico on 9 to 11 December 2003, was The new paradigm of combating corruption in the world. Since the birth of UNCAC, prevention and eradication of corruption is a responsibility of all countries in the world, through cooperation with one another, with the encouragement and involvement of individuals and groups outside the public sector as the general public, non-governmental organizations community, and organizations , an organization that society. Overall, the UN Convention Against Corruption carve a new history in the international legal order. Because, for the first time, the mechanism of withdrawal of assets from corruption is comprehensively regulated in the Convention. The Convention recognizes the right of countries victimized and harmed by corruption, to withdraw the country's assets are parked by the corrupt abroad. Establishment of the United Nations international convention conducted in line with government's policy in following up the activities of corruption in Indonesia. The formation of state institutions such as the Commission is an attempt of the State in dealing with cases of corruption, the establishment of the Commission a being in the fight against corruption in Indonesia.

Before ratifying the 2003 Merida Convention regarding corruption as a transnational crime, Indonesia first Palermo have signed an agreement in December 2000 to prevent and fight against transnational organized crime. Signatories of the treaty is a form of Indonesia's efforts to fight corruption because it belongs to the transnational organized crime. By ratifying the UN Convention against corruption, then the norms of international law embodied in the Convention that could be transformed into law of the land, which means strengthening the infrastructure of the national law. Moreover, the process of international cooperation mandated by the United Nations Convention in opposing corruption, Indonesia can increase the capacity of national institutions and the formation of international cooperation in tackling corruption, such as asset tracking (tracing of assets), the recovery of assets (asset recovery), and extradition of corruption perpetrators.[5] [2]Based on the above description, in this study the issues formulated as follows :

a. How is an effort to control corruption through the UNCAC and implementation in Indonesia?

2. United Nations Convention Against Corruption

United Nation has attention to the problem of corruption which can be seen since 2000. The United Nation General Assembly 55th resulted in UN Resolution No. 55/61 on 6 December 2000. This resolution mentions the need to formulate a legal instrument of international anti-corruption globally. These instruments are needed to bridge the different legal systems and advance its efforts to combat corruption effectively. Finally in 2003, the United Nations (UN) set up a Convention against Corruption (United Nations Convention Against Corruption - UNCAC) which aims to prevent corruption globally by international cooperation to jointly undertake the steps and eliminating corruption throughout the world. UNCAC or what is often called the

5.ICW(2009).”Independent report,corruption assesement and compliance UNCAC 2003 in Indonesian law”.http://antikorupsi.org/docs/independentreport2ndcospuncac-id.pdf accessed on 29 oktober 2019

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United Nations Convention against corruption is a Convention against corruption which includes provisions of criminalization, liability to prevention measures in the public and private sector, international cooperation in investigations and law enforcement, measures of technical assistance, as well as provisions regarding return on assets. That is because the problem of corruption today has entered the cross-border, it is stated in the fourth preambule paragraph UNCAC.[63]

"Convince that corruption is no longer a local matter but a transnational phenomenon that Affects all societies and economies, making international cooperation to Prevent and control it essential. "
(Convinced that corruption is no longer a local issue, but rather a phenomenon transnational affecting the whole system of society and the economy, which cause of international cooperation is very important in terms of prevention and combating corruption)

UNCAC contains eight sections (chapter), namely, Chapter I General Provisions Chapter II Preventive Measures Chapter III Criminalization and Law Enforcement Chapter IV International Cooperation (Articles 43 -50), Chapter V asset Recovery (return on asset) Chapter VI technical assistance and information exchange Chapter VII mechanisms for implementation) and Chapter VIII Final provisions (of the Act).[7]

Then, after going through several hearings and meetings, the UN General Assembly finally received UNCAC, which passed through the Summit (Summit) on 9-11 December 2003 in Merida, Mexico. Until the year 2010, counted 141 states have signed the convention parties and even has been ratified by 145 countries. Since enacted in 2003, many countries then using the mechanisms and principles contained in UNCAC to address the problem of corruption in their respective countries. One of the 145 countries that ratified the UNCAC is Indonesia, which ratified the UNCAC on April 18, 2006, through Law No. 7 of 2006. UNCAC has a purpose and a common goal, which is to promote and improve / strengthen measures to prevent and combat corruption more efficiently and effectively, to promote, facilitate and support international cooperation and technical assistance in preventing and combating corruption, especially the return of assets, as well as improving the integrity and public accountability and the management in the management of State assets. The UNCAC can be regarded as a revolutionary step in the field of international criminal law, because this convention is the first international legal instrument that governs the problem of corruption within the provisions of international law. The UNCAC is a manifestation of an international consensus on what should be done by States to prevent and criminalize corruption. In addition, the UNCAC also reflects the agreement of members of the United Nations to increase international cooperation in the fight against corruption and asset returns. The Convention

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stresses the importance of the distribution of responsibilities in each countries in preventing and combating corruption crimes that cross national borders.

In UNCAC there are chapters that explain the definition of corruption according to the convention. But in chapter III of the convention consists of 11 articles (Chapters 15-25), obliges States signing the convention set a number of actions performance national laws of each State which qualified as corruption, there are: [8]

a. Briberry of national public official
b. Briberry of foreign Public Officials and Officials of public international organizations
c. Embezzelment, misappropriation or other diversion of property by a public Officials
d. Trading in influence (trade effect)
e. Abuse of function (dysfunction)
f. Illicit enrichment (enrichment illegally)
g. Briberry in a private sector
h. Emblezzement of property in the private sector
i. Laundering of proceeds of crime
j. concealment (hiding)
k. Obstruction of justice

3. Implementation of UNCAC and an efforts to prevention

Indonesia has made efforts to combat corruption long ago through legislation combating corruption through the establishment of relevant institutions. Indonesia seems very serious in this corruption case because the act of corruption has been shifting the essence of every vital aspect in Indonesia, call it as a shift towards political, legal, economic, educational and even religious. Indonesia's seriousness can be seen from various forms of laws that appear and create an institution fighting corruption called the Corruption Eradication Commission (KPK). In 2003, Indonesia got the fresh breeze of the international community regarding the prevention and eradication of corruption, namely through the United Nations with the birth of the United Nations Covention Against Corruption (UNCAC). Indonesia welcomed the anti-corruption policy in the hope that the state completely clean of corruption that can afflict people. Three years. That's the time it takes the Government of Indonesia to formally committed themselves to the United Nations Convention Against Corruption (UNCAC). This Convention was first formulated in Merida, Mexico on December 9 to 11, 2003. Exactly on April 18, 2006, President Susilo Bambang Yudhoyono signed Law No. 7 of 2006 as a sign of UNCAC ratification.

Once ratified UNCAC then there is the importance of ratification for Indonesia:[94]

a. Enhance international cooperation, especially in the tracing, freezing seize and recover assets from corruption stationed overseas.
b. Increase international cooperation in achieving good governance.
c. Increase international cooperation in the implementation of the agreement on extradition, mutual legal assistance, delivery of prisoners, the transfer of criminal proceedings, and law enforcement cooperation.

9.Kerangka acuan seminar sehari sensitasi konvensi PBB melawan korupsi (UNCAC) stranas PPK dan Inpres nomor 1 tahun 2003 Indonesia.Jakarta 7 November 2013

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d. Encourage the establishment of technical cooperation and information exchange in the prevention and eradication of corruption under the umbrella of economic development cooperation and technical assistance on the scope of bilateral, regional and multilateral.
e. Harmonization of national legislation in the prevention and eradication of corruption in accordance with this Convention. Efforts are made through mutual legal assistance agreements and bilateral extradition agreements with targeted countries to facilitate legal proceedings.

Indonesia continues to actively participate in every meeting of UNCAC. In 2008, Indonesia to host the second session of the Conference of States Parties in Bali as well as a President of the Conference. At the fourth session of the Conference of States Parties in 2011 in Morocco, Indonesia became First Vice President representing Asia Group. On the occasion, Indonesia has helped President of the Conference (Morocco) in leading the proceedings on several important events, namely the review of UNCAC implementation, technical assistance, and asset recovery. Government seriously tackle corruption in concrete terms. One implementation is the issuance of Presidential Instruction (Instruction) 17/2011 on the Prevention and Combating of Corruption Action 2012. This decree is an advanced Instruction No. 9 of 2011 on the Prevention and Combating of Corruption Action in 2011. In two of this Instruction, the Government implement six strategies appropriate on the United Nations Convention Against Corruption (UNCAC). These six strategies are: Prevention at the Institute for Law Enforcement; Prevention at the Institute of Others; Action; Harmonization of Laws and Regulations; Rescue Assets Results of Corruption; International Cooperation; and report.[105]

Measures of prevention and control of corruption are the underlying rules and provisions of the legislation of each country based on the rule of UNCAC contained in article 5 that the policies and practices to prevent corruption mentioned that:[11]

a. States Parties shall, in accordance with the fundamental principles of its legal system, develop and implement or maintain effective anti-corruption policies and coordinated to enhance community participation and reflect the principles of the rule of law, the management of public affairs and public wealth is good, integrity, transparency and accountability.
b. States Parties shall endeavor to establish and promote effective practices aimed at the prevention of corruption.
c. States Parties shall endeavor to evaluate the legal instruments and administrative measures related periodically so inadequate to prevent and combat corruption.
d. The State Party shall, if deemed necessary and in accordance with the fundamental principles of its legal system, in cooperation with other States Parties and with international and regional organizations related to improving and developing the measures referred to in this Article. That collaboration may include participation in international programs and projects aimed at the prevention of corruption.

10.http://webcache.googleusercontent.com/search?q=cache:rBoGYguUEpYJ:bawas.mahkamahagung.go.id/portal/images/stories/kumpulan_pdf/sby%2520terbitkan%2520inpres%2520anti%2520korupsi%2520jilid%2520ii.pdf+&cd=4&hl=en&ct=clnk&client=firefox-b-ab

11. United Nation Convention Against Corruption article 5

12.United Nation Convention Against Corruption article 6

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Next is the setting of the Anti-Corruption Agency for prevention contained in Article 6 of UNCAC:[12]

a. States Parties shall, in accordance with the fundamental principles of its legal system, should ensure that the body or bodies, if appropriate, that prevent corruption by such means as:
   (A) Implement policies which referred to in Article 5 of the Convention and, if necessary, supervise and coordinate the implementation of that policy; (B) Increasing and disseminating knowledge about the prevention of corruption.
b. States Parties shall provide to the entity or entities referred to in paragraph (1) of this article the necessary independence, in accordance with the fundamental principles of its legal system, to enable the body or bodies that carry out its functions effectively and free from undue influence. Material resources and specialized staff required, also training such staff may require to carry out its functions shall be provided.
c. States Parties shall provide to the Secretary-General of the United Nations information regarding the name and address of the authority or authorities that may assist other States Parties to develop and implement specific measures for the prevention of corruption.

Furthermore, in the prevention of corruption is of course there are many obstacles faced and the emerging problem is the restitution of asset hidden abroad. UNCAC in Article 17 has been set technical asset returns from the outside into the country. In this convention recognized that the need to withdraw assets from corruption cases abroad practically only be done within the framework of international cooperation. This is the primary motivation for Indonesia to sign the UNCAC 2003 and ratified.[136] Given that, one of the convention's significance for Indonesia, is to improve international cooperation, especially in the tracing, freezing, seizing, and recover assets to corruption stationed abroad (General Explanation of Law No. 7 of 2006) , However, if observed carefully are still too many "gap" between UNCAC with the laws and regulations in Indonesia, which then can be an inhibiting factor that significan for recovering assets corruption.[14] In conjunction with the scope of authority of the Corruption Eradication Commission (KPK) for example. Article 41 of Law No. 30 of 2002, international cooperation to do KPK limited in terms of the investigation, investigation and prosecution of corruption. While the "return on assets" of corruption related to judicial action is mainly done through a court decision. Thus, the "return on assets" proceeds of corruption have not been fully able to do if solely relied on the existing authority of the Commission with regard to international cooperation, particularly in the areas of investigation, investigation and prosecution. "The recovery of assets" generally can only occur through a court decision, either criminal or civil, directly or in the framework of mutual assistance in the field of criminal law.

Indonesia has done a lot of changes and progress in its efforts to eradicate corruption. The Corruption Eradication Commission (KPK) is born indirectly by UNCAC is a sign that there are changes on a concrete willingness to eradicate corruption. In doing so, Indonesia has implemented the provisions of UNCAC in general as a process of asset recovery by Indonesia, as do bilateral cooperation, conduct mutual legal assistance (mutual legal assistance), efforts asset search through banks from other countries, etc. , In fact the assets proceeds of corruption are

13.Romli Atmasasmita.2004.Sekitar masalah korupsi aspek nasional dan internasional.Bandung:Mondar maju
14.Identification of gap between law/regulation of Republik Indonesia and UNCAC.Jakarta:KPK,2006

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taken abroad and assets that are successfully returned to Indonesia difference is huge. Comparison of assets still abroad are still more than assets, the result of corruption that have been successfully brought back into the country. In fact it can be said that none has returned the assets of corruption. This did not happen just like that, there are issues which in practice often appear to be the main factors that hinder the process of asset recovery.

However, there are two other mechanisms that can be taken in terms of return on assets of this cooperation. First, a formal mechanism through a request for mutual legal assistance from the State assets are corrupted. The goal for the State concerned to help efforts to recover assets to Indonesia. Second, informal mechanisms in the form of international aid that does not require the use of power enforcement.[157]Between these two mechanisms of corruption settlement through informal international links can be more effectively optimized. One example of success is the restitution of asset Nigerian President Sani Abacha. Its assets are successfully returned to Nigeria which used to an informal approach. Next is Zine al-Abidin bin Ali of Tunisia where the European Union managed to freeze assets of people allegedly affiliated.[16]

Provisions of the Convention in respect of return on assets has an international dimension. Always associated elements of a "foreign" in this case, the restitution of asset that is done in other countries (foreign) or done in their own country by another country (foreign). Therefore the asset recovery provisions of the Convention can be divided into two parts. First, the asset recovery provisions of corruption in a country as "the requesting party" return of these assets are located in another country. Second, asset recovery provisions of corruption in terms of a country's position as "the parties are required to" restore such assets by other countries. Well done directly or within the framework of international cooperation, both bilateral, regional or multilateral. This provision is a very significant for the development of legal corruption. UNCAC in 2003 embraced a comprehensive approach in dealing with corruption involving two or more countries is certainly involve foreign nationals so that the center of gravity setting located on procedures on how to track down and confiscate and return the assets resulting from the corruption of a country that "enjoy" to the victim states (state's victim).[17] The cooperation and assistance of a country to return assets that are proceeds of corruption in the country is done by citizens of other countries, the absolute existence and it is the obligation of every state party to the UNCAC Article 51 of UNCAC 2003. In 2003 it was called a "fundamental principle".

In addition, the special nature of international cooperation in asset recovery to corruption by UNCAC, 2003, require a review of various legal umbrella (umbrella act), both Act Extradition, or Law of Mutual Assistance in the Field of Criminal, and various regulations other legislation which gives competence to certain parties have international cooperation. Required assess whether institutions regulatory authority (e.g the Ministry of Justice and Human Rights or the Ministry of Foreign Affairs), have adequate resources, both for "ask" as well as in terms of "requested", assistance with regard to matters relating to criminal offenses corruption. Do not let the unpreparedness of the institution have an impact on the deployment of Indonesian as "non-

15. www.Hukumonline.com/berita/baca/lt4d5eca3b82bc/memaksimalkan-pengembalian-aset-koruptor-di-jalur-internasional diakses pada tanggal 25 oktober 2016
16.utama,paku.deregenerasi korupsi.2011(53-55)

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cooperative country" or impact counter-productive to attempt eradication of corruption in the country.

4. Conclusion

Based on the discussion of the problem of corruption is no longer a national issue of a country but has become an international problem. This relates to the corruption that escape out of the country and even save all of its assets abroad so that corruption has entered into cross-border, which as stated in the fourth preamble paragraph is to the United Nations 2003 Convention Against Corruption (UNCAC). With the birth of the UNCAC becomes a source of new regulations for Indonesia, especially in resolving the problem of corruption relating to national and international law. Indonesia itself has ratified the UNCAC by Law No. 7 of 2006. With so all the rules contained in the UNCAC becomes an important part which is also a reference in regulating all forms, sanctions and even the agencies combating corruption. UNCAC establish international cooperation in legal assistance for extradition, mutual as well as the harmonization of national legislation in the prevention and eradication of corruption in accordance with this Convention.

The scope of the authority of the Commission are limited in terms of fighting corruption investigation, investigation and prosecution. While the restitution of asset related to judicial action which is done through a court decision. Thus, the restitution of asset can not be fully done if solely relied on the authority of the Commission. Return on assets generally can only occur through a court decision, In doing so, Indonesia has implemented the provisions of UNCAC in general as a process of asset recovery but in fact the assets proceeds of corruption are taken abroad and assets that are successfully returned to Indonesia difference is huge. Comparison of assets still abroad are still more than those who are successfully brought into the country. There are problems in practice appear to be the limiting factor asset recovery process. However, two other mechanisms that can be taken in terms of return on assets of this cooperation. First, a formal mechanism through a request for mutual legal assistance from the State assets are corrupted. The goal for the State concerned to help efforts to recover assets to Indonesia. Second, informal mechanisms in the form of international aid that does not require use of the power of force. Among these two mechanisms of corruption through an informal settlement can be more effectively optimized. One example of success is the restitution of asset Nigerian President Sani Abacha and Zine al-Abidin bin Ali of Tunisia.

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Labour Wages Stevedoring; Abandonment of Labour Protection

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Abstract

Wages are workers' rights must be protected and guaranteed by the government do with the minimum wage system as a safety net. With the safety net, workers' wages will be protected and the workers will be living above the poverty line. The minimum wage should address the labor classification. But in reality, the minimum wage has not reached the whole of labor. There are still many workers who receive wages below the safety net set by the government, one of which is the labor of loading and unloading. The government seemed to neglect the protection of workers unloading. So that the protection of workers unloading become a serious problem today.

Researchers approach the problem by normative and empirical. Assessing Act and other legislation as well as look at the laws and customs that exist in the field.

Based on the results of research and discussion, the relationship between employers and workers unloading there are many parties that affect the wage. Their intentions as labor foreman, "thugs", and others were cutting wages to the workers so that the workers received wages below the minimum wage of a safety net. Other reality is the Government issued Decree No. Lampung Governor G / 627 / III.05 / HK / 2015 On Wage Rate Determination of Worker Unloading Sorting Goods Sector, Warehousing and Shops and markets in Lampung Province in 2016, as the regulatory systems of remuneration of labor of loading and unloading. In the decree wage system uses wage system unit. In fact, the reality habits wage system that occurs in the loading and unloading workers use piece rate systems. When we refer to sources of labor law, the sequence which is (1) Legislation (2) habit, (3) Decision, (4) of the Treaty, (5) Treaty. Meaning here contradiction Decisions issued by the Government of Lampung through Governor Decree with habits that apply in the labor of loading and unloading.

Keywords: *wages, labor, loading and unloading, neglect, protection*

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1. Introduction

Employment is one thing that is always in the spotlight in Indonesia. That is because a large number of Indonesian population, one of the largest in the world. Due to the large number of people in Indonesia, it is necessary also enough jobs. Enough jobs must also be supported by the income of workers eligible. Useless if many jobs but gained income or wage workers are not feasible.

Wages are the rights of workers / laborers are accepted and expressed in the form of money as a reward from the employer or the employer to the worker / laborer assigned and paid according to an agreement, agreements and legislation, including allowances for workers / laborers and their family for a worker and / or services that have been or will be made.

Wages are important elements that affect the lives of workers because wages are a source of income to meet the needs of workers and their families living either in the form of clothing, food, shelter and other needs. Wages are the remuneration received by employees for services rendered in the produce or goods or services in the company. Basically the wage must be proportional to the contribution and productivity of workers in the company. In remuneration by Entrepreneur to workers also depends on the wage agreement between the two sides. May depend on the duration of the work, the amount of goods production, wholesale, etc.

In reality, in Indonesia there are still many problems occurred on the wages that never let up in each year. Settings on wages in this country still become a problem that seemed not to be completed. Parties of those involved in the wage system has not been able to solve the problems of this classic.

The most idientik wage laborers. The term worker / laborer appeared as a substitute term labor. Feudal or the former Dutch colonial era that meant the workers were -the collar workers such as porters, foremen, carpenters, and others. These people by the Dutch government first called the blue collar (blue-collar), while those who do the work "smooth" as an administrative officer who used to sit at the table called the white collar (white collar). Now, the term workers and comparable workers. That every person who works for a wage or other forms of remuneration.

Labour always be those who feel aggrieved about wages. Wages are given to the workers is always below the standard minimum wage and does not qualify as workers. Workers using the march, which is called by the Workers Union / Labour to express their aspirations in terms of wages or others. Labor / unions that exist in the company or outside the company has always put up a fight either by way of mediation up to the action. Many reports in the social media, both electronic and print on workers' resistance is incorporated into a wide variety of trade unions / union. That is indeed the problem of wages between workers, employers, and the government becomes a tough problem in this country.

The condition was also experienced by workers unloading cement warehouse in Bandar Lampung. There is a problem on the wages that occur between workers and

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employers in the warehousing cement cement. Calculation of wages on the cement warehouse use contract wage system. While the rules, wages do should be calculated based on the amount of cement persaknya. This means that here there is a dispute regarding the wage system in warehousing cement Bandar Lampung.

Workers feel aggrieved by the incompatibility of their wages by the wage rules unloading cement. Regarding remuneration actually also look to the issue of wage agreements. The agreement made by the parties involved, ie workers and employers should be done with a parallel position. However, the position of the workers can not always be aligned with employers. This makes the hard labor in the bargaining positions with entrepreneurs. Solutions that workers are to be aligned with the employer, namely the existence of a safety net. Safety nets were made by the government to protect the rights of workers. The safety net is the minimum wage (UMR / UMP).

Besides workers, most things related to wages is a businessman. An employer is an individual, a partnership, or a legal entity that operates an enterprise of its own, not his own or the company, or a legal entity located in Indonesia representing the company domiciled outside the territory of Indonesia.

Recognizing the importance of workers for companies, governments and the public, it needs to be thought so workers can keep their safety in carrying out the work. Similarly, efforts must be made of tranquility and health of workers so that they have to face in the work can be considered as much as possible, so vigilance in carrying out the work is ensured. Thinking it is a program of employment protection, which in daily practice is useful to be able to maintain the productivity and stability of the company

In Article 91 paragraph (1) and (2) actually has been explained that the setting of wages are set on the basis of agreements between employers and workers / laborers or union / trade union should not be lower than the provision of remuneration set out the legislation in force , In case the agreement referred to lower or opposed to the legislation, the agreement is null and void, and the employer must pay the wages of workers / laborers according to the legislation in force. Then, it is also stipulated in Government Regulation on the Protection of Wages stating that when held the agreement between workers and employers concerning a provision that harm workers and contrary to the provisions of this regulation or legislation other and therefore become void according to the law, then the worker is entitled to receive repayment of wages detained as part of the calculation of wages, and he is not required to return what has been given to him to fulfill the agreement

Minimum wage for workers is one of the important issues in employment in Indonesia until now, because it does not count with a clear mechanism or system. In determining the minimum wage of workers in Indonesia, one of which is based on the Living Needs (in addition to productivity and economic growth) the pekarja who has undergone two changes: first setting a minimum wage that is based on Physical Requirements Minimum (KFM) are both based on Needs Minimum life (KHM). Changes - these changes again due to the incompatibility of wage determination based on minimum physical needs, there arises a

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change is called the minimum requirements (KHM). But the wage determination based on minimum requirements received sizable correction of the workers, because it will have implications for the lack of purchasing power and welfare of the community, especially the lower level workers. In 2015, the calculation of wages changed again. In the era of President Jokowi, appeared PP 78 2015 About Wage. Calculation of wages according to the PP is the UMP next year current year + = UMP (UMP current year x (inflation + economy)). Up until now, the PP 78 in 2015 is still being debated because it was rejected by the workers.

Wage agreements between workers and employers also highlighted on wages. Apart from the calculation based on the Living Needs (KHL), the Wage Agreements between workers and employers often become probelmatika. That is because the safety net wages, ie minimum wage, was defeated by the economic conditions of workers forced to take and receive a wage agreement that wages below the minimum wage. take it or leave it, are words in accusing the employer to the worker.

Wage system in Indonesia there are several kinds. The first is wages by time. Wage systems where the wage rate based on the old working person. Unit time is calculated per hour, per day, per week or per month. For example, construction workers are paid per day / week. Then wages by unit results. According to this system, the wage rate based on the amount of goods produced by someone. The units of the results calculated per piece of goods, per unit length or per unit weight. Eg tea leaf picker wages are calculated per kilo. Then the wage contract. According to this system of wage payment based on a mutual agreement between the giver and the recipient of the work. Eg wages to repair damaged cars, build houses etc. Then the bonus system. Bonus system is an additional payment beyond the wage or salary intended to stimulate (provide incentives) so that workers can carry out their duties better and responsibly, in the hope of higher profits. The higher the profits the greater the bonus given to workers. Then Systems business partners. In this system of payment of wages partly given in the form of shares of the company, but the shares are not given to individuals but to the organization of the company's employees. Thus the working relationship between employers and employees can be increased to the relationship between the company and partners. In Indonesia, the government set a minimum wage that must be paid by the company. The minimum wage each region is different, because it has a variety of resources, customs, culture, and economic structures and performance.

In the Lampung Governor Decree No. G / 627 / III.05 / HK / 2015 On Wage Rate Determination of Worker Unloading Sorting Goods Sector, Warehousing and Shops and markets in Lampung Province in 2016, persaknya cement valued at Rp. 1,023. In reality, workers at the cement warehousing only paid Rp. 750. It is making this wage workers complained to the Department of Employment in Bandar Lampung. But that's not the problem. The problem is the wage system used by the cement warehousing use a contract system. However, the rules set tariff unloading the cement workers' wages are calculated persaknya. Then there is a gap on wages, and most importantly, the wage system contained in cement warehousing Bandar Lampung. Therefore, the authors will examine this issue in order

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to create clarity about the Wage System Labor Warehousing Stevedoring in Cement in Bandarlampung.

2. Formulation Of The Problem

1. How Labor Wage System Unloading?

2. How Labour Protection Unloading?

3. Discussion

3.1 Wage system

Which is included in the basic wage components, namely wages, fixed allowance, and allowances are not fixed. Basic wage is the base remuneration paid to workers according to the level or type of work as stipulated by the agreement.

Fixed Allowance is a regular payment relating to work given fixed for workers and their families and paid in the same time as the payment of basic wages, such as the allowance Wife; Children allowance; Housing allowances; Death benefits; Regions allowances and others. Benefit Dinner and Transportation Allowances can be included in the component fixed allowance allowance if they are not associated with the presence, and received regularly by workers in a unit of time, daily or monthly.

Benefits Variable is a payment that is directly or indirectly related to the workers, which is given on an intermittent basis for workers and their families and paid by units of time are not the same as the time of payment of basic wages, such as the Transportation Allowances are based on attendance, allowances eating can entered into fixed allowances if such benefits granted on the basis of presence (allowance can be in the form of money or dining facilities).

In the Lampung Governor Decree No. G / 627 / III.05 / HK / 2015 On Wage Rate Determination of Worker Unloading Sorting Goods Sector, Warehousing and Shops and markets in Lampung Province in 2016, the workers unloading the cement warehousing earn Rp. 1141 / zak. Relalitanya, workers unloading the cement warehouse in Bandar Lampung, only paid Rp. 750 / zak. A lot of money that occurs difference of labor-employer conflict in the cement warehousing. Therefore, the worker-employer disputes between seemingly never finished.

In the field, remuneration of workers unloading cement warehousing use piece rate systems (packaged). The process is when the truck comes to warehousing and want to be apart of the workers, wages calculation based on the number of trucks coming or unloaded unloading cement once in warehousing process. Meanwhile in Lampung Governor Decree No. G / 627 / III.05 / HK / 2015 On Wage Rate Determination of Worker Unloading Sorting Goods Sector, Warehousing and Shops and markets in Lampung Province in 2016, pengupahannya based per sack or unit. Obviously here a conflict regulations made by the local government with customs that exist in society.

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With the issuance of Lampung Governor Decree No. G / 627 / III.05 / HK / 2015 On Wage Rate Determination of Worker Unloading Sorting Goods Sector, Warehousing and Shops and markets in Lampung Province in 2016 the nature of setting wages based unit, is clearly contrary to the habits of wage workers loading and unloading system uses wholesale. And has become the logical consequence that there will be differences in the amount of wages earned by workers unloading. Therefore, wages in the can by the workers unloading is not in accordance with existing regulations, in this case Lampung Governor Decree No. G / 627 / III.05 / HK / 2015 On Wage Rate Determination of Worker Unloading Sorting Goods Sector, Warehousing and Shops and markets in Lampung Province in 2016.

3.2 Labor protection

Amendment of Article 28D of the 1945 Constitution mandates that "Everyone has the right to work and to receive remuneration and fair and proper treatment in employment". Furthermore, Article 28 paragraph (4) states that "In order to uphold and protect human rights in accordance with the principles of a democratic constitutional state, the exercise of human rights are guaranteed, regulated and set forth in the legislation."

Law No. 39 of 1999 on Human Rights, as the Law of the organic from the provisions paasal 28I (5) of the 1945 Constitution states that "Everyone has the right to freely choose a job he likes and right, too, over the terms of fair employment." Under the provisions of , then the state is constitutionally obliged to execute the mandate of Article 28D relating to guarantees of labor rights.

The basic provisions in particular Article 28D of the 1945 Constitution Amendment is the mandate of the state apparatus in order to realize the legal protection of labor rights, including seeking legal guarantees through the framework of reform legislation.

However, the process of making the Labor Law as an organic law to regulate the implementation of the guarantee of legal protection of labor rights, always coincide two great interests, the interests of employers who want the flexibility of labor markets and the interests of the workers who want to get legal guarantees protection of labor rights , Not infrequently these two interests berhimpitnya requires states to reinforce the political policies or laws that will be the basis in setting the terms of employment.

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The legal protection of workers unloading unruk though not guaranteed by the government. Party workers unloading only be a non-permanent employees are included in the Employment of Labor Affairs (TKLHK). Regarding the guarantee of safety as only a mere

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normative words yng exist in legislation. In the legislation, in case of nullification work that resulted in the workers do not work as a result of the work that makes the object be gone, employers should continue to pay wages for such work have been promising, although such work has been carried out. But the fact the field would, labor has always been the injured party, it also occurs in workers unloading the cement warehouse in Bandar Lampung.

4. Conclusions And Recommendations

4.1 Conclusion

Law Number 13 Year 2003 on Manpower is born of the transitional political situation rose a politically and economically. Economically Labour Law born of a crisis situation. Thus, the Act No. 13 of 2003 as part of efforts to exit the crisis by attracting investment, because the Law No. 13 of 2003 in transition to democracy, namely political and civil habits got a fairly large room. Because the process of discussion of Law No. 13 of 2003 can not escape the influence of the workers. In such a situation there was a compromise in drafting the law. The compromise is that labor rights are guaranteed textually but obscured within the framework of law enforcement, so that in practice these rights difficult get.

Act No. 13 of 2003 on Labour in textual adequate to provide recognition and legal guarantees for the rights of workers, but the framework of the process of law enforcement remains very weak, so not quite able to realize the protection of labor rights. Some of the legal issues in the implementation of the Labor Law which causes problems, both yurudis and implementation on the ground is one of the Employment Agreement Specific Time (PKWT). Certain times of the Employment Agreement may only be applied in the work of temporary or seasonal, but setting it in article 56 of Law No. 13 of 2003, based on the time period and the completion of a particular job, causing interpretation among some employers in the implementation PKWT by periods of time without seeing the job.

Dilemma legislation regarding Labor does not stop there. In PP No. 78 Year 2015 on Equal Remuneration ensued contradictions. PP rejected thousands of workers for no pro to workers. Formulation future wage calculated merely economic growth and inflation figures issued by government agencies, namely the Central Statistics Agency (BPS), ignoring the survey prices the annual cost as a standard component of the Living.

In addition to the PP wage boards have the authority to determine the amount of wages is also taken over by the BPS. In the provisions of Article 45 and Article 47 of Regulation No. 78 Year 2015 on Equal Remuneration, Remuneration Council authority only conduct a review of the need for decent living, while still based on the Minister of Labour regarding the determination of the components and types. When it should be, the Governor before setting a minimum wage provincial and district / city, pay attention to suggestions and considerations Wage Council, as stipulated in Article 6 (3) of the Regulation of the Minister of Manpower and Transmigration No. 13 of 2012.

Thus, although the Wage Council was given authority to make a proposal to the sectoral minimum wage. But in terms of the determination of minimum wage, only

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authorized Wage Council will provide advice to the Governor, the Regent / Mayor, upon review of the need for decent living are reviewed every five (5) years, in accordance with Article 43 paragraph (5) PP 78 Year 2015 on Equal Remuneration.

In the province of Lampung, Lampung Governor Government issued Decree No. G / 627 / III.05 / HK / 2015 On Wage Rate Determination of Worker Unloading Sorting Goods Sector, Warehousing and Shops and markets in Lampung Province in 2016. Workers unloading cement warehousing earn Rp. 1141 / zak. Relalitanya, workers unloading the cement warehouse in Bandar Lampung, only paid Rp. 750 / zak. A lot of money that occurs difference of labor-employer conflict in the cement warehousing. Therefore, the worker-employer disputes between seemingly never finished.

In the field, remuneration of workers unloading cement warehousing use piece rate systems (packaged). The process is when the truck comes to warehousing and want to be apart of the workers, wages calculation based on the number of trucks coming or unloaded unloading cement once in warehousing process. Meanwhile in Lampung Governor Decree No. G / 627 / III.05 / HK / 2015 On Wage Rate Determination of Worker Unloading Sorting Goods Sector, Warehousing and Shops and markets in Lampung Province in 2016, pengupahannya based per sack or unit. Obviously here a conflict regulations made by the local government with customs that exist in society.

With the issuance of Lampung Governor Decree No. G / 627 / III.05 / HK / 2015 On Wage Rate Determination of Worker Unloading Sorting Goods Sector, Warehousing and Shops and markets in Lampung Province in 2016 the nature of setting wages based unit, is clearly contrary to the habits of wage workers loading and unloading system uses wholesale. And has become the logical consequence that there will be differences in the amount of wages earned by workers unloading. Therefore, wages in the can by the workers unloading is not in accordance with existing regulations, in this case Lampung Governor Decree No. G / 627 / III.05 / HK / 2015 On Wage Rate Determination of Worker Unloading Sorting Goods Sector, Warehousing and Shops and markets in Lampung Province in 2016.

4.2 Suggestion

For the sake of improvement of the condition of remuneration necessary steps:

1. Components of Living Needs (KHL) needs to be revised by adding components diketentuan KHL existing legislation, as judged by the workers is not sufficient lives their life.

2. In preparing the KHL, especially the survey should be conducted in a transparent and accountable and participatory, because it is still considered to be closed and does not involve labor entirely, although in the normative labor Wages Council sits as a member.

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3. In the settlement of wage disputes, Law No. 13 of 2003 on Manpower need to give space to the office to decide because of the perceived mechanism prescribed Law No. 2 of 2004 concerning Industrial Relations Dispute Settlement to cost, time and effort is not small.

4. Monitoring and investigation by the Office of Manpower very weak due to problems in terms of financial and personnel and capability, so the government needs to address the issue this policy so that the role of supervision and investigation can run as expected, employers, and government.

5. The government should be careful to understand the sources of labor law. That the source of labor law, namely:

a. Legislation;

b. habits;

c. Decision;

d. Treaty;

e. Agreement.

That is, the government issued Decree should see the source above the existing law, namely the Legislation and Practices. The Government issued Decree wage by calculation based on the unit or sack. While habits that occurred in warehousing cement which uses a system of calculation based on the contract. Therefore, there is a difference calculation of wages cause workers to sue dispute rights.

6. criminal and administrative sanctions needs to be brought in Law No. 13 of 2003 on Labour, as the main cause of the reluctance of Manpower in monitoring and investigation and the investigation is the absence of a witness as the basis for prosecution.

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Keputusan Menteri Tenaga Kerja dan Transmigrasi Nomor KEP 100/MEN/VI/2004 tentang Ketentuan Pelaksanaan Perjanjian Kerja Waktu Tertentu

SK Gubernur Lampung No. G/627/III.05/HK/2015 Tentang Penetapan Tarif Upah Pekerja Bongkar Muat Barang Sektor Sortasi, Pergudangan dan Pertokoan serta Pasar di Provinsi Lampung 2016

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The Implementation of The Principle Of Public Information Freedom On Criminal Cases In The Court

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Abstract

The characteristics of Indonesian Criminal Justice based on principles that contain in Criminal Code Procedures are efectivity, transparency, accountability, and respect for the legal interests of those seeking justice. Act No. 14 of 2008 on Freedom of Public Information requires that every stakeholder and judiciary must be carry out about Freedom of Public Information. The existence of the transparency in the criminal justice process is oriented to the realization of substantial justice. The application of the principle of Freedom of Public Information in any court use the instruments of Search Information Systems Case or Case Tracking System (CTS) that the format of the substance has been determined by the Supreme Court of the Republic of Indonesia. But there are still any obstacles for justice seekers to get an information about their criminal cases.

This research method uses socio-legal research approach that using primary and secondary data through a data collection tools such as interview, observation, literature and legislation. The primary data analysis technique uses an interactive model, while secondary data uses a deductive and inductive logic.

The results of the research: (1) the urgency of Freedom of Public Information of criminal cases in the court are not only used for giving information to justice seekers to follow the development of their cases, but also for monitoring the performance of the court officials; (2) public information contained in CTS is more emphasis on information about the administration of adjudication and not yet fully contains information about the administration of justice; (3) the obstacle factors are lack of clarity on the Supreme Court's rules for Freedom of Information in the court and there is no professionallity and work ethic of Human Resources in court.

It is suggested that The Supreme Court's rules about Freedom of Public Information must be appropriate to the values and the law politics of Act No. 14 of 2008. And then The Supreme Court must be developing perspective, attitude and performance of judges and clerks of the court based on the values of progressive laws.

Keywords: *Freedom, Court, Criminal Justice.*

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1. Introduction

Indonesia's criminal justice serve as a means of the formation of substancial justice. This can be found in the principles of the implementation of judicial power that contain in Article 2 Section 1 Act No. 48 of 2009 on Judicial Power. That Article said that justice carried out for justice based on the only one God. It means justice based on God's rules that has some principles: (1) similarity; (2) objectivity; (3) fair and (4) impartiality.[1]

For creating substancial justice, mechanism of handling a case has already regulated in a limited manner on legal proceeding that aims for justice officials especially judge and clerk in the court on their duty must be carried in orderly, well-organized, and legally accountable. That provision in accordance with the function of legal code procedure for monitoring the law enforcer, not the perpetrators.[2]

The provision of legal proceeding of the criminal case in Indonesia such as contain in procedural design is held by criminal justice at the stage of adjudication[3] that contain in Chapter XVI and Chapter XVII from Article 145 until Article 258 Act No. 8 of 1981 on Criminal Code Procedures (KUHAP). Administration of justice offense based on Criminal Code Procedures has principles. There are principle of free judiciary, open to the public, and held fast, simple and inexpensive, and also independent, fair, impartially conducted by certain officials that all this activity is manifested in writting by legislation.

Based on that principles of justice, ideally characteristic criminal justice in Indonesia must be effectiveness, transparant[4], accountability, and there is a respect for the legal interests of justice seekers. Therefore the criminal justice at the part of adjudication are required to be implemented effectively , is open , accountability , and meet the law aid justice seekers[5], that have occurred in apply the principle of freedom of public information.

Court as an institution law enforcers in an undeveloped encountered bureaucratic activity. The importance of the role bureaucratic of the court that considering of criminal justice model addopted by Criminal Code Procedures (KUHAP) is a service model[6], where to embody justice will be given fully to the state through law enforcement officials in this case court officials are judges and clerk of the court. Based on this model to achieve the law justice seekers deputed fully to law enforcement. Hence officials judicial in it works should put position justice seekers it represents similar to the position of them, so that officials judicial in function are obliged to realize the law aid of justice seekers like a being treated in a human, do not ask question which is entrap, do not act tendensius for the offense of the defendant, justice seekers especially the defendant have to get information regarding the

[1] Barda Nawawi Arief, 2011. *Pendekatan Keilmuan dan Pendekatan Religius Dalam Rangka Optimalisasi dan Refomasi Penegakan Hukum (Pidana) di Indonesia.* Book Publisher Undip Semarang. Page 16.

[2] Jerome H. Skolnick, "*Justice Without Trial: Law Enforcement in Democratic Society*", In Lawrence M. Friedman and Stewart Macaulay (ed), *Law And The Behavioral Sciences*, The Bobbs-Merril Company, New York. 1966. Page 903 that *The substantive law of crimes is intended to control the behavior of people who wilfully injure persons or property, or who engage in behaviors eventually having such a consequence, as the use of narcotics. Criminal procedure, by contrast is intended to control authorities, not criminals*.

[3] Definition criminal justice in this paper is an implementation of criminal justice in the court (adjudication).

[4] Decree of The Head of Supreme Court No. 144/KMA/SK/VIII/2007 on Freedom of Information in the Court.

[5] Justice seekers are victim, defendant, witness, and society in general.

[6] Model of criminal justice beside service model, also known model of procedural rights. Based on this model justice jeekers especially victims get a right to prosecute direcly in the criminal cases.

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development of their examination, so that substantive justice can be achieved[7]. This is in line with the provision of Article 14 Section (1) an international agreement of their rights civil and political that guarantees rights over a trial open to the public, as the one of important element from the concept of judicial fair.[8]

Judicial practice nowdays as a consequence of the bureaucracy was not substantive justice that given by judicial officials but bureucracy justice produced.[9] This matter can be seen from dissatisfaction of justice seekers for the way and the results of judicial officials in check and decide a criminal cases likes the completion of criminal cases protracted, services is closed, performance judicial officials low and practices litigation adapted with the interests of judicial officials and / or court institutions. The ways of working of judicial officials can be happen because the court as an organization that always demanded to any of its members in worked so as to be oriented into thing that was favorable for organization and avoid any thing that can inhibit or injurious interests of the organization.

In the aspects as an organization, judicial officials in their work will always try to find a best way so that work institutions can be implemented carefully. For that institutions driven to develop a measures which would guarding organization, which by Chambliss and Seidman formulated as "*maximizing rewards and minimizing strains on the organization*" which is a organization and its members tend to replace goals and norms of organization in accordance with policies and activities is constantly being run, that would raise advantage over organization and would put pressure on barriers over organization.[10]

The judicial process transparent is one of the requirements to realize a freedom and accountability of the judicial.[11] To apply the principle of freedom of information in court, Supreme Court of Indonesia as an organizer the duty of state in the field of justice has created a policy that contained in Decree of The Head of Supreme Court Indonesia (SK KMA) No. 144/KMA/SK/VIII/2007 on Freedom of Information in the Court.[12] This regulation has been adjusted with Act No. 14 of 2008 on Freedom of Public Information, through SK KMA No. 1-144/KMA/SK/I/2011 on Guideline of Service Information in the Court.

This paper will try to discuss about the implementation of public information freedom on criminal cases in the court, especially in Lampung Province Republic of Indonesia.

[7] Because the biggest role of judicial officials so that Act No. 48 of 2009 on Judicial Power regulated that court must be helping justice seekers and trying to resolve all the obstacle to achive a justice that simple, quick, and inexpensive (Article 4 Section (2)), and also judges in their role must be explore, follow, and understand the values of law and sense of justice that alive in the society (Article 5 Section (1)).

[8] Indonesia Legal Aid Foundation, 1997, *Fair Trial: Prinsip-Prinsip Peradilan Yang Jujur dan Tidak Memihak.* YLBHI. Jakarta. Page18.

[9] Agus Raharjo, http://www.unsoed.ac.id, accessed on 23-10-2010.

[10] Satjipto Rahardjo, TT. *Masalah Penegakan Hukum Suatu Tinjauan Sosiologis.* BPHN. Jakarta. Page 22.

[11] Preamble of SK KMA No. 144/KMA/SK/VIII/2007.

[12] The current obligation of public institutions to implement the freedom of information regulated in Act No.14 of 2008 on Freedom of Public Information.

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2. Discussion

Information about investigation progress of criminal case is basically the human right for justice seekers13, after all, information transparency is a very important characteristic for democratic country that hold on popular soverignty to construct well state management. That statement corresponds with Article 28 F on Constitution of the Republic of Indonesia 1945 (UUD 1945) that declared "The right to communicate and getting information access to develop personal brand and social life, not to mention to seek, get, achieve, save, manage and declare information through all available connection."

Justice Institution that consist of Supreme Court and all its subordinate institution, in this case High Court and State Court all across Indonesia as public institution that conduct state obligation in the term of judicial as what executive and legislative division does, mandated to provide excellent serivce to each citizen of Indonesia.[14] It is connected to the vision of a nation to serve each citizen to fulfill their basic right and demand in the term of public service as what UUD 1945 declared.[15] One of excellent service that conducted by justice institution is information freedom about someone who in the process of internal court. An open court process is one of important element in the fair justice concept and it's a indictment from Article 14 Section 1 International Agreemant about Civil and Political Right.

The existence of SK KMA No. 1-144/KMA/SK/I/2011 indicates that there is obligation for each court to grant the access to society of getting information about court process that still running. As a follow up about that resolution, The Supreme Court released Circular Letter No. 6 of 2010 on Information Transparency and Implementation Instruction on the Justice Circle that mandated all courts to publish several important information that society need through official website such as (a) court decision or determination in law, either it has justice power or not (b) the cost for each case, includes consignment fee, waranty detention fee, evidence fee, supporting fee for unaffordable party (c) the procedure of denunciation and follow up the report from society.

Regarding the policy above, Supreme Court also create one-day-publish regulation as a realization of policy that is added into SK KMA No. 138/KMA/SK/IX/2009 managed about the term and period of case handling time and the time limit of publishing case information.[16] Through this policy, each decision from the judges should be announced within 1x24 hours. The policy was created to make judge become more dicipline of making a final decision in State and High Court, Cassation and Re-evaluation (PK), therefore it should be announced as soon as possible. Right after the decision has finally made out, in a 1x24 hour, the information should be directly published within the website, at least the statement should be based on the agreement. The policy was utilized to solve some conditions like the staff of the court that late-publish about the decision and act as if the case does not solve yet. Due to that situation, The Supreme Court clarified that in every court office should be completed by

[13] Compare with opinion of YLBHI, *Op.Cit.* Page 18 that the hearing of justice that open to the public is a right that not only had by the parties, but also had by public society in the democratic society.
[14] Barda Nawawi Arief. 2003. *Kapita Selekta Hukum Pidana.* Publisher PT. Citra Adity Bakti. Bandung. Page 57 that the management of criminal justice is a part of public administration that has responsibility on society.
[15] Act No. 25 of 2009 on Public Service.
[16] http://www.pembaruanperadilan.net/v2/2012, accessed on 11-10-2014.

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banner about court decision information and this can be uploaded and seen directly through the website.[17]

Apparently, the definition of information itself, according to SK KMA No. 1-144/KMA/SK/I/2011, is only administration of court about the cases publication, the schedule of council, the cost of a case, organization stucture and etc, however it's not included administration of justice as exposing the activity of council through the informartion and technologi media, publicaton and decision examination etc.

Ideally, information transaperncy in the court based on SK KMA cover administrative aspect above, due to the policy within the SK KMA has been matched with Supreme Court Republic of Indonesia (MARI) vision and mission. The vision of Supreme Court is to create supremation of law through indpeendent power of judge, effective, effisient also getting public trust, professional and providing public service through good law service to the society, ethically right, affordable and low cost for below level of society also able to respond public service calling. Meanwhile, the missions of Supreme Court are (1) creating justice based on law and the regulation, also fulfill the feeling of justice for society (2) creating an independent treatment of justice, no intervention from irresponsible group of people, (3) fixing service access in the platform of justice for society (4) fixing internal input quality in the process of justice (5) creating an effective, efficient, elegant and respected Justice Institution (6) executing an independent, transparant and neutral power of judge.[18]

The information that should be given to the society need to relate with administration action or bureaucrat activity in the court. This relates that administration of justice has double meaning, (1) as a court administration, means that everything about managing organization, administration itself and financial of justice instituition (2) secondly, in the context of administration of justice about caseflow management, litigation procedure and practice, in the judicial power composition. The power to judge relates and closes to the law enforcement and protection.[19]

There are two urgent administration aspects, due to two things are very close with judicial responsibility unity that contain 3 dimension: (a) administrative responsibility that demand organization management quality, administration and financial management (b) procedural responsibility that demand meticulous and accurateness of law that will be utilized and (c) substantive responsibility that relates with create good logic between the facts and the current law. Responsibility contain some dimensions that need to be controlled or responsive accountavility, represent, and more economize (awarness of public control, especially all things that relate with public funding used).[20]

[17] Newspaper of Radar Lampung, *Putusan Tak Publikasi, Promosi Tunda*, on 27-05- 2013 Page.5.
[18] Artidjo Alkostar, http://www.ymp.or.id / accessed on 2-12-2009.
[19] Muladi, 2002. *Fungsi Administrasi Peradilan Dalam Sistem Peradilan Pidana Terpadu.* Paper on Seminar of Criminal Justice System, Unisba Bandung that administration of justice has double meaning, as a court administration, means that everything about managing organization, administration and financial of justice institution; and administration of justice about caseflow management, litigation procedure and practice in the judicial power composition; the power to judge relates and closes to the law enforcement. Page. 3.
[20] Muladi, 2002, *Demokratisasi, Hak Asasi Manusia dan Reformasi Hukum di Indonesia*, The Habibie Center, Jakarta, Page 36.

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The idea of transparency is very important for the society of getting information access, especially within the system of Court and Case Information, The Head of Supreme Court, Agung M. Hatta Ali has declared that all State Court has established and adapted Case Tracking System by the end of 2013. This is also re-declared in the Supreme Court Council with all Heads from Highest Court on December 17th 2012 in Denpasar that before 2014, all of courts in all level should sign up and establish SIIP/CTS, along with Act No. 14 of 2008 on Freedom of Public Information in the Court SK KMA No. 1-144/KMA/SK/I/2011 on Guideline of Service Information in the Court dan SK KMA No. 026/KMA/SK/II/2012 about Justice Service Standard.[21] Based on this situation there are 10 State Courts in Lampung Province has established and adapted SIPP/CTS.[22]

The actualization of Freedom Public Information in all state courts all across Lampung Province, according to all respondents, it was applied using SIPP/CTS instruments that can be seen through official website of the courts. The content of SIPP/CTS is generally same because the template and format have been given by Supreme Court. The content of information in State Court is about (1) information about the case that has been managed by the court itself, (2) information about council schedule (3) information about detainee status (4) information about decision-day schedule and the status of council, is it going to be a cassation or having power of law. SIPP/CTS is not only about council stages information of a case such as choosen judge member, provement activity (Investigation and Interrogation Report), the content of Judge's decision and information about the execution.

The existence of information would be very helpful for society as a control mediator about the process of investigation of a case in the name of substantial justice. Society control also can solve the issue of justice institution independence especially on public interest case. That is why law reformation should be conducted to give more control toward justice institution. An important element is to develop law regulation and justice, that placing society in the more strategic position through opeing and widening society access, either they are directly involve or not.[23] Regarding this issue, it is important to build a progressive frame system of bureaucrat based on law regulation on council agenda that adapt freedom of information and public service.

The freedom in the process of criminal justice is mandatory and rigid, due to the freedom system and determine how the process of criminal justice. According to Andrew Karmen statement below:

> "*The criminal justice system is a branch of govemment that comes under scathing attack all quarters. Conservatives, liberals, and radicals; feminist; olaw and order advocates; civil rights activist; and civil libertarians: all find fault with its rules and operations. Even its officials joint the chorus of critics calling change. If there is*

[21] Ridwan Mansyur, Implementation of SIPP/CTS dan SIADPA Based IT "*Menyambut Matahari Terbit di Januari 2014*", http://www.mahkamahagung.go.id/, accessed on 15-6-013.
[22] Pujiono, The Young Clerks of High Court in Tanjungkarang, interview on 21-8-2013.
[23] Bambang Widjojanto. 1997. *Fair Trial: Prinsip-Prinsip Peradilan yang Adil dan Tidak Memihak*. YLBHI. Jakarta. Page xii.

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one word that describe how the criminal justice system treats victim of crimes and witnesses to crimes, it is "badly".[24]

The principal of public information freedom is not the same with the defintion of freedom that Courts have established curently. The definition of freedom is stated that "A council is opened for public" and there is a mandatory obligation for the chief of judge should declare "the council is opened and it's publicly opened, if it isn't done then the cancelation of the decision in the name of law.[25] The definition of freedom is not only about what has been mentioned above, but all investigation process of criminal council can be accessed by public except judge discussion.

The actualization of criminal justice in the level of State Court based on procedural design of KUHAP regulated in BAB XVI, Article 145 until Article 232 KUHAP. Based on that regulation, there are 3 kind of investigation agenda in the state court (1) Regular Investigation Agenda that under the law of Article 152 until Article 202 KUHAP (2) Short Invetsigation Agenda that under the law of Article 203 until Article 204 KUHAP, (3) Express Investigation Agenda that consist of Common Criminal Invetsigation that under control Article 205 until Article 210 KUHAP and Traffic Violation Investigation that under control Article 211 until Article 216 KUHAP.

Based on KUHAP regulation above, criminal justice process that using Common Investigation Agenda consist of several steps below (1) The Head Panel of Judges open the council by saying The council is opened and it's publicly opened. That statement is mandatory to be declared, if it's not then the decision in the name of law will be canceled (Article 153 Section (4) KUHAP). (2) The chief of judge ask the prosecutor to ask the suspect for attending the agenda, (3) The Prosecutor should presenting the suspect in the free condition and sit on the chair, (4) In the beginning of the council the chief should ask the identity of the suspect and his/her body condition (5) The Head Panel of Judges allows The prosecutor to read sue letter (6) The prosecutor give the letter after read it to The Head Panel of Judges along with the physical evidence also a copy of sue letter to the lawyer of the suspect. (7) The Head Panel of Judges ask the suspect that she/he understand about the accusation, if he/she doesn't understand, the prosecutor would retell the sue letter on what part that missed (8) The Lawyer of the suspect is allowed to deliver exception. (9) the process of proven consist of investigate all witness (b) investigate expert witness (c) investigate the letter and (d) investigate the suspect. (10) delivering Sue Letter (11) delivering a defence note from the lawyer of the suspect (12) delivering a *Reflik* (and it's delivered by The Prosecutor) (13) delivering *Duplik* (the answer of the reflik) and it's delivered by The Lawyer of the suspect (14) council discussion and (15) deliver the decision of council. All the steps above should be informed to the public except the part of council discussion process.

The steps of criminal investigation in the court based on KUHAP above, if it is linked to the idea of transparency, accessable and understandable, then it can be summarized into 4

[24] Heri Taher. 2010. *Proses Hukum Yang Adil Dalam Sistem Peradsilan Pidana di Indonesia.* LaksBang Presssindo. Yogyakarta. Page 18.
[25] Article 153 Section (3) and Section (4) KUHAP.

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things (1) receiveing criminal case from public prosecutor and pointing panel of judge (2) proven steps (3) the step of reading judge decision and (4) execution of judge decision.

Based on the study, it can be analyzed that principally all respondents stated that there should be an freedom of public information about the progress and status of the suspect within the criminal case in the court with various reason as contained in Table 1 below.

Table 1. The Respondents opinions about the importance of Information Freedom in the criminal cases investigation

No	Respondents	Position	Opinion
1	Srutopo Mulyono	The Vice of Kotaagung State Court	As a form of justice transparency toward development process about cirminal handling Giving information to the public generally and the suspect or even the supsct's family, especially toward criminal case handling progress
2	Sutaji	The Judge of Tanjung Karang State Court	So that, society could understand the progress of a criminal case progress in the court Delivering information for the justice seeker is important because they are the one who involve in the criminal council.
3	Febri Purnamavita	The Judge of Metro State Court	To make society aware how the process of the criminal council from the beginning until the end. As a form of information transparency that has been managed on (1) Act No. 14 of 2008 on

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			Freedom of Public Information (2) Act No. 25 of 2009 on Public Serivce (3) Decree of Supreme Court Head RI No. 1-144/KMA/SK/I/2011 on The Guideline of Service Information in the Court. (4) Decree of Supreme Court Head RI No 026/KMA/SK/II/2012 about The Standard of Judicature Service (5) Publication Letter of General Judicature No 559/DJU/HK/ 00/7/VI/2012 about Information System of Criminal Investigation in The General Judicature Environment.
4	Teti Hendrawati	The Judge of Metro State Court	As a actualization of Act No. 14 of 2008 on Freedom of Public Information.
5	Eva S.	The Judge of Metro State Court	In order to make Public Information Freedom based on Act No. 14 of 2008 on Freedom of Public Information and Publication Letter of General Judicature 559/DJU/HK.00.7/VI/2012 about Information System of Criminal Investigation in The General Judicature Environment.
6	Heru Widjatmoko	The Prosecutor on High Prosecutor of Lampung (Kejaksaan Tinggi	To create a platform for justice seeker and The Prosecutor could understand the progress of a each case.

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		Lampung)	
7	Cik Mamat	Clerks on State Court of Kalianda	In order the public can control and evaluate the progress of the case and the Council Member can totally do their main job
8	Pujiono	Young Clerks on High Court of Tanjungkarang	It become a mandatory for every institution to inform all their activity to the public as a regulation of the state declared.

Source: Primary Data from Field Observation

Based on table 1 above, it can analyze that principally the Judges and clerks in the court agree to conduct the freedom of information when handling a certain case, as the reason to give information for the justice seeker and also it can be used as the method to control the process of council in the court just like what has been regulated in (1) Act No. 14 of 2008 on Freedom of Public Information (2) Act No. 25 of 2009 on Public Service (3) SK KMA No. 1-144/KMA/SK/I/2011 on Guideline of Service Information in the Court (4) SK KMA No. 026/KMA/SK/II/2012 on The Standard of Judicature Service Standard (5) Publication Letter of General Judicature No. 559/DJU/HK/00.7/VI/2012 on Information System in The General Judicature Environment.

Regarding the hidden information about indicating council judges mechanism according to majority of respondents because the process is the right of The Court Chief according to Srutopo Mulyono[26], the process of choosing should be based on burden of duty and variant of case that handled by a council, and another thing is everything should be on a portion and still have to remember that not all information is launched for the public. It is a bit different with Febri Purnamavita[27] that it is needed for the mechanism to choose the council member to be transparant because as a public control so that the choosing mechanism could be matched and fixed by the system. Distrust from the public is something we need to avoid because this is going to be not good,. As the example the pratice of colution or nepotism that happen within the court should be abandoned and banned.

The hidden information itself such as proven, report of witness Investigation, experts, and the suspect, according to Srutopo Mulyono and Teti Hendrawati[28], due to it's not realy a matter in SK KMA No. 1-144/KMA/SK/I/2011, and also because there is no urgency at all, meanwhile for the Prosecutor / the suspect, it is needed for the material that used for deffence notes. According to Eva Susiana[29], Investigation and Interrogation Report (BAP) is not really

[26] Vice Head on State Court (PN) Kota Agung Tanggamus Regency, Lampung Province.
[27] Judge on PN Metro Lampung Province.
[28] Judge on PN Sukadana East Lampung Regency, Lampung Province.
[29] Judge on PN Gunung Sugih Central Lampung Regency, Lampung Province.

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need to be published because it is a state secret and it is confidential. A different respond coming from Febri Purnamavita and Sutaji[30] that beside the suspect and the Prosecutor, the public also need to know and notice that information about what happens within the BAP because it can be a control function. Beside that, sometimes, The Lawyer is picked by the suspect after the process of council is on the go. So that, the lawyer can understand and know everything before they are choosen to represent the suspect. As a basic law for the prosecutor, the suspect or the lawyer on making cassation and proposing the law process. However, based on Sutaji[31] opinions the limitation of human resource power, working ethos, and academic abaility of clerks on composing Council Report are the factors that causing BAP is unable to be informed to the society, general prosecutor and defendant.

Hidden information comes to the public and the decision that has been made by the judge, according to Sutaji, the composing process meeting an obstacle because BAP council is not complete yet and that is exactly the duty of the clerks. Meanwhile, according to Febri Purnamavita, what become this seems not effective because there is a process that let the suspect to deffence themselves when the Council Member declare the decision, and basically that's the right of the suspect. Within a very short time, it could causing the report is not ready yet because the format is still on the handwriting not in a very complete and official form. The decision will be directly stated in that day and fulfilling a very simple judicature, quick and inexpensive as what has been mandated through Article 2 Section (4) Act of Judicial Power.

The same opinion was declared by Teti Hendrawati[32] that the cause of there is no complete decision because the prosecutor pending the process, then the suspect has lost their time. To fulfill a simple judicature principle, fast and light cost then the case will be very soon decided and will be determined directly through handwriting. Meanwhile, according to Srutopo Mulyono, the decision still need editing process to reach the prefect decision and as what has been stated through Article 52A Section (2) Act No. 49 of 2009 on General Justice that giving time limit 14 days for the court to give a copy of the decision for each party. In the other hand, hidden public information about the execution of a case according to the respondents because the execution is the duty of The Prosecutor as the last decision of the case itself.

Based on the data above, it describe that there are plenty of officer in the court that being isolated by legalistic law. The legalistic way itself is created by the method of working that oriented with fulfilling the regulation order only. In the mindset of the judges, justice process sometimes translated to be a process of investigate and judge as a whole based on affirmative law only. A formal vision in legalistic dominating all law deffender, so what becomes the regulation content, that is what become the basic thing.

The main weekness of this vision is a very rigid law deffend, and tend to ignore the idea of justice to the public and somehow only focus in the idea of law and rigid. But the fact, justice process is not only about actualizing the article content, but also need to see what is going on within the society itself. Because of that, in the sociology prospective, judicature

[30] Judge on PN Tanjungkarang Bandar Lampung City, Lampung Province.
[31] Judge on PN Tanjungkarang Bandar Lampung City, Lampung Province, interview on 21-08-2013.
[32] Judge on PN Sukadana East Lampung Regency, Lampung Province.

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institution is an institution that has multi-function and as a place for "record keeping" site of administrative processing", "ceremonial changes of status", "settlement negotiation", "mediations and arbitration", and warfare.[33]

The stereotype of normative positivis causing a worse of law actualization, that is why to get out of this stereotype and method, its need to get out from positivis. It is because the way of positivis-legalistic only focus on rule bound and would not be able to embrace the idea of truth. That is the reason why must need more responsive and progressive toward justice within the society. The mindset is based on the structure of law that built by human being as social interaction between individu with all of variety and complexity that tend to has an asymmetric nature. In the sense of law subject to force centripetal who created regularity, as well as subject to centrifugal forces who created irregularity (disorder), chaos and conflict. So that the law is not can be viewed as something rigid (formal-legalistic-positivis) but must be flexible regard for facts and social reality as an opinion of Charles Stamford that was quoted by Ahmad Ali.[34]

Relating to the above, especially in criminal law enforcement not only function as fear of law or rule written, but also must to see the value of sosiologis-rasional that desires law have utility and equity. This is in accordance also with one of the main principle of criminal justice systems that are expediency principles, social desireability, and the interest of the legal order.[35]

In connection with this, according to Bagir Manan former Chairman of The Supreme Court Republic of Indonesia that there are three options role by law enforcement agents in law enforcement namely: (a) in terms of the rule of law is clear, law enforcement simply acted as a rule, unless the application of it would set injustice, opposed decency, or contrary to an interest or public order; (b) law enforcement agents as an interpreter the rule of law that the rule of law can be justice instruments. This was due to the existing regulation imperfect, either language or object incomplete. (c) law enforcement agents to the creator of law (*rechsschepping*) the law is not enough set or found legal vacuum, or already is highly inadequate that could no longer "patched" through the meaning of law.[36]

The presence of Supreme Court Circular (SEMA) No. 4 of 2012 on Recording a Trial should be addressed by judges and clerk of the district court as law political developed by the supreme court about meeting the needs of people will be the implementation of judicial information. But it is regrettable that there are still many court officials who do not know the SEMA. This can be seen from the opinion of the respondents who regards research recording the trial was not carried out by the court. They assume the recording such as those often carried out by the media and an adviser to the law so that must obtain permission from the head of panel judges.

SEMA No. 4 of 2012 determine that to ensure the implementation of the trial that more transparent, accountable, and orderly, so besides the note of the cleck that substitute for

[33] Ahmad Ali, 2002 . *Keterpurukan Hukum di Indonesia penyebab dan Solusinya,* Ghalia Indonesia, Jakarta. Page 48.
[34] *Ibid.*
[35] Muladi, 1995. *Op.Cit.* Page 22.
[36] Bagir Manan, 2009, *Menegakkan Hukum Suatu Pencarian,* Jakarta, The Asociation of Indonesia Advokat. Page 59.

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set out in the report a trial for is stipulated in Article 202 Section (1) KUHAP, in the future needs to be done audio recording visual systematically, regular and inseparable of the procedure fixed trial. To thes needs, then gradually trials in court the first degree should be accompanied by audio and visual recording under the following conditions: (1) of the audio and visual recording complement of the report trial; (2) audio recording visual done in a systematic and guaranteed the integrity; (3) the audio and visual recording trial managed by clerks, and (4) the audio and visual recording as part of a bundle A.

To ensure the provisions above, so the priority in audio recording visual on trial will be done as follows: (1) for the first step performed on corruption cases and other interesting things public attention; (2) chairman of the court to make sure of visual audio recording in accordance with this letter; (3) directorate general of public judicial responsible for: (a) financing; (b) technical standardization; (c) coaching; (d) meeting the needs of infrastructure; (e) by regular evaluation, and (f) an annual report to the Supreme Court. Considering the resources, then recording process is expected to already done at least on December 1st 2012.

A court that work in an impartial manner, humility integrity, and just in case break, and apply the principle of openness, accessibility, and accountability, certainly will eventually be awarded and get higher trust naturally. In connection with this, according to Barda Nawawi Arief that quoted "*working paper*" on Congres PBB 9th/1995 in Cairo that the way how to make criminal justice systems to gain public trust and respect so the judicial system must be open and transparent. This is due to management of criminal justice is part of public administration which must also responsible to the nationwide. It also affirmed that accountability criminal justice systems is part of the concept of good governance that will in turn assure the success of sustainable society.[37]

In connection with this, according to Pan Mohamed Faiz, one of the programs major in bureaucratic reform self-important and relevant with bring back of public trust to the face and character the judiciary is through program of quick of wins. A simple example in the program quick of wins is to optimization on the court website in order transparency and accountability through a system one click service to get actual information actual that always renewed by covering at least procedure dispute, schedule of trial, the award matter, statistics matter, laws and regulations related to, publication activities, the routine reports, and transparency budget. The court institutions that can be role model in the acceleration through the application of ICT *(*Information and Communication Technologies*)* are State Court Bitung North Sulawesi and State Court Simalungun North Sumatra or Constitutional Court.[38]

3. Conclusions And Suggestions

[37] Barda Nawawi Arief. 2003. *Kapita Selekta Hukum Pidana.* Publisher PT. Citra Aditya Bakti. Bandung. Page 57.
[38] Pan Mohamad Faiz, http://panmohamadfaiz.com/ accessed on 23-10-2010

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3.1 Conclusions

To achieve substantial justice was needed a judicial process transparent by applying the principles of public information freedom in the enforcement of criminal justice. The application of the report in any court based on the Decree Head of Supreme Court Indonesia (SK KMA) No. 1-144/KMA/SK/I/2011 on Guideline of Service Information in The Court.

The court for its liabilities provided access to give information to the public manifested via web site in any court, both State Court, The High Court, and The Supreme Court. Public information contained in a web site in any court use instruments of Case Tracking System (SIPP/CTS). The content of SIPP/CTS is generally same because the template and format have been given by Supreme Court. The content of information in State Court is about (1) information about the case that has been managed by the court itself, (2) information about council schedule (3) information about detainee status (4) information about decision-day schedule and the status of council, is it going to be a cassation or having power of law.

Public information contained in every web site court only relating to the court administration, while the administration of justice such as information the trial, information about news event trial and content judicial decisions after read by the judge in the both State Court, The High Court, and The Supreme Court as practiced by Contitutional Court has not yet executed.

3.2 Suggestions

That the Supreme Court regulation about freedom of public information in the court adjusted to the values and law politics of Act No. 14 of 2008 on Freedom of Public Information;

That the Head of Supreme Court Republic of Indonesia must be built a perspective, attitude, and performance of judges and clerks based on the values of progressive law.

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The Ownership of Genetic Resources Traditionally Utilised for Health From The Perspective of Intellectual Property Rights

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Abstract

In the last three weeks, mass media here in Indonesia have been fulfilled with the news of fake vaccines that could be endanger to many young lifes. As we know that vaccine is a microorganism living attenuated organisms, or living fully virulent organisms injected to health people that has not experience such disease yet for the purpose to increase immunity, generally to childrens as a barrier of such disease in the future. If the vaccine is a fake one, inspite of increasing children immunity, it could cause otherwise though. Despite the clarification made by authority on this matter today, still there is a potential of abusing medical substance to make some fortune only, regardless the effect of it to people. Vaccine is one of genetic resources utilised for health purpose. Indonesian's genetic resources or biodiversity has known as enormous in variety and endemic; the second largest in the world and becomes the first largest when it combines with the cultural rich of the country. The natural resource has been used for food and health in general. Along with the increasing of awareness using herbal medicine as alternative drugs due to safety of such use, genetic resources as raw materials for the drugs become more important. However, the use of genetic resources for health in Indonesia has not identified very well yet neither developed properly using necessary market and technology approach. Additionally, culture related to the use of such genetic resources and traditional knowledge that conserve both biodiversity itself and the use of the biodiversity for health have not well recognised either. The importance of protecting those resources due to the effort of our ancistors to preserve, conserve and developed them therefore we can access and utilised those resources safely today in turn which becomes an asset to local related community. However, from the perspective of intellectual property rights, there is an issue to whom the protection should be given; since there is no authentic inventor or creator or conservator can be identified as the main parameter in intellectual property right system. This article will discuss how the scheme of best protection for Indonesia genectic resources traditionally used for health either using intellectual property system or other relevant instruments.

Keywords: *genetic resources, natural health, intellectual property right*

1. Introduction

When media in Indonesia was rookery of fake vaccine in the last few months, the issues related to the incident are not only the criminal and health issues merely, but more that this bring us to the reflection how to use our natural or genetic resources for health purpose affordably, therefore no further need to make fake medicine in order to get profit from the

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greediness of people who sees the opportunity of doing so due to expensiveness of medicine around Indonesia.

Indonesia have been blessed as one of the countries with tremendous natural or genetic resources in number; only second to Brazil that have Amazone Rive that makes natural or genetic resources could be developed and maintained optimally, since availability of fresh water is the main factor for living thing besides the sunlight.

Indonesia's natural or genetic resource or also knowns as biodiversity has known as one of the most exceptional number in the world. According to Indonesian Forestry Ministry, Indonesia has at least 38.000 of plant species which is 55% of them are endemics. To give clearer picture of biological diversity of Indonesia can be shown in Table 1.

Table 1: Indonesia Biological Diversity in Region and Their Endemics Status

Island	**Birds (kinds)**	**Endemic (%)**	**Mammalia (kinds)**	**Endemic (%)**	**Reptile (kinds)**	**Endemic (%)**	**Plants (kinds)**	**Endemis (%)**
Papua	602	52	125	58	223	35	1030	55
Maluku	210	33	69	17	98	18	380	6
Sulawesi	242	30	41	12	77	22	150	3
Kalimantan	289	32	114	60	117	26	520	7
Java Bali	362	7	133	12	173	8	630	5
Sumatera	465	2	194	10	217	11	820	11

Source: Forestry Ministry of Indonesia, 1994

Despite of the huge number of Indonesian biological diversity, the sources have not explored much yet for health purpose. The common use of such resources for health purpose is limited to the traditional used for healing such as sirih (*piper betle*), temu lawak (*curcuma xanthorrhiza*), jahe (*Zingiber officinale*), kencur (*Kaempferia galanga* L), and many more. In this sense, besides the very simple technology involved of such used, the potent of the resources that can be explored by using modern technology in order to meet the need of medicine in Indonesia becomes very important issues and need to be elaborated further. The other issue is disappearance of some valuable resources due to lack of awareness of society or because of other short term benefit purpose. The other important issue is the protection of the resources that very weak. In 2002 Japan has cancelled its patent using Indonesian biological resources called brotowali (*Tinospora tuberculata Beumee*) that used as antiaging material.

Along with the increasing awareness of using herbal medicine as an alternative of save medicine and back to nature way of life, it is important for Indonesia to have a picture of its own biodiversity that could be used as a medicine and how to elaborate the source for wider benefit, i.e. public welfare as stated in Indonesian constitutions that sees Indonesian natural resources as a fundamental capital for increasing public welfare in broad sense.

Indonesia's biodiversity in general has been acknowledged as the second most highest in variety in the world. This richness of the Indonesia's biodiversity has been contributed to Indonesian people daily life greatly for food, housing, health, and many other usages. Moreover, Indonesia also is rich in culture in the term of using such resources. These combinations make Indonesia in the top of presenting sources that available to be used by people, as stated by Grifo (1997).

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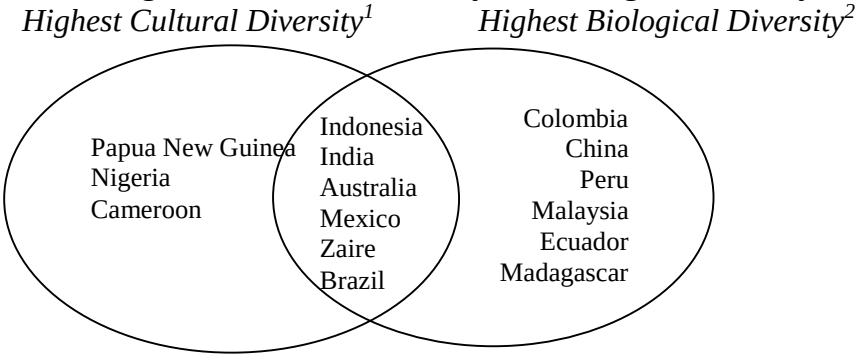
Figure 1. Cultural diversity and biological diversity



Source: Worldwatch Institute
1Countries where more than 200 languages are spoken
2Countries listed by biologist as "megadiversity" countries for their exceptional numbers of unique species

The two aspects become part of biodiversity (Neely in Proceeding, 2005). Cultural and biological diversity are inextricably linked, like double helix of DNA, where they constantly interacting to each other. The culture biodiversity affects very close to the management of biological diversity. Under culture and biological diversity, the system of health care is established based on locally available plant species and sometimes animals as well. This richness is threaten by modern society where more rely on manufactured goods, including chemical drugs for health care that can accessed very easily and practical. In time, the traditional knowledge of utilizing natural sources for health care did not pass by to the next generation, since the later community has different way to take care of their health.

2. Indonesian Genetic Resources Used for Health

The use of biodiversity for health could be developed either traditional or modern way. Initially, the used of biological diversity for health is in traditional healing context. Traditional healers in Indonesia (dukun) used variety of plants and animals to treat their patients. Usually, plants or herbs that used as material of medicine are boiled and the liquid resulted from them must be drank by patients to get their effect, or just put the herbs over the wound. By using this method from generation to generation, several herbs have been proved to be effective for human use; therefore the essences of the herbs have been passed a clinical trial somehow in modern method of improving drugs. Therefore, those drugs are still relevant in the sense of modern way of health cure.

Traditional medicine has a characteristic as non verbal knowledge that passed from generation to generation that formulated based on tradition, culture, or even magical approach. In this sense, the culture of the community took a very important part to develop and conserve the knowledge. The main issue related to traditional medicine is two things: how using the knowledge in modern life and how to protect and appreciate the community properly of maintain of the knowledge until now.

When traditional medicine did not accept any longer along with emerging of rational and logical thinking, the cure method also took this approach, including the drugs itself. As it is noted in the terminology 'pharmacology', the drugs are initially developed by using

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poison, as we seen in developing vaccine in the past. This approach has been proved effective since then. However, this kind of drugs contain bad side effect in long run, and cause another symptom in the end.

Since the notion of using herbal medicine is healthier and safer for curing human health, more and more attention to use biodiversity as a material to develop drugs spread very fast. Modern medicine also utilized the herbal using modern knowledge and technology to provide drugs that close to its natural character. Some of natural product for drugs are antibacterial, antivirals, antifungals, antiparasitics, malaria, and even anticancer.

When this step is taken, there are also three issues involved: the usage of material for drugs, the traditional knowledge attached, and the protection to the product using intellectual property mechanism as a tool for commercialization of the product. Each issue needs to be elaborated further.

Another aspect of medicine is malnutrition. The problems of malnutrition and health status of Indonesian had been existing regardless abundance of natural sources. Malnutrition of the people such as protein energy malnutrition (PEM), Iodine deficiency Disorder (IDD), Iron Deficiency Anemia (IDA) and Vitamin A Deficiency (VAD) are still becoming nutrition problem in Indonesia. These conditions resulted in low productivity and therefore threat to the national development.

Since the abundance resources of foods to be utilized for people welfare, the priorities need to be established to determine where conservation actions need to be implemented in Indonesia and the most appropriate mechanisms for that implementation especially to induce with recent appropriate technology to protect and maintenance intellectual property right, especially related to indigenous knowledge of local people.

Indonesia with 17,000 islands is a mega biodiversity country that is ranked first in the world for number of mammals, palms, swallowtail butterfly, and parrot species, especially food and herbal sources. Therefore, Indonesia has been identified, by all recent international priority-setting exercises, as a global priority for actions to conserve biodiversity. The regional biodiversity analyses showed that these threats to biodiversity have worsened since the political, economic and environmental shocks of 1997-1998. The fall of Suharto in May 1998, the central government's control over regional affairs, including natural resource management, vastly reduced. This has led to worse forestry practices, increased exploitation of biodiversity and increased conflicts over land tenure. The utilization of natural sources of biodiversity has been conducted by people to improve their health and nutritional sources. The lack of culture to protect our biodiversity sources resulted in depending on the modern practices, on food and herbal.

The increasing empowerment of local governments and communities through decentralization laws, also offers hope that governments and local communities will purposively respond to these crises at both the policy and ground levels of protection of biodiversity resources.

However, there is still lack of consciousness among the people to maintain the valuable sources which is shown in report of USAID Indonesia's team (2004) regarding Indonesia's Biodiversity in tropical forest. This attitude leads to extinction or endangered some of the sources and the statistic is increasing in every year. On the other hand, the dependence to the source becomes critical, since Indonesia could not able to seek technology as their main resources to survive and the population growth is very high. This unbalanced situation should be considered seriously and set up the solution that could be applied in practice.

The phenomenon is also happened for biodiversity for health. The addition to the problem in this area is the sources has not yet exploited very well while tremendous natural resources in number is in the neighbourhood remains idle. Moreover, the trend 'back to nature' that spread broadly through the community in the world somehow affects the

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Indonesia's biodiversity. More and more people rush to explore how to use the sources using various scheme and technology. Unfortunately there is not many Indonesian experts that concern with the trend which caused the source has not been explored properly and effectively.

The main issue in the context of environmental is conserving the sources and the same time utilizing the very source optimally and effectively.

The challenge in the term of protecting the valueable resources is how to use the biodiversity effectively and the same time still promotes the sustainable of the resources. To reach this idea, the role of policy and regulation to support the concept is very important and vital. While there are no less than 28 regulations in Law or *Undang-Undang* form, directly or indirectly relate to biodiversity, but there is still no evidence the effectiveness of those regulations in supporting the notion (Lubis, 2009:218).

Table 2: Laws Relate to Biodiversity

No	Instruments	Concerning	Authority
1	UU No.5 /1960	Basic Regulation of Agrarian	Ministry of Agriculture
2	UU No. 6/1967	Basic Regulation of Husbandry and Animal Health	Ministry of Agriculture
3	UU No.1/1973	Coastal Zone Management	Ministry of Marine
4	UU No. 5/1983	Indonesia's Exclusive Economy Zone	Ministry of Marine
5	UU No. 5/1990	Conservation of Biodiversity and Ecosystem	Ministry of Environment
6	UU No. 12/1992	Plant Cultivation System	Ministry of Agriculture
7	UU No. 16/1992	Quarantine of Animal, Fish and Plant	Ministry of Agriculture
8	UU No. 24/1992	Spatial Use Management	Ministry of Foreign Affair
9	UU No. 5/1994	**Ratification of United Nations Convention on Biological Diversity**	Ministry of Environment
10	UU No. 7/1994	Ratification of Establishment of World Trade Organization (WTO)	Ministry of Trade
11	UU No. 6/1996	Marine of Indonesia	Ministry of Marine
12	UU No. 7/1996	Food	Ministry of Agriculture
13	UU No. 23/1997	Management of the Environment	Ministry of Environment
14	UU No. 22/1999	Regional Governance	Ministry of Internal Affair
15	UU No. 25/1999	Fiscal Balance between Central and Regional Governments	Ministry of Finance
16	UU No, 41/1999	Forestry	Ministry of Forestry
17	UU No. 25/2000	National Development Program 2000-2004	BAPPENAS
18	UU No.	Plant Variety Protection	Ministry of Agriculture

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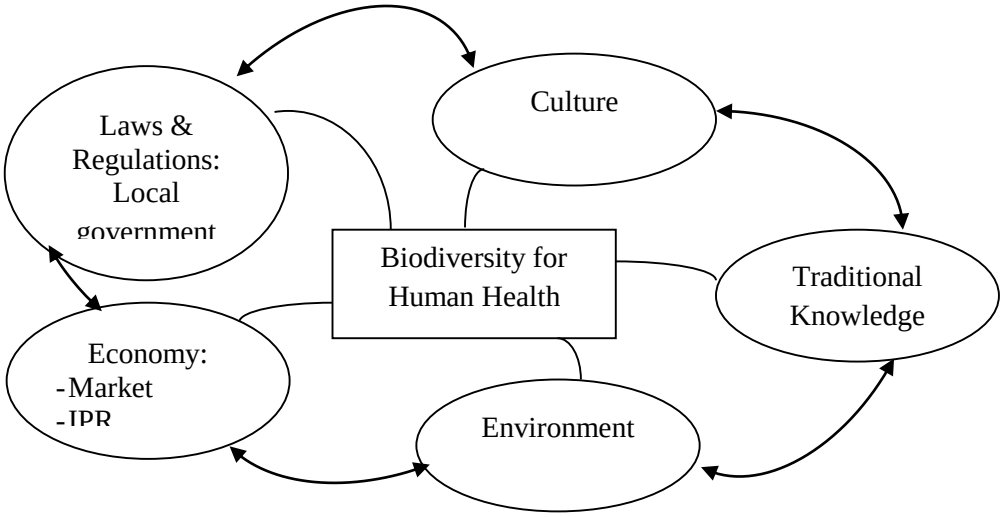
	29/2000		
19	UU No. 30/2000	Trade Secret	Ministry of Law and Humanright
20	UU No. 31/2000	Industrial Design	Ministry of Law and Humanright
21	UU No. 14/2001	Patent	Ministry of Law and Humanright
22	UU No. 15/2001	Trademark	Ministry of Law and Humanright
23	UU No. 18/2002	National System for Research, Development, and Application of Science and Technology	Ministry of Law and Humanright
24	UU No. 19/2002	Copyright	Ministry of Law and Humanright
25	UU No. 18/2004	Plantation	Ministry of Agriculture
26	UU No. 21/2004	Ratification of Cartagena Protocol on Biosafety to the Convention on Biological Diversity	Ministry of Environment
27	UU No. 31/2004	Fisheries	Ministry of Marine
28	UU No. 4/2006	Ratification of International Treaty Plant Genetic Resources for Food and Agriculture	Ministry of Agriculture
29		Declaration On The TRIPS Agreement And Public Health (Doha Declaration)	

Sources: Lubis, 2009: 218

The main problem in the term of legal frameworks is inconsistencies as indicated by USAID's research team (2004: 2-8). Disharmony among the laws leads to difficulty of biodiversity conservation. The inconsistency is about the use of terminology, the scope of protection, and the overlapping in authority in managing biodiversity due to governance new system, where the stressing of doing the management in the hand of regional government.

Developing model of utilizing biodiversity for health is not an environment issue or technology alone; rather it relates to several areas that connected to each other.



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The other issue relates to the loophole for protecting materials and knowledges of biodiversity traditionallya used for health purpose. As we seen from the regulations above, all protection directed to protect the end product of such biodiversity, not the source and know how developed traditionally that turn from one generation to another verbally; therefore there is no solid evidence such publication whatsoever could be used as prior art in the term of intelellectual property rights for example. In this sense, it is important to elaborate further in order to give proper protection for Indonesian genetic resources and traditional knowledge attached to the valueable resources.

3. Indonesian SDG Traditionally Used for Health

According to the Chief of Forest Information, Ministry of Forest, there are estimated 38.000 plants varieties in Indonesia out of 40.000 plant varieties all over the world. Among those varieties, approximately 940 varieties could be developed as herbal medicine; and this becomes 90% of herbal medicine plant in Asia (Masyhud, 2010). From this number, study shows that only 20-22% of those plants are cultivated; the rest of it still in their very natural shape which should be taken from their natural habitat. According to the Chief of Study Center of Biopharmacy of University of Bogor Agriculture, this huge potential market could be seen from export trend which was 7.000 ton in 2007 doubled to 14.000 in the next year (Kadarusman, 2013). From the value of money point of view, Saerang – the Chief of Herbal Medicine (Jamu) Producen, the number in 2010 reached Rp 7.2 billion dan increased to Rp 12 billion in 2011.

From 940 plant varieties potented herbal medicine above, some of the profile as describe below:

1. Kemangi leaves (*Ocimum basilicum var. anisatum*)
   This plant can be also used as fresh vegetable due to its aroma and taste like mint. Some of the usage of the plant is for curing thrush (*sariawan*), smoothing blood stein, bone growing, immunity increasing, improving infertilizing, balancing heart, even for improving sexual aility.

2. Temulawak (*Curcuma xanthorrhiza*) for curing back pain, he adache and cold, ulcer, constipation, improving kidney function, anti inflamation, acne , increasing appetite, anti cholesterol, anemia, anti oxydant, preventing cancer, and anti microba.

3. Clove (*Syzygium aromaticum*) for curing respiratory infection, tootache, acne spot, disinfectant, antiseptic, natural aromatic, and herbal pesticide. This plant also can be used as food ingredient, and as material for cigarettes beside tobacco.

4. Meniran (*Phyllanthus niruri L.*) has a lot of calium and filantic substance which can be used as curing cancer, hepatitis, urine problem, respiratory problem, diabetic, diarrehae, fever,

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smallpox, variety of viruses and bacteria infections and also increasing immunity system.

5. Brotowali (*Tinospora crispa (L.) Miers ex Hoff.f.*) contain alcaloid, pocroretin, palmatine, barbarine, etc. With these substance, brotowali could be used as internal and external curing. Both its stein and leave are common to be developed as a curing agent as well a it root. Several diseases could be cured by this very useful plant, such as arthritis, diabetic, fever, scabies, yellow fever and many more. Additionally, brotowali also known for its high antiaging agent which is used for cosmetic purpose. For daily use, brotowali also used as face cleanser for keeping and attaining smooth and bright skin.

4. Ownership Issue over Genetic Resouces Traditionally Used for Health

When we discussed ownership, we assume that genetic resources or biodiversity as a property. For Indonesian biodiversity as a whole, the basic law of ownership should refer to Article 33 par. 3 of Indonesian Constitution which under the title of 'National Economy and Social Welfare'; which ammended in the year 2000 (fourth ammendment) into:
"Bumi dan air dan kekayaan alam yang terkandung di dalamnya dikuasai oleh negara dan dipergunakan untuk sebesarbesar kemakmuran rakyat".

From the perspective of Indonesia Constitution (UUD 1945) the existance and the usage of biodiversity is mainly for the welfare of nation widely; becomes a nation capital and comparative advantage which should be well managed by the authority. In order to implement the notion, Higher House of Representative enacted TAP MPR No. IX/MPR/2001 especially stipulate the function of state to manage our natural resources in the purpose of make a system of occupation, ownership, usage, and preservation of such resources fairer; so that these valuable resources could be beneficial for our next generation also which is still focus on availibility and supporting environment as the main consideration[1]. In this regulation, the main principle is community welfare widely, begin with the most disadvantage member of community. Additionally, the management of such natural resources should be not only for economic reason merely, but also for the purpose of environmental preservation for the next generation.

Characteristically, there are three classifications regarding to ownership and control for genetic resources traditionally used for health, i.e:
(1) genetic resources in the original form, either it is wild or domestification;
(2) genetic resources developed traditionally;
(3) genetic resources developed using modern biotechnology.
Regarding to stakeholders related to those three groups wich is referred as the owner, could be describe as follow:

Table 3: Genetic Resources Classification According to Its Character and Stakeholders Related

Genetic Resources Division	*Stakeholders* Related	Purposes
In original form	Community the genetic resources found	Food, health, environment, spritual

[1]See Article 7 jo. Article 5 f, g TAP MPR No. IX/MPR/2001 of Agriculture Development and Natural Resources Management.

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Developed traditionally	Community the genetic resources found	Traditional knowledge, farmers right
Developed in modern way	Community the genetic resources found, industry/industry developed	Traditional knowledge, intellectual property rights

From the regulation above, we can see that the approach method of stipulate the genetic resources interdicipliner which could be overlapping one to another.

4.1. Genetic Resources for Health in Original Form

The ownership of GR for health in original form can be divided into *in situ* and *ex situ* condition. *In situ* condition means that GR in its natural habitat or in its development environment[2]. While ex situ condition means that GR and its components is outside of its natural habitat[3].

The protection of *in situ* GR for health refers to *United Nation Convention on Biological Diversity* (CBD) which ratifed through the Law No. 5 Year 1994. Along with other regulations such as the Law No. 5 Year 1983 if Exclusive Economy Zone; the ownership of GR for health is on the State hands. This can be traced to Article 33 Par 3 of Indonesian Constitution (UUD 1945) that state:

> Earth and water and all natural property inside them occupied by the State for the greatest citizen's welfare.

According to Siahaan and Harjono (2008), the meaning of occupied by the State should not be translated in the concept of property in private law, it should be connected to the State as sovereign entity though. Therefore, the authority of the State in this sense covers related matters otuside of its territory including to draw other related properties into the State occupation[4].

Following the argumentation above, consistently all related regulations stipulated the similar notion. The Law No. 5 Year 1983 of Indonesia Exclusive Economy Zone stated that Indonesia sovereignity of its GR in Exclusive Economy Zone which is coverage as long as 200 miles from sea baselines. Those GR is considered as nation's capital or ownership of Indonesian people. In this sense, the State should make necessary exploration, exploitation, managing, and conservation of GR in that area, including GR for health; every effort or activity in that area should be under the State supervision through its permit mechanism.

The similar notion also granted by the CBD which is ratified by Indonesia through the Law No. 5 Year 1994, especially stated in Article 3 under title Principle:

> *"States have, in accordance with the Charter of the United Nations and the principles of international law, **the sovereign right** to exploit their own resources pursuant to their own environmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction".*

[2]See Article 2 Law No. 5 Year 1994 of United Nation Convention on Biological Diversity Ratification juncto Article 2 Law No. 4 Year 2006 of International Treaty On Plant Genetic Resources For Food And Agriculture Ratification.

[3]Law No. 5 Year 1994, *Ibid*.

[4]Maruarar Siahaan, 2008, **Undang-Undang Dasar 1945: Konstitusi yang Hidup**, Jakarta, Sekretariat Jenderal dan Kepaniteraan Mahkamah Konstitusi, 32.

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Legal reasoning of CBD highlighted the sovereign right of the States over their GR refers to Article 2 of Charter of United Nations and other international law principles[5].

For ex situ collection, the protection for GR for health refers to both international and national mechanism. According to international mechanism such as The Consultative Group on International Agricultureal Research (CGIAR) which focuses on collaboration among countries for sustainable agricultural system in order to provide food security internationally along with other related issues such as poverty and human rights. The principle of protection of GR in this context is trusteeship[6] which means all countries give an authority to the CGIAR to managed GR in its authorization. The same principle goes to organization developed under this international collaboration such as Internaionl Treaty on Plant Genetic Resource for Food and Agriculture.

In national level, there is no clear regulations to protect Indonesia GR in *ex situ* condition; consequently the protection depends on institutions mechanism that collected the GR itself. For GR under FAO administration, the principle used to those GR is common heritage of mankind. In this sense, every country can access the collection freely although in the further steps the instituion applied what so called Standard Material Agreement (SMTA) to prevent unwanted GR developments and researchs[7].

4.2. Genetic Resources for Health Developed Traditionally

The protection mechanism for GR for health developed traditionally also considers international and national mecahnism as well. In International level, CBD COP Decision IX/12 or known as Bonn Guideline stated that there should be mechanism to acces GR for health and benefit sharing arising from such access. Despite the notion that benefit sharing usually related to each party's contribution, the treaty make a guideline to consider action should be taken when GR of other country is used for certain product. These actions could be either monetery and non monetery as describe as follow:

Table 4 : Benefit Sharing Arising from GR Utilization

Non Monetary	Monetary
- *acknowledgement in publication* - *joint research and increased scientific capacity* - *participation in planning and decision making* - *control over samples and research results* - *voucher specimens deposited in a national institution* - *co-ownership or sole ownership of intellectual property rights* - *free access to technology and products resulting from the agreement* - *protection of local existing applications of intellectual property rights* - *technology transfer (equipment and material*	- *bioprospecting fees* - *per sample fees* - *percentage or research budget* - *percentage of royalties* - *development of alternative income generating schemes* - *commitment to re-supply in source country, sample* - *int. fund based on levies and sales* - *specific funds (Trust Funds)*

[5]The complete article:"*The Organization is based on the principle of the sovereign equality of all its Members*".

[6] David S. Tilford, *Saving The Blueprints: The International Legal Regime For Plant Resources*, Case Western Reserve Journal of International Law, 1998, 424.

[7]See Article 9 Law No. 5 Year 1994 of United Nation Convention on Biological Diversity Ratification.

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donation) - *training in bioprospecting methods, collection and preparation of samples, biodiversity monitoring, socioeconomic monitoring, and/or nursery and agronomic techniques (increased conservation capacity)*	

Souces: Ad Hoc Open-Ended Working Group on Access and Benefit Sharing (UNEP/CBD/WG-ABS/1/INF/4). Environmental Policy Studies, Working Paper No. 4, New York 1999, p. 75.

4.3. Genetic Resources for Health Developed in Modern Way

The development of GR for health in modern way can use either conventional or biotechnology mechanism. Despite the approach of developing product based on GR, the protection of the products end up in the same mechanism. According to international treaty of Trade Related of Intellectual Property Rights (TRIPS) of World Trade Organization (WTO), the ownership of such product could be protected under Intellectual Property mechnism; Indonesia has been stipulated all necessary legal instrument under seven laws[8]:

Table 5: Intellectual Property Laws in Indonesia

No	Types of IP	Regulations	Scope
1	Copyright	Law No. 28/2014	Sciense, art and literature for its originality.
2	Patent	Law No. 13/2016	New, inventive, and industrial applicable technology.
3	Mark	Law No. 15/2001	Distinctive symbol that used in trade.
4	Plant Variety Protection	Law No. 29/2000	New, uniqe, uniform, and stabel plant variety.
5	Trade Secret	Law No. 30/2000	Valuable information in trade.
6	Industry Design	Law No. 31/2000	Aesthetics and economics value of the form.
7	Lay out Circuit Protection	Law No. 32/2000	Electronical function of circuit design.

All the mechanism above could be applied for GR for health, including Geographical Indication that stipulated in the Law No. 15 Year 2001 of Mark. The protection of GR for healt in details can be seen in the following table:

Table 6: The Possibility of Protection of GR for Health Under IP Rezim

Types	IP Rezims						
	Patent	PVP	Copy right	Mark		Trade Secret	Industry Design
				TM	GI		
1. GR							
♦ Local	-	Par.7(1)	Par.39	-	Par. 56 (1)	-	Par. 1(1)

[8]Indonesia ratified TRIPS in the year 1994 through the Law No. 7 Year 1994. According to this Law, Indonesia obliged to impelement all IP provision to its national regulation.

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♦ Breeding	Par.1(1) jo. Par. 7	Par.1(1)	Par.39	Par.1(1)	Par.56(1)	Par.1(1)	Par. 1(1)
2. GR Products			Par.39	Par.1(1)	Par.56(1)	Par.1(1)	Par. 1 (1)

Sumber: Adapted from Lubis, 2002.

The application of IP for protecting GR for health not only concerned by WTO but also become the concern of World Intellectual Property Organization (WIPO). One of WIPO effort to protect GR for health is to make an obligation to disclose the material used in patent document. The disclosure make available to identify the GR related in the patent application so that can be traced such material contain traditional knowledge of certain group of Indonesia people whatsoever which can be treated according to the Bonn Guidelines for benefit sharing and prior informed consent mechanism[9]. Other effort of WIPO is introducing such traditional knowledge in *International Patent Classification*, A61K 36/00[10].

The most recent convention regarding GR for health is Doha Declaration. Article 4 of the Declaration stated that for promoting access to health in order to provide medicine for all pupose, the provision in TRIPS should be interpreted and implemented in such manner therefore should not hamper the member countries of TRIPS in developing and protecting their citizen's health.

5. Conclusion

Looking at protection the ownership of GR for health brings the broad issues; both international and national level. The protection could apply for GR for health as material with or without traditional knowledge or know how embedded to it in developing the GR. In developing medicine using GR could also divided into conventional and in modern way. The nature of developing medicine from GR takes different protection consequenly.

The discussion of ownership for GR in its original form is still on place in international level. Most developed countries still consider that such GR should be the heritage of mankind, therefore every contries should be able to access the GR for humanity in turn. The GR providing countries consider that GR is part of their sovereign so that must be subject to national policies for exploring and exploitating and conserving such GR. The principle prior informed consent and benefit sharing that introduced by the Bonn Guidelines is still in challenge in the implementation level.

For GR that developed for health either using conventional and biotechnology method could be protected according to Intellectual Property mechanism. All IP rezim could be applied to the developed medicine; although there is an exception for medicine for all purpose that introduced through Doha Declaration.

[9]Task Force for Intellectual Property Rights in Genetic Resources, Traditional Knowledge, and Folklore Expression Section, as stated in Ministry of Justice Decree No. M.54.PR.09.03. 7 August 2002.

[10]See document WIPO/GRTKF/IC/5/6; WIPO/GRTKF/IC/8/9; WIPO/GRTKF/IC/4/14; WIPO/GRTKF/IC/5/13; available at http://www.wipo.int/tk/en/databases/contracts/index.html.

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Standard Contract Which Contain The Exoneration Clause In Connection With Empowering SMEs

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Abstrak

The research studies about Standard Contract Which Contain The Exoneration Clause In Connection With Empowering SMEs. This research using a normative method.The result of research indicates that a standard contract that contains the exoneration clause prohibited by Article 18 of Law No. 8 of 1999 on Consumer Protection and Article 22 verse 3 of the Financial Service Authority (FSA) Rules. But the reality in practice, almost an average of Banking Financial Institutions still run it. standards contract still contained in exoneration clause. The effect is the result of the Agreement Null and Void because it conflicts with applicable regulations.

Keywords*: The Exoneration Clause, Empowering SMEs,Contract*

1. Introduction

1.1 Background

Modernization era became the biggest challenge in every country. The challenge shall be welcomed by every State when His country did not want to lag behind other countries. Formation of a strong country and competitive should be strengthened by the State Economic Power. 1945 constitution mandated to build economic democracy which guided by the Community Economy system in the form of operations is People's Economic Empowerment. The spirit of the constitution set forth in the Basic State Guidelines (Guidelines) 1978. One of the contents of these guidelines is to multiply the populist economic system that refers to the construction of the mechanism of self-interest of small entrepreneurs in all aspects of life.

The establishment of Law 20 of 2008 on Micro, Small, and Medium Enterprises is a form of consistency of government to empower and protect the existence of small Business actors. Understanding Micro in of Law 20 of 2008 on Micro, Small and Medium Enterprises is a productive enterprise belonging to individuals and / or entities that meet the criteria of individual businesses Micro, While the definition of small business in the Act 20 of 2008 on Micro, Small and Medium Enterprises is an economic enterprise productive stand-alone, conducted by an individual or business entity that is not a subsidiary or not a branch of the company owned, controlled, or be part either directly or indirectly from Medium Business or

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Large enterprises that meet the criteria for Small businesses and Understanding Medium enterprises in Act 20 of 2008 on Micro, Small and Medium enterprises is an economic enterprise productive stand-alone, conducted by an individual or entities which are not subsidiaries or branches of companies owned, controlled, or be a part either directly or indirectly by the Small Business or large businesses with total net assets or annual sales . Understanding Empowerment under the Act 20 of 2008 the efforts made by the government, local government, business world and society in synergy in the form of growing climate and business development of the Micro, Small, and Medium enterprises so it can grow and develop into a strong and independent businesses.

Not to the strong economic fundamentals of Indonesia in this times , encouraged the government to continue to empower the Micro, Small and Medium Enterprises (SMEs) . this sector is able to absorb a large enough labor force and providing opportunities for SMEs to grow and compete with companies that are more likely to use large capital (capital intensive). The existence of SMEs is undoubted because it proved able to survive and become major economic powers, especially after the economic crisis. On the other hand, SMEs also face many problems, one of which is the limited working capital. Other obstacles for SMEs is the relationship with prospects less clear and the planning, the vision, and mission that has not been steady. This happens because most SMEs are income gathering of raising the revenue, with characteristics as follows: a family owned business, using technology that is still relatively modest, lack of access to capital (bankable), and there is no separation of venture capital to individual needs. using a technology that is still relatively modest, lack of access to capital (bankable), and there is no separation of venture capital to individual needs.

To overcome the problem of capital for SMEs, the government in collaboration with the banking side, it is stipulated in Presidential Instruction Number 5 of 2008 regarding the focus of the economic program in 2008-2009.The government policy in the form of People's Business Credit (KUR), however Giving credit through Banking Institutions using standard contract that containing Clause exoneration, often detrimental Actors SMEs, Because in the agreement to business credit for SMEs often Parties Banking uses Standard Contract which there Clause exoneration which is prohibited by Article 18 of Law No. 8 of 1999 on Consumer Protection and Article 22 paragraph 3 of the FSA Regulation No. 1 Year 2013 on Consumer Protection Financial Services Sector. Business communities of SMEs generally do not understand the agreement and substance . The Position SMEs as customers are in a weak position and faced with a bid of Banking Financial Institutions (Take it or leave it) or simply take away.

1.2 Issue

1. Is the Bank Credit Agreement in Lampung in Bandar Lampung contains the exoneration clause?
2. What legal consequences of the application of the exoneration clause in the agreement to the Credit?
3. Legal Protection for Customers debtor in standard contract in which there is the exoneration clause?

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2. Results and Discussion

2.1 Credit agreements at Bank Lampung in Bandar Lampung contain the exoneration clause

Banks were selected as sample is Bank Lampung, that the credit agreement contains the exoneration clause, which states that the parties agree to implement this agreement as well as submissive and obedient to the general terms of credit agreements made by bank, the problem is that a lot of the exoneration clause contained in the general terms of the credit agreement, and the general terms of this being an attachment credit agreement. The discussion in this section will be explained and demonstrated that the Bank Lampung in Bandar Lampung using the exoneration clause in the loan agreement, as will be described below;

Table 1

the contents of bank credit agreement with a debtor which contains a clause on the exoneration of the debtor shall be subject to the general rules of bank Lampung

Name of Bank	The rule
The bank of Lampung	article 15, Debtor is subject to the general rules on crediting and habits regarding credit agreements and crediting, in particular, apply to banks as well as other regulations or changes set by the bank and Bank Indonesia either existing or to be set later

Source : Thesis Jahri[1]

very clear this clause prohibited According to Article 18 of Law No. 8 of 1999 on Consumer Protection and Article 22 paragraph 3 of the FSA Regulation No. 1 Year 2013 on Consumer Protection Financial Services Sector, but banks still impose it.

In addition, as mentioned above there are still some exoneration clauses such as presented in Table 2 below.

Table 2

The contents of bank credit agreement with a debtor which contains a clause of exoneration of the loan interest rate

Name of Bank	The rule
The bank of Lampung	article 4 : Bank reserves the right at any time to change the interest rates on loans although , the bank set a later date in accordance with the provisions or the state of the bank without prior notice and without the approval of the debtor

Source : Thesis Jahri[2]

[1] Jahri ., " Klausula Eksonerasi didalam perjanjian baku pada perjanjian kredit Bank Lampung di Bandar Lampung", S2 Archival of the Faculty of Law., UNILA, 2012, page. 36.

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from the table above it can be concluded that the banks disclaim liability or transfer of responsibility in the event of changes in the market interest rate increases in case of change of interest rate in the market increases, by enacting clause that the bank may change the interest rate at any time from time to time by the bank's policy without asking the consent of the debtor enough just to notice. the bank intention to apply this clause is to anticipate changes in the market interest rates, The change should be can go up and also can down but in practice interest rates are always going up every year.

Article on interest rates on credit agreements stated that the bank and the debtor has agreed to pay certain interest until the loan is otherwise keel. Means the application of the clause on interest rates is not in line with Article 22 paragraph (3) letter f the regulations of financial services authority Number: 1 / POJK.07 / 2013 on Consumer Protection Financial Services Sector, which stipulates that the agreement standard referred to in paragraph (2) which is used by the banks prohibited from stating that consumers are subject to the new regulations, additional follow-up, and / or changes made unilaterally by the banks in times of consumers take advantage of the products and / or services purchased, even this is contrary to Article 1320 private codes on legitimate of the agreement, namely :

1. agreement between the parties
2. proficient in making agreement
3. one particular thing
4. not in conflict with the law

Regarding the determination of the interest in civil law also stipulates the provisions of Article 1767 of the Civil Code which states :

> "There is interest for the stipulation of the law, there are also stipulated in the agreement. The interest by law is the interest determined by law . The interest stipulated in the agreement may not exceed the interest according to the laws in everything that is not prohibited law . The amount of interest stipulated in the agreement must be stated in writing "

Therefore, the determination of the interest in the credit agreement must be in writing. Article 6, paragraph (2) of BI Regulation No. 7/6 / PBI / 2005 can be used as guidelines in terms of determination of the interest in writing in a credit agreement , Article 6, paragraph (2) of BI Regulation No. 7/6 / PBI / 2005 can be used as guidelines in terms of determination of the interest in writing in a credit agreement, because the bank shall notify the customer if there is a change in interest rates on bank credit. This can happen if the debtor agrees to changes in the loan interest rate . Approval of the debtor is essential for the entry into force of change in lending rates by banks because Article 18 paragraph (1) letter g Consumer Protection Act prohibits the standard contract that says consumers are subject to regulations that are new rules, additional, alteration made unilaterally by businesses.

Another article in the credit agreement containing a clause on the exoneration is the chapter on unilateral cancellation by the banks, as presented in Table 3 below.

[2] Ibid, page 38.

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Table 3

The contents of bank credit agreement with a debtor which contains a clause on the exoneration of the bank reserve the right to terminate the agreement unilaterally.

Name of Bank	The rule
The bank of Lampung	article 6, the bank reserves the right to terminate and decide the credit agreement and other agreements, so it is not necessary a notice (summons) or a warning letter bailiff or another letter similar, in such case, the debtor shall pay off the entire debt to the bank immediately and once either because the principal debt, fees, interest, penalties, and other costs arising from the credit given.

Sorce :thesis jahri[3]

The main reason the Banking to cancel the agreement , namely the negligent debtors for his achievements. Definition or limitation state of neglect in the interbank languages are different, but the principle is the same, namely :

1. the debt is not paid off on time and in the manner specified in the credit agreement if late paying already is sufficient evidence and legitimate that the debtor had neglected its obligations;
2. if a provision of the representations and warranties as well as the ability of the debtor / owner of the collateral listed in the credit agreement, or as stated in general terms of credit,or the document is not correct or entirely incorrect or can not be met.
3. If a document was shown or handed over to the bank, in connection with the credit agreement, the general requirements, collateral documents, or with the opinion of the bank guarantee document is false or misleading;

banks can do anything on behalf of negligence. whereas in the credit agreement has been expressly specified credit period, meaning that if the debtor fails to pay the loan installments, the bank is also obliged to remind or inform either verbally or in writing, so that the debtor knows there are obligations that have not made the payment.

Negligence is the reason for the bank to cancel the loan agreement unilaterally. Articles 1266 and 1267 of the Civil Code specify the requirements to terminate the agreement.

Article 1266 Private codes " The termination requirement always deemed that is stipulated in the reciprocal agreement if one party does not fulfill its obligation. In such case, the agreement isn't null and void, but termination must be requested to the Court.

Article 1267 Private codes " Party that his/her agreement was not fulfilled, can decide, to force other Parties to fulfill the agreement, if it still can be conducted, or demanded the termination of the agreement, with compensation of cost, losses, and interest.

[3] Ibid , pages 45

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a decision that the debtor's negligence is not in the hands of the banks, but the judge who must decide whether the debtor's broken promises heavy enough or not to cancel the agreement.

Based on the data that has been presented, then it can be concluded that the Bank Lampung in Bandar Lampung is a sample of this research, they apply the exoneration clause in the loan agreement, even though it has been banned from Article 18 Paragraph (1) of Law No. 8 of 1999 on Consumer Protection, and Article 22, Paragraph (3) of Regulation FSA Number: 1 / POJK.07 / 2013 on Consumer Protection Financial Services Sector

2.2 The Effects Applying the exoneration clause in the Agreement.

In the course of business using of standard clauses actually intended to save time in each Agreement, inefficient if any occurred credit agreement., they still talk about the contents of the contract of credit agreement. [4] Therefore, in a standard contract included clauses are commonly used in bank loan agreement.

Mariam Darus Badrulzaman interprets with the exoneration clause, as the translation of exoneration clause.[5] Remy Sjahdeini interprets with else MSI clause, while Barnes have called Exculpatory Clause. Exculpatory Clause according to Barnes is;

"a provision in a contract that attempts to relieve one party to the contract from liability for the consequences of his or her own negligence". [6] Shidarta distinguishes between the standard clause by clause exoneration , if the standard clauses, the emphasis is on the procedure of making unilateral and not about its content, whereas in the case of exoneration in question is related to the substance, namely diverting obligations or responsibilities of business operators.[7] Regardless of the term used by a legal expert, clause exoneration is a clause that is used with the aim essentially to liberate or limit the responsibility of one of the parties to the lawsuit the other party, concerned undue perform its obligations that specified in the agreement. Responding to the existence of the exoneration clause in conjunction with consumer protection, Nik Ramlah Mahmood argued as follows;

"Clauses in standard form contracts which exempt or limit a contracting party's liability for certain breaches of the expressed or implied terms of the contract or for the commission of a tort, operate extremely harshly against, and to the detriment of, consumers. Such clauses are found at the back of tickets of public transport, on receipt and other types of standard form consumer contracts". R.H.J.

Engels mentions the existence of three (3) factors of the agreement with the standard clause is as follows;[8]

a. Responsibility for the consequences of the law, because it is less well in implementing treaty obligations.

[4] Yogar Simamora, Kontrak Pengadaan Barang dan Jasa Pemerintah di Indonesia, (Surabaya: Laksbang Justitia, 2012), pages. 37

[5] Salim (2003). Hukum Kontrak (Teori dan Teknik Penyusunan Kontrak). Jakarta: Sinar Grafika,pages.82.

[6] Ibid

[7] Munir Fuady, Perbandingan Hukum Perdata, (Bandung: PT Citra Aditya Bakti,2005) Pages 61

[8] Agus Hernoko, Hukum Perjanjian (Asas Proporsionalitas Dalam Kontrak Komersial), (Jakarta: Kencana, 2010) pages. 125

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b. The obligations themselves are usually borne by the parties to the terms made, restricted or abolished (for example, the agreement emergencies).
c. Obligations are created (the terms of the exemption) by one of the parties charged with to bear responsibility for any possible losses suffered by third parties.

Understanding Clause raw according to Article 1 (10) consumer protection laws formulated, standard clauses are any rules or terms that have been prepared and determined in advance unilaterally by businesses set forth in a document and / or agreement binding and enforceable consumer. [9]

Consumer protection legislation does not prohibit businesses to create a standard clause for any business transaction documents and agreements of trade in goods or services, as long as all the standard clauses and they do not include provisions as prohibited in Article 18 paragraph (1) of the Consumer protection legislation.[10] and also provided it does not conflict with the legitimate Terms of the agreement, namely Article 1320 Private codes namely;

1. agreement between the parties
2. proficient in making agreement
3. one particular thing
4. not in conflict with the law

The requirements of the first and the second relates to the subject of the agreement or terms of the subjective The third and fourth requirements relating to the object of the agreement or terms of the objective. The subjective element includes a free agreement of the parties that promise and prowess of the parties entered into an agreement, whereas the objective elements include the existence of subject matter which is the object in the form of achievement that agreed to be implemented, Should be something that is not prohibited or allowed by law. Non-fulfillment of one of the elements of those four elements causes a defect in the agreement, And The agreement was threatened with nullification, either in the form of irrevocable (if there is a breach in the subjective element), as well as null and void (in the case of non-fulfillment of the objective element), with the understanding that the engagement is born of the agreement can not be forced to be implemented. [11] But must take into account the principle of freedom of contract that set out in Article 1338 (paragraph 1), namely;

1. Free to make any kind of agreement;
2. Freely set the content;
3. Free to set its shape. [12]

In the law of contract in Indonesia, there is no prohibition against the agreement with the standard clause. Law No. 8 of 1999 on Consumer Protection only prohibits the use of some standard clauses in certain matters as contained in Article 18 paragraph (1) The effect is the Agreement Null and Void that mentioned in paragraph (3) with the same laws . In the

[9] Ahmadi Miru, (Prinsip-prinsip Perlindungan Konsumen di Indonesia), (Jakarta: PT Raja Grafindo Persada, 2011), pages. 132

[10] Celina Kristiyanti, Hukum Perlindungan Konsumen, (Jakarta: Sinar Grafika, 2011), pages 58

[11] Ricardo Simanjuntak, "Hukum Kontrak Teknik Perancangan Kontrak Bisnis, Cetakan II, Edisi Revisi, Kontrak Publishing, Jakarta, 2011, pages200.

[12] Syaifuddin, Muhammad (2012). Pengayaan Hukum Perikatan. Bandung: CV. Mandar Maju.pages 229

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regulations of financial services authority Number: 1 / POJK.07 / 2013 on Consumer Protection Financial Services Sector Article 22 paragraph (3), also prohibits agreements that in which their exoneration clause .

When linked with the clause in the agreement the bank Lampung in Bandar Lampung which has been described above, there are some clauses are said to be null and void because it violated the provisions of Article 18 paragraph (1) of BFL, namely:Clause that states consumers subject to regulation in the form of new rules, additional, secondary and / or advanced conversion made unilaterally by businesses. In the bank credit agreement Lampung in Bandar Lampung is mentioned that:

> "Debtor is subject to the general rules on crediting and habits regarding credit agreements and crediting in particular apply to banks as well as other regulations or changes set by the bank and Bank Indonesia either existing or to be set later"

This clause is also contrary to the regulations of the financial services authority Number: 1 / POJK.07 / 2013 on Consumer Protection Financial Services Sector, Article 22 paragraph (3) f, namely:

> "the banks prohibited from stating that consumers are subject to the new regulations, additional follow-up, and / or changes made unilaterally by the banks in times of consumers take advantage of the products and / or services purchased."

Clause transfer responsibility , such as article bank interest rate which may at any time raise interest rates, this is because the bank wants to shift its responsibility if market interest rates rise, so the increase in third party funds rate will not reduce the bank's profits;

Based on the description above, the authors conclude that due to the law of treaties raw containing a clause on the exoneration on credit agreements Bank Lampung is null and void because it is contrary to Article 18 of Law No. 8 of 1999 on Consumer Protection and Article 22 paragraph 3 of the Regulation FSA No. 1 Year 2013 on Protection consumer Financial Services Sector.

2.3 Legal protection for consumers

The main problem for Actors Small Medium Micro Enterprises is the capital, therefore, usually business actors can not reject an offer from the bank capital loans because they need funds to run its business. The credit agreement should be made by agreement of the parties. Agreement in the agreement is basically meeting or concord of wills between the parties in the agreement. Someone said give consent or agreement (to stemming) if he did want what was agreed. [13]

On this argument, the efficiency of the agreement is supposed to be replaced by an agreement an agreement that has been made by parties that have to bargain (bargaining position) in this case is the bank. The debtor has no other choice but to accept or reject the agreement offered by the bank (take it or leave it). The inclusion of clauses in the loan agreement in the bank is a partnership effort because bank customers as creditor or debtor both need each other in an

[13] J. Satrio, "Hukum Perikatan, Perikatan Yang Lahir Dari Perjanjian Buku I", PT Citra Aditya Bakti, Bandung, 2001, pages 164.

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effort to expand its business respectively. The tightness Clause based on the attitude of banks to implement the principle of prudence in lending. In providing protection against debtor customers needs be regulations on credit must be realized so that it can serve as a guide in their lending. On the other side of the court which is the third party to settle the dispute between the bank and debtor, customers can assess whether the efforts made by both sides in accordance with the agreed and did not violate the statutory provisions. [14] Mariam Darus Badrulzaman in his dissertation entitled Bank Credit Agreement, argued that the bank and the customer relationship, the customer placed in a weak position that needs to be protected through government intervention on the substance of bank credit agreement .[15] Ahmadi Miru in his dissertation entitled Principles of Legal Protection for Consumers in Indonesia stated that the balance between consumers and businesses can be achieved by improving the protection of consumers as manufacturers have a stronger position when compared with consumers. [16]

Consumer protection can be done through protection by the law. The purpose of consumer protection can be viewed from various aspects such as aspects of the subject, the object, and the transactions that occur between consumers and businesses as well as other parties. [17]Related to the application of standard agreement containing the exoneration clause in the loan agreement, there are some objections to the treaty raw among others:

(1) The content and the terms have been prepared by one of the parties,
(2) Do not know the content and the terms and conditions of the raw and if they know, do not know the reach of the legal effects,
(3) one of the parties is economically more powerful,
(4) There is an element of "forced" to sign the agreement. [18]

The reasons for the creation of a standard agreement is for the sake of efficiency. Entrepreneurs who violate the provisions of Article 18 of consumer protection laws, punishable by a maximum imprisonment of five years or a maximum fine of Rp. 2,000,000,000.00 (two billion). This provision is stipulated in Article 62 paragraph 1 which states: Entrepreneurs who violate the provisions referred to in Article 18 shall be punished imprisonment of 5 (five) years or a maximum fine of Rp. 2,000,000,000.00 (two billion). Conversely, of course, a bank can not be blamed or sued when they are using a standard clause in accordance with the provisions of Article 18 of consumer protection laws. Lawmakers intend to create equality and balance between businessman . Although provisions concerning the standard clause are set in the consumer protection laws, but in fact often still violations in the manufacture of a credit agreement as described above, there are many clauses in the loan agreements that are contrary to the Consumer Protection Act and Consumer Protection Financial Services Sector.Number: 1 / POJK.07 / 2013 on Consumer Protection Financial Services Sector.

[14] Johannes Ibrahim, "Cross Default dan Cross Collateral Sebagai Upaya Penyelesaian Kredit Bermasalah", PT Refika Aditama, Bandung, 2004 pages 47.

[15] Mariam Darus Badruzaman, "Perjanjian Kredit Bank", PT Citra Aditya Bakti, Bandung, 2002, pages 17.

[16] Miru, Op. Cit., pages 215

[17] Wahyu Sasongko, "Ketentuan-Ketentuan Pokok Hukum Perlindungan Konsumen", Universitas Lampung, Bandar Lampung, 2007, pages 29.

[18] H. Budi Untung, "Kredit Perbankan Di Indonesia", Andi, Yogyakarta, 2005, pages 38.

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In order to implement Consumer Protection Financial Services Sector Bank, the FSA also issued a circular that is FSA circulars Number: 13 / SEOJK.07 / 2014 on Standard Contract. Regulating the use of the terms in the manufacture of the raw agreement is one of the government's efforts to protect consumers against businesses in the field of financial services. State law, not only to maintain order but also achieve the welfare of the people as a form of justice (welfare state). In an effort to realize the welfare state (welfare state), especially the consumer from the position that was previously subordinate to be balanced, the government through the Financial Services Authority Regulation No. 1 / POJK.07 / 2013 on Consumer Protection Financial Services Sector was able to put the position of consumer financial services be balanced with perpetrators of financial services, but in practice, banks are still applying this clause. Hence the active supervision by the FSA against banks that still apply this needs to be done and the imposition of sanctions as stipulated in the Consumer Protection Financial Services Sector must be upheld, namely as contained in Article 53 paragraph (1) which reads:

"Business communities of the Financial Services and / or those who violate the provisions of the Regulation of Financial Services Authority is subject to administrative sanctions, such as:

a.Written warning;
b. Fine or obligation to pay a certain amount of money;
c. Restrictions on business activities;
d. Suspension of business; and
e. Revocation of business activities. "

FSA should make a raw deal format that can be applied by the bank, resulting in the imposition of sanctions is not a debate. The manufacture format standard agreement can be made by the FSA as the authority, as examples of rules related to insurance premium rate,

the FSA has issued a rule in a FSA Circular Letter : No. 036 / SEOJK.05 / 2013 regarding the determination of the premium or contribution rates on property insurance business line and motor vehicles in 2013 , that has been done with changes FSA Circular Letter Number: 21 / SEOJK.05 / 2015 regarding the determination of the premium or contribution rates on insurance business line of property and motor vehicles in 2015. Due to the implementation of the FSA circulars all insurance companies in determining the premium rate refers to the FSA intended Circular Letter. If the format of the agreement standard was created by the FSA , the Bank will make a corresponding credit agreements standardized format so that the bank simply fill clauses that can not be standardized, , While the raw content of the agreement which has been referred to the standard agreements made by the FSA. If it is done then there is no longer an opportunity for the bank to enter the exoneration clause in each agreement in the bank, then it can be more effective, and if one of the banks that do not follow or violate the FSA should be firm to give sanction to the offender.

Whereas, in a case of disputes between consumers and Financial Services Institutions associated with the credit agreement, in this case, the banks, there is some solution that can be taken by consumers according to FSA Regulation No. 1 / POJK.07 / 2013 on Consumer Protection Financial Services Sector;

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Consumers can file complaints with the financial services business agent to resolve the problem by way of deliberation, Based on article 32 FSA regulation 1/2013 the banks are required to have and implement mechanisms for consumer complaints resolution service. Then based on article 39 paragraph (1) FSA regulation 1/2013 if consumers do not reach an agreement resolving a grievance, Consumers can perform dispute resolution outside the court or through the courts, , Then article 39 paragraph (3) In the event of dispute settlement is not conducted through alternative dispute resolution alternatives , Consumers can submit an application to the Financial Services Authority to facilitate the settlement of consumer complaints are harmed by the bank.

This means that the filing of complaints by consumers to the bank may be the first attempt to resolve disputes between consumers and the bank, , But if consumers do not submit to the Institute of Alternative Dispute Resolution or District Court, , Consumers can file a Consumer Complaints to the FSA with the requirements already covered the settlement of consumer complaints to the financial services businesses.

Based FSA regulation 1 / 2014th Settlement out of court settlement is done through alternative institutions outside the court, Settlement out of court were published in the Register of Institutions Alternative dispute resolution that stipulated the FSA. And based on the Decision No. 1 / D.07 / 2016 on List of Institutions Alternative dispute resolution in the financial services sector are;

1. Badan Mediasi dan Arbitrase Asuransi Indonesia (BMAI) in sector insurance
2. Badan Arbitrase Pasar Modal Indonesia (BAPMI) http://www.bapmi.org/ Gedung Bursa Efek Indonesia, Tower I Lantai 28 Suite 2805 Jl. Jend. Sudirman Kav. 52-53 Jakarta 12190 in sector Capital Market
3. Badan Mediasi Dana Pensiun (BMDP) Gedung Arthaloka Lantai 16 Jl. Jend. Sudirman Kav. 2 Jakarta in sector Pension fund
4. Lembaga Alternatif Penyelesaian Sengketa Perbankan Indonesia (LAPSPI) http://lapspi.org/ Griya Perbanas Lt.1 Jl. Perbanas, Karet Kuningan Setiabudi, Jakarta in sector Bank
5. Badan Arbitrase dan Mediasi Perusahaan Penjaminan Indonesia (BAMPPI) http://bamppi.org/ Gedung Jamkrindo Jl. Angkasa Blok B-9 Kav. 6 Kota Baru in sector financing and pawnshops.[19]

While in case of disputes between businesses and consumers based on Article 45 of Law No. 8 of 1999 on Consumer Protection that:

1. Every consumer who has suffered damages may file charges against the entrepreneurs through the foundation which is responsible for settling the disputes between the on SumerS and entrepreneurs or through a court under the jurisdiction of general court
2. Settlement of the consumers' disputes can be conducted in a court or outside the court based on the voluntary choice of the disputed parties.
3. Settlement of the disputes outside the court as intended by Section 2 above shall not forfeit the penal responsibility as regulated in the law.

[19] http://www.ojk.go.id/id/berita-dan kegiatan/pengumuman/Documents/daftar%20lembaga%20penyelesai%20sengketa.pdf,diakses pada tanggal 1 Oktober 2016 Jam 11:00 WIB.

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4. If efforts to settle the consumers disputes outside the court has been made, charges can only be filed in the court if the said efforts are declared unsuccessful by one of the parties or by both of the parties in dispute.

In chapter 6 Letter B Act No. 8, 1999 established the right of businesses are:

> "to obtain legal protection from the consumer's acts of bad faith"

Therefore, , Use of the exoneration clause in the basic agreement is an indication of good faith that is not good and this is clearly contrary to the law in force due to the Banking Institutions normally use the exoneration clause in order to eliminate the responsibilities of a claim and liability, cancel the agreement unilaterally and set clause which only beneficial for the company.

3. Conclusions And Suggestions

3.1 Conclusion

Based on the description above can be concluded that:

1. Based on research credit agreement Bank Lampung in Bandar Lampung still apply the exoneration clause prohibited by of Law 8 of 1999 on Consumer Protection and FSA Regulation No. 1 / POJK.07 / 2013 on Consumer Protection Financial Services Sector.
2. due to the law of treaties raw containing a clause on the exoneration on credit agreements Bank Lampung is null and void because it is contrary to Article 18 of Law No. 8 of 1999 on Consumer Protection and Article 22 paragraph 3 of the Regulation FSA No. 1 Year 2013 on Protection consumer Financial Services Sector. settlement of disputes in accordance with consumer protection legislation that consumers can file lawsuit to consumer dispute resolution agency or the District Court,if the lawsuit to Consumer Dispute Settlement Agency unsuccessful , consumers may submit to the District Court. Meanwhile, according to FSA Regulation No. 1 / POJK.07 / 2013 the filing of complaints by consumers to the bank may be the first attempt to resolve disputes between consumers and the bank, , But if consumers do not submit to the Institute of Alternative Dispute Resolution or District Court, , Consumers can file a Consumer Complaints to the FSA with the requirements already covered the settlement of consumer complaints to the financial services businesses. though,the legal consequences of application of the the exoneration clause is null and void, the agreement was not canceled just like that, The judge who must decide to annul and void the agreement, the agreement is void in whole (not just the default clause).
3. In chapter 6 Letter B Act No. 8, 1999 established the right of businesses are:"to obtain legal protection from the consumer's acts of bad faith" Therefore, use of the exoneration clause in the basic agreement is an indication of good intentions and this is clearly contrary to the law because the parties want to give credit usually shifting responsibility from an obligation and legal responsibility,cancel the agreement unilaterally and set clause which only beneficial for the company. Article 18 of the Consumer Protection Law and Articles 21 and 22 of the FSA Regulation No. 1 / POJK.07 / 2013 on Consumer Protection Financial Services Sector is a form of protection for the Consumer Law. Violation of these provisions could receive severe sanctions, including revocation of business licenses.

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3.2 Suggestion

Related to this study, the authors suggest the following:

1) In the preparation of the credit agreement, the bank must pay attention to clauses that are prohibited by the Consumer Protection Law and FSA regulations, so that the loan agreement made by the bank in accordance with the provisions of the legislation and the bank can avoid legal risks.
2) Considering almost all banks apply the treaty raw in the implementation of the credit agreement, preferably clauses that could be standardized made by the FSA , As the authority to be applied to the bank, and the bank only fill a few things that can not be standardized like the parties, the amount of the loan principal, period, type of collateral and others.
3) Type of Credit like business credit is one of the objectives of government in cooperation with the banks to solve the problems of entrepreneurs of SMEs due to limited capital. This should be welcomed by the Banking Institutions because it is the shape / form of consistency concern for the banks will be the advancement of the economy of Indonesia from the SME sector . Therefore Banking Institutions must intend either to exclude the exoneration clause in the loan agreement People Business Credit because it does not comply with existing regulations and for the creation of a balance between creditors and debtors.

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Marine Environment Pollution Impact on Human and Other Living Things

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Abstract

The living environment is a gift that must be protected and maintained it can be a source of life support for humans and other living things. The development of the international community shows that the environment can no longer be overlooked position in human life . Serious attention and treatment that should be done , given the environmental damage means the threat to the survival of humans and other living creatures in this world .

Territory of a country other than the air, on land also is ocean . Seafood is part of the environment that have enormous benefits for human life . At this time, damage the marine environment is one issue that is getting great attention from the international community . This is because the sea is one of the resource center for human life has been in a very alarming condition

Marine pollution caused sustainability and environmental compatibility as well as the benefits of the natural resources in the sea to be disrupted . Marine pollution can also affect all human activities at sea . Based on Government Regulation No. 19 of 1999 Article 1 , marine pollution is the introduction of living creatures, substances , energy , and / or other components into the marine environment by human activities so that quality decreases to a certain level , causing the marine environment is no longer appropriate to the quality standard and / or functions

Once the importance of the protection of the marine environment , in the United Nations Convention on the Law of the Sea (UNCLOS) of 1982, there is a section that specifically regulates the protection , preservation of the marine environment . Regulations concerning the protection of the marine environment contained in Chapter XII of UNCLOS in 1982 , essentially contains the protection, conservation of the marine environment , the prevention and marine pollution .

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1. Preliminary

1.1 Background

The living environment is a gift that must be protected and maintained it can be a source of life support for humans and other living things. The development of the international community shows that the environment can no longer be overlooked position in human life.

Territory of a country other than the air and ground, also mostly ocean. Seafood is part of the environment that have enormous benefits for human survival in the world. The sea is a space area of ocean that is a geographical unit along with all elements related to it are determined based on the boundary and system asfek functional.

In marine waters, contained a variety of resources, both living such as various types of fish, shrimp, crab, sea cucumber, seaweed and marine animals more, and the resources non-biological such as gas oil / natural gas, sulfur, hard minerals, rocks coal, diamond, nodules, consisting of manganese, iron, nickel, not to mention the potential contained in the coastal area (beach) which also contains a variety of potential which can be used as a source of human life.

But unfortunately, our sea is increasingly dirty and broken. Damage to the marine environment caused by various causes, among others by the behavior of human actions are not responsible, such as sewage, garbage, pollution from tanker operations, as well as the leakage of oil and gas offshore.

One example occurred in 2009, for example East Sea pollution Indonesia by Australia Montana company, which according to the Marine and Fisheries Research Institute (BRKP). The results of their survey on 4 November 2009, the pollution reached 16 420 square kilometers. Contaminants in this case the oil entering the marine ecosystem not only can directly damage the marine environment, but further can also be dangerous for the supply of food and habitat of the marine environment is a source of natural wealth for a country, especially for the Asian region Tengggara populated heavily dependent on fishery products.

Most people think that with the breadth of the ocean, all the result of the disposal and the remnants of industry that comes from human activities on land entirely on the capacity of the ocean without causing a harmful effect. Supposing the sea is very big litter box so that it can accommodate various types of waste in any form.

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At this time, damage the marine environment is one issue that is getting great attention from the international community. This is because the sea is one of the resource center for human life has been in a state of very high concern.

Marine pollution caused sustainability and environmental compatibility as well as the benefits of the natural resources in the sea to be disrupted. Marine pollution can affect all human activities at sea. Based on Government Regulation No. 19 of 1999 Article 1, marine pollution is the introduction of living creatures, substances, energy, and / or other components into the marine environment by human activities so that quality decreases to a certain level, causing the marine environment is no longer appropriate to the quality standard and / or function.

Government regulation is the basic law in writing this paper.

Based on the above problems, the pollution of the marine environment is a threat that really should be dealt with seriously. For the writing team would try to examine further how the impact of pollution of the marine environment on humans and other living creatures.

1.2 Problem Formulation

Based on the above, it can be the formulation of the issues to be discussed in this paper, namely:

1. What is the impact of pollution of the marine environment on humans and other living creatures?
2. How to prevention, mitigation, monitoring, and enforcement of laws against pollution of the marine environment?

1.3 Writing Methods

Author Tim methods used in preparing this paper is the normative juridical method, the approach through library research (library research) by reading, quoting and analyzing theories of law and legislation related to the problems in the writing of this paper.

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2. Discussion

2.1 Marine Environmental Pollution

Marine pollution is an event the entry of contaminants such as particles of chemical material, industrial waste, agricultural waste and housing, into the sea, which can damage the marine environment. The hazardous material has a varying impact on the waters. There are impacting directly or indirectly.

In a case of pollution, hazardous chemicals to form small particles which are then taken up by plankton and animal basis, most of which are disintegrating or filter feeders (filter water). In this way, the toxins are concentrated in the sea into the food chain, the longer the chain of contamination, the greater the possibility of toxicity stored. In many other cases, many of these chemical particles react with oxygen, causing the waters became anoxic. Most sources of marine pollution comes from land, either in the wind, drifting or through spills.

Activity or activities on land (land-based pollution) that could potentially contaminate the coastal and marine environment, among others: deforestation (deforestation), industrial waste (disposal of industrial waste), discharge agricultural waste (disposal of agricultural wastes), discharge of wastewater domestic (sewage disposal), solid waste disposal (solid wastes disposal), conversion of mangrove and seagrass (mangrove and swamp conversion), and the reclamation of coastal areas (reclamation). While the activity or activities at sea (Sea- based pollution) that could potentially contaminate the coastal and marine environment include: shipping (shipping), dumping at sea (ocean dumping), mining (mining), the exploration and exploitation of petroleum (oil exploration and exploitation) , marine aquaculture (mariculture), and fishing (fishing). (Misran, 2002).

2.2 Cause of Pollution of the Marine Environment

The marine environment is a place of life of various types of marine life and plants are very diverse, and must be protected to maintain the existing ecosystem. Damage to the marine environment caused by human activity that does not care about the consequences of pollution.

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Causes of Sea Pollution can come from:

1. Contamination by oil

   Currently the world's oil industry has developed rapidly, so the crash accidents resulting oil tercecernya dilautan almost inevitable. If there is contamination oil in the ocean, this will cause the oil to float above the sea level were eventually swept away and brought ashore.

2. Pollution by heavy metals

   Heavy metal is a solid or a liquid having a weight of 5 grams or more per cm3, while the metal that weighs less than 5 grams is a light metal. The cause of heavy metal pollution in the waters are usually derived from the input water contaminated by waste from industrial and mining.

3. Pollution by garbage

   Plastic has become a global problem. Discarded plastic trash, floating and deposited in the ocean, in addition to 80% (eighty percent) of garbage in the ocean is plastic, a component that has been rapidly accumulating since the end of World War II. Massa plastic in the oceans is estimated that accumulate up to one hundred million metric tons.

4. Pollution by pesticides

   Damage caused by pesticides are cumulative. They deliberately spread into an environment with the aim of controlling pests of plants or other organisms-organisms are undesirable. Ideally these pesticides must have a high specification which can kill organisms-organisms that are not desired without damaging other animals, but in reality pesticides can kill aquatic biota in the sea.

5. Pollution due process of eutrophication

   Eutrophication is an increase in the incidence of events / enrichment of nutrients, typically compounds containing nitrogen or phosphorus, in an ecosystem. This can lead to increased primary productivity (marked increase in excessive plant growth and tend to quickly decompose). Further effects include decreased oxygen levels, declining water quality, and certainly destabilize the population of other organisms.

6. Pollution due to acidification

   Adults are many human activities that cause pollution of air, soil and water, which is caused by industrial waste, industrial, fumes, and lots more. The potential of ocean acidification may affect the ability of corals and other shellfish to form shells or order.

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Climate change will also have a negative impact on the ecosystem in the oceans. If the sea water heats up, there will be an increase in ocean acidity, and coral reefs are the most vulnerable to acidification of this.

2.3 Impact of Marine Environmental Pollution

Damage to the marine environment will result in a decrease in the quality of the earth is due to the oil spill terehempas on the beach, which is due to the levels of hydrocarbons that is put into it will inundate or change the function of seawater.

In connection with the problem of damage caused by oil spills, Mochtar Kusumaatmadja said that "sources of marine pollution by ships is more serious is the entry of oil into the sea from ships sailing in the waters of the archipelago, occurring either intentionally or was not deliberate" being another section write "distress or absence of pollution for marine life or the environment than the place of pollution". Of the opinions mentioned above, it can be concluded that the damage caused by the oil spill has resulted alarming apparent from the maintenance of preservation of the marine environment, especially for the marine environment of the archipelago.[1]

Here is the impact of pollution of the marine environment.

1. Oil

   According Furkhon 2010, an oil spill that occurred in the sea is divided into two types, oil-soluble in water and will float on the surface of the water and oil to sink and accumulate in the sediment as a black deposit on the sand and rocks on the beach. The oil floats on the water surface can certainly lead to black water and would interfere with the organisms that are on the surface of the waters, it will reduce the intensity of sunlight to be used by phytoplankton to photosynthesize, and may break the food chain in the region, if it so happens, it will directly reduce the rate of primary productivity in the area because of delays in the phytoplankton to photosynthesize.

2. Heavy metals

   WHO (World Health Organization) or the World Health Organization and FAO (Food and Agriculture Organization) or the World Health Organization recommends to not eat seafood (seafood) contaminated with heavy metals. Heavy metal has long been known as

[1] Komar Kantaatmadja, *Ganti Rugi Internasional Pencemaran Minyak di Laut*, Penerbit: Alumni, Bandung, 1981, Hlm. 86.

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an element which has a highly toxicity of potential and has the ability to accumulate in human organs. Even some who cause death.

3. Trash

   Many of the animals that live on or in the sea often consume plastic because plastic contained in the sea will seem like food for marine animals. Plastic can not be digested and will continue to be on the digestive organs of these animals, thus clogging the digestive tract and cause death through starvation or infection. In addition to health effects of marine life, their garbage at sea also have an effect on human health. The simplest diseases such as itching of the skin after contact with sea water, etc.

4. Pesticides

   The influence of pesticides on living organisms is water: The active ingredient but can kill aquatic organisms (fish) also can alter fish behavior and hinder the development of molluscs and fish eggs.

5. Eutrophication

   Eutrophication is being overly fertile waters, causing an explosion of algae and phytoplankton competing gets light for photosynthesis. Because too much then algae and phytoplankton at the bottom will experience mass death, and there was competition in the consumption of O2 because too many organisms at the place. Remaining respiration produces a lot of CO2 so that the condition of the waters became anoxic and cause mass deaths in animals in these waters.

6. Increased acidity

   In addition to causing damage to the coral reefs, marine life is affected because of the change, especially animals and plants that have bones of calcium carbonate and are a source of food for other marine inhabitants. One billion people rely on fish as their main source of protein producers will be affected from the ocean acidification.

2.4 Prevention, Control and Law Enforcement

Prevention, Control and Enforcement of the Environment, including the marine environment is not only the duty of the Minister of Marine and law enforcement agencies alone, but the whole society should have participated in keeping no more pollution at sea which cause damage to the sea.

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Every country is obliged to conduct surveillance and prevention of pollution of the marine environment, and is responsible for any damage caused by a violation of international obligations to tackle such pollution.[2]

Implementation of the protection and preservation of the marine environment, confirmed also in Chapter 17 of Agenda 21 on the protection of the ocean, all kinds of sea, including enclosed and semi tetutup sea and coastal areas and the protection, use and development of biological resources in a manner rasioanl. In this chapter asserted that the rights and obligations of states and set on international basis to protect and develop the marine environment and its resources along the coast on an ongoing basis.[3]

Preventive and mitigation pemcemaran sea has been regulated by the government in the Indonesian Government Regulation No. 19 Year 1999 concerning Pollution Control And / Or Destruction of the Sea:

Prevention

There are several ways you can do to prevent pollution of the seas:

- Do not throw garbage into the sea and reduce the use of plastic
- recycling is organic waste and use of pesticides to taste
- Every industry or factory provides Wastewater Management Installation (IPAL)
- Using environmentally friendly mining, the mine closed.
- Law enforcement and reform government policies

Countermeasures

- Perform the bioremediation process, including releasing insects untu neutralize sea pollution caused by oil spills from oil field explosion.
- Phytoremediation by using plants that are able to absorb heavy metals was also taken. One of the herbs used are tree api-api (Avicennia marina). Tree fires have the ability to accumulate heavy metals higher.
- Conduct periodic cleaning of the sea by involving community participation

[2] Mochtar Kusumaatmadja, dkk, *Pengantar Hukum Internasional*, PT. Alumni, Bandung, 2003, hlm. 190.

[3] Heryandi, *Hukum Laut Internasioanl*, Lembaga Penerbit Universitas Lampung, Bandar Lampung, 2008, hlm. 115.

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Businesses that can be done to prevent and reduce marine pollution levels are:

1. Increase public awareness of the importance of the sea for life.
2. Promote the campaign to continue to maintain and preserve the ocean and its contents.
3. Do not throw garbage into the river that empties into the sea.
4. Do not use hazardous materials such as bombs, poison, trawling, and others that cause damage to the marine ecosystem.
5. Do not make the sea as a waste disposal site production plant which will pollute the ocean.

International Conventions that deal with regulations regarding sea pollution by record rusmana (2012) are as follows:

A. United Nations Covention on the Law of the Sea 1982 (UNCLOS)

Convention on the Law of the Sea 1982 is the culmination of the work of the United Nations Law of the Sea, adopted in Montego Bay, Jamaica on 10 December 1982. Convention on the Law of the Sea 1982 complete set of protection and preservation of the marine environment (protection and preservation of the marine environment) contained in Article 192-237.

Article 193 outlines the key principles of resource utilization in the marine environment, namely the principle which says: that each State has the sovereign right to exploit its natural resources in accordance with their environmental policies and in accordance with its obligations to protect and preserve the marine environment.

Convention on the Law of the Sea 1982 asks each country to make efforts to prevent (Prevent), reduce (reduce), and control (control) the pollution of the marine environment from all sources of pollution. In a variety of prevention, reduction and control of environmental pollution that each State should cooperate both regional and global cooperation as stipulated by Article 197-201 Convention on the Law of the Sea 1982.

With regard to the use of this high seas, Etty R.Agoes (1995) states that the regulation on the protection and preservation of the marine environment becomes an important part of the arrangements regarding the exploration and exploitation of natural resources,

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as set out in paragraph four Heryandi 1982. UNCLOS Preamble, the International Law of the Sea.[4]

B. International Conventions on Civil Liability for Oil Pollution Damage 1969 (*Civil Liability Convention*)

The International Convention on Civil Liability Against Oil Pollution at Sea (International Convention on Civil Liability for Oil Pollution Damage). CLC 1969 is a convention that regulates compensation for marine pollution by oil tanker accidents. This Convention applies to pollution of the marine environment in the territorial sea in the participating countries. In terms of accountability marine environment pollution damages the principle used is the principle of absolute liability.

C. *Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter 1972 (London Dumping Convention).*

London Dumping Convention is an International Convention to prevent disposal (dumping), which is referred hazardous waste disposal either of the ships, aircraft or industrial plant. The state convention is obliged to take into account any such dumping. Dumping can cause marine pollution that results in threats to human health, damaging ecosystems and interfere with the trajectories in the sea.

D. *The International Covention on Oil Pollution Preparedness Response And Cooperation 1990* (OPRC).

OPRC convention is an international cooperation tackling marine pollution due to oil spills and hazardous toxic materials. Of understanding exists, we can conclude that the Convention is to quickly provide assistance or relief to victims of the marine pollution, such relief by way of provision of equipment in order to help the recovery and evacuation of casualties can be dealt with immediately.

Supervision:

In Article 19, 20, 21,22 PP 19 Year 1999 on Pollution Control And / Or Destruction of the Sea, has been set up on the supervision and in essence the Minister to supervise the

[4] *Ibid,* hlm. 112

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arrangement responsible for a business and / or activities that may cause marine pollution and destruction.

To conduct supervision as referred to in paragraph (2), the Minister may assign an authorized officer to supervise.

Law enforcement :

Enforcement against marine pollution the same thing with the law enforcement environment in general, because to talk about environmental law also includes the law of the sea as well.

Environmental law enforcement can be done preventively in order to fulfill the regulations. And refresif through sanctions or litigation in the event of acts against the rules. For those reasons, the legal instruments available in the context of environmental law enforcement can use the instruments of administrative law, criminal law instruments, and instruments of civil law. Against certain cases the impact on cross-border use of instruments of international environmental law.[5]

However, in cases where the pollution of the marine environment and the adverse systemic impact of Indonesian society, caused by the oil spill are carried by foreign ships, then who will be responsible are flagged ships that country. The government may file a lawsuit in court in the country where the flag ship that has been polluting the waters of Indonesia.

UNCLOS Convention governing the issue of liability and indemnity obligations with respect to the protection and preservation of the marine environment. It is described in the provisions of Article 235 of UNCLOS Convention which stipulates that each country is responsible for implementing international obligations concerning the protection and preservation of the marine environment, so that all States must bear the liability for compensation in accordance with international law.

The issue of compensation is also governed by Article 24 and 25 of Government Regulation No. 19 of 1999 concerning Pollution Control And / Or Destruction of the Sea. Law enforcement against violations can through administrative sanctions, outside the court, and through the courts (regulated in Law No. 32 Year 2009 on the Protection and Management of the Environment).

[5] Prof. Dr.Muhammad Akib, S.H., M. Hum., *Penegakan Hukum Lingkungan dalam persfektif Holistik-Ekologis*, Graha Ilmu, Yogyakarta, 2015, hlm. 33

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To prevent overlapping law enforcement and enforcers different instruments that, then there needs to be cooperation or consultation between law enforcement agencies, namely the police, prosecutors, and local administration (Governor, Regent, Mayor).[6]

Against perpetrators of pollution of the marine environment person / legal entity, its completion would be better to use the legal instrument of state administration, where a legal instrument governing the settlement of disputes relating to the compensation, while the use of the instrument of criminal law is the last resort in the settlement of environmental pollution.

3. Cover

3.1 Conclusion

Marine pollution caused sustainability and environmental compatibility as well as the benefits of the natural resources in the sea to be disrupted. Marine pollution can be caused by the oil spill, metal, trash, pesticides, due to the process of eutrophication.

The impact of marine pollution perceived by most humans and other living creatures that live on the seabed and the environment. Damage to the marine environment will result in a decrease in the quality of the earth, caused by oil spills will inundate or change the function of seawater. In addition affects the health of marine life and the destruction of coral reefs, sea pollution also affect human health, can even cause death.

Prevention, Control and Law Enforcement of the marine environment is not only the duty of the Minister, state officials and law enforcement officers, but the whole society to participate in keeping even should start from ourselves so that no more pollution in the ocean, given the management of the marine environment and natural resources aims to provide maximum benefit for the people's welfare and the survival of other living creatures on the face of this earth.

Against perpetrators of pollution of the marine environment person / legal entity, dispute resolution law would be better to use the legal instrument of state administration, where a legal instrument governing the prevention, settlement of disputes relating to the

[6] Hamzah, *Penegakan Hukum Lingkungan*, Sapta Artha Jaya, Jakarta, 1997, hlm. 74.

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compensation, while the use of the instrument of criminal law is the last resort in the settlement of environmental pollution.

3.2 Suggestions

Based on the discussion and the conclusion, the author team provides advice to the government that should be:

1. Provide a tougher sanctions against perpetrators of pollution of the marine environment better person / legal entity, as well as continuously disseminate to the entire community in order to protect and preserve the environment together.
2. Provide additional maritime curriculum for basic education to upper secondary as a form of understanding for the younger generation to maintain marine resources and coastal waters by good and will bring a love of the sea so that marine pollution can be minimized.

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Legislative Function Based on Democratic Economy

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Abstract

Democratic economy development is inseparable from the role of the parliament in the legislation. Constitutionally, economy principles regulated in article 33 verse (1) and verse (4) UUNRI 1945. Verse (1) states that economic compiled on the basis of kinship. Verse (4) on the other hand, economy is based on the principles of efficiency. The difference between them is often translated differently. But to get to the democratic economy, at least contain people's participation, responsibility of the state, and the relationships between economic actors (people, state and foreign parties). In fact, transplantation of these is still not optimal. Such conditions arise because of the disharmony. Each existing laws bring their own legal politics, focusing only economic actors or the protection of small economies. Yet among them there is a relationship of mutual influence. On the other side of this disharmony not only with respect to the substance. Perspective (legal hermeneutics) on interpreters stuck in the view of the law is autonomous and without relation. This paper examines the embodiment of democratic economy in legislation, with normative method through a political approach of law and legislation. The scope of the study is the post-reform legislation. The goal is to see the consistency of regulation in ensuring the sustainability of democratic economy. The results showed, post reform legislation tend to be pro-interests. Participation and protection of democratic economy is still not accommodated

Keywords: *Democratic Economy, Legislation, Harmonization*

1. Introduction

Legislation function of parliament, cannot be separated from the development of economic. The role of legislations product not only bringing certainty of economic development. As example law also has a function to keep and push efficiency in economic.[1] But the purpose of efficiency is cannot be said, as free as possible. The freedom of efficiency is restricted by the constitutions. Few constitutions describe it, as example constitution of Spain discusses social and economic rights are the state responsible or non forcible rights (Weimar Constitution), Italy formulates social and economic rights in the rights of workers, and for German places the rights in the protection of the family.[2]

[1] Butler said that in general there are two (2) ways of how the law can work to boost efficiency in the economy. First, the law became a tool to prevent market failure. A simple example is a law preventing monopolistic practices that may emerge in the growth of the market economy. Second, the strengthening of the provisions in the contract guaranteeing efficient economic transactions. Law in this case provide a general framework and can ensure the enactment of freedom of contract in an efficient economic transactions. See Butler, 2011, *Law and Economics, Internet Encyclopedia of Philosophy,* online. www.iep.utm.edu/law-econ/ access on, 20 September 2016

[2] See Norman Dorsen, et all, Comparative Constitutionalism Case and Materials, West Group, United State, 2003, page 1218-1219.

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Indonesia regulates state role development of economic in article 33 UUDNRI 1945. Article 33 verse (1) UUDNRI 1945, describes the national economic is manage in togetherness based on the principle of kinship. The principle of kinship is the form of economy democracy to completing deficiency in the liberal democracy.[3] Muhammad Hatta mentioning, the political democracy must also work with economic democracy.[4] Independence cannot be fulfilled if there is no equality and fraternity.[5] After the amendment of UUDNRI 1945, principal of efficiency has also become the principal of economic development. Then the state must re-formulates the economic development based on the balance of the two principals. The difficulties of the formulation not only comes from the principals but also from globalization. The expansion of the unlimited markets makes the principles of efficiency becomes the best solutions if the state wants to survive in the global competition. This paper gonna discuss economic democracy in the legislation products after the reform, with the normative method which using legislation and legal politics approach.[6] Legal politics and legislation approach will be done with the discussion about two indicators below:

a. First, the democratic economy and its base. This is to know about what the true of the democratic economy which aspired in UUDNRI 1945.
b. Second, the global pressure in the rulemaking process.

2. Democratic Economy: Dilemma in Form and Liberal Thinking Domination

The preamble of UUDNRI 1945, define the purpose of Indonesia Republik one of it is to fulfill social Welfare. Social Welfare is the form of Indonesia commitment for statecraft not only based on politics democracy, but also social democracy. The Founding Father of Indonesia formulated, to realize welfare and prosperity must back to Social Democracy.[7] UUDNRI 1945 guarantee the will of our Founding Father about Socio Democracy in Article 33 verse (1), "Economy has created incorporation with kinship principle. However, on the progress, the principles of kinship, is also accompanied with efficiency principles. This is confirmed in article 33 verse (3) UUDNRI 1945.

> The organization of the national economy shall be conducted on the basis of economic democracy upholding the principles of togetherness, the efficiency with justice,

[3] See Jimly Asshiddiqie, *Konsolidasi Naskah UUD 1945 Setelah Perubahan Keempat*, Jakarta: Pusat Studi Hukum Tata Negara Fakultas Hukum Universitas Indonesia, 2002, page 56

[4] See Muhammad Hatta, Demokrasi Kita din Kompas Gramedia, *Muhammad Hatta Politik, Kebangsaan dan Ekonomi (1926-1977)*, Jakarta: Pt Gramedia, 2015, page 280.

[5] *Ibid.*

[6] See also Legal politic on R. Wietholter, B Arief Sidharta, Meuwissen tentang Pengembanan Hukum, Ilmu Hukum, teori Hukum dan Filsafat Hukum, Jakarta: Refika Aditama, 2013, page 34. Kelsen said as a policy that determines the rules of law. Satjipto defined it in four (4) questions. 1) the purpose of establishing the law; 2) the means used to achieve those goals; 3) When does the time change of the law; and 4) get a well-established pattern formulated. See Satjipto Raharjo, *Ilmu Hukum*, Pt Citra Aditya Bakti: Bandung, 2013, page 399.

[7] According to Hatta Social Democracy contains 3 (three) basic value:[7] defending on humanity (Socialist), truth and divine justice with fraternity (from Islam perspective) and Indonesia based on collectivism. In other word unity and corporation which becomes principal factor of sovereignty and Economic justice. See Muhammad Hatta, *Demokrasi kita*, on Kompas Gramedia, *Muhammad Hatta Politik, Kebangsaan dan Ekonomi (1926-1977), Opcit*, page 280. Tjokoroaminoto formulates about Islam is also taught Socialism and freedom which make it different with West taught. Islam taught us the barrier among humankind has been deleted, Islam makes us in one unity.[7] Human is not only individuals which sacrifice the other interest for their own interest. In every property and enjoyment, there is also another human interest which is God leave to us. See Yudi Latif, Negara Paripurna, Jakarta: Pt Gramedia Pustaka Utama, 2013, page 406. Tan Malaka also said if the Socio Democracy must be developed. *Ibid*, page 408.

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continuity, environmental perspective, self-sufficiency, and keeping a balance in the progress and unity of the national economy.

We can conclude the originality of efficiency principle is base on liberal democracy. Then is Indonesia become liberal now? Work of efficiency principle in the other hand must work with the kinship, in order to create welfare. This becomes the dilemma which is cannot be delayed. The idea of Democratic Economy on the other side is still in discussion room, not lived among community and statecraft. Kwik Kian Gie concludes There are many people believe Indonesia economic system is Pancasila, which reformulated has become mutual cooperation.[8] He also argues if the policy and program of Pancasila Economy are not clear, in the practice system that we use its look like practice in the West Countries.[9] Therefore to makes clear about Indonesia economic system, will be discussing the economic system which is grown the West countries, to make sure Indonesia system already use full liberal or not.

After the collapse of Communist, the world idea is dominated by democracy, individualism, and capitalism. [10] The domination makes the idea of free-markets also progress. Steven Rosefielde argues the system which depends on the free-market as self-regulating system, giving on every people with the rights, voice, and chance. [11] Involvement of communal and state will be burden market efficiency, the distribution of income must also neutral. Efficiency in the free-market is the only key to lead on the welfare and prosperity.[12] The efficiency of the free-market is also restricted role of the state, then how far is the role of the state in their perspective? [13] This Confusion being argued by David Howarth as the term problem of Liberal economic which always lumped with a classic liberal. [14] The view of classic liberal doesn't care about the distribution and democracy, but only care with restriction of government from their rights of property. [15] Responsibility for the welfare and prosperity being held in every hand of individuals. Property rights is an absolute for every citizen to have it. Samuel Freeman said the distributive justice in the classic liberals, has done with capitalist markets distribution and economic agents already fulfill their responsibility through the judiciary and public goods provide. [16] The limit of responsibility from classic liberal, only placed in the chance providing. [17] Condition without control will bear predator which is ready to prey the weak.

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[8] Kwik Kian Gie, *Nasib Rakyat Indonesia dalam Era Kemerdekaan,* Jakarta: Pt Gramedia Pustaka Utama, 2016, page 46.

[9] *Ibid.*

[10] Brian Z. Tamanaha, *On The Rule of Law: History, Politics, and Theorie,* Cambridge: Cambridge University Press, 2004, page 1.

[11] Steven Rosefielde, Comparative Economic System Culture Wealth, and Power in 21st Century, Massachusetts (United State of America): Black Well Publishing, 2002, page 16.

[12] There are two (2) reasons chosen by liberals why pro-free markets: 1) The interest in realizing basic liberty exists in free markets. Each person is free to choose a career and the workplace. 2) allocation made by the market considered to be more efficient, from a non-market system. See Samuel Freeman, Capitalism In The Classical and High Liberal Traditions, Sholarly Journal Social Philosophy and Policy, Volume 28, 2011, Oxford: Cambridge University Press, Issue 2, page 36.

[13] Ramlan Surbakti said that the responsibility of the government there is its role as a regulator, controller, and / or prevention. See Ramlan Surbakti, *Memahami Ilmu Politik,* Jakarta: Pt Gramedia, 2010, page 272-275.

[14] David Howart, *What is Social Liberalism?,* can be accessed at http://www.socialliberal.net/2009/02/12/what-is-social-liberalism/

[15] *Ibid.*

[16] Samuel Freeman, *Capitalism in The Classical…Opcit,* page 47.

[17] The liberal view in terms of salary as an example of someone with a particular talent gets a higher salary because:1) everyone is made better off when those people work those jobs, and 2) those people will only work those jobs when they are given incentives. Accessed at http://harvardpolitics.com/united-states/liberalism-versus-socialism/

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The unbalance situation because the effect of liberal, become a reflection among the liberals itself. Responsibility and role of state it's become their discussion, as the example in America. Roosevelt in the liberal-progressive movement said the construction of property rights is against the human rights, truly are the property is not the absolute existence of human kinds, but it will alienate human from their welfare. [18] Property rights in the end, not an absolute right. The government has obligation to involve and care about social and economic condition.[19] Federal government not only control but also redistribute the private wealth for the public welfare. [20] Scott Arnold argues in the case of United State of America, the system which is the used is among liberal-socialist and social democrat. [21] America shows their practice in the issue of economic and social. Amerika uses liberal-socialist is supported by 2 (two) features: [22] 1) in the liberal ownership they only reside only nominally with the private party; 2) compensation for tax and spend with impunity has been omitted, if facing with regulations. [23] America uses social democracy is seen on their institution which is being purposed to counter social issue problems (e.g unemployment, health, and poverty) and has the will to create the welfare state. [24] State and welfare are cannot be separated. The accomplishment of the state not only indicate with the economy but also in social and political.

Europe experience in deconstructing liberal thinking is with social-democracy movement. Tom Allen in his research with social-democracy in Europe, conclude that the state has space in social responsibility which is associated with the ownership. [25] The state approach in property or ownership, not become a threat to the system anymore. The state can adjust the value of the property with legislation and also can determine public interest demands. [26] The role of state institution overall are gonna makes the welfare as their main objection.

The West Countries also research about their view in efficiency and states responsibility. West Countries start from individuals property right, but Indonesia starts from the communal right. Article 33 UUDNRI 1945, state become the ruler of important production sector and natural resources. The conception of state ruling is related to people's sovereignty, which is described peoples become the source of authority in statecraft. [27] The state only borrows people's right in ruling and has obligation to manage it for the interest of the peoples. Ironically now Indonesia has infected by free-market possession and market sovereignty. As example role of the state in Law No. 7 of 2004 about water resource. Water resource should in state possession, but in the end become the private possession. The West

[18] Ronald J. Pestritto, Founding Liberalism, Progressive Liberalism, and The Rights Of Property, Scholarly Journal Social Philosophy and Policy, Volume 28, July 2011, Oxford: Cambridge University Press, page 72.

[19] *Ibid*, page 73.

[20] *Ibid*. See Characteristics of progressive according to James W. Jr. Elly. James W. Elly, *The Progressive Era Assault on individualism and property rights*, Scholarly Journal Social Philosophy and Policy, Volume 29, July 2012, Oxford: Cambridge University Press, page 258.

[21] N Scott Arnold, *Are Modern Liberals Socialist or Social Democrats*, Scholarly Journal Social Philosophy and Policy, Volume 28, July 2011, Oxford Cambridge University Press, page 262.

[22] *Ibid*, page 282.

[23] State manipulation of the tax code aimed at a wide variety of social functions. See *Ibid*, page 264.

[24] *Ibid*, page 282.

[25] Tom Allen, Liberalism, Social Democracy and The Value Of Property Under The European Convention On Human Rights, International and Comparative Law Quarterly, October 2010, Oxford: Cambridge University Press, page 1068.

[26] *Ibid*, page 1077.

[27] Jimly Asshiddiqie, *Hukum Tata Negara dan Pilar-Pilar Demokrasi*, Jakarta: Sinar Grafika, 2010, page 140.

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Countries itself has been neglecting the power of market, because afraid of welfare will be marginal issue. Edi Swasono argues if market sovereignty cannot evicting the people's sovereignty. [28] The state will change into the corporate state, not the nation state. [29] The hope for economic development, will be pushed by free-market. [30] Market on the other side, cannot be dissociated as a phobia but must be controlled in case not adverse and plunges the weak or marginal actors. Economic democracy wants to realize, must come from the state as facilitators. Daron Acemoglu and James A Robinson formulating theory of politic and economic institutions, in relation to welfare and prosperity. The theory explained in 2 (two) levels, the first level is the difference between extractive politic-economy institution and inclusive institution. [31] Inclusive institution: protecting the wealth of peoples, creating fair competition arena, improving in new technology invest, and improving human resources. [32] Extractive institution: centralization of power in a political elite, tend to create the institution for their own interest and use every resource only for their interest. [33] In the next level explain why the inclusive institution can grow. [34] The influence of political institution is so significant. Extractive institution tends to extinguish the creativity among the citizens and this will effect on the economic development.

3. Globalization and Fate of Democratic Economy Legislation

State nowadays cannot stand anymore as an autonomous institution. Globalization has strong influence and intervention against policy and purpose of statecraft. The purpose of democratic economy in article 33 UUDNRI 1945, also trapped in globalization, especially free market. Who are the free-market? they are the global financial tycoon with their fund manager. [35] Globalization now able to create its own Global Economic Governance. The empowerment of Global Economic Governance is being the sustainable issue. Daniel D Bradlow formulated 4 (four) framework of global economic governance. [36] First, they must have the same issue (development of the weakest society, and poorest individuals). [37] Second, the respect of international law principals. [38] Third, comprehensive coverage: needs of mechanism and institution must applicable to every interest and involved stakeholders. [39] Fourth,coordinated specialization where every actors and stakeholder consistent and support the needs of global economic governance. [40]

The reality of global empowerment then reinforced law instrument in every state. The state must rethink their own purpose and interest in the name of universal interest. On the other side, agree with global interest it means to agree with investment. Investment cannot reject, especially for Indonesia after 1998 crisis. In 2005 even Indonesia government declare

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[28] Sri Edi Swasono, *Daulat-Rakyat versus Daulat Pasar*, Yogyakarta: Pustep-UGM, 2005, page 34-35.

[29] *Ibid.*

[30] *Ibid.*

[31] Daron Acemoglu dan James A Robison, *Mengapa Negara Gagal Asal Mula Kekuasaan, Kemakmuran, dan kemiskinan,*Why Nation Fail? The Origins of Power, Property, and Poverty, terjemahan Arif Subiyanto, Jakarta: Gramedia Pustaka, 2015, page 499.

[32] *Ibid,* page 500.

[33] *Ibid.*

[34] *Ibid.*

[35] Sri Edi Swasono, *Daulat-Rakyat versus Daulat Pasar, Opcit,* page 16.

[36] Daniel D Bradlow, *A Framework For Assessing Global Economic Governance,* Boston College Law Review, 05/2013, Volume 54, Issue 3, United State: Boston College School of Law page 982.

[37] *Ibid,* page 982-983.

[38] *Ibid.*

[39] *Ibid,* page 989.

[40] *Ibid,* page 990.

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the wide space of investment. Kwik Kian Gie documented in speech of Coordinating Minister for the Economic, Abu Rizal Bakrie and Vice President Jusuf Kalla: [41] a) Indonesia has power to funding the infrastructure for 17 percents. The rest in widely opened to private, especially foreign investors; b) We invite you to take benefit from infrastructure because indexing of the cost. In 2014 so significant Indonesia can increase foreign investment for 20 percents to 22,6 billion dollars from 18,8 billon dollars compare with the preceding year. [42] Investment is realized as a powerfull instrument to influence the economic policy. In the end are in every investment there also protection of economic and social rights of citizens? it not really sure. The increasing of investment in Indonesia is always not enough and sustainable. Every problem came from economic crisis always be solved by investment. As the example in World Bank reports in March 2016, from 9 (nine) suggestion, clearly, it dominated by investment. [43] The social issue being marginals issue, and always be ruled out. Social and economic rights then not included in investment package. Caroline L Paine in her research for 129 non OCED countries with 500 thousand populations , found globalization and foreign investment is not followed by social and economic rights. [44] In the context of rulemaking, Frank J Garcia argue globalization can affect in 4 (four) ways:[45] a) changing the needs of the client (scope of needs is not interstate but wider across the nation); b) changing the substance of the law (law adapting and response to society, in case of globalization and technology); c) Changing nature of regulation; d) changing the purpose and role (globalization can make and affect state, to create strong vs weak law).

Globalization affect state law is an undoubtedly. Van Der Vlies, argues if the legislative bodies must create the law which is suits to the global perspective and it's not the only expression of state will. [46] Expression of the law is the universal expression. On the other side, it's the way keep connect with the global web. [47] Sometimes the rulemaking process forgot about national interest. Andreas Follesdal said if the international rule or non-state actors, drastically influence, limiting and strengthens the authority of the state to make their international and domestic policy.[48] This condition illustrated it double hard to make pure economic regulation based on the democratic economy. In the end, we must prove the condition on Indonesia legislation product in post-reform. Does it suit with the democratic economy, which is based on Article 33 UUDNRI 1945? or mainly product will only contents with liberal-economic interest? At least we must see at 3 (three) feature of the legislation product: state control of natural resources, economic development, and social welfare. The analyses will be divided into 3 (three) periods. First period 1998-2004, as the period of democracy and economic awakening. Second period 2005-2009, the period where Indonesia

[41] Kwik Kian Gie, *Nasib Rakyat Indonesia dalam Era Kemerdekaan, Opcit*, page 42.

[42] Accessed at http://www.cnnindonesia.com/ekonomi/20150625010145-92-62208/naik-20-investasi-asing-di-indonesia-tertinggi-di-asean/

[43] Accessed at http://www.worldbank.org/in/news/feature/2016/03/15/indonesia-economic-quarterly-march-2016

[44] Caroline L Paine, Bringing Home the Bacon or Not? Globalization and Government Respect for Economic and Social Rights, Human rights review, 09/2009, Volume 10, Issue 3, Dordrecht Netherlands: Springer Science & Business Media, page 426.

[45] Frank J Garcia, *Introduction: Globalization, Power, States, and Role of The Law*, Boston College Law Review, 05/2013, Volume 54, Issue 3, United State: Boston College School of Law page 907-909.

[46] I.C. van derv lies, *Legislation in a Global Perspective*, in J Arnscheidt, et.all, *Law Making For Development Exploration into the Theory and Practice of International Legislative Projects*, Leiden: Leiden University Press, 2008, page 133.

[47] *Ibid.*

[48] Andreas Follesdal, *Global Distributive Justice? State Boundaries as a Normative Problem*, Global Constitutionalism, Volume 1 issue 2, July 2012, Cambridge: Cambridge University Press, page 275.

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facing the next global crisis. Third period 2010-2016 after 2008 global economic crisis and the generation of the free-market era (Asia Free Trade etc).

Periods of 1998-2004 there are several laws related to economic and social.

Table 1.economic based legislation 1998-2004

State control of Natural Resources	State Socials Responsibility	Economic Growth
1. Law number 22/2001 about oil and natural gas	1. Law number 13/1998 about elderly welfare 2. Law number 39/1999 about human rights 3. Law number 21/2000 tentang labor union 4. Law number 23/2002 about child protection 5. Law number 13/2003 about man power 6. Law number 2/2004 about settlement of industrial relations 7. Law number 40/2004 tentang Social securities 8. Law number 41/2004 about Wakaf	1. Law number 5/1999 about anti-monopoly and unfair business 2. Law number 25/2004 about national planning system

The table illustrated and separated the law under the theme of the laws. There is 1 law about state control of natural resources, 8 laws about social responsibility and 2 laws related to economic growth. On the law number 22/2001 about oil and natural gas, there is inconsistency among the article and in the end, the article only focuses on efficiency. Constitutional Courts already annulled this law related to state control on resources, parliament involvement, and dissolution of oil and gas implementing agencies. The other inconsistency it also came from the article 28 verse 3 law number 22/2001, which is said about the state responsibility on the level of society in price policy, but in the article29 the technical problems only talk about technical and economic aspect without social aspect. The second column describes the laws related to social welfare. In the law number 41/2004 about wakaf, there are sentences about economic value also have social value. Wakaf system under the article 49 verse (2) supported by the government through the cooperation with financial aids. In the law number 39/1999 about human rights, it proved under the of human rights there is no complete recognition about economic rights. Economic rights are be regulated only by 4 (four) article, that is article 1 number 3, article 64, article 71 and article72. All of it just said about group discrimination on economic, child exploitation on economic, and unclear implementation about economic rights. On the other hand, we must also discuss the laws related to man power and worker. Overall the law related to man power and worker not fully protecting and empowering them. As an example on the law number 21/2001 about labor union, the state only guarantee the freedom to create a union. The unions welfare it depends on their performance, and state not involved in this condition. The unfair condition related to worker welfare is also found on the law number 13/2003 about man power. The interest of company is a priority beyond the man power interest. On the law related to the economic growth, start from law number 5/1999 about anti-monopoly and unfair business. This law has a function to optimize the economic sector in order to prevent the market

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failure. But in the article 30, there is no clear time about the establishment of commission inspector of business competition. The law which has core to watch unfair business will be useless because of it only a rule without a clear inspector. In the law number 25/2004 about national development planning, there is no clear clause for the society participation. Article 6 and 7 only provide society able to participate, but how to participate there is no clear sentence, in the end, development planning only on the government perspective. The laws on 1998-2004 in the end does not dominate by economic democracy. The laws only support to economic development, the social development still retarded.

Periods of 2005-2009 already collected many laws related to economic and social. The table below provide the list of the laws.

Table 2. economic based legislation 2005-2010

State control on Natural Resources	State Social Responsibility	Economic Growth
1. Law number 30/2007 about energy 2. Law number 4/2009 about mineral and coal mining	1. Law number 12/2005 about ratification of international covenant on civil and political rights 2. Law number 16/2006 about extension of agriculture, fishery and forestry 3. Law number 20/2008 about micro, small and medium enterprise. 4. Law number 36/2009 about health 5. Law number 52/2009 about population and family development.	1. Law number 25/2007 about capital investment 2. Law number 2/2009 about export finance institution 3. Law number 39/2009 about special economic area

The table describes only 2 laws related to State control of Natural Resources, 5 laws related to state social responsibility, and 3 laws related to economic growth. The first table provides law of state control the natural resources. Law number 30/2007 about energy provide the state responsibility not only for the control of natural resources but also have the sentence for the social responsibility. It described on article 7 about subsidy, article 21 which is directed the energy utilization for the people's needs especially on the regional which produces the energy. In the law number 4/2009 about mineral and coal mining, the orientation already maximizes for people's interest. People's also has rights to manage the mining through people's mining licenses. Article 72 also provide responsibility of local government. On the other side, the supervision for people's mining not clear, especially for the conflict among the people about the management of mining. The discussion for the laws which related to social responsibility, start from the law number 12/2005 ratification of the international covenant on civil and political rights. The state commitment for fulfilling the human rights on civil and political describe on this law. The ratification about human rights still not complete because the state only ratifies civil and political but not the economic rights. In the Law number 16/2006 about the extension of agriculture, fishery, and forestry, we can conclude about the state strategy to improve the human resource on agriculture, fishery, and forestry. The state

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gives the local government as the director of the extension. The government prepares from the establishment of extension institution, until the implementation. On the other side, we must concern about the type of the extension. The extension must provide the freedom to improve creativity, and the participant not only follows all of the programs which is supplied by the government. The state responsibility on the progress now also reach the micro and small economic. Law number 20/2008 about micro, small and medium enterprise provide the protection and empowerment of small, micro and medium economies. Article 7 describe the state response for the capital, facilities and infrastructure, information, licenses, promotion, partnership, and business opportunities. Every aspect which provided by the state must set on comprehensive view. Especially on information and opportunities, the global challenge it not only about capital but also about the information and opportunities. The state must concern on that point. The law number 36/2009 about health also describe the state social responsibility. The state must guarantee the health of the citizen. The clause about social securities of health only regulated on article 20 and article 172, but only declare about government responsibility without a clear provision. The law should provide clear provision as state allocation and the management of social securities. Law number 25/2007 about capital investment describe the true condition of Indonesia economic system nowadays. The system we use now directed to free-market and liberalism. We can see it at article 1,6,7, and 8 which explain about the freedom of foreign company in case of capital investment. This condition clearly makes state control for the company will be decreased. In the law 30/2007 about export finance institution, it already response the condition and situation in Indonesia economic development. The principal of Syariah also included in the financing and exporting activities. In the article 8 regulate about insurance for export financing, so exporter can have guarantees for their efforts. In the law number 39/2009 about the special economic area, the economic development integrated to one economic area system. The laws is also provided for the micro and small economies development, but the way to support it only with providing the location.

Table 3. economic based legislation 2010-2016

State control of Natural Resources	State Social Responsibility	Economic Growth
Law number 21/2014 about geothermal	1. Law number 13/2011 about the poor 2. Law number 20/2011 about flats 3. Law number 23/2011 about zakat management; 4. law number 24/ 2011 about agencies administering social security 5. law number 19/2013 about protection and empowerment of	1. law number 17/2012 about perkoperasian 2. the law number 3/2014 about industry 3. law number 7/2014 about commerce 4. law number 11/2016 about tax amnesty

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	farmers 6. law number 4/2016 about saving public house 7. law number 7/2016 about protection and empowerment of fisherman 8. law number 8/ 2016 about disability.	

The table describes law around 2010-2016. The analysis will start on law number 21/2014 about geothermal. Article 65 already has provision for the role of people's on geothermal using. There is inconsistency in the will to open participation for the people's. As the example on article 48 the concessioner of geothermal, it only regulates about a report, understanding the rules related to geothermal, and pollution control. The obligation to the people was separated from the provision of geothermal concessioner. The next part is about state responsibility on social problems. There are 8 laws related to this issue. First, the law number 13/2011 about the poor. The law provided a form of handling for the poor are self-development, social aids, and legal aids. The economic development only is regulated in article 24. The perspective of this law only view the poor as social problems, and economic development being abandoned. On the periods 2010-2016, there is also 2 law related to public housing, law number 20/2011 about flats and law number 4/2016 about saving house. The state has been provided the easy access for the peoples to get flats or house. On the other hand, in the periods 2010-2016, there are also laws about social service: Law number 23/2011 about zakat management, law number 24/ 2011 about agencies administering social security, and law number 8/ 2016 about disability. Law number 24/ 2011 about agencies administering social security, on article 56, the government make sure the social securities always work even there is a crisis. The next column describes economic growth law, there is 5 law. First law number 17/2012 about perkoperasian. Koperasi law provides the rules related to koperasi and all of its activities, start from the establishment until the empowerment. The koperasi must empower to fulfill the will of economic democracy. In the law number 3/2014 about the industry, we must focus on the provision strategic industry and empowerment. In the article 84 the strategic industry under the control of the state, but the provision likely not consistent. In that article state also share the capital with foreign. This condition will make the strategic industry purpose will be delayed for the welfare of the people's. In the law number 7/2014 about commerce, we must concern about the empowerment for the commerce. On chapter X the empowerment is held for micro, medium and koperasi. The provision of empowerment also has hidden restriction for the state responsibility on empowerment of commerce. In this periods, there are also 2 laws related to protection and empowerment for the farmer and fisherman. Law number 19/2013 about protection and empowerment of farmer, provide protection and empowerment for the farmer. Sustainability

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of this policy very depends on local government. Article 7,8 regulates local government responsibility to achieve the welfare program for the farmer. Even on the agricultural insurance based on article 37 and 38, it very depends on local government. In the law number 7/2016 about protection and empowerment of fisherman, the role of local government also important to achieve the empowerment for fisherman. Article 13, 14, and 15 regulates the local government responsibility on planning and implantation of empowerment. This law on the other side, already recognizes the role of women. In the article 45, involvement and role of women being agenda of women. But how the strategy to ensure the empowerment of women is not clearly yet. In the law number 11/2016 about tax amnesty, there is fantastic plan to increase tax revenue. The government success to increase the tax revenue, based on article 1 with the strategy to eliminate tax owed with pay on ransom money. Improvement of tax income showed rapid progress. The problem for this laws is about repatriation on state wealth. The government should take fast action to accommodate the income which goes to the state. The periods of 2010-2016 showed, the state increasing their concern on social responsibility. In the other side, the view of economic growth as main priority is not false, the government should improve their economies to facing the global crisis and competition.

Conclusion

Legislation which is produced after reform, still disharmony. The law provision only concern about separated issue, social, state control or economic growth. The fact is each issue cannot be separated from a different issue. State control of Natural Resources will affect on social responsibility or the economic growth will affect on social services. This condition needs harmonization under the same view, which is based on the spirit of our constitution. Economic democracy must back on the implementation and spirit of every law. But the economic democracy has its own problems. Legislation based on economic democracy have troubles on the concepts and intervention from global. Economic democracy which is described in article 33 UUDNRI 1945, do not have an arrangement and a definite shape to be considered as a real system. In the article 33, UUDNRI 1945 have socialist and liberal value on the same track. The idea about economic democracy about balance in socialist and liberal values with pluralism. All natural resources under control of the state. On the other side, resources are being distributed to the interest of the people's. Individual rights still recognize but limited. But under the globalization era, it more challenging to fulfill the will from UUDNRI 1945. Economic democracy need a form to make the purpose comes true. The economic democracy must design as an integrated system, which clears on the purpose and target for economic and social development.

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The Role of The Government of Bandar Lampung City in The Management and Development of Wastewater System on Micro, Small and Medium Enterprises (SMES)

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Abstract

This research seeks to examine how is The Role of Bandar Lampung City Government in the Management and Development of Domestic Wastewater System on Micro, Small and Medium Enterprises (SMEs). This role is based to Mandatory Government Affair, relating to Basic Service on field of public works and spatial planning, as referred to Law Number 23 Year 2014 on Local Government. It also related to mandatory government affair on field of cooperatives, small businesses, and medium, all of which as mandatory government affair. The focus of research is in the city of Bandar Lampung, especially on field of environmental management. The legal issues as research questions are: (1) how are the government functions of Bandar Lampung City in the management and development of wastewater systems for the SMEs? And (2) how are the regulations on the management and development of wastewater systems for the SMEs at sided with the small business sector?

This type of research is the legal research. In order to strengthen the analysis, researcher is also collecting the material through a review of documents, and observations, especially related to the local environmental management in Bandar Lampung.

The results of the research to answer the first question of this research is a hypothesis that the government of Bandar Lampung should provide some sort of subsidies for SMEs. It needs to be done, because the SME sector will find it difficult to meet the environmental standards. To answer the second question, it is necessary to codify local regulation that ensures the siding of local governments to SMEs, so they can meet the required environmental quality standards.

Keywords: *local government, SMEs, Wastewater, Management*

1. Introduction

Wastewater management issues are intrinsically related to environmental management. The regulation of wastewater in Law Number 23 Year 2014 on Regional Government included in the functional assignment of public works and arrangement of space.[3] A systems approach in the management of waste water is essentially suggests that wastewater management is also related to the affairs other areas of government. Government

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[3] See Appendix C. Government Affairs Division Public Affairs and Spatial Planning Law Number 23 Year 2014 on Regional Government.

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affairs sub areas of waste water is a matter of concurrent organized jointly between the government, provincial government and district / city governments. Within the scope of the district / city, business is done is "Management and development of domestic waste water systems."

Waste is the residue of a business and / or activity.[4] The diversity of the types of waste will depend on the activity of the producing. The use of raw materials and types of business waste producers will also determine the type of waste generated. Scale production of a business that generates waste will also determine the volumes produced. From an environmental perspective, the waste will have an impact on the environment in the event of dumping (dumping), the act of throwing, placing, and / or enter the waste and / or materials in an amount, concentration, time, and location with the specific requirements for certain environmental media. Instruments to measure the impact of waste water discharged into the environment are wastewater quality standards.[5]

Protection and management of the environment demands the development of an integrated system in the form of a national policy of environmental protection and management should be implemented in strict principles and consequences from the central government to the local government. The use of natural resources must be harmonious and balanced with environmental functions. As a consequence, policies, plans, and / or development programs must be animated by the obligation to make environmental preservation and realize the goal of sustainable development.

Changes in the region's economy as a result of the rise of the industry which is currently one of the factors of economic progress in the city of Bandar Lampung. Sectors which positively impacted mix industry, namely manufacturing, trade, restaurants and hotels, transport and communications, leasing, financial services, as well as property sector.

Sectors related to Micro, Small and Medium Enterprises (SMEs) should also meet the Environmental Quality Standards required by the provisions of the legislation. In fact, the necessary technology is quite expensive to build waste water management system in which waste is removable / dumped into the environment meet the quality standards of waste water. Thus, the role of local government is required to exercise their functions "Management and development of the domestic waste water system" as mandated in the Local Government Act. Do not let the implementation of regional autonomy is precisely the reality of environmental management is not better than before.[6]

The above is a background which illustrates the need to do research on the function of the Government of Bandar Lampung in Management and Systems Development Sector Wastewater for SMEs.

Based on the description above, the research questions are:

a. How the government functions of Bandar Lampung in the management and development of wastewater systems for the SMEs? and
b. How the regulations on the management and development of wastewater systems for the SMEs sector?

Based on the formulation of the problem posed, this research aims to:

[4] Article 1 paragraph 20 of Law No. 32 of 2009 on the Protection and Management of the Environment (Act PPLH-2009).

[5] See Article 20 paragraph (2) letter b aw No. 32 of 2009 on the Protection and Management of the Environment

[6] Muhammad Akib, *Penegakan Hukum Lingkungan dalam Perspektif Holistik-Ekologis*, Yogyakarta: Graha Ilmu, p. 61.

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a. map out rules and authority to perform the function of the government of Bandar Lampung in the management and development of wastewater systems for the SMEs; and
b. Bandar Lampung outlines regulations relating to the management and development of wastewater systems for the SMEs sided with it.

The theoretical benefits of this research are as contribute ideas on regional governance, namely the implementation of local government functions in the management and development of wastewater systems for the cooperative sector, small businesses, and medium. Another benefit is the search for a theoretical review of the functions of government in the management of wastewater systems for SMEs. The practical benefits of this research is to provide the reorientation of understanding and formulation of the management and development of domestic waste water systems-oriented SMEs.

The framework of this study departs from the significance of the findings related to the functions of government in Bandar Lampung in the management and development of wastewater systems for the SMEs. Implementation of sub-field of waste water is also related to environmental issues. Legal issues that will be built, is to examine the legislation, including local regulations promulgated in order to conduct its affairs in the field of waste management, environmental management, waste management, and environmental health.

2. RESEARCH METHODS

This research question will be described with normative juridical *(legal dogmatic research)* done by examining secondary data through literature to examine the primary legal materials in the form of legislation or other legal documents. In addition, also examined the results of research, the results of the assessment, and other references. This study is also equipped with official data on the management of domestic waste water system Bandar Lampung obtained from written documents and interviews with informants who have competence in the field of environment in the city of Bandar Lampung.

Category approaches through regulation, opportunity, ability, communication, interests, and ideological processes used as a knife analysis to test the function of the Government of Bandar Lampung in Management and Systems Development Sector Wastewater for SMEs.

Data collection methods used in this study include:

a. Inventory of legal documents related to the study;
b. The study of literature related to the research;
c. Method competent interview with elements related to the research.

Data processing is done by reading and classifying the data systematization. Legislation were analyzed by analysis of text content *(content of analyzes).* Processing of legal materials will be made through the stages description of positive law, legal approach, positive legal analysis and interpretation of positive law. Then proceed with the reflection of reality in legal validity. Analysis of the legal materials and data conducted a descriptive analysis, which examines the concept of law, principles of law, rule of law and the legal system relating to Bandar Lampung City Government Functions in the Management and System Development Sector Wastewater for Cooperatives, Small and Medium Enterprises. Review of aspects of dogmatic legal science, law material analysis done by the exposure and analysis of the structure of the applicable law, legal systematization, interpretation and legal assessment.[7] The method used legal interpretations, among others; grammatical interpretation (languages), a systematic interpretation, an authentic interpretation and comparative interpretation.

[7] D.H.M Meuwissen, Ilmu Hukum (Penerjemah B. Arief Sidharta), Pro Justitia, Jurnal Unika Parahyangan, Tahun XII No.4, Oktober 1994, pp 26-28

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3. Discussion

Efforts to control water pollution in the city of Bandar Lampung still has many obstacles. Most of the producers of pollutants, both small industry and domestic, are still not doing the processing of waste, due to various constraints, among others: lack of awareness that waste management is a long term investment that must be made, the lack of information technology wastewater treatment plant (WWTP) effective and efficient and the lack of capacity of human resources (HR) that controls the waste treatment technology.

Many cases of pollution that resulted in losses of others, without the burden of guilt of the perpetrators of pollution. For example, cases of pollution in some rivers in the city of Bandar Lampung. The impact of this pollution has aroused public concerns. The growth of small industries in Bandar Lampung relatively rapidly, especially in the food processing sector. This small industry impact on environmental pollution.

The low income of the people as a result of various crises of world economic development, poor housing conditions, poor health, and housing does not provide support for the environment and poverty has worsened the environmental conditions.

By law, offender's pollution should be proven through scientific methods of data in the form of laboratory analysis results were scientifically. However, such evidence is expensive and a taking long time.

Various attempts have been made to reduce the pollution caused by industrial activities include the development of clean production process (non waste), waste minimization, replacement of hazardous materials, and waste treatment technology *(end of pipe).* Waste treatment technology although it's use as a final settlement and considered to be less efficient, but until now the technology is still very necessary. Various rules and regulations have also been issued to prevent, reduce and control environmental damage from a variety of activities, including a small industrial sector.

Although various methods have been adopted to achieve the clean production process (non waste), but this technology cannot be applied to all existing industrial sectors. If the waste minimization measures have been taken but the waste was generated, then processing steps to be carried out. In general, small industry or households is still experiencing difficulties in implementing the processing of waste.

So that small businesses are not burdened to process wastes it is necessary given waste treatment technology that is simple, efficient, and effective in order to operate properly. This obstacle can be solved by providing government subsidies in wastewater management for small industries. Based on Law No. 20 Year 2008 on Micro, Small and Medium Enterprises,

a. Micro criteria are as follows:
   - Have a net worth of at most Rp50,000,000.00 (fifty million rupiahs), excluding land and buildings; or
   - Has annual sales results Rp300,000,000.00 (three hundred million rupiah).

b. Small Business criteria are as follows:
   - Have a net worth of more than Rp50,000,000.00 (fifty million rupiah) up to at most 500,000,000.00 (five hundred million rupiah) not including land and buildings; or
   - Has an annual sales turnover of more than Rp300,000,000.00 (three hundred million rupiah) up to at most Rp2.500.000.000,00 (two billion five hundred million rupiah).

c. Medium Enterprises criteria are as follows:
   - have a net worth of more than Rp500,000,000.00 (five hundred million rupiah) up to at most 10,000,000,000.00 (ten billion rupiahs), excluding land and buildings; or
   - has an annual sales turnover of more than Rp2.500.000.000,00 (two billion five hundred million rupiah)

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Discussion of this article is limited to the above criteria, which is abbreviated by SME criteria.

SMEs are in Bandar Lampung spread across several districts, but some are concentrated in a small industrial centers, such as tempeh making industry in South Teluk Betung, Tofu Industry Way Halim, and Chips Manufacture in Labuhan Ratu. This industry criteria has characteristics, namely:

a. expanding small business capital,
b. using production techniques and equipment that is simple,
c. occupational safety and health received less attention,
d. HR education level is relatively low,
e. research and development activities is still minimal effort,
f. not prioritizing environmental sustainability factors,
g. has not been able to process the waste to meet the applicable standard.

With the conditions as mentioned above, it is necessary to provide a simple technology that can be applied by entrepreneurs without feeling burdened so that sewage treatment can be applied and operated properly.

To avoid pollution caused by industrial waste, waste management it is necessary to properly and of course with a minimum cost. This should be done starting from the source and the existing production process, namely the adoption of clean technology (non-waste), waste minimization *(re-use*, *recycle* and others), and the new waste treatment technologies as a last alternative.

The legal basis of the waste water management are:

a. Law No. 32 of 2009 on the Protection and Environmental Management
   Article 69 paragraph 1 letter a:
   "Every person is prohibited from doing acts that resulted in pollution and / or destruction of the environment"
b. Government Regulation No. 82 of 2001 on the Management of Water Quality and Water Pollution Control
   Article 37:
   "Every person in charge of business and / or activities that discharge wastewater into water or water source must prevent and mitigate water pollution."
   Article 40 paragraph (1)
   "Every business and / or activities that discharge wastewater into water or water source must have written permission from the Regent / Mayor"
   Some provisions regulating the industrial waste are:
   - the obligation to treat waste;
   - requirements for quality and quantity of waste water may be discharged into the environment;
   - requirements for disposal of waste water;
   - the requirement to hold the means and procedures for emergency relief;
   - requirements for monitoring the quality and wastewater discharge;
   - other requirements as determined by the results of the environmental impact assessment
   - of the ban at once in a single moment or sudden release;
   - prohibition to carry wastewater dilution and obedient effort required limit of the content;
   - the obligation to perform a self-monitoring and self-monitoring obligation to report the results.

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c. Environment Minister Regulation No. 01 Year 2010 on Procedures for Air Pollution Control
d. Environment Minister Regulation No. 5 of 2014 on Waste Water Quality Standards

Wastewater disposal should be through licensing mechanisms, applications, and application of models of local government policy as presented in the chart below:

4. Conclusion

Based on the results of research conducted, it can be concluded as follows:

a. Wastewater management of SMEs in the city of Bandar Lampung optimal and sustainable requires assessment, planning, cooperation and partnerships among *stakeholders* in the management of wastewater SMEs in the city of Bandar Lampung, the government of Bandar Lampung, Entrepreneur SMEs, public and private sector actors CSR as the embodiment of green environmental management.
b. Implementation of wastewater management SMEs in Bandar Lampung optimal and sustainable, namely:
   - Drafting regulations, policies and programs of the government of Bandar Lampung in focus and detail in realizing the wastewater management of SMEs in the city of Bandar Lampung,
   - Development of SMEs in the city of Bandar Lampung intensively and continuously in wastewater management and environmental pollution control by the relevant agencies,
   - Construction of Wastewater Treatment Plant (WWTP) communal governments with technology that is easy, operating costs and maintenance cost with the performance of the processing results that meet environmental quality standards i.e. biological treatment with anaerobic process initiated by BLHD of Bandar Lampung,
   - Formation of government institutions, social institutions and institutional research and development in collaboration with universities in wastewater management of SMEs in the city of Bandar Lampung.

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The Shield of Transformation of Constitutional Sovereignty: The Judgment of Constitutional Court

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Abstract

The history of Indonesia constitutional is a proof that Indonesia has undergone a transformation of constitutional sovereignty. The constitutional sovereignty means that the constitution is the supreme authority in a country. As guardian of constitution, the constitutional court has substantial role in the process of transformation of constitutional sovereignty. The purpose of this research is to analyze that the judgmen of the Constitutional Court is shields of constitutional sovereignty by using a historical dynamic of constitutionalism of Indonesia. The result of this research will demonstrate that the judgments have been issued by the constitutional court. They are the proofs that Indonesia has experienced a transformation of constitutional sovereignty.

Keywords: *Transformation, Sovereignty, Constitutional, the Judgment of Constitutional Court*

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Understanding the history is a torch to illuminate the past, and to prevent us repeating the mistakes of the past. But we can not revise the history to suit our will. "

Claude G. Bowers (1878-1958)

1.Introduction

Constitutional life of a country can not be separated from the presence of both a written constitution or the constitution unwritten constitution [1] because the constitution is the supreme law that contains vision and include life values grow and develop in a society. Therefore, the constitution has vital role in the constitutional system and this urges an establishment of an institution that serves as the guardian of constitution.

Amendment of Constitution ratified on August 13, 2003 gave birth for the Constitutional Court (MK)[2] as an institution of Indonesian judicial power, and the Supreme Court (MA) in the state system of Indonesia [3] The Constitutional Court of the Republic of Indonesia has four authority and the one obigation set out in Section 24C and Section 7B of the Constitution. The task of the Constitutional Court is to interpret the law with constitution as the guardian of the constitution and the sole interpreter of the constitution[4] in order to protect constitutionality of the state administration.

The judgment of Constitutional Court has a final and binding force .[5] The existence of the Constitutional Court in Indonesia indicates that Indonesia is in process was proceed to uphold the supremacy of constitution.[6] This research will prove that there has been a transformation of constitutional sovereignty in terms of the judgment of Constitutional Court.

This research is very important for Indonesia, because Indonesia is on progress to be constitutional state. Therefore, it is necessary for studying constitutional sovereignty to avoid repetition of the cycle of modern king sovereignty and absolute state sovereignty repeat in Indonesia.

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[1] K.C. Wheare, *Modern Constitution*, Oxford University Press, London-New York-Toronto, 1979. p. 61-62, which translated into Indonesian K.C. Wheare, *Konstitusi-Konstitusi Modern (Modern Constitution),* Nusa Media, Bandung, 2015, p. 61-62, Dahlan Thalib, dkk., *Teori Dan Hukum Konstitusi, ...*,p 58-59.

[2] The Constitutional Court of Indonesia appeared inseparable from the history that has happened among other cases, *Madison vs Marbury* in the US, the idea of Hans Kelsen in Austria, the idea of Mohammad Yamin in BPUPKI, and debate of Committee MPR at sessions in order amendment constitution and Janedjri M. Gaffar, *Kedudukan, Fungsi Dan Peran Mahkamah Konstitusi Dalam Sistem ketatanegaraan Republik Indonesia*, (Surakarta: Mahkamah Konstitusi Republik Indonesia, 2009) p. 3, see also Ahmad Fadlil Sumadi, *Politik Hukum Konstitusi dan Mahkamah Konstitusi (aktualisasi konstitusi dalam praksis kenegaraan),* Setara Press, Malang, 2013 p. 41.

[3] Article 24 paragraph (2) of the Constitution states that: "the judicial power held by an institution ..... Supreme Court, and by a Constitutional Court."

[4] Secretary Jenderal of Constitutional Court, *Pendidikan Kesadaran .....,Op.Cit* p. 131-132 see also Jimly Asshiddiqie dalam *Cetak Biru, Membangun Mahkamah Konstitusi sebagai Institusi Peradilan Konstitusi yang Modern dan Terpercaya*, Sekretariat Jenderal MKRI, 2004, p. iv.

[5] See on Article 24C paragraph (1) constitution, Article 1 paragraph (1) point d UU No. 24 on 2003 about Constitution Court (LN RI No. 98 on 2003, TLN RI No. 4316) *juncto* Article 29 paragraph (1) point e Act No. 48 on 2009 about Kekuasaan Kehakiman (LN RI No. 157 Tahun 2009, TLN RI No. 5076).

[6] Jimmly Asshiddiqie, *Konstitusi Bernegara: Praksis Kenegaraan Bermartabat dan Demokratis,* Setara Press, Malang, 2015. p. vii

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2. Materials And Method

The methode that be used is data analysis which is a decision of Constitutional Court that would be able to describe transformation of constitutional sovereignty in Indonesia.[7] The approach to solve this problem is using the approach of case study reviewing Constitutional Court decision relating to education, development of state control doctrine and state institutions. The data will be analyzed by using a legal interpretation and construction.[8] By doing interpretations of law, it will be a legal interpretation through legal discovery or *rechtsvinding*. Then, the legal construction is done through legal arguments *a contrario* [9] will answer the legal issues.

Thus, a methods of legal discovery will produce legal argument that can answer law issues through legal logical and systematical. In the last, this article will be able to show that Indonesia has transformation of constitutional sovereignty by proved the Judgment of Constitutional Court.

3. Results/Discussion

Constitutional sovereignty means that the constitution is the supreme power in the state. Based on the history of the constitutional and confirmed by the Constitutional Court's decision, confirms that Indonesia is being transformed towards constitutional sovereignty. The Indicators was used to confirm that there has been transformation of constitutional sovereignty by decisions of the Constitutional Court. These decision are grouped by categories such as:

a. Basic Rights of the enjoyment of education;
b. The Development of State Control Doctrine;
c. Constitutionality of Institutional State.

3.1 Basic Rights of Education

Some of the judgments of the Constitutional Court with regard constitutional review of laws against the constitution relating to transformation of constitutional sovereignty on category of basic rights of education, including Judicial Review of Law No. 20 of 2003, Law No. 12 of 2012, and Law No. 20 of 2013.

a. *The Constitutional Court Decision No. 5/PUU-X/ 2012 on the Judicial Review Application Law No. 20 of 2003 on National Education System of the Constitution*

[7] This research is a type of normative or dogmatic research that is searching for the truth in the science of law to see regulations written into the main object of study. Furthermore, the notion of normative law can be found at Suratman dan H. Philips, *Metode Penelitian Hukum*, Alfabeta, Bandung, 2013, hal. 54. Then Abdulkadir Muhammad on *Hukum dan Penelitian Hukum,* PT Citra Aditya Bakti, Bandung, 2004, p. 101-102. And also Bambang Sunggono on *Metode Penelitian Hukum*, Raja Grafindo Persada, Jakarta, 1997, p. x

[8] Suratman, dkk. 2013. *Metode Penelitian Hukum,* Bandung: Penerbit Alfabeta. p. 86.

[9] *Ibid.*

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The decision of Constitutional Court are granted the request of the applicant in its entirety: Article 50 paragraph (3) of Law No. 20 of 2003 on National Education System contrary to the constitution and does not have legal binding.

Constitutional Court Decision No. 5/PUU-X/2012 meant that in Article 50 paragraph (3) is contradictory to constitution and does not have legal binding, Position the constitution became the highest law in Indonesian and has moral values in them.

b. The Constitutional Court Decision No. 33/PUU-XI/2013 on the Judicial Review Application Law No. 12 of 2012 on Higher Education of the Constitution

The decision of Constitutional Court is rejected the request of the applicant in its entirety. It meant that Law No. 12 of 2012 on Higher Education does not conflict with Constitution. Reasons cited include: 1) the autonomy of public universities is an effort to achieve the goals of higher education; 2) a management form of public universities is not liberalization of higher education and does not conflict with the Constitution; 3) autonomy of financial management of higher education is not close access to affordable and quality education for society.

The basic recall used by the Constitutional Court is the issue of constitutionality that has been considered and decided by the Constitutional Court Decision No.103 / PUU-X /2012, dated December 12, 2013.

c. The Constitutional Court Decision No. 122 / PUU-XII/2014 on the Judicial Review Application Law No. 20 Year 2013 on Medical Education of the Constitution

The Article of judicial review is Article 36 paragraph (1), (2), (3) and Article 39 paragraph (1) and (2) of the Law of Medical Education of constitution. Constitution Court Decision is reject the application for entirety.

The Court considers that the application has no legal grounds. The main problem in this decision is that should be considered by the Court, namely (i) the doctor competency test, (ii) Issuance of certificates of competency doctor, and (iii) primary care doctor and also the Constitutional Court say that the applicant does not have legal standing to give application.

Some Constitutional Court decisions related to constitutional rights of education such as Constitutional Court No 5/ UU-X/2012, No. 33/PUU-XI/2013, and No. 122/PUU-XII/2014 described that court decisions has enforce supremacy of the constitution.

3.2. The Development of State Control Doctrine

Some of the judgments of the Constitutional Court regarding to judicial review of laws with constitution related to the change of state sovereignty in the category the development of state control doctrine (*Hak Menguasai Negara*) such as the Forestry, Electricity and Minerals.

a. The Constitutional Court Decision No. 32/PUU-VIII/2010 on Judicial Review Application Law No. 4 of 2009 on Mineral and Coal Mining of the Constitution

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The judgment of Constitutional Court is granted the request of the applicant in part. The Constitutional Court only accepts the application of Article 10 letter b.

Based on the Constitutional Court Decision No. 32/PUU-VII/2010 provides for the obligation of the state to protect, respect and fulfill the interests of the community and its land area will be incorporated into the mining regions and communities that will be affected. The decision illustrates the change in sovereignty of countries that were previously the only state "... considering the views ... the public ..." in accordance with Article 10 letter b of Law No. 4 of 2009 through this decision the state has an obligation to protect, respect and fulfill the interests of the community that the regions and soil hers will be incorporated into the mining regions and communities that will be affected.

b. Constitutional Court Decision No. 35 / PUU-X / 2012 on Judicial Review Application Law No. 41 of 1999 on Forestry of the Constitution

The judgment of Constitutional Court verdict on the petition is granted the request of the applicant in part The Court only accepts the application of Article 1 letter 6, Article 4 paragraph (3), and Article 5.

The Court Decision is strengthens that has been change of state sovereignty to popular sovereignty in the development of state control doctrine. Based on this decision, the word “states” in Article 1 of Law No. 41 of 1999 on Forestry to be abolished "indigenous forest is a forest located in the area of indigenous peoples. And Article 4 paragraph (3) of Law No. 41 of1999 on Forestry "state forest control by taking into account the rights of indigenous people, all still alive and in accordance with the development of society and the principles of the Unitary Republic of Indonesia stipulated in the legislation. Prior to the decision of this forest is state forest interpreted the absence of recognition of indigenous forest. Only after the verdict gives the strength that indigenous forests separated from state forests as a form of popular sovereignty.

c. Constitutional Court Decision No. 85 / PUU-XI / 2013 on Judicial Review Application No. 7 of 2004 on Water Resources of the Constitution

The decision of the Constitutional Court on the petition of the petitioner is granted in its entirety. UU No. 7 of 2004 is contradictory to the Constitution of the Republic of Indonesia and does not have binding legal force. Law No. 11 of 1974 onirrigation reenact replace Law No. 7 of 2004 on Water Resources.

SDA Law in practice has been interpreted differently from consideration in the Decision No. 058-059-060-063/PUU-II/2004 and No. 008/PUU-III/2005. Court needs assert that in Indonesia, meaning that the land and water and natural resources contained in it are controlled by the state and utilized for the benefit of the people mandated that in the view of the founders of the nation, especially the framers of the Constitution, water is a very important element and the basics of life and human life or dominate the life of many people. As one important element in human life that dominate the life of many, water should be controlled by the State of Article 33 paragraph (2) and (3) of the Constitution.

Based on these considerations, the utilization of water there must be severe restrictions in an effort to preserve and sustainability. As there may be restrictions on the State Power

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of Water Resources. Act No. 7 of 2004 on Water Resources by the decision gives enormous power to the private sector to manage the Water Resources of Indonesia. This is considered contrary to the Constitution.

d. Constitutional Court Decision No. 95/PUU-XII/2014 on Judicial Review Application Law No.18 of 2013 on Preventing and Combating Deforestation and Law No. 41 of 1999 on Forestry of the Constitution

Granted the request of the applicant for the most part;

1. Article 50 paragraph (3) letter e of Law No. 41 of 1999 on Forestry contradictory to the Constitution *to the extent not interpreted that provision is excluded communities that live for generations in the forest and is not intended for commercial purposes*;
2. Article 50 paragraph (3) letter e of Law No. 41 of 1999 on Forestry.

This is one of the Constitutional Court decisions outstanding. The Constitutional Court, it is to guarantee the fulfillment of the constitutional rights of indigenous forest communities. This decision also shows the process of sovereignty transfer that is the country's sovereignty in terms of the right to control the state shifted to the sovereignty of the people.

Some of Constitutional Court decision is relating to the Right to Control State including No. 32/PUU-VIII/2010, No. 35/PUU-X/2012, No. 85/PUU-XI/2013, No. 95/PUU-XII/2014 shows that there has been a change the system in which is the state sovereignty to people sovereignty. That is proof that Indonesia has transformastion of constitutional sovereignty.

3.3 Dispute Institutional Countries

Some of the judgments of Constitutional Court is regard to judicial review of laws and Constitution related to transformation of constitutional sovereignty dispute in the state institutions category. Here are some Constitutional Court decision related to state institutional dispute ever handled by the Constitutional Court.

a. Constitutional Court Decision No. 068/SKLN II/2004 on Case Highlights Dispute Authority of State Institutions in the case of the appointment of the Chairman of the BPK by the President

The object of dispute this petition is the authority of the appointment of Chairman of the BPK by the President. Constitutional Court in this case declare that DPD as the applicant then the President and Parliament as a defendant is a state institution whose authority granted by Constitution. Authority disputed by the applicant is correct authority to propose the appointment of the chairman of the BPK and also true authority of the President and Parliament to appoint the Chairman of the BPK such as mandated by the constitution. However, in this case the applicant can not prove their arguments to the Court because at the time the increase on chairman of BPK, council has not been constituted and yet contain members. The Court decided that the President and the Parliament is a state institution when it has the constitutional authority to appoint the chairman of the BPK without any considerations of the DPD, because at that time there was no DPD.

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b. Constitutional Court Decision No. 025/SKLN II/2005 Case Highlights Dispute Authority of State Institutions in terms of determining the certainty Leadership in Lampung Province

Dispute objects in this application is the determination of certainty Leadership in Lampung Province. Constitution Court Decision is reject the application for entirety. Type Case No. 025/SKLN-III/2005 is justified and not in conflict with the law with due regard to Article 35 of Law No. 24 of 2003 regarding the Constitutional Court, which states that "1) the applicant may withdraw a request before or during the hearing the Court Constitutions do. 2) the withdrawal referred to in paragraph (1) resulted in the petition can not be filed again. Under the provisions of Article 35 of the Law of Constitutional Court led to the Petitioner can not reapply for *a quo.*

c. Constitutional Court Decision No. 004 / SKLN-IV / 2006 on the principal case Dispute Authority of State Institutions regarding the appointment and dismissal of the regent and deputy regent approval by the Minister of Home Affairs

The judgment of Constitution Court is reject the application for entirety. In the Constitutional Court's decision No.004/SKLN/2006, states to define the object of the dispute is not only interpret textually sound of Constitution which authorizes certain institutions, but also the possibility of seeing their implicit powers contained in a principal authority and the necessary authority (necessary and proper) for running the authority of the principal. The principal powers is contained in an Act. This means that the Court declare the petition can not be accepted (*niet ontvankelijk verklaard*). In this dispute over state institutions in dispute in the Constitutional Court is the President, Minister of Home Affairs, Parliament, and the Regent.

d. Constitutional Court Decision No. 1/SKLN-X/2012 on Case Highlights Dispute Authority of State Institutions in determining the phase delay local elections in the Aceh Province

The object of dispute this petition, the delay stages of local elections in the Aceh Province.

1. The Court found the defendant of the Commission as a body of state authority granted by the Constitution, while KIP Aceh as the second defendant is not a state agency that has the authority granted by Constitution.
2. The Court found the applicant's interior minister as though included in the affairs of presidential authority granted pemerintahan impressed that has positioned itself as a defender of the interests and provide top notch privileges to a particular group, should the applicant as civil servants can treat its citizens in an equal.
3. That the applicant stating the purpose thereof occurrence of specific disorders *Kamtibnas* is not in accordance with security conditions in Aceh that are still favorable in organizing the General Election to determine prospective phase and sequence number within the requested program is going well, the Police Department here is also stated that the security in Aceh yet entered in a dangerous state.
4. That the apparent level of community participation were handed over ID cards is very high ranging from 176.767 pieces as a form of support which is the real

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strength of the political landscape, the security issue is the authority of the police which is not an excuse to delay Election has gone well/normal just because no one political parties obviously delay the election would be detrimental Aceh.

5. That request did not specify the applicant's vague because the applicant authority clearly drawn, reduced, blocked, ignored, and are disadvantaged by the Second Respondent in this case KIP Aceh.

E. Constitutional Court Decision No. 3/SKLN X/2012 on the Principles of the State Institute for Dispute Case in terms of authority is the General Elections of Governor and Vice Governor of Papua

The object of dispute in this petition is the General Election of Governor and Vice Governor of Papua. The verdict on the petition is granted on the grounds that in consideration of the law in the Constitutional Court decision No. 27 / SKLNVI/2008 mentioned Election Commission which is national, permanent, and independent is a state institution that has the constitutional authority to hold elections as referred to Article 22E paragraph (2) of the Constitution, so that the applicant has legal standing to apply for dispute the authority of state institutions and the respondent as a representation of local government is the constitutional authority of state institutions also governed by the Constitution.

The Court did not find convincing evidence that the election of the Governor and Deputy Governor of Papua is the specificity of Papua Province which is different from other provinces in Indonesia, the Court also believes the election of Governor and Vice Governor by Parliament as provided in Article 7 paragraph (1) letter a of Law No. 21 of 2001 does not meet the criteria of specificity or privileges attached to the relevant area, either because the right of the origin attached to the Papua Province which has been recognized and kept alive, as well as the background of the establishment and the real needs of the need for specificity and privileges of Papua as part from the Republic of Indonesia.

The Judgment of 3/SKLN-IX/2012 is the only verdict that states grant the request. In this case obviously the Commission is a state institution whose authority is granted directly by the Constitution, as well as the Parliament of Papua included in subjectum litis and the object of dispute is to hold elections in the province of Papua which authority to hold elections system was taken over by the Parliament of Papua.

Some of the decision of the Court relating to the institutions of the country including 068/SKLNII/2004, 025/SKLNIII/2005, 004/SKLN-IV/2006, 1/SKLN-X /2012, 3/SKLNIX/2012 shows that there has been a change in the system of sovereignty where the system of state sovereignty shifted to a system of people sovereignty. It is a proof that Indonesia has transformation of constitutional sovereignty.

4. Conclusion

Decision of the Constitutional Court was used as a transformation shield of constitutional sovereignty in Indonesia. The conclusion of all the Constitutional Court decisions show that the position of the Constitutional Court as the guardian of constitution is very strategic in

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constitutional of Indonesian given that the decisions of the Constitutional Court is a final and binding decision. Through decisions in the category of basic rights in the enjoyment of education; right to control the country; institutions constitutionality of the country have proved the sovereignty of constitutional transformation in Indonesia.

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Putusan Mahkamah Konstitusi

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Postponement Case of Imported Garlic Through Affiliate Relations : Trade Conspiracy

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Abstract

Import and export activity is a trade that became an important factor in supporting the growth of the economy of a country. Export and import in various countries, in addition to impact the economic growth also increase market openness freely in each country. Openness of the free market has a positive impact also have negative impacts. The negative impact is happening is the emergence of unfair competition. One motive of unfair competition, the example is case of trade conspiracy done through affiliate relationships to postponement imports of garlic.The existence of one of the case raises legal issues that need to be assessed, is the driving factor for business in the conspiracy trade done through an activity delays the realization of the import of white garlic, then how can the implications arising from the existence of the conspiracy trading activities for other business actors. After knowing the driving factors and implications for other business actors, further on whether the legal consequences that will be imposed for the perpetrators of trade conspiracy. To know the that question, it will be a research method normative and descriptive approach that where the latter aims to enrich the research in the field of business competition. The findings resulting from this research is clear that the legal regulation of the activities of business competition is one thing that is very important in increasing the economic value of a country and a way to lower conspiracy activities of trade between businesses in the era of market transparency.

Keywords: *Affiliate Relations, Conspiracy Trade, Imports*

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1. Introduction

The free market is one of the effects of globalization. Globalization arising from their lack of market transparency was a victory against the ideology of open economies. Openness of the economy in the world economy, prompted many countries previously relatively closed into a country that opens its domestic economy as well as economic resources allow it to move freely in the transnational economy .[1] The movement of econimic with a transnational method give one impact, namely the emergence of export and import activities.

Exports and imports that occurred from the openness of the market, is one of the factors supporting the growth of the economy of a country. The emergence of the global economic growth of their activities and import ekpsort make developed countries and developing country competing in the transnational transactions. Competition occurs between countries, besides bringing positive impact it also carries a negative impact. Negative impacts on their export and import activities is the existence of an unfair competition conducted among business actors.

Unfair competition described in Article 1 paragraph 6 of Act No. 5 of 1999 is a competition among business actors in conducting activities for the production and / or marketing of goods or services carried out by dishonest or unlawful or anti-competition. The act of unfair competition apart from the meaning of Article 1 paragraph 6 of Act No. 5 of 1999, can also be seen from the fulfillment of some elements in the process of competition in economic activities, which include[2]:

1. Do unlawful manner;
2. Potential losses for entrepreneurs competitors;
3. Do the fault (deliberate or negligent); and
4. There is a causal relationship between the acts and damages.

As one of the motives unfair competition as described above is carried out through a conspiracy.

Conspiracy activity is a form of cooperation conducted between businesses and businesses with stakeholders. The activities of the conspiracy aiming to dominate the market in order to achieve the desired interest by businesses and stakeholders. Market control or become ruler in the market has a positive correlation with the level of benefits that might be gained by businesses, but to get it is not uncommon unfair business actors perform actions contrary to the law. Such actions are usually carried out by operators through a relationship affiliation.

[1] Benny Pasaribu, Ph.D., " *Kebijakan Industri Versus Kebijakan Persaingan",* Komisi Persaingan Usaha, Edisi 2 No. 3, November 2009, hlm. 5

[2] Abdulkadir Muhammad, Loc Cit, hlm. 452

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Affiliation is a relationship that arises from the existence of a coordination established between business operators to run the same interest among business actors.[3] Their affiliation make entrepreneurs may perform an activity in a coordinated and good conspiracy. The one of example case conspiracy affiliated well, namely the case of conspiracy trade done by postponement the time of import of garlic between business actors and stakeholders.

Conspiracy trade by postponemant the time of import of garlic conducted between businesses with stakeholders, suspected by the Business Competition Supervisory Commission in violation of Regulation Ministry of Trade No. 60 / M-DAG / PER / 9/2012 on Imports of products Horticultural and Regulation of the Ministry of Agriculture No. 60 / Permentan / OT.140 / 9/2012 concerning Horticulture Product Import Recommendation. The suspected violations done by granting an extension of Letter of Import Approval by the General Foreign Trade Ministry to companies engaged in the import of garlic without a Horticulture Product Import Recommendation of the Ministry of Agriculture for the second period. In addition, the issuance of KT 9 by Quarantine Ministry of Agriculture Republic of Indonesia as evidence of documents.

Based on the brief description above, then make writer interested in conducting in-depth research on the case and put it under the title "Postponement Case of Imported Garlic Through Affiliate Relations : Trade Conspiracy".

2. Formulation Of The Problem

Based on the description of the background of the above, then the formulation of the problem of this research are:

1. What is the motivating factor for businesses actors in the conspiracy trade done through a time postponement activity import of garlic?
2. How implications arising from their trading activities process conspiracy for other businesses actors ?
3. What will be subject to legal consequences for the perpetrators of trafficking conspiracy?

3. Discussion

3.1. Driving Factors Doing Business Actor Conspiracy Trading Garlic with Time Postponement Import

Business competition is one of activity that is often found in economic activities, whether in services or activities in the field of selling goods. Business competition will be fair activities when they are carried out in accordance with existing regulations. Fair competition can also be a positive impact for businesses, because can create motivation or drive to

[3] www.pengertianmenurutparaahli.net

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increase efficiency, productivity, innovation and quality of the products it produces. In addition, a positive impact for business, fair competition can also provide positive impact for its customers, as well as reduced prices, more choices and improving product quality. But on the contrary if the petition are not done in accordance with existing regulations, the activities of the competition into the activities of unfair business competition, and may well have a negative impact for businesses, consumers, and even to the national economy.

On the 2013, there is an unfair competition in the field of import of garlic in the Indonesian market, where a potent suspicion of conspiracy trade which resulted in the market share, which occurs between the Trade Ministry of the Republic of Indonesia, the Director-General of Trade of the Republic of Indonesia, with companies in the field of import of garlic are affiliated. The trading conspiracy guessed by the Commission is done by the postponement of the time of import of garlic.

Indonesia is the country with the activities of commodity imports of garlic supreme, it began when Indonesia joined the *World Trade Organization* (*World Trade Organization / WTO*), as it was, garlic origin other countries including China invaded the Indonesian market and shut down businesses garlic local farmers for price fell. As a result we signed the *WTO*, local garlic prices plummeted due to start invaded garlic imported from other countries that looks big and has a good enough quality. The addition of the above factors Indonesian farmers are also experiencing an issue on fertilizer and seed. Fertilizer and seeds for planting and development of the garlic plant has not been registered in the Ministry of Agriculture so difficult if purchased using state funds or state budget. Fertilizer and the seed can only be purchased by the farmer with his own money, it could lead to garlic farmers have to spend a very high cost.

The presence of two of the above factors that cause Indonesia experienced dependence on imports of garlic from other countries, and than instability of the weather that occurred in Indonesia in October 2012 until the year 2013 which resulted in the failure of the harvest by the farmers of garlic in Indonesia, making Indonesia must import garlic to the Chinese State. The necessity to import garlic to the Chinese state, which is caused by the market demand for garlic is quite high in the period October 2012 until March 2013, accompanied by the scarcity of garlic that occur as a result of crop failures, it makes businesses with government use , namely the postponement of time import of garlic through policies that created and published by the government so that there is a shortage of garlic in Indonesia within a certain time.

Policies are created and published by the Government, namely the policy of the Ministry of Trade Regulation Number 60 / M-DAG / PER / 9/2012 on Imports of products of Horticulture and the Ministry of Agriculture Regulation Number 60 / Permentan / OT.140 / 9/2012 on Recommendation Imported Products horticulture, in which regulates the issuance RIPH and SPI, utilized by the Government and importers to reap high profits. The

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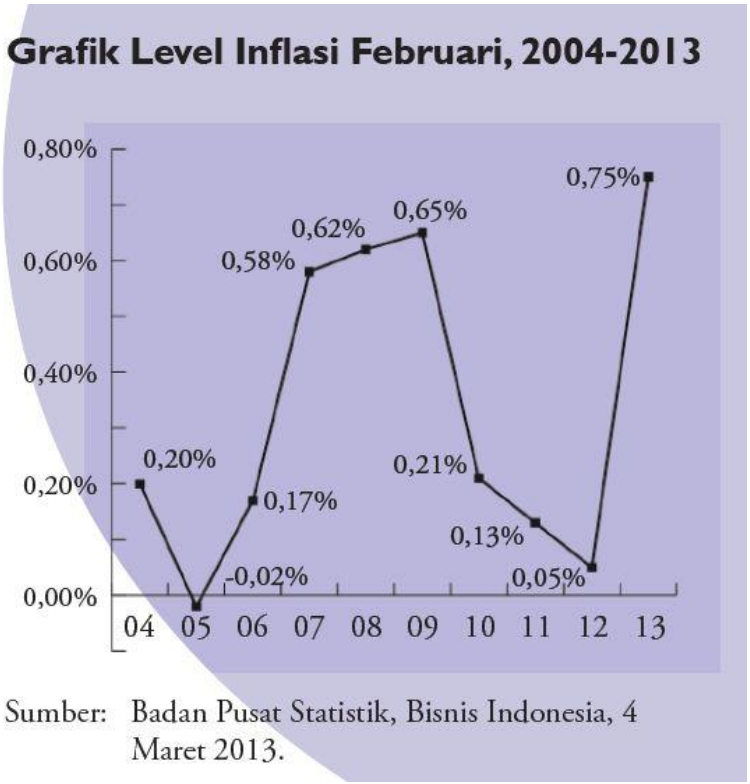
arrangement of the publication RIPH and SPI are intended to regulate the volume of imports of garlic with garlic imports volume setting in the midst of failure garlic crop farmers locally, it can lead to inflation. As for 2004 until 2013, the highest inflation occurred in January 2013 (1.03%) and February 2013 (0.75%). Inflation in January-February calendar year 2013 has reached 1.79%, while the inflation target according the state budget in 2013 amounted to 4.9%. Based on BPS data, the largest contribution to the inflation rate in February 2013 were foodstuffs (0.49%). The foodstuff commodities are major contributors to inflation is the biggest garlic (0.12%), and followed tomatoes and onions (0.07%), and red pepper (0.04%), while beef reaches 0 , 01%.[4]

Picture :



Inflation as described above, may cause prices to rise drastically. The price increase drastically is utilized by the Ministry of Commerce of the Republic of Indonesia, the Director-General of Trade of the Republic of Indonesia, with companies in the field of import of garlic to reap big profits. As for how the Ministry of Commerce of the Republic of Indonesia, the Director-General of Trade of the Republic of Indonesia, with companies in the field of import of garlic, to conspiracy to trade raises market share, which is done through the timing of the import of garlic to benefit greatly, namely the sequence, as following :

[4] Fika Panjaitan, 2009, *"Ekonomi dan Kebijakan Publik",* Pusat Pengkajian, Pengolahan Data dan Informasi (P3DI) Setjen DPR RI, Vol .V, No.5/I/ P3DI/Maret/2013,hlm. 13.

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1. RIPH issuance and SPI for the period October 2012-December 2012.
2. With the issuance RIPH and SPI for the period October 2012-December 2012, once used by importers who cooperate with the Director-General of Trade of the Republic of Indonesia which is engaged on behalf of the Minister of Trade of the Republic of Indonesia to extend the SPI period January-February 2013.
3. SPI extension of period of January-February 2013, with no extension RIPH preceded it can pass Import Garlic for two at the same period in different years. Imports of garlic which were passed in the period January-28 February 2013, based on the analysis depth is done by using the remaining time of one month from the expiry RIPH, which as stipulated in Article 16 Paragraph (3) that RIPH as it can be given the longest for a period 4 (four) months. As if seeing the stretcher 4 month period commencing from October 2012-December 2012, the remaining RIPH one more time, ie in January 2013. The rule is exactly what lead can do garlic imports for the period Januri 2013. Coupled with the issuance KT 9 by the Ministry of Agriculture Quarantine Agency as evidence has their documents.
4. With the import of garlic beyond the time period October 2012-December 2012, then garlic can be imported to meet domestic demand with more quota.
5. Garlic imports are up in January 2013 with a more of quota , which is about 863 containers, only 332 containers or about 9,886 tons, which can be released into the Indonesian market, and it is only for the period from October to December 2012 and January 2013 due to the documents are complete, while 531 containers stuck at the port of Tanjung Perak, Surabaya, because can not meet in the documents require.
6. There is a 563 containers stuck at the port of Tanjung Perak, due to incomplete documents, so that the 563 containers detained in the port of Tanjung Perak. Stockpiles of some container that makes the scarcity of garlic in Indonesia in February-March 2013 which resulted in higher prices of garlic.
7. At the time of the increase in the garlic is high in the month of February 2013, the government did not immediately make the issuance of SPI and RIPH, it causes can not do the spread of garlic were buried in the port of Tanjung Perak, resulting in high demand in the domestic market can not be met.

Based on the explanation above we can see that the driving factors behind the conspiracy garlic trade between the Trade Ministry of the Republic of Indonesia, the Director-General of Trade of the Republic of Indonesia, with companies in the field of import of garlic, is because they want to get high profits. The desire to get high profits between the government and the companies import garlic is done by setting import, starting from the extended SPI to use the remaining time of one month from the validity period of RIPH, so it can import more quota of garlic. Their quota increase garlic do with the timing of the issuance of SPI and RIPH as a condition of completeness Document Import garlic, can make the rare occurrence at a particular time. The emergence of the shortage, making the price of garlic to be increased due to the high market demand. The rise in prices is exactly what is causing high profits, which is where the advantage can be obtained by the parties to

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conspiracy to trade, namely the Ministry of Commerce of the Republic of Indonesia, the Director-General of Trade of the Republic of Indonesia, with companies in the field of import of garlic affiliated.

3.2 Implications Arising from Trade Conspiracy Import Garlic

Conspiracy activity can lead to implications for other business actors. The implications that occur can lead to high profits and losses are great for businesses and government as a party involved in the import of garlic. Even the impact of their activities such conspiracy may affect the country's economy. As in the case of conspiracy trades affiliated to postponement these imports, which, as has been proved by the Business Competition Supervisory Commission, raises implications for other businesses that in fact not involved in the conspiracy. Entrepreneurs who harmed from their trading conspiracy in this case is PT. Indobaru Utama.

The emergence of trading conspiracy is affiliated with the postponement time of the import of garlic over an extended period SPI 2013 without RIPH implausible. Indobaru Utama who are not members of the affiliate relationships are discriminated against, it is because when PT. Indobaru Utama asked the Ministry of Commerce regarding the extension mechanism SPI, but rejected by the Ministry of Commerce which in this case has been delegated to the Director General of Trade of the Republic of Indonesia. As for discrimination in the form of rejection experienced by PT. Top Indobaru caused by PT. Indobaru Utama not a composite of the Association of Importers of Garlic such other business entity, so PT. Indobaru Main considered competitors in imports of garlic for the period January-February 2013, which later feared would result in losses that resulted in the failure of the planning that has been planned by the importers of garlic conspiracy with the Ministry of Commerce of the Republic of Indonesia and the Director General of Trade of the Republic of Indonesia.

Discrimination resulting rejection SPI extended by PT. Indobaru Utama cause can not do garlic imported by PT. Indobaru Utama, such as companies import more garlic. As a result of a lack of transparency and discrimination by the Ministry of Trade of the Republic of Indonesia and the Director General of Trade of the Republic of Indonesia to PT. Utama Indobaru, is the inhibition of the production and / or marketing of garlic in the domestic market. Barriers to production and / or marketing of garlic in the domestic market Prolonged will make other businesses which in this case PT. Indobaru Utama will incur very high. Losses were very high levels can lead to a breakdown of the financial management system PT. Indobaru Utama.

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3.3 Law Effects From Garlic Trade Conspiracy

The Regulation Number 5 of 1999 issued to prevent actions aimed at blocking businesses or contrary to the principles of fair competition, among others, such as market access restrictions, collusion and other measures aimed at eliminating competition. The addition several actions over other actions that may result in the occurrence of unfair competition is an act of conspiracy to inhibit the production and or marketing of goods and or services of their competitors, which, as regulated in article 24 of regulation number 5 of 1999. The existence of such a conspiracy could lead to their market share.

Market domination of conspiracy can occur grave implications both for other businesses and for the economy of the country. In the case of conspiracy in affiliated trade by delaying the time of import, market domination occurred sebgai the effects of their conspiracy, causing losses to other businesses, is one of them PT. Indobaru Utama. As for the losses experienced by PT. Indobaru Utama, then the business actors who cooperate with the government in a conspiracy, proved to meet the elements of Article 24 and Article 19 letter c of regulation number 5 of 1999, which, as the fulfillment of the elements of the passage presented as follows:

Elements fulfillment of Article 19 presented by the Commission, is as follows:
Business Actors Elements :

a. Business actors in Article 1 paragraph 5 of Law No. 5 of 1999 is an individual or business entity, whether legal entity or non-legal entity established and domiciled or conducting activities within the jurisdiction of the Republic of Indonesia, either individually or together through agreements, organizing various business activities in the economic field;
b. Business actors in this case are Importers Garlic referred to above;

Elements Doing One Or Some good activities Individual Or Joint With Other People to Restrict Distribution and / or Sale of Goods and / or services on Relevant Markets :

a. Buisness Actors of the firms import of garlic fields are buisness actors that earn revenues Permissions recommendations horticultural products namely garlic for the period October 2012 - December 2012 Entities that have different legal entities;
b. Differences entity legal entity as well as the similarity of products owned consequences that each of these businesses is a company competing in the market Garlic products;
c. Cooperation undertaken by the Party concerned to make arrangements to supply the garlic is realized or not, an action that is based only on mere business interests without regard to the obligation to realize the quota in accordance with the volume and period of time;

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d. The Reported proved using the same SPI to perform maintenance and / or extension of SPI;

Elements is causing unfair competition:

a. The business actors of the firms import of garlic field is a competitor, which is supposed to compete in doing importation of garlic. But the fact that there is cooperation between the Party either directly or indirectly as described above;
b. There is a Reported behavior as importers took advantage by delaying the realization of the import which is the act of holding the supply;

There is a explanation of above, the elements of Article 19 letter c of regulation Number 5 of 1999 have been fulfilled. Furthermore, in addition to the elaboration of the fulfillment of article 19 c, the Commission also held explanation towards the fulfillment of the elements of violations committed under Article 24, is as follows:

Business Actors Elements :

a. Business actors in Article 1 paragraph 5 of regulation number 5 of 1999 is an individual or business entity, whether legal entity or non-legal entity established and domiciled or conducting activities within the jurisdiction of the Republic of Indonesia, either individually or together through agreements, organizing various business activities in the economic field;
b. Business actors in this case are Importers Garlic referred to above;

Elements Conspiring with Other Business Actors :

a. Conspiring in Article 1 point 8 of regulation number 5 of 1999 that "forms of cooperation undertaken by business actors with other business actors with the intention of controlling the relevant market for the benefit of businesses that conspiracy";
b. In Article 24 of regulation number 5 of 1999 specifically regulate the parties in the conspiracy is the Business Actors and Others Business Actors, so it is means from the Other Business Actors is the Ministry of Commerce of the Republic of Indonesia, the Director-General of Trade of the Republic of Indonesia, and the Agricultural Quarantine Agency of the Republic of Indonesia;
c. The parties conspired are companies engaged in the import of garlic by using the same parties in the management of SPI and / or extension of SPI;
d. In the case of conspiring with other buisness actors are companies engaged in the import of garlic by giving extension Period SPI outside RIPH which has no legal basis;

Involved Market Elements :

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a. Involved market in Article 1 point 10 of regulation 5 of 1999 is a market related to the range or area specific marketing by businesses for goods or services identical or similar or substitution of goods and or services;
b. In the case of importation of the involved market is Garlic Period November 2012 - February 2013;

Inhibiting element Competitors:

a. There Importers garlic that do not get SPI approval of the Ministry of Trade of the Republic of Indonesia;

Lack of Timeliness The Elements Required:

a. In publishing RIPH and SPI companies engaged in the import of garlic have got the time period required by the Ministry of Commerce of the Republic of Indonesia and the Director General of Foreign Trade Ministry of the Republic of Indonesia;
b. In such cases the companies engaged in the import of garlic do Importation beyond RIPH a given period of time;

Elements is causing Unfair Competition:

a. The business actor of the firms import of garlic field is a competitor, which is supposed to compete in doing importation of garlic. But the fact that there is cooperation between the reported either directly or indirectly as described above;
b. There is a reported behavior as importers took advantage by delaying the realization of the import which is the act of holding the supply;

As for the fulfillment of both elements of the article, which proves that there has been a violation of Article 24 and Article 19 letter c of regulation Number 5 of 1999, the buisness actors may incur Administrative Sanctions in the form of fines, while the Government will be disqualified Advistory Policy as the legal consequences arising from their trading conspiracy garlic affiliated with a time postponement imports.

Magnitude matter of fines levied against business actors that have proven violating the provisions of regulation number 5 of 1999 concerning Prohibition of Monopolistic Practices and Unfair Business Competition, refer to:

a. Article 47 paragraph (2) g, regulation number 5 of 1999, the Commission authorized to impose administrative sanctions measures include the imposition of fines as low as Rp 1,000,000,000.00 (one billion rupiah) and a maximum of Rp 25.000.000.0000,00 (twenty five billion rupiah);

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b. Guidelines to Article 47, the determination of the amount of the base value, calculated based on the quota of each Party multiplied by the amount of excessive profits, with reduced Value Added Tax (VAT) of 10% (ten percent), multiplied by the long violation;
c. Guidelines to Article 47, the Commission may impose additional fines for things that are burdensome to the calculation base value will be increased up to 100% (one hundred percent).

While the Policy Advistory given to the Government by the Commission as one of the legal consequences arising from the unfair competition, referring to Article 35 paragraph e regulation number 5 of 1999, that the Commission can provide advice and opinion concerning Government policies related to monopolistic practices and / or unfair competition through the initiative of the Commission itself and through the handling of the case.

4. Conclusion

Conspiracy activity is a form of cooperation conducted between businesses and businesses with stakeholders. The activities of the conspiracy aiming to dominate the market in order to achieve the desired interest by businesses and stakeholders. Market control or become ruler in the market has a positive correlation with the level of benefits that might be gained by businesses, but to get it is not uncommon unfair business actors perform actions contrary to the law, causing unfair competition. The existence of unfair business competition implications are bad for other businesses as well as the growth of the state economy.

One of example of the activities of unfair business competition, namely trade conspiracy case through a postponement time garlic imports conducted affiliated. The existence of such cases indicates that there has been an offense committed between businesses engaged in the import of garlic with stakeholders. The offense was committed by means of extended period of the Second Letter of Import Approval without a Recommendation Import Garlic. As for the driving factor for the prohibited activities is the desire to get high profits that implicates high losses to other businesses, namely PT. Indobaru Utama. The emergence of the implications of the high losses experienced by PT. Indobaru Utama, making the Business Competition Supervisory Commission to sanction administrative actions such as fines for businesses and stakeholders who have been convicted of a violation of article 24 of the Conspiracy of Commerce and Article 19 letter c of Market Control.

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Law as an Instrument to Protect Indonesian Domestic Agriculture Comodities Againts The Imported One To Create Economic Welfare and Social Justice

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Abstract

Some domestic agriculture comodities in Indonesia has beaten up by the imported one because of the quality matter. To increase the value of the domestic comodities, government can't decide to prohibit the imported comodities come to Indonesia. It's because of Indonesian membership in World Trade Organization which has several rules to obey. It shows on the General Agreement on Tariffs and Trade 1994 article III (1) which explain that a nation can't do something to protect their domestic product. But Indonesia had two reason to except it on GATT 1994 Article XIX about emergency action on imported products to limit it and Annex 1 WTO Treaty to avoid imported products come to Indonesia with sanitary, health, and techinal barrier reasons. Those exceptions clause need to be formulated into the *Keputusan Menteri* as the law instrument in coordination with related ministry to create multidisciplinar synergy between law and the technical matter. Then finally, the formulation of this basic research with normative method will be expected to create economic welfare by fulfilling two comodities aspects which are justice aspect on individual differences and excellence aspect on quality differences, and also to create social justice government need to omit another two comodities aspects which are efficiency aspect on individual differences and liberty aspect on quality differences.

Keywords: *Agriculture Comodities, Safeguard, Trade Barrier, WTO, Economic Welfare, Social Justice.*

1. Background

Indonesian domestic agriculture beaten down by the imported one example in this case is about salt. Australia was importing salt in total 1,2 ton with 65,2 millions US dollar value and Singapore was importing in total 24 thousand ton with 1,4 millions US dollar value to Indonesia in 2010. It's totally concerned to our nation regarding to Singapore teritorial land is

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not bigger than Jakarta. Government said those action was to fulfill the domestic salt need due to lack domestic stocks and lack technology to improve the quality and quantity of the salt industry.[1] There wasn't any government protection to the salt farmer so it makes the salt price was down into Rp. 300/kg. It's down far from the government decision price in range Rp. 700/kg for 1st quality and Rp. 500/kg for 2nd quality. It results in lower producing from the farmer and indicate the importing act. Indonesian salt farmer can only producing the less NaCl 90% due to industry and home consumption need to be more than 90% NaCl.[2]

Those complicated issues in the case of trade liberalisation and lack of government action to evolved the technology for agricultural improvement. In the other hand, the international trade especially on agriculture comodity raisen up in the case of trade liberalisation of agriculture comodities by World Trade Organization.[3] Indonesian membership in World Trade Organization which has several rules to obey. It shows on the General Agreement on Tariffs and Trade 1994 article III (1) which explain that a nation can't do something to protect their domestic product.[4]

So, how to solved those issues, Indonesian Government need to formulate a public policy through law instrument which is not contradict with the GATT 1994 article III (1) and it can accomodate every aspect which contain in the issue. The concern is about the salt farmer and also the international relation due to the import activity policy. This research hopefully will create economic welfare and social justice.

2. Issues

Based on the background, there are several issues that will be showed in this research, which are:

a. How is international law accomodate Indonesia to formulate a public policy through law instrument for helping the domestic agriculture comodities without making any contradiction with the GATT 1994 article III (1) clause?

[1] Nailul Huda, *Analisis Industri Garam Lokal di Kabupaten Rembang (Pendekatan Structure-Conduct-Performance),* Semarang: Diponegoro University Press, 2013, pp. 2.
[2] *Ibid*, pp. 3.
[3] Yusuf and Widyastutik, *Analisis Pengaruh Ekspor-Impor Komoditas Pangan Utama dan Liberalisasi Perdagangan Terhadap Necara Perdagangan Indonesia,* "Agribusiness Management Journal, Vol. 4 No. 1 March 2007: 46-56, Bogor: Institute Pertanian Bogor Press, 2007, pp. 46.
[4] Huala Adolf, *Hukum Ekonomi Internasional Suatu Pengantar,* Bandung: Keni Media Press, 2011, pp. 29.

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b. How is the suitable way need to be taken due to emergency situation and protect Indonesian domestic agriculture comodities from the imported one?
c. How is Indonesian Government formulate the public policy through the law instrument for helping the domestic agriculture comodities to create economic walfare and social justice?

3. Research Method

This research is using Dogmatic Legal Research. A legal research that based on written materials or secondary data to analyze theoretically about legal principle, legal doctrine, regulation and law system.[5] This Dogmatic Legal Research is concepted as it written on the law act or law be concepted as a norm for measuring how normal people behave.[6] And also this research is using two conceptual approach which are economic and morality. This approach used into the goods which separated by individual and quality differences. The economic approach require a fulfillment on efficiency in individual differences and liberty in quality differences to create economic welfare, and the moral approach require a fulfillment on justice in individual differences and excellence in quality diferencess to create social justice.[7]

4. Discussion

4.1. General Agreement on Tariffs and Trade 1994 Article XIX and Annex 1 General Agreement on Tariffs and Trade 1994 about Agreement On The Application Of Sanitary And Phytosanitary Measures as An Escape Clause for World Trade Organization National Treatment Principle

Every system needs a safety release valve to handle situations where too much pressure has been brought to bear on some part of the system. In the multilateral trading system, the product-specific safety release valve has primarily been contained in Article XIX of the GATT.[8] For example a system that state on article III GATT 1994 about national treatment principle. It saids:

[5] Soerjono Soekanto and Sri Mamudji, *Penelitian Hukum Normatif: Suatu Tinjauan Singkat,* Jakarta: Raja Grafindo Persada Press, 2003, pp. 13.
[6] Amiruddin and H. Zainal Asikin, *Pengantar Metode Penelitian Hukum,* Jakarta: Raja Grafindo Persada Press, 2006, pp. 118.
[7] Yuichi Shionoya, *Economy and Morality "The Philosophy of The Walfare State",* Massachusetts: Edward Elgar Publishing, Inc, 2005, pp. 40.
[8] Terrence P. Stewart, Patrick J. McDonough, Marta M. Prado, *Opportunities in the WTO for Increased Liberalization of Goods: Making Sure the Rules Work for All and That Special Needs are Addressed,* "Fordham International Law Journal, Vol. 24:652, Issue 1, Berkeley: The Berkeley Electronic Press, 2000, pp. 654.

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> "The contracting parties recognize that internal taxes and other internal charges, and laws, regulations and requirements affecting the internal sale, offering for sale, purchase, transportation, distribution or use of products, and internal quantitative regulations requiring the mixture, processing or use of products in specified amounts or proportions, should not be applied to imported or domestic products so as to afford protection to domestic production."

The word *"laws"* in article III GATT 1994 indicate that a WTO Parties shouldn't make a regulation based on law instrument to protect their domestic products. But, the XIX article of GATT make an exception. Pursuant to GATT Article XIX and the Safeguards Agreement, a WTO Member may impose a safeguard where its competent authorities have found in an investigation increased imports of a given product that have arisen from unforeseen developments and are injuring domestic producers of like or directly competitive products. Or it called *"global"* safeguards available under GATT Article XIX should also be distinguished from the *"bilateral"* safeguards provided for in many RTAs.[9] So, the parties could make a suspension and doing a necessary things to prevent or remedy such injury.

The other International Law Instrument for domestic agriculture comodities protection is Agreement on The Application of Sanitary and Phytosanitary Measures on GATT 1994 and also the Annex provisions. On the article 2 at least there are three point that giving any exception to any nation of WTO parties to making any regulation for securing the nation sanitary and health. We can see on the article 2 which are:[10]

a. Members have the right to take sanitary and phytosanitary measures necessary for the protection of human, animal or plant life or health, provided that such measures are not inconsistent with the provisions of this Agreement;
b. Members shall ensure that any sanitary or phytosanitary measure is applied only to the extent necessary to protect human, animal or plant life or health, is based on scientific principles and is not maintained without sufficient scientific evidence, except as provided for in paragraph 7 of Article 5;
c. Members shall ensure that their sanitary and phytosanitary measures do not arbitrarily or nunjustifiably discriminate between Members where identical or similar conditions prevail, including between their own territory and that of other Members. Sanitary and

[9] Tania Voon, *Eliminating Trade Remedies From The WTO: Lessons from Regional Trade Agreements,* "Georgetown Business, Economics & Regulatory Law Research Paper No. 1504030, Georgetown University Law Center, 2009, pp. 9.
[10] Article 2 *"Basic Rights and Obligations"*, Agreement on The Application of Sanitary and Phytosanitary Measures on GATT 1994.

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> phytosanitary measures shall not be applied in a manner which would constitute a disguised restriction on international trade.

Those article could be very useful in the case for human protection, so it can be a real reason to banned any imported product with health protection reason that our government makes. But this things is very sensitive which regards to the technical reason that Indonesia need to do and making an adaptation with the Indonesian sociological aspect.

4.2. Emergency Actions to Protect Its Domestic Agriculture Comodities From The Imported One

In this case, there would be two suitable ways to take in this case for domestic agriculture comodities protection againts the imported one. The first is ban all the imported agriculture comodities which is threating the domestic one. The second is enhancing the domestic agriculture comodities in purpose to giving the domestic product more value on it. Because its an emergency situation that needs fast decision, so enchancing the domestic comodities is not the right solution. Because enhancing the domestic comodities is the way far, start from giving any protection to the farmer which is need a big budgets and also time consuming. Banning all imported agriculture comodities is posibble due to the two reasons that i had explains on 4.1. section.

So, if Indonesian Government choose to ban all the risky imported products will helps the domestic agriculture comodities and also saves our rate currency. Because, if the imported products come down to Indonesia, our exchange currency will decreased by paying with our currency and it moves to the importer country. As we can see the exchange rates theory told that:[11]

> "As holdings of foreign money increase relative to domestic money, the relative value of foreign money will fall, or the foreign currency will depreciate."

And we are making example for Australia with Australian Dollar currency importing an agriculture comodities to Indonesia with Rupiah currency, so with theory above Australian Dollar currency will increase and the Indonesian currency will fall.

In the other side, Indonesian Government should protect the Indonesian Agriculture Comodities Farmer through a policy how enhance the comodities with affirmative action. The

[11] University of Texas Arlington Paper, *Chapter 18 – Exchange Rate Theories*, Texas: Texas Arlington University Press, pp. 458.

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affirmative action should be oriented to the supporting living standards and reducing inequality. In the affirmative action should contains three social liberal thesis which are:[12]

a. Thesis 2: Assistance targeted than general equity: Interest of sociopolitical liberal is to help suffering people through proactive action in the prevention of poverty, and not to generalize social differences.
b. Thesis 3: The principle of subsidiarity: The word "subsidiar" means "help, complete". In the context of the principle of subsidiarity, liberal social policies would only intervene when individuals or communities are not able to help themself or if it is not sufficient.
c. Thesis 10: Prioritising aid subject rather than the object of subsidies or intervention against market: Liberal social policy choose to provide assistance directly to those in need rather than manipulate prices and cover-up costs through market intervention or subsidies.

Because from that enhancement will effected on the quality of the comodities. I said, the quality matter is a must because we can see a trade determination is affecting the exchange currency. For example, Consider a world with two countries, two goods, and two moneys. People in country one produce only good one but consume both goods one and two; people in country two produce only good two but consume both goods. Thus there is a complete specialization in production, and trade allows people to consume both goods.[13] The concrete example would be, a world only with Indonesia and Australia, salt and soy bean, Rupiah and Australian Dollar. Indonesia is only produces soy bean but consume soy bean and salt: Australia is online produces salt but consume soy bean and salt. If Indonesia only produces soy bean, so it need a salt which will be imported from Australia. We are gonna buy it with Rupiah and Indonesian currency will fall as stated on theory above. But, if Indonesia produces soy bean and salt but the salt is lack of quality, the consumption rate will try to find the good quality and the answer is import action. So, the Indonesian Government must taking care of the quality matter through the protection policy.

[12] Hieronymus Soerjatisnanta and M Farid Al Rianto, *Law Function as An Instrument To Build Stability of Moral Economy in Globalization Era,* "3rd International Multidisciplinary Confrence On Social Science Bandar Lampung University Proceedings", Bandar Lampung: University of Bandar Lampung Press, 2015, pp. III-42.
[13] Alan C. Stockman, *A Theory of Exchange Rate Determination,* "The Journal of Political Economy, Vol. 88, No. 4 (August, 1980), Chicago: The University of Chicago Press, 1980, pp.678.

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As example, Japan has using escape clause that was happen in 2005. Japan was reject American Apple that got imported to Japan. And one of the Japanese scientific name as Erwina Amylovora told that American Apple brought a bacterium that renders infected apples inedible and unmarketable, causing them to shrivel up and discolour names Fireblight.[14] Japan is a fireblight-free country and is particularly sensitive to the serious effects that would follow from the establishment of fireblight in host plants in Japan. To combat the risk of introducing fireblight, Japan has applied strict phytosanitary measures to imported apple fruit.[15]

4.3. Indonesia's Keputusan Menteri As a Law Instrument That Acomodate The Esclape Clause Formulation To Protect Domestic Agriculture Comodities And Create Economic Walfare And Social Justice

Based on section 4.2, there are two type how to using the escape clause that accomodated by international law instrument. The first is baning the imported product with security actions and sanitary matter or enhancing the domestic agriculture products to add some more value on it. But those things need to be formulated into the national law instrument. In this case, the best decision how to covers the formulation is through *Keputusan Menteri.*

Basically, *Keputusan Menteri* is writen decree which are provision or decision *(Beschikking)* that made by bodies or state administrative functionary.[16] Decree was recently called with actions provision that based on one side law called as *Beschikking*.[17] The decrees are made for solving a kind of concrete thing which are known in the beginning by the Government. In the other side, laws are made to solved things which unknown before, but posibbly happen. Laws are general provision which aimed to the abstract things.[18] The delegation system shows the laws creation is the higher laws authorize the lower law hierarcy. Indonesian Constitution is giving an authorization or delegation to the act.[19] And finally

[14] Caroline E Foster, *Japan – Measures Affecting the Importation of Apples: Rotten to the Core?,* "Australian Year Book of International Law Vol 25", 2009, pp. 313.
[15] *Ibid.*
[16] Bagir Manan, *Beberapa Masalah Hukum Tata Negara Indonesia,* Bandung: Alumni Press, 1997, pp. 135.
[17] Hassan Suryono, *Hukum Tata Usaha Negara,* Surakarta: LPP and UNS Press, 2005, pp. 27.
[18] Soenobo Wirjosoegito, *Proses dan Perencanaan Peraturan Perundangan,* Jakarta: Ghalia Indonesia, 2004, pp. 13.
[19] Rooseno Hardjowidigdo, *Wetgevingsleer di Negeri Belanda dan Perkembangan Undang-Undang saat ini di Indonesia,* Jakarta: Badan Pembinaan Hukum Nasional Departemen Hukum dan Hak Aasi Manusia, 2004, pp. 5.

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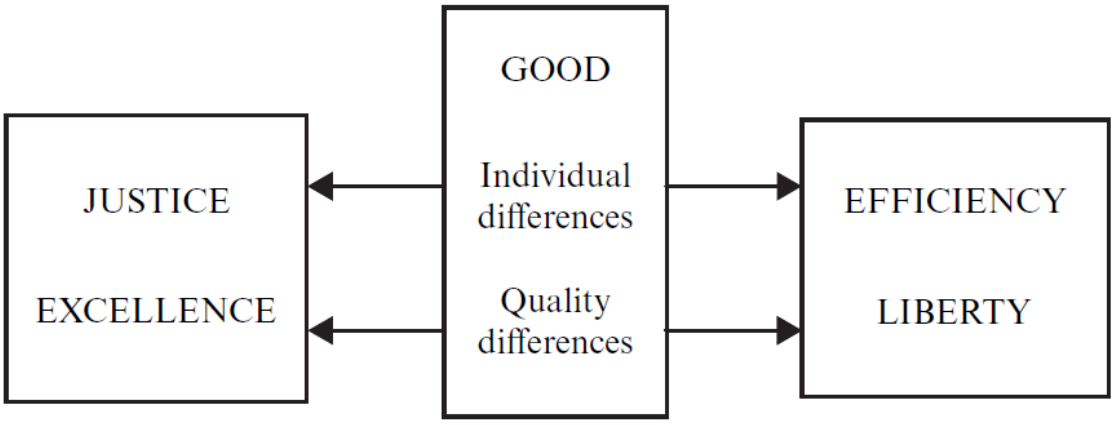
provision is the legal acts which performed by government tools, their statement will inside the implementation of special rights, in purpose to declare an alteration in legal field relation.[20]

The concrete actions that we could formulate, if the government are trying to suspend and making a limitation to the risky imported agriculture comodities, the *Keputusan Menteri* should be taken on trade ministry. Because, the concrete thing need to be done here is a trade activity. This suspension and limitation actions is also need to be covers with the real data on the market to proof that our domestic comodities is on a threat. After that, *Keputusan Menteri* need to be taken by the Agriculture Ministry because of the sanitary reason. But this fundamental research need a big effort of technical matter. This formulation need to be linked with the higher education research about the agriculture protection. And the last, the most important thing is to enhancing the domestic agriculture comodities by protecting the farmers and also the comodities. The enchancement must be coordinate with three ministrial bureau. The first is Foreign Minister which using the international law as the door and and international diplomacy for struggling our nation interest. Second, Internal Affairs Minister which formulate the domestic policy, Third, Agriculture Ministry to doing the concrete and technical things on the comodities.

Finally, this agriculture comodities case protection is related to an approachment of social justice and economic welfare. How to fulfill the social justice and economic welfare, we need to see this figure back down:



[20] Amrah Muslimin, *Azas-Azas dan Pengertian Pokok tentang Administrasi dan Hukum Administrasi*, Bandung: Alumni Press, 1980, pp.144.

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Figure 1. Yuichi Shionoya's goods theory of social justice and economy welfare.[21]

Those figure mentions that how to fulfill social justice and economic welfare by the goods. How to fulfill economic welfare the set point is how the goods get accomodated by the individual differences and has efficiency value on it. By the quality differences the goods need to has liberty aspect on it. In the other side, how to fulfill the social justice, sets point to the goods that accomodated by the individual differences and has justice value on it. By the quality differences, the goods need to has excellence aspect on it.

5. Conclusion

Based on the discussion above, there is several conclusion which are:

a. General Agreement on Tariffs and Trade 1994 Article XIX accomodate the security actions to limit and suspend the imported agriculture products. Annex 1 GATT 1994 accomodate the escape clause due to sanitary reason of agriculture comodities that will threat other domestic agriculture comodities.
b. How to protect the domestic agriculture comodities are banning the imported product by suspending actions due to domestic comodities threat and sanitary and health reason to ban all the imported product to Indonesia. The other way to protect the domestic agriculture comodities is enhancing the domestic product, but government need to do affirmative actions which contain the social liberal thesis.
c. Keputusan Menteri is an instrument that accomodate escape clause formulation. Through Foreign Minister decree, holticulture minister decree and internal affairs decree harmonize the political things, law things and technical things. Finally, the comodities matter that linked with Yuichi Shionoya goods theory will result in fulfillment of social justice and economic welfare.

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[21] Yuichi Shionoya, *Loc.Cit.*

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Village of Financial Management

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Abstract

This village is the pioneer of the democratic system of autonomous and sovereignty. The village government is an integral part of the local government. Rural finance is the hierarchy of the financial structure of the central government above the district; provincial and central government have a significant role in the allocation of financial resources of the village.

To support this, the budget of each village throughout Indonesia will receive budget calculations based on the number of villages; with such considerations are the number of population, poverty, regional and geographical difficulty level, in order to improve the welfare of the village and equitable development.

Keywords*: village of vinancial, village of development.*

1. Introduction

The Indonesian Constitution asserts that Indonesia is a unitary state with a Republican form, thus corresponding wording of Article 1 paragraph (1) of the Constitution of the Republic of Indonesia in 1945 divided Top provincial regions and these provincial regions shall be divided into districts and cities, which tiap- by province, district, and the city has a regional government, which is regulated by law. Based on empirical circumstances Indonesia, historically there is a village which is a forerunner to the formation of society and government in Indonesia. Long before the modern nation-state is formed, a kind of village social groups or indigenous peoples, etc., have become an important part of a state order. Between the village, kingdom, state or equally a region different organizational forms, but the same object and subject perpetrators, namely the people.[1]

The village in general is an agglomeration of settlements in the area of rural (rural). The village is an administrative region under the districts headed by a village chief. The village is the pioneer of the democratic system of autonomous and sovereign. Since long, the village has

[1]Francis Wahono, Bersekongkol atau Saling Kontrol, dalam Duto Sosialismanto, Ibid, hal. xxi.
Dalam: Didik Sukriono, 2013, *Hukum, Konstitusi, dan Konsep Otonomi: Kajian Politik Hukum tentang Konstitusi, Otonomi Daerah dan Desa Pasca Perubahan Konstitusi,* Setara Press Malang, hlm 188.

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systems and mechanisms of governance and social norms respectively. Until now village development is still considered to be a quarter of the eye by the government.[2]

2. Material and Method

The methode that be used is data analysis which is village of financial management. village where the structure as a government that has the authority to determine the financial management and development indonesia.

Thus, a methods of legal discovery will produce legal argument that can answer law issues through legal logical and systematical.

3. Result/ Discussion

Fiscal decentralization is happening in Indonesia, it is not enough only to the regional administration. Fiscal decentralization in village autonomy is a vital issue that must be fought by the village authorities in the implementation of autonomy.

Rural financial management includes: [3]

1. Planning:
2. Implementation;
3. Administration;
4. Reporting and Accountability.

3.1 Determin Of Financial Management Of Rural Development

Related to this, a new breakthrough, which until now warmly discussed is the existence of Article 72 of Law No. 6 of 2014 on Rural Finance linked to the Village where one source of funds comes from the village of Revenue and Expenditure. Practically, this raises a lot of pros and cons, because basically the government's intention to recognize the existence of the village and provide an opportunity for the village to accelerate the development realized by positive law. However, on the other hand, the readiness of the village to village financial management that so many can not be ignored given the conditions and the potential Villages in Indonesia pluralistic.

Enforcement Act establishes village Desa entity as the reporting entity. Desa entities have greater authority in terms of expenditures, including the authority to form a business entity Village.[4]

[2]Misbahul Anwar dan Bambang Jatmiko, *Kontribusi Dan Peran Pengelolaan Keuangan Desa Untuk Mewujudkan Anggaran Pendapatan Dan Belanja Desa Yang Transparan Dan Akuntabel (Survey Pada Perangkat Desa Di Kecamatan Ngaglik, Sleman, Yogyakarta)*, Universitas Muhammadiyah Yogyakarta, 2012, hlm 388.

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[4]Junaidi, Perlakuan Akuntansi Sektor Publik Desa Di Indonesia,Jurnal NeO-BisVolume 9, No. 1, Juni 2015, hlm 40.

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The village fund management in many settings stated that the financial management of the Village is a series of activities that includes planning, implementation, administration, reporting and accountability. Furthermore, the existence of a strengthening of the management and financial oversight of a good village is absolutely necessary to prevent or at least reduce the possibility of irregularities as well as the realization of the development goals village. Supervision is performed to determine whether or not a deviation occurs, and when it happens, you need to know the causes of these deviations so that no destructive trends worsen.[5]

Rural Finance is the hierarchy of the financial structure of the central government on it. district, provincial and central government have a big share in the allocation of financial resources Village. In Law No. 6 2014 proposed revenue structure of village consisting of revenues Village, assistance from the district administration, assistance from the central government and provincial governments, donations from third parties, and loans Village.[6]

Regulation provides the foundation for the more autonomous village in practice, not just a normative. With no its granting authority financial management Village (based on the Minister of Interior No. 113 of 2014 on financial management of the Village was signed by the Minister of the Interior Tjahjo Kumolo on December 31, 2014 is once again revoke Minister Regulation No. 37 Year 2007 regarding Guidelines for Financial Management Desa. Permendagri on financial management of the village that was recently made to implement the provisions of Article 106 of Government Regulation No. 43 year 2014 on implementing Regulations of Law No. 6 of 2014 on the village of Regulation of Minister of the Interior regarding Guidelines for Financial Management of the village. Where in this regulation arranged several things: the principle of village financial management, financial management powers Village, APBDesa, management, as well as guidance and supervision.

In Chapter VIII Financial Page 1945, among others mentioned in Article 23 paragraph (1) that the state budget as the manifestation of the financial management of the State each year is set by law and carried out in an open and responsible for the overall prosperity of the people. Article 23 A which provides that taxes and other fees that are forced for the purposes of the State shall be regulated by law. Other matters concerning state finances sesuaidengan mandate of Article 23 C shall be regulated by law.[7]

Rural financial particulars set out in Article 71-75 of Law Village. In Article 71 paragraph (1), stated that "Finance village is all the rights and obligations of the village which can be valued in money and everything is in the form of money and goods related to the implementation of the rights and obligations of the village." Furthermore, the regulation concerning the finances of the village and other things associated with elaborated further in a variety of regulations, including regulation No. 43 Year 2014 concerning the Implementation Regulations of Law No. 6 Year 2014 about the village, PP 60 of 2014 on Village Fund is sourced from the state budget, PP 22 Year 2015 on Amendments to Regulation No. 60 In 2014, PP 47 Year 2015 on Amendments to Regulation No. 43 In 2014, Permendagri 113 of 2014 on the Management of Rural Finance, Ministry Decree 241 / PMK.07 / 2014 on Implementation and Accountability Transfer to Regional and Village Fund, Ministry Decree No. 250 / PMK.07 / -

[5]Sujamto, *Aspek-Aspek Pengawasan di Indonesia*, Sinar Grafika, Jakarta, 1987, hlm 66

[6]Antono Herry P.A, *Kesiapan Desa Menghadapi Implementasi Undang-Undang Desa (Tinjauan Desentralisasi Fiskal dan Peningkatan Potensi Desa),* Jurnal Ilmiah *CIVIS*, Volume V, No 1, Januari 2015, hlm 741.

[7]Telly Sumbu, *Hubungan Pemerintah Pusat dengan Pemerintah Daerah dalam Kerangka Pengelolaan Keuangan Negara dan Daerah,JURNAL HUKUM NO. 4 VOL. 17 OKTOBER 2010,* hlm 568

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2014 on Appropriations Transfer to Regional and Village Fund, Permenkeu 93 / PMK.07 / 2015 on Procedures of Allocation, Distribution, Use, Monitoring, and Evaluation of the Village Fund, and Permendes PDTT No. 5 Year 2015 on Use of Funds Rural Priorities.[8]

Apart from these problems, the village fund in terms of overall miscellaneous income in the village managed APBDes must be managed in a transparent, accountable, participatory and orderly and disciplined budget (Article 2 of Regulation No. 113 of 2014). Because it comes from the state, then the management must follow the rules that apply to the management of public funds. In Permendagri 113 of 2014 concerning Financial Management of the village, and village affairs management have been set out in Chapter V. In it, stipulated that the village fund management consists of five things, namely planning, implementation, administration, reporting, and accountability.

If judging from upstream, village financial management from the planning stage. First held village meetings organized by the Village Consultative Body (BPD) to discuss matters of a strategic nature (see Article 54 of Law Village). Then, the results of consultation in the form of village development planning Rural development forum, followed by the village planning (musrenbangdes) held the head of the village and devices. Musren-Bangdes is discussing the Medium Term Development Plan Rural (RPJMDes) every six years and the Village Government Work Plan (RKPDes) and APBDes every once a year.

After Raperdes about APBDes agreed by the village chief and BPD slowest month of October and the results of the evaluation of the regent / mayor or district head (which got the delegates to evaluate Raperdes APBDes) states that Raperdes APBDes not contrary to the public interest and the laws and regulations are higher, APBDes can Defined. The use of village funds managed by the village through the power of the head of the village and used in accordance RPJMDes, RKPDes, and APBDes.

The report submitted APBDes realization of the village head to the regent / mayor form of first-half report that must be submitted no later than the end of July and the end of the half year report no later than the end of the month January next year (Article 37 of Regulation No. 113 of 2014). In addition to reporting, the village chief also must submit an accountability report APBDes realization in the form of village rules to the regent / mayor each year end budget (Article 38 of Regulation No. 113 of 2014).

Supervision plays an important role in ensuring that the management of village fund run by an accountable, transparent, and participatory public for the benefit of the villagers. Strict supervision, control, professionalism and integrity become an important prerequisite.[9]

Rural financial management actually monitored plated by many parties. In Article 44 of Regulation No. 113 of 2014 states that "the Government of Regency/City fostering and overseeing the implementation of the financial management of the village." Dalamhal this, the Regional Inspectorate will play an important role as a leading financial institution village affairs management supervision. While at the central level, the CPC and the Financial and Development Supervisory Agency (BPKP) also will oversee the financial management of the Village by sampling. Village funds into the realm of their control because the village fund is state money from the state budget so the management should be accounted for in accordance with the rules

[8]Antonius Galih Prasetyo Dan Abdul Muis, Pengelolaan Keuangan Desa Pasca UU No. 6 Tahun 2014 Tentang Desa: Potensi Permasalahan Dan Solusi, JURNAL DESENTRALISASI Volume 13, No.1, 2015, hlm 20
[9]Ibid, hlm 22

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applicable. To monitor the implementation of the guidance and supervision of village funds, the central government has also formed a team to control the village fund consisting of officials from the various ministries.[10]

Fiscal decentralization is happening in Indonesia, it is not enough only to the regional administration. Fiscal decentralization it should come to the village government, because as has been stated in Law No. 23 In 2014, the village is an autonomous region. Fiscal decentralization in village autonomy is a vital issue that must be fought by the village authorities in the implementation of autonomy.

Decentralization led to the implication that the village is required to improve the accountability of the obligation to explain how the realization of the authorities obtained. Suryanto (2010) mentions three types of accountability: first, political accountability, connected with the process and the electoral mandate, the mandate given by the people to politicians who occupy executive and legislative positions within a government. Second, administrative accountability, referring to the obligation to carry out tasks that have been given and received within the framework of the authority and the resources available. Third, financial accountability, reporting is accurate and timely information about the use of public funds, which is usually done through reports that have been professionally audited.[11]

Fiscal allocation at village level is a balance funds from local governments, provinces and the center called the Village Fund Allocation (ADD). In prinsipial, purpose and function of the ADD equal to the DAU is in an effort to reduce the level of disparities in development across the village in the context of decentralization and in the acceleration of poverty reduction; Source ADD has been set derived from the budget that comes from the balance funds obtained districts / cities of at least 10%. Fund balance is made up of tax sharing and SDA plus DAU after minus employment expenses.

In Article 2 of the Indonesian Government Regulation No. 60 Year 2014 About the Village Fund Yang Sourced From Budget Revenue and Expenditure Who Have Experienced Changes So Become Regulation No. 22 Year 2015 mentioned that the Village Fund is managed in an orderly manner, abide by the provisions of the legislation, efficient , economical, effective, transparent and accountable with regard to justice and propriety as well as the interests of the local community.

Elucidation of Article 72 paragraph (2) of the Act Village states that "The amount of budget allocation designation directly to the Village specified 10% (ten percent) of and outside funds Regional Transfer (on top) gradually." That is, the provision of funds in a matter billion each new village will be enacted in the future after going through the stages of a certain time.

3.2 Rural Financial Management

[10]Ibid, hlm 23

[11]Antono Herry P.A, *Kesiapan Desa Menghadapi Implementasi Undang-Undang Desa (Tinjauan Desentralisasi Fiskal Dan Peningkatan Potensi Desa)*, Jurnal Ilmiah *Civis*, Volume V, No 1, Januari 2015, hlm 739

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a. Planning Phase

Rural development planning refers to the concept of Village Building and the Village Building. The concept of a village in the context of planning is that in planning development, village development planning needs to refer to the district/city. It is set in the village of Law, in particular Article 79 and Article 80. In Article 79 of the Village Law states that:

1. The Government of the Village planning Rural Development in accordance with its authority with reference to the development planning Regency / City.

2. Rural Development Plan as referred to in paragraph (1) are arranged in futures include:

    a. Village Medium Term Development Plan for the period of 6 (six) years; and
    b. Annual Development Plan or the so-called Rural Village Government Work Plan, is an elaboration of the Medium Term Development Plan for the Village for a period of 1 (one) year.

3. Medium Term Development Plan and the Rural Village Government Work Plan as described in paragraph (2) shall be determined by Village Regulation.

4. Village Regulations on Medium Term Development Plan and the Rural Village Government Work Plan is the only one planning document in the village.

5. The Medium Term Development Plan and the Rural Village Government Work Plan is a guideline in preparing the Budget village stipulated in Government Regulation.

6. Programme of the Government and / or local scale Local Government Rural coordinated and / or delegated implementation to the village.

Rural Development Plan as referred to in paragraph (1) is one source of input into development planning Regency / City.

b. Implementation Phase

Under Article 100 of Government Regulation No. 43 of 2014 states that the Village Shopping specified in APBDesa used with the following provisions:

a. at least 70% of the total budget used to fund the implementation of Rural Village Government, the implementation of village development, village community development and empowerment of village communities; and

b. at most 30% of the total budget of the village used to:
    1. fixed income and allowances village head and village officials;
    2. Operational village government;
    3. The operational allowances and Village Consultative Body;
    4. incentives and harmonious neighborhood residents.

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From the article it appears that the village is only limited finances to carry out the administration of the village, the implementation of village development, village community development, community empowerment village, and pay income and incentive allowances for the village, Village Consultative Body and neighborhoods / pillar citizens.

c. Phase Administration

Administration is an activity that almost made throughout the fiscal year. This activity relies on the duties and responsibilities of the Treasurer. Diligence and accuracy the condition for carrying out these activities. Administration is the recording of all financial transactions, both revenue and expenditure of money in a budget year.

d. The reporting and accountability.

The next stage in the cycle is the village's financial reporting and accountability. The village head was in charge of the financial management of the village as a whole. In PP 43 2014 Articles 103-104 regulate reporting procedures that must be done by the village chief.

More detail, reporting and accountability arrangements APBDesa use contained in Regulation No. 113 of 2014 on financial management of the village. In the Regulation also set of standards and accountability reporting format to be prepared by the chief. As the provisions of attachments that need to be met in the accountability report APBDesa realization, namely:

a. Format accountability reports progress in implementation of the budget year in respect APBDesa.
b. The village-owned wealth report format as of December 31 regarding the budget year.
c. Format reports Government and Local Government program that goes to the village.

3.2 Monitoring Rural Development

Village Law laid the basic principles for the supervision and monitoring of development peneyelenggaraan village that includes oversight by a supra-Village (downward accountability), supervision by village institutions and supervision of the public (upward accountability). There are several mechanisms for oversight and monitoring as follows:

(i) Monitoring by the Village supra gradually by District / City Government and the Central Government in this case the Ministry of Interior, the Ministry of Rural and Ministry of Finance (Article 26 of Regulation No. 60 of 2014). In operation, supervision by the District / Municipal Government is the responsibility of the Regent/Mayor. The oversight functions delegated by the Regent / City from the district and also Inspectorate District / City. Results oversight District / City Government submitted to the Central Government associated with the element of control. Supervision of village funds submitted to the Ministry of Finance, supervision of construction of the village submitted to the Ministry of Rural and supervising the government submitted to the Interior Ministry.
(ii) Monitoring supra Another village is the supervision of the Supreme Audit Agency (BPK) and the Financial and Development Supervisory Agency (BPKP). This is

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based on Law No. 15 of 2004 on the Management and Financial Responsibility State in which the financial Villages come from the Central Government and Local Government State Finance included into the category because the source state and local budgets. PP No. 60 of 2008 on the Internal Control System The government also provides authority for BPKP to oversee the financial management of the village because of the source from APBN and APBD.

(iii) Monitoring by BPD institutions as part of the oversight of the performance of the Village Head, among others through a response to a village chief accountability and public complaints submitted via BPD (Articles 55 and 82 of Law Village). As well as the functions of DPR and DPRD, BPD also have oversight of the Rural Village in managing finances.

(iv) Monitoring by the people who are guaranteed the right to monitor and respond village chief accountability report (article 82 of Law Village). Community supervision to the village in the village financial management supported by an obligation for the village to have a Village Information System as the implementation of the provisions of the public's right to information (Articles 26, 55, 82 Law on the Village).

4 Conclusion

The village fund management in many settings stated that the financial management of the Village is a series of activities that includes planning, implementation, administration, reporting and accountability. Rural Finance is the hierarchy of the financial structure of the central government on it. district, provincial and central government have a big share in the allocation of financial resources Village.

Fiscal allocation at village level is a balance funds from local governments, provinces and the center called the Village Fund Allocation (ADD). In prinsipial, purpose and function of the ADD equal to the DAU is in an effort to reduce the level of disparities in development across the village in the context of decentralization and in the acceleration of poverty reduction; Source ADD has been set derived from the budget that comes from the balance funds obtained districts / cities of at least 10%. Fund balance is made up of tax sharing and SDA plus DAU after minus employment expenses.

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Utilization of Information Technology and Electronic Transactions of Insurance

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Abstract

Insurance is also called the coverage in practice in the business world that despite the interest it is insured as a party that transferred the risk to the assets and / or soul, both for themselves and for others, but the initiative for the creation of a relationship in the insurance usually starts from the insurance company. Information technology and electronics, can be used as a tool in relation insurance for insurance companies and prospective insured and the insured, and the convenience for people to search for, identify, assess and choose which company is right for the place they insure their property and / or soul. Information technology serves as a medium of communication between the community and the insurance company, to build a communications law that raises legal relationship or the rights and obligations in the field of insurance. Responsibilities of the parties in the use of information technology and electronic transactions on insurance in the enjoyment of rights and obligations, should not violate the norms prevailing in society, in accordance with the provisions of Article 3 and 4 of Law ITE on Principles and Objectives, implementation requirements valid agreement on Article 1320 of the Civil Code and Article 250, 251 Commercial code, as well as the principles of Insurance, the parties responsible in accordance with the principle of balance which is done by anyone and is done proportionally.

Keywords: *Information Technology, Electronics, Utilization, Insurance*

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1. Background Issues

Insurance is an economic activity to handle or accept the risks faced by the people in public life. Risks facing is an indeterminate event that may occur and may cause harm if uncertain events it really happened, to the soul and goods. According to Abdulkadir Muhammad that that risk is all the dangers that threaten the safety, addressed to the richness, body and soul of man, if the danger was real reality is certain will lead to the loss of property, disability, and even death,[1] that risk exists whenever people can not master it perfectly, or to know more in advance about the future,[2] the risk is a condition that contains the possibility of deviations worse than expected results,[3] so risks contain some uncertainty, because anything can happen could not. On the other hand the risk can be seen as the spread of values in a distribution around the average value, the greater the diffusion rate, the greater will be the risk.[4]

To the possibility of risk to do a variety of ways, namely avoiding the risks of, prevent risks and withstand risks, it is an effort done by everyone. Another way to do is to do with the transfer of risk to another party, or divide the risks to the insurance company.

The development of information technology and electronics, can be used for means to easy for society in terms of the positive impact of increased productivity, efficiency and the jobs that can help meet the needs of individuals as well as society in general. The development of information technology has made the world be without borders (*borderless*) and cause significant social changes taking place so quickly.

Unable to be believed that insurance in Indonesia is still much to be improved and the need to reform the very significant kind of legislation in the field of insurance, culture and circumstances and the role of government, in order to compete with other countries, if not then the chances of the insurance business will exploited by foreign parties, for example with their insurance company PT Prudential Life Assurance, insurance (general) PT Avrist

[1] Abdulkadir Muhammad, Insurance Law Indonesia, Bandung: PT Citra AdityaBakti, 2006, page: 117.

[2] Sri Redjeki Hartono, Insurance Law and Insurance Company, Jakarta: SinarGrafika, 1997, page: 58.

[3] Emmet J. Vaughan dan Therese Vaughan, *Fundamentals of Risk amd Insurance*, Jhon Wiley & Sons, Inc, 9th Edition, 2003, page: 3.

[4] Herman Darmawi, Insurance Management, Jakarta: Earth Literacy, 2000, page: 17.

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Assurance that is developing in Indonesia. Indonesian insurance company that is able to live and grow is PT Asuransi Sinar Mas as general insurance.[5]

As we know that the development of society must be followed by the development of law in a society that, for the changes that occur not only led to the development of purely physical, but mental-spiritual development, namely the integral human development, as written by Mochtar Kusumaatmadja with reference to the opinion of Roscoe Pound: "law as a tool of social engineering"[6] that the law must appear on the front and gave directions in the renewal and development. Legal regulations are prepared not only for the present but should be able to anticipate the life to come along with the development of society and technology, in accordance with the objectives of the Indonesian Nation to nation's intellectual life, realize a just and prosperous society based on Pancasila and the 1945 Constitution.

The enactment of Law No. 11 of 2008 on Information and Electronic Transactions (hereinafter written brief as Law ITE), Act ITE shall take effect from the date of promulgation on April 21, 2008, was declared effective as of the date of promulgation and Government Regulation must be set a maximum of two (2) years after the enactment of the legislation, as set forth in Article 54 of Law ITE. Regulations implementing the Law ITE those that have been issued Government Regulation No. 82 Year 2012 on the Implementation System and Electronic Transactions, the matters governed by this Government Regulation regulates: Operation of Electronic Systems, organizers electronic agent, implementation of electronic transactions, electronic signatures, the implementation of electronic certification, certification bodies reliability, and management of the Domain name.[7]

Some people argue that the Act ITE restrict the freedom of a person / group in opinion and expression, unburden himself (vent), as stated by AgusSudibyo from the Science Aesthetics and Technology, written in Kompas, June 2009, but on the other hand that Act ITE issued precisely to provide a filter to freedom do not excessively so may result in losses as well as new legal problems for others.

[5] http://www.mediaasuransinews.com , retrieved on August 8, 2015 At 11:20 pm

[6] Mochtar Kusumaatmadja, Function and Development Law in the National Development Research Institute of Law and Krimonologi FH-ubuntu, 1986, page: 15

[7] Article 2 of Government Regulation No. 82 Year 2012 on the Implementation System and Electronic Transactions

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In connection with the development of information and transactions that can be done through electronic media, as well as the enactment of Law No. 11 of 2008 on Information and Electronic Transactions (ITE) and the rules relating to insurance, especially Law No. 40 of 2014 on Insurance, is interesting to examine matters relating to the utilization of Information Technology and Electronic Transactions for People in Insurance.

2. Problem Formulation.

Based on the above background, the issues to be examined are:

a. How does the use of information technology and electronic transactions in the insurance?

b. How is the responsibility of the parties to the insurance against the use of information technology and electronic transactions?

3. Purpose

a. To identify and analyze on the use of information technology and electronic transactions in insurance.
b. To perform the analysis of the responsibilities of the parties to the insurance against the use of information technology and electronic transactions.

4. Discussion

4.1 Utilization of Information Technology and Electronic Transactions in Insurance.

It was inevitable that everyone can easily access what information is required, so long as one understands and understand technical uses, including in electronic transactions in public relations. The Internet is an electronic communications network that connects computer networks and computer facilities organized around the world via telephone or

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satellite,[8] to a job will be more easily solved and can seek information and disseminate information to others or the public easily and quickly.

Information Technology Support in meeting the demands of the insurance business of the network infrastructure, security, database, and collaboration with other parties to provide convenience for customers to access information and transact anytime and anyplace. Information technology infrastructure has become a tool that could affect the company's ability to achieve competitive advantage so as to make use of the information technology infrastructure as the need for a strategy that is key to allowing the implementation of system innovation, reduce costs, improve the ability of a strong bargaining position between communities and employers in defining back and improve services and enable the company to offer new products.

Chairman of the Insurance Council of Indonesia and Chairman of the Life Insurance Association of Indonesia (AAJI), Hendrisman Rahim said the bank's use of IT in business, tourism, transport is not new, even absolute. This trend is also transmitted to the insurance business, life and loss. These systems improve efficiency and effectiveness. For example, in the application of the decision-making system and building a data warehouse for Business Intelligence, as well as developing e-commerce. Currently, all life insurance companies are already using IT in their business, especially for database storage system and data processing. The role of IT is to reduce the cost commissions, premiums could also be cheaper.[9]

A discussion of the use of information technology and electronic transactions for people, especially in the insurance in this paper, read and learn in advance the statutory provisions in force at this time that Law No. 11 Year 2008 on Information and Electronic Transactions (hereinafter writable Law ITE) and Law No. 40 of 2014 on Insurance, to get these regulations do not have to buy directly book containing the rules (in physical form), but can be obtained from the electronic information, of course, also have to read, analyze provisions in the 1945 Constitution as amended, as well as studying other library materials related to information technology and insurance issues.

[8] Suzana and Ernawati Waridah., Dictionary of Indonesian. Bandung, Living Word Imprint Kawan Kita, 2013, page: 253.

[9] http://keuangan.kontan.co.id/news/ti-pangkas-biaya-di-industri-asuransi-10-20, Downloaded date 14 september 2015 At 10:35 pm

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As stipulated in Article 1 paragraph (1) of the Act ITE: The electronic information is one or a set of electronic data, is not limited to text, sound, pictures, maps, plans, photographs, electronic data interchange (EDI), electronic mail (electronic mail), telegram, telex, telecopy or the like, letters, signs, numbers, access codes, symbols, or perforations that have been processed that has meaning or can be understood by people who are able to understand :

Article 3 says that: Utilization of Information Technology and Electronic Transactions conducted under the principles of legal certainty, benefits, prudence, good faith, and freedom to choose technology or technology neutral.

Article 4 says that: Utilization of Information Technology and Electronic Transactions carried out with the aim to:

a. Educating the nation as part of the world information society;
b. Developing trade and the national economy in order to improve the welfare of society;
c. Improving the effectiveness and efficiency of public services;
d. Opening the widest opportunity to everyone to promote thinking and capability in the use and utilization of information technology optimally and responsibly; and
e. Providing a sense of security, justice, and legal certainty for users and providers of Information Technology.

Freedom of information and providing information through the media of electronic technology must also consider the provisions stipulated in the 1945 Constitution as amended either inArticle 28: "Freedom of association and assembly, issued thoughts with oral and written, and so on are set by Law", in other chapters arranged on Human Rights relating to the use of freedom technology is on:
Article 28 C: "Everyone has the right to develop themselves through the fulfillment of basic needs, is entitled to education and to benefit from science and technology, arts and culture, in order to enhance the quality of life and for human well-being"

Article 28 F: "Everyone has the right to communicate and obtain information to develop

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personal and social environment, seta right to seek, obtain, possess, store, process and convey information by using all available channels".

Based on the provisions contained in the 1945 Constitution that use existing technological development, including technologies in communications, is the right of all people and include human rights protected by law, which can be useful for education, development of science and technology, art and culture to improve the quality his life for the welfare of human beings, as well as to obtain and impart information through all available channels.

Freedom as a human right protected by the law of course must be balanced to respect the human rights of others in an orderly manner in the life of society, nation and state to consider moral, religious values, security and public order in a democratic society as the provisions written in the Constitution RI 1945 amended Article 28 J Figures (1) and Net (2) is as follows:

(1) "Everybody is obliged to respect the human rights of others in the orderly life and society, nation and state"

(2) "In carrying out the rights and freedom of each person shall be subject to the restrictions established by law with the sole purpose of securing due recognition and respect for the freedom of others and to meet the demands of a fair in accordance with considerations of morality, values against, security and public order in a democratic society ".

In connection with the insurance business conducted by business people as activities of receiving transfer of risks from the public individually or in groups, to objects that contain risks. Insurance in general can be seen in the written provisions in Article 1 paragraph (1) OF the Insurance Act, are:

"The agreement between the two parties, example in the insurance company and the policyholder, which became the basis for the acceptance of premium by the insurer in exchange for:

a. Reimburse the insured or the policyholder for loss, damage costs incurred, loss of profits, or legal liability to third parties which may be suffered by the insured or the policyholder due to the occurrence of an event that is uncertain: or

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b. Provides payment based on the death of the insured or a payment based on the life of the insured with the benefits that the amount has been established and / or based on the results of fund management.

Understanding insurance above in accordance with the type of a commercialinsuranceto be natured merely for profit, including the type of insurance is life insurance and general insurance (losses), on social insurance implemented by legislation this formulation is less precise, given the social insurance is mandatory, where the social insurance is not based on an agreement (the agreement the parties); it is obligatory that is not based on the agreement. Thus, in the Law of Insurance which regulates the general implementation of insurance under the agreement and also governs the social insurance compulsory, so that the formulation of the terms of insurance should not have written that insurance is an agreement but that insurance is engagement, engagement is a bond that can give rise to legal relations originating from the agreement as well as from the legislation. So it must be differentiated from the existing formulation in the Book of the Law of Commercial Law of insurance to business which indeed is based on the insurance agreement.

Presented by Sri Redjeki Hartono, that insurance is a result of the evaluation is very essential human needs, namely the need for safety and protection, against possible losses,[10] as put forward by James. L. Athearn in his book Risk and Insurance, stated that the risk was a major aspect of human life in general and an important factor in insurance.

The insurance agreement that has an interest in the insurance object is insured party, therefore the insured person is given the freedom to decide on insurance companies where the risk will be transferred. Freedom to choose the insurance company is certainly to the public (insured) by giving precedence to the insurance company in the country, meaning that people can choose a foreign company when capacity in Indonesia is not possible to accept insured by the insurance objects will be transferred, or because there is no insurance company in country towards a particular object and as well as the type of insurance you want.

Technological developments in the field of information must be utilized as much as possible by anyone in a responsible manner, because the development of the technology itself through the thought process is not easy, as well as by certain permissions, so that these technologies fit for use by the public, as stipulated in the 1945 Constitution and ITE Law itself, so the

[10] M. Suparman Sastrawidjaja, and Endang ..*Legal Protection Insurance Insured Deposit Insurance Insurance Business*, Bandung: Alumni, 1997, page: 96.

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technology is used as a communication tool proportionately. The use of technology in proportion means that in connection with the transition of risk and choosing an insurance company which is desired by the prospective insured as well as the formulation of the contract, a communication that would lead to a legal relationship, so that communication in the use of information technology in business transition such risks constitute legal communication, resulting in building the legal communication parties must have a good faith, honest and open, not only an obligation but also the prospective insured should be done by the insurance company.

The existence of the Act ITE still observe the principle of proportional, so that freedom of opinion and expression are recognized constitution is ensured.[11] Agus Yudha Hernoko (2011) using the principle of proportionality is not concerned about their balance (equality) results, but emphasize the proportion of distribution of rights and obligations between the parties.[12] So that the development of technology should be used responsibly, not excessive in accordance with the need to follow the laws and norms prevailing in society, including religious values recognized in Indonesia, so it will not cause problems, does not violate the rights of others, including law problem.

4.2 Responsibility of the Parties in the Insurance Against the Use of Information Technology and Electronic Transactions.

The sense of responsibility in the Great Dictionary of Indonesian is the state ought to bear everything in case anything should be prosecuted, blame, sued, and so forth.[13]

Algra et al. interpret responsibility as a translation of the Dutch "verantwoordelijkeheid", is the obligation to bear responsibility and bear the losses (if required), both in law and in administration.[14] Furthermore, Hans Kelsen argued about legal liability (legal liability) that he called in the traditional theory, that the responsibility is divided into two (2) types, namely: responsibility based fault and strict liability. Responsibility based errors are the responsibility imposed on legal subjects or offenders who committed an unlawful act or criminal act for their mistake or negligence (negligence), while

[11] *Ibid*, page: 8-9

[12] AgusYudhaHernoko, *Contract Law Principle of Proportionality in Commercial Contracts*, Jakarta: Kencana, 2011, page:. 30-32.

[13] Op.cit, *Big Indonesian Dictionary*, page .: 628

[14] H. Salim and Erlies Septiana Nurbani, *Application of Legal Theory On Research Dissertation and Thesis*, Jakarta: Rajawali Press, 2014, pp .: 207-208.

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the ultimate responsibility that his actions lead to a result which is considered detrimental by lawmakers and there an external connection between the act with its consequences.[15]

It is understood that the responsibility is the obligation to bear losses due to negligence or as a result of an unlawful act, and there is a causal relationship between the acts with the consequences. Form of responsibility may be the application of sanctions provided for in law and in social norms and religious norms.

Responsibility in this discussion is related to the relationship the parties to the insurer in respect of the use or utilization of information technology and electronic transactions. Information technology is a technique to collect, prepare, store, process, publish, analyze, and / or disseminate information as provided for in Article 1 Paragraph (3) of the Act ITE.

Each person or group should be aware that when he chose to make communication with other parties for the use of information technology, the person or group has committed an act of law, so that all matters submitted must legally defensible.

Utilization of information technology and electronic transactions should be conducted under the principles of legal certainty, benefits, prudence, good faith and the freedom to choose technology or technology neutral.[16] More on this principle as it is written in the explanation of Article 3 of Law ITE. Act ITE is a legal basis or legal basis for the utilization of information technology and electronic transactions, so for anyone who uses this tool to get legal recognition, utilization of information technology and electronic transactions pursued to support the process of informed so it can be useful in improving the welfare of the community, for the parties concerned, by being careful attention to all aspects of the potential harm, both for themselves and for others in the use of information technology and electronicstransactions. The use of information technology by the parties in electronic transactions is not intended to deliberately and without rights unlawfully causes damages to the other party without the knowledge of the other party, therefore the use of information technology and electronic transactions not focused on the use of certain technologies in order to follow developments on future. Therefore, it is wise to use the term "free", freedom in society, should be used proportionately, because smoking is not without limits but still consider the order of life, norms of living in society, it may be said smoking would be more

[15] *Ibid*, page: 211-212
[16] Article 3 of Law ITE

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appropriate to be replaced with "open "openness, thus the situation became relatively dependent on how far and how much freedom is given by order of the community members.[17]

The responsibility of the parties to the insurance in the use of information technology and electronic transactions in accordance with the principles and objectives set forth in Articles 3 and 4 of Law ITE and also provisions relating to insurance that is on the terms of a legitimate occurrence of insurance, as stipulated in the general civil law provisions, namely Article 1320 Book of the Law of Civil Law:

1. The Agreement, concerning: the object of insurance, risk, premiums, type special clauses and insurance policies.
2. The authority to conduct legal action, the insured or the policyholder can be held liable in law as well as the insurer (insurance company) is a company that is legal.
3. The existence of specific objects (possessions or persons)
4. Causes of kosher: the content of the agreement is not prohibited by law, lawful and not contrary to public order

Special requirements as stipulated in Article 250 and 251 the draft Trade Law (Commercial code): the requirements to the interests of the object attached to the insured / policyholder, as well as the required notification (information) that very clear about the object of insurance.

From the terms of the insurance over the course can be done by using information technology and electronic transactions, in order to facilitate the provision of information from the parties, in addition there is to be done directly, especially in the clarity of the insurance objects, which require direct inspection by the insurance company as it relates to the responsibility of the parties, if it can happen insurance or not, if there is an agreement for the insured, then the transaction making of an insurance contract to do more through the internet, here requires confidence in both parties that the pair may be responsible for the information that is already submitted and agreed to the legal relationship in insurance.

A description of the insurance agreement above was in commercial insurance, whereas in the compulsory insurance of course, can also be done by using information technology and electronic transactions throughout indeed against certain parties such as the people (individually and collectively) is obliged to follow the insurance stipulated in certain laws, for

[17]Satjipto Rahardjo. *Build and Remodel Law Indonesia An Interdisciplinary Approach.* Yogyakarta: Genta Publishing, 2009, page: 28

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example in the case of card printing social insurance programs (compulsory) and the acquisition of information necessary parties.

Modern communications technology of course must pay attention to the norms prevailing in society, there are legal norms, religious norms, moral norms, and norms of customary law. Obviously there needs to be a concern of all elements of society to supervise as control over the entry into force of the norms prevailing in society. The values contained in each regulation certainly has a specific purpose when the rules are made and enforced, which in each of the rules contained grades of skill, prohibition, compulsion and sanctions for violators, including here is the rule of law of a country made by the authorities to organize life in society.

Enactment of Act ITE is to use information technology for the benefit of trade and growth of the national economy for the public welfare, so the use of information technology is done safely to prevent abuse by taking into account the values of religion and social culture of Indonesian society.[18] This means that the regulations contained in the Act ITE is inseparable from the norms of living in society. The use of information technology and electronic transactions openly not unlimited freedom but freedom is responsible.

Abuse in the use of information technology and electronic transactions, especially in the field of insurance means the existence of an act committed by a particular party is not as it should be. When viewed from the benefit of the use of information technology to insurance activities, a greater tendency by an insurance company, the first to provide information where the information is expected to attract people to want to buy insurance products offered, at least to introduce an insurance company with the type of insurance that is run by the company. If a violation of law, the insurance company should be responsible. And for the use of information technology and electronic transactions as a means to ease in finding muchinformation about insurance companies, insurance products offered, as well as other benefits that exist in a particular company, about the ease of transaction and no less important is about the advisability or legality of insurance companies, including insurance tamping power itself, as if the force of tamping insurance in accordance with certain insurance objects exist in the country, is certainly easier to do as well as supervision. Community certainly must be careful in its choice of the insurance companies which were selected, which conformed to the principles set out in the Act ITE Article 3, and the Law of the Insurance

[18]Siswanto Sunarso. *Information and Electronic Transaction Law: A Case Study of Prita Mulyasari.* Jakarta: PT Rineka Copyright 2009: page: 195

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Article 24 Paragraph (1) and Paragraph (2) of the voting rights insurance companies and the capacity of the insurance company.

The use of information technology and electronic transactions that do not correspond to their intended use, including the infringement as stipulated in Article 4 of Law ITE, writing that: Utilization of Information Technology and Electronic Transactions carried out with the purpose of educating the nation as part of the world information society, developing trade and the national economy in order to improve the welfare of society, improving the effectiveness and efficiency of public services, as well as to open up greater opportunities to everyone to promote thinking and capability in the use and utilization of information technology optimally and responsibly; and provide a sense of security, justice, and legal certainty for users and providers of Information Technology.

The responsibility of the parties to the insurance, especially in the use of information technology is also the implementation of a rule of law made by the authorities in a country to regulate and control the process of society, in this case strongly influenced by the implementation of the rule of law itself. Law enforcement is a task, which is carried by law enforcement officials, a task that must be carried out, namely to implement the legislation in force, so that law enforcement must be exercised in accordance with the law.[19] Law enforcement must not only carried out by law enforcement officials only, it will affect other factors by the rule of law, public law and legal culture of society and the means infrastructures required in the law enforcement process itself.

Society plays a role in increasing the use of information technology through the institutions established by the community, such agencies are institutions engaged in the field of information technology and electronic transactions. The role of government and society above show their direct involvement by governments and communities to implement the provisions of the Act ITE. The government must be able to provide legal certainty, fairness and protecting the public interest. Communities in assessing and determining the selection on which insurance the right of an interest in the property and / or soul, for yourselves, family or a third party are the responsibility of insurance policy holders, so that information technology and electronic transactions can be used responsibly for the community and the parties are bound in relation to insurance

[19] Bernard L. Tanya. *Law Enforcement Ethics in Light*. Yogyakarta: Genta Publishing, 2011. Page: 27

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5. Conclusions and Recommendations

5.1. Conclusions

Against the issues discussed in this paper after the discussion, can be summed up as follows:

a. Information technology and electronics, can be used as a tool in relation to insurance for insurance companies and prospective insured and the insured, and the convenience for people to search for, identify, assess and choose which company is right for the place they insure their property and / or soul. Information technology serves as a medium of communication between the community and the insurance company, to build a communications law that raises legal relationship or the rights and obligations in the field of insurance.

b. Responsibilities of the parties in the use of information technology and electronic transactions on insurance in the enjoyment of rights and obligations, should not violate the norms prevailing in society, in accordance with the provisions of Article 3 and 4 of Law ITE on Principles and Objectives, implementation requirements valid agreement on Article 1320 of the Civil Code and Article 250, 251 Commercial code, as well as the principles of Insurance, the parties responsible in accordance with the principle of balance which is done by anyone and is done proportionally.

5.2. Recommendations

a. Developments in information technology and electronic transactions should be used responsibly based on the principles and objectives set forth in the Act ITE, including in the insurance business.

b. That the provisions of the law can be run effectively, particularly the implementation of the Act ITE and the Insurance Act should need to be increased dissemination (legal counseling) on all elements of society, government and businesses as well.

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Tax Amnesty In Indonesia: From Fairness In Taxation To The Awakening Of Tax Awareness

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Abstract

Indonesia has a variety of tax problems that are generally encountered in other countries, such as low tax compliance, lower tax revenue, to the low capacity of the tax administration agency. To overcome this matters, in July 1st 2016, government has imposed The Law No.11 about Tax Amnesty (Tax Amnesty Act). The method in this research is doctrinal, done through legislation, analytical, and conceptual approaches and complemented by socio-legal approaches.

Tax amnesty program has some disadvantages which still in contrary with the principle in taxation, which is known as Adam Smith's Four Canons in Taxation; euality, certainty, convinience & economy. Supposedly, the fulfillment of those principles will ensure fairness in taxation so it can raise taxpayer awareness. Lack of taxpayer understanding about tax amnesty has create fear in taxation. In the other hand, this program also give some advantages, because can lure they who evade tax to participate in tax amnesty program.

Keywords: *Tax Amnesty, Fairness in Taxation, Tax Awareness*

1. Introduction

Taxpayers are heroes for their country. Through taxes, they contribute to the community to assist the government in carrying out governance functions—such as infrastructure constructions, policy making to achieve common goals and prevent clashes in the community, to promote the welfare and prosperity of the people, justice, and so forth—and the surplus used to the government's public saving.[1]

Tax collection is defined by the authority of powers of the government to take a man's wealth and hand it back to the community through the state treasury fund, as has been noted by Jean Jacques Rousseau in his book Le Contract Social, where some of their rights being entrusted to one organization that takes care of the common interest named state.[2]

The Oxford dictionary defines tax as a compulsory contribution to support the government to carry out public services. It is levied on persons, properties, incomes,

[1] Rochmat Soemitro, *Dasar-dasar Hukum Pajak dan Pajak Pendapatan*, 1994, Eresco, Bandung, page 8.

[2] Safri Nurmantu, *Pengantar Perpajakan*, 2005, Granit, Jakarta, page 1.

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commodities, and transactions at a fixed rate mostly proportionate to the amount on which the contribution is levied.[3]

According to Rochmat Soemitro, taxes are the contributions from people to the state treasury fund which is enforceable by law and does not receive reciprocal services directly to the payer, and used for state general expenses.[4] Therefore, basically, no one voluntarily and happy to pay taxes because taxpayer feel that they have nothing to gain reciprocal from the amount of taxes they pay.

In Indonesia, the understanding of the tax function is still very low, even though tax is actually not only about raising revenue by adding funds optimally into the state coffers (budgetary function), but also to organize and direct people toward the government wants (regulerend function) such as `redistributing` wealth and income, calibrating the economy through financial `regulation, or repricing` goods and services that are incorrectly priced by the market e.g. alcohol, tobacco, carbon emissions etc.[5]

Indonesia has a variety of tax problems that are generally encountered in other countries, such as low tax compliance, lower tax revenue, to the low capacity of the tax administration agency. Moderation of global economic growth, the American economy which is not yet stable, slowing growth in China, uncertainty in monetary policy, declining commodity prices, and geopolitical risk: middle east and brexit, causing Indonesian economic slowdown, decrease in the growth of the industrial sector/manufacturing, enlarged budget deficit. This condition bring Indonesia into some sectoral matters such as unemployment, poverty, and inequality between community.[6]

To overcome this problem, in July 1st 2016, government has imposed The Law No.11 about Tax Amnesty (Tax Amnesty Act). The goal is to boost domestic liquidity, improvement of the exchange rate, competitive rates, and increased investment. It's short-term goal is to increase tax revenues from ransom, while the long term is to get complete and accurate databases, so that the calculation of potential tax revenue is more reliable in the future. After several tax amnesties program launched in 1964, 1984 and 2008—but did not have much success due to low participation–Indonesia has now begun to apply another tax amnesty in 2016.

2. Research Methodes

The method in this research is doctrinal, done through legislation, analytical, and conceptual approaches. As a complement, socio-legal approaches also being used to examine the law as a social phenomenon that is related to the tax amnesty, fairness in taxation, and tax awareness based on The Tax Amnesty Act No.11 year 2016.

3. Tax Amnesty Justification in Tax System

Tax system is a taxation pattern which harmoniously coordinated taxation including tax policy, tax law, and the tax administration that has to be in balance and harmony to support the state revenue. Tax policy is different from fiscal policy, although many thoughts

[3] Hornby A.S., *Oxford Advanced Learners Dictionary of Current English*, 2005, Oxford University Press. 7th Edition, page 1516.
[4] Rochmat Soemitro, *Op.Cit*, page 23.
[5] Ali Chidir, *Hukum Pajak Elementer*, 1993, PT Eresco, Bandung, page 134.
[6] Faisal Fatahillah, head of tax office KPP Teluk Betung Directorate General of Taxation, Ministry of Finance, at Seminar Tax Amnesty for Tax Payers, Post Graduate Program Master of Law, University of Lampung, August 27th 2016.

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there are the same. Fiscal policy is a policy of adjustment between revenue and government expenditure in order to achieve economic stability and economic growth that is desired. The main objective of fiscal policy, are:

a) To guarantee economic growth
b) Maintaining reasonable price stability
c) Increasing the rate of potential growth without disturbing other purposes.[7]

According to Devereux, tax policy is a policy that associated with how to determine what will be assigned as tax base, who will being taxed or being excluded from tax, what will be the object of taxation, how to tax and how to determine the procedures for implementing the tax. For the examples of taxation policy is tax reform, sunset policy, tax amnesty, or tax holiday.[8]

Within the framework of state revenues, Indonesia had applied some tax policy, that is:

a. Tax holiday for company tax;
b. Stamp duty exemption for foreign investment;
c. Exemption of import duties for capital goods in the context of foreign investment;
d. Exemption of vessel transfer tax;
e. Investment allowance for profits transferred to the country of origin;
f. Tax amnesty in 1965 and 1984 but failed, because the tax system has not been built.[9]

Tax amnesty is a term used to describe a one-time offer to settle an outstanding tax debt for an amount that is less than the current debt. In other words, this approach means enabling taxpayers to pay unpaid tax debts under suitable circumstances without incurring additional late fees and other penalties. Tax amnesties are accepted as one of the politically popular ways used for increasing the state revenues, and their importance in tax policies rises day by day.[10]

Tax amnesty is defined as waiver or reduction and sometimes removal of penalties in back taxes to encourage defaulting taxpayers to pay what they owe within a specified window. It could also be said that tax amnesty is where the evader is granted freedom from prosecution but must pay the tax and full monetary penalties. The objective for tax amnesty is to forgive or negotiate the tax liabilities of individual and corporate tax payers in line with laid down statutes. An amnesty must necessarily have legal or legislative backing for it to be effective and deadline for compliance must be stipulated as part of the provisions.[11]

Jacques Malherbe defined tax amnesty as a limited time opportunity for a specific group of taxpayers to pay a defined amount the possibility of paying taxes in exchange for the forgiveness of the amount of the tax liability (including interest and penalties), the waiver of criminal tax prosecution, and limitations to audit tax determinations for a period of time.[12]

Generally, tax amnesty aims to:

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[7] Kesit Bambang Prakosa, 2005, *Pajak dan Retribusi Daerah*, UII Press, Yogyakarta, page 65-66.
[8] Michael P. Devereux, 1996, *The Economics of Tax Policy*, Oxford University Press, UK, page 9.
[9] Rochmat Soemitro, Dewi Kania Sugiharti, 2004, *Asas dan Dasar Pepajakan*, Refika Aditama, Bandung, page 130-131.
[10] Wisegeek in Mehmet Nar, *The Effects of Behavorial Economics on Tax Amnesty*, 2015, International Journal of Economics and Financial Issues.
[11] Josephine A.A. Agbonika, *Tax Amnesty For Delinquent Tax Payers: A Cliché in Nigeria*, June 2015, Global Journal of Politics and Law Research.
[12] Jacques Malherbe, *Tax Amnesties in the 2009 Landscape*, April 2010, Bulletin for International Taxation, page 224.

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a. Increase tax revenue in short time. Government expect taxpayer to take this program to immediately pay their tax.
b. Prevent the potential loss of tax. Government use tax amnesty program as a bait to lure the tax evader so that they come to declare or reapatriate their assets which been a loss for the country.
c. Improve tax compliance in the future. Government expect after this program, taxpayers who have not previously been part of tax administration system, will be put on tax database and they no longer can avoid from their tax obligation.
d. As a tool for transition the taxation system, as the government has fixed the database accurately.

The Tax Amnesty Act No.11 in year 2016 determine subject, object, tariff, and sanctions:

a) The subject of tax amnesty is the entire Taxpayer—indivudual or firm—who submit the income tax in Tax Return. But first they must have Taxpayer Identivication Number (*Nomor Pokok Wajib Pajak* or NPWP) in order to participate in tax amnesty program.
b) The object of tax amnesty is a tax obligation that has not, or has not been fully resolved by the taxpayer which is represented as a wealth or assets that has not been reported as the last income tax in Tax Return (*Surat Pemberitahuan Pajak* or SPT). Assets that must be reported, for example are the form of land and/or buildings, debt, movable property such as cars, and rights over shares.
c) They who participate in this program must pay a ransom in exchange for the elimination of all tax debt debt—Income Tax (*Pajak Penghasilan* or PPh) and Value Added Tax (*Pajak Pertambahan Nilai* or PPn)—,exempt from tax administration penalties and tax criminal sanctions, by uncovering their wealth and pay some ransom as stipulated in this act. A ransom is the amount of money paid to the state treasury to get amnesty, conducted through declaration, repatriation, or both.
d) Tax rate and period devided into three:
    1) Repatriation the property of taxpayers, inside the country or abroad, that being transferred and invested into the country in a short period of 3 years.

Table 1. Repatriation Ransom Tariff

Tax Rate	Time Period
2%	1 July 2016 – 30 September 2016
3%	1 October 2016 – 31 December 2016
5%	1 January 2017 – 31 March 2017

Source: Article 4 Tax Amnesty Act

    2) Declaration of taxpayer property which is reside abroad and not transferred into the country.

Table 2. Declaration Ransom Tariff

Tax Rate	Time Period
4%	1 July 2016 – 30 September 2016
6%	1 October 2016 – 31

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	December 2016
10%	1 January 2017 – 31 March 2017

Source: Article 4 Tax Amnesty Act

3) Taxpayers who have business circulation up to Rp 4.8 billion (MSMEs) in the last tax year.

Table 3. MSMEs Ransom Tariff

Tax Rate	Scope	Time Period
0.5%	for wealth value up to Rp10 billion	1 July 2016 – 31 March 2017
2%	for wealth value over Rp10 billion	1 July 2016 – 31 March 2017

Source: Article 4 Tax Amnesty Act

e) Income tax that is not paid or underpaid after the expiration of tax amnesty, will be penalized based on income tax Act, and added with taxadministration sanction 200% of income tax that is not paid or underpaid.

4. Tax Amnesty and Fairness in Taxation

Prudent people honor their tax obligation.

This is one famous adage to describe one's tax liability as a proof of devotion to the country. Because of the nature of tax that do not provide reciprocal service to it's payer, some set of rules must be made.

Taxes must be regulated by law. It is a must, that tax need approvement from parliament or the Council of Representatives (DPR/DPRD). No taxation without representation, or it will turn into robbery, since the history has told us about The Stamp Act that had been proposed which led to the outbreak of the American Revolution almost 400 years ago.

The Article 23A of the Third Amendment of Constitution (Undang-Undang Dasar 1945) has determined that the taxes and other charges for the purposes of coercive must be based by law. The consequences of this provision, there should be no tax if there is no legal basis or acts. However, this article does not provide the taxing power restrictions to the state (represented by the Government). It is caused by any draft legislation usually always be submitted by the Government's initiative to the Parliament. [13] No limitation of taxing power also often result deviation from the principles of taxation as Adam Smith's theory which is known as The Four Canons of Tax.

Adam Smith's Taxation Canons are as follows:[14]

1) Canon of Equality. Taxation between the tax subjects should be balanced with their ability**.** Equality here means justice. It means that the broadest shoulders must bear the heaviest burden. This canon has given rise to two theories:
   a) Equality of Sacrifice Theory. It means that the burden of taxation should involve an equal sacrifice for every individual.

[13] Marlia Eka Putri, *Perlindungan Atas Hak Masyarakat Terhadap Kekuasaan Negara dalam Mengenakan Pajak*, 2015, research report documented at LPPM Unila.

[14] Adrian Sutedi, *Hukum Pajak*, 2011, Sinar Grafika, Jakarta, page 29.

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b) Equality of Ability To Pay Theory, which holds that the rich should be made to pay something more than proportionate to their income.

2) Canon of Certainty. Taxation must ensure legal certainty. The individual should know exactly what, when and how he is to pay a tax.
3) Canon of Convenience**.** Obviously, there is no sense in fixing a time and method of payment which are not suitable. For example, land revenue is realized after the harvest has been collected. This is the time when the cultivators can conveniently pay.
4) Canon of Economy or efficiency. This means that the cost of collection should be as small as possible. If the bulk of the tax is spent on its collection, it will take much out of the people's pockets but bring little into the State's pocket. It is not a wise tax.[15]

Four canons above are the ultimate principles for government to collect taxes. If fulfilled, it will create fairness in taxation, and will increase taxpayer awareness.

Tax amnesty is a free-pass for taxpayers to disclose incomplete or unreported income in their previous tax periods without having to face prosecution by the tax court or pay any penalty. During this period, the taxpayers only need to pay a special tax in exchange for a government pardon on their tax liability.

Tax Amnesty Act has stipulate not only for tax evader from inside the country or abroad, but also the MSMEs (*Usaha Mikro Kecil dan Menengah* or UMKM). Tax rates are vary, depending on what period taxpayer apply for amnesty. More longer taxpayer declare or repatriate their wealth, more greater ransom they should pay. Thus, the Act imposes harsher penalties on those who are eligible but do not follow amnesty. Article 18 determines the penalty rate 200% as an additional from income tax debt.

Most likely, this three period was create to avoid individuals to have an expectation of tax amnesty and they make a habit to extend it. The sooner they apply for amnesty, the sooner tax revenue increased.

According to Smith Canons, Tax Amnesty Act has create some problems in it's implementation. First, there's no differences between honest and dishonest taxpayer. For Tax Amnesty Act, all of them are delinquents, and this is not equality at all. The aim of this Act was to lure tax evader inside or outside the country to fulfill their liability, but it turn out to discourage the compliant taxpayer from continuing to comply with their tax obligations.[16]

The lack of socialization has caused unconvenience for taxpayer, which has create bad precedent about tax amnesty. People are afraid to calculate and report their wealth, even though the Act only mention the wealth refers to the wealth that have not been reported in Tax Return. In the end there is a confusion and mix between central tax with local tax like Land and Building Tax or Vehicle Tax.

One of main target of Tax Amnesty Act actually large business, but MSMEs with a turnover up to Rp4.8 billion also become subject in Tax Amnesty Act. In terms of fairness of taxation, there is Non Taxable Income (*Penghasilan Tidak Kena Pajak* or PTKP). Tax Income should be calculated from Taxable Income (*Penghasilan Kena Pajak* or PKP) after deducting with Non Taxable Income.

By using MSMEs turnover as tax base which is first stipulated in 2013 with Government Regulation No.43, government has doing tax from MSMEs gross income. This means whether they gain profit or loss, they still have to pay tax full from they turnover. And with Tax Amnesty Act, MSMEs have to pay ransom too. This is not fair enough for them,

[15] http://www.economicsdiscussion.net/taxes/canons-of-taxation-enunciated-by-adam-smith-discussed/1948

[16] http://mediaindonesia.com/news/read/64106/tax-amnesty-tidak-menyasar-masyarakat-kecil-dan-menengah/2016-08-29

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because government should provide ease and convinience for MSMEs in order to grow, as it is a pillar of our economy.

5. Tax Amnesty and The Awakening of Tax Awareness

There is no denying that Tax Amnesty has brought some advantages for the country. The programs are generally a "win-win" for taxpayers and tax administrators. A further benefit is that amnesty program can increase the tax base and thereby improve future tax collections.[17]

For the first period of tax amnesty in Indonesia (July 2016–September 2016), Tax Amnesty Ransom has reached Rp97 billion, from Rp165 billion that has been targeted by government.[18] This means about 59% has been succesfully achieved from this program.

Tax amnesty indeed is a program that has been taken by government as tax policy that make people who evade taxes will be stimulated to come voluntarily in order to eliminate their fine, penalty, or any consequences to face the court. Other than that, this Act has providing some new resources for government to explore new kind of Income Tax. Government, through The Directorate General of Taxation now planning Income Tax from social media users who use their accounts to sell services or goods on social media.[19]

However, expected positive results can be provided if only tax amnesties are well-designed, the aforesaid practices are not applied frequently, and the losses and earnings that would occur in the short and long terms are presented clearly enough. Furthermore, it is important to apply positive discrimination for rewarding honest taxpayers at this point.[20]

The "Pull and Push" Strategy once popularize by South Africa can be used by giving incentives to them who dutifully pay their taxes, or making a discount on the taxes, and allocating tax revenue for development of the country that can be felt directly to the community.

6. Conclusion

Tax Amnesty Act is one of tax policy making by government in order to reach government intetention to gain revenue from Income Tax and Value Add Tax. There is a lot advantage from this program, but also has some disadvantages which still in contrary with the principle in taxation. Some taxpayer feel this amnesty not fair enough because generalize they who delinquent or tax evader with they who liable to pay their taxes but perhaps negligent with their report in fulfill Tax Return.

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[20] Mehmet Nar, *Ibid*.

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Arrangement the Principle of Cabotage in Convention on the Law of the Sea 1982 and the Implementation in Indonesia

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Abstract

There are two facts about Indonesia that need serious concern, first; Indonesia is the biggest archipelagic state in the world, wherein, Indonesian marine area covering two thirds of the whole of the state; Second; Indonesia is located between two oceans and two continents that makes Indonesia as a state with the crowded shipping and trading lines. From those two facts, it could be a big potential on economic values, but it could be a serious threat on defense and security of Indonesia. Hence, it needs an application of the cabotage principle in Indonesian marine area comprehensively, so that the needs of Indonesia from the two aspects can be fulfilled equally.

Result of the research showed that the application of cabotage principle in a marine area of a state set out by the Convention on the Law of the Sea 1982, which is divided into some zones: inland waters, territorial sea, straits used for international shipping, contiguous zones and the high seas. The implementation of cabotage principle in Indonesia can be seen by Article 7 and 8 in Law No. 17 of 2008 on the Navigation, Governmental Regulation No. 22 of 2011 on the Change of GR No. 20 of 2010 on Transportation in the Water (Article 5 and Article 206 (a)), Presidential Instruction No. 5 of 2005 on Empowerment the Navigation Industry of Indonesia, Regulation of the Minister of Transportation (RMT) No. PM 10 of 2014 on Procedures and the Granting of Licenses for the Use of Foreign Ship for Other Activities that Do Not Include Transporting Passengers and / or Goods in the Activities of Domestic Marine Transportation (Article 2 and 13), RMT No. KM 71 of 2005 on Carriage of Goods or Cargo between Domestic Seaports (Article 12).

1. Preliminary

Indonesia is the biggest archiplago state in the world, with approximately 17. 504 islands, and 70% of Indonesia is covered by sea. Status of Indonesia as archipelagic state has been declared by the time of Juanda Declaration on December 13, 1957 submitted by the Prime Minister Djuanda Kartawidjaja. This declaration stipulated that the territorial waters of Indonesia is 12 nautical miles, drawn from straight baselines connecting the outermost points of the outermost islands. Juanda Declaration of 1957 is a very important breakthrough in the field of legal, political, economic, cultural, territorial integrity of states, and the integrity of Indonesia. This declaration marked the claims and efforts of international juridical recognition of the status of the archipelagic state's sovereignty. International recognition of the sovereignty of the Republic of Indonesia as the archipelagic state had been approved by the United Nations Convention on

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the Law of the Sea in 1982, which was subsequently ratified by Law No. 17 of 1985 on the Ratification of the United Nations Conventions on The Law of the Sea in 1982.[1]

Indonesia has a coastline of 95 181 km2 and located in a very strategic position between Asia and Australia as well as the Indian and the Pacific Ocean. Land area is approximately 2,012,402 km2 and sea approximately 5.8 million km2 (75.7%), which includes 2,012,392 km2 of Inland Waters, 0.3 million km2 of territorial sea and 2.7 million km2 of Exclusive Economic Zone (ZEE).[2]

As an archipleago state, the sea has an important role for the life of the nation. Since ancient times, Indonesian ancestors sailed over the sea and traded from one place to another exploring the archipelago. At that time, maritime cultures evolved. In the 7th century, Srivijaya didn't only master shipping and trading in the archipelago, but also to foreign countries. After succeeding mastered the trading during centuries, the triumph was shrinking with the times. Sriwijaya collapsed as a maritime empire, and was replaced by Majapahit in the 14th century. This kingdom mastered the trading and unified the nations. When Srivijaya and Majapahit at the height of their greatness, maritime culture entrenched in the archipelago. However, after a period of their greatness collapsed and replaced by the Bugis-Makassar, Aceh, Palembang, Jambi, Banten; maritime culture remain to expand, albeit slowly declining along with the influx of foreign powers.

Shipping and Marine trading was a uniqueness of ancient peoples of Indonesia at that time, because most of the people who lived in areas with a coastline had a tradition of sea shipping and trading, as one of the economic activities. Living with the sea made the ancestor had character of egalitarian and open.[3] Sea became a place to live and a source of cultural orientation. In the past, the sea had also become a defense with the strength of a formidable fleet .[4]

In the era of globalization which is characterized by trade and competition liberalization among nations increasingly fierce, all sectors of the economy should be able to produce goods and services that are highly competitive. As a maritime country and the world's largest archipelago, Indonesia has a big and diverse potential for economic maritime. Maritime and marine economy consisting of various sectors that could be developed for the promotion and welfare of society.[5]

As an archipleago state that has extensive sea and a long coastline, maritime and marine sectors become strategic for Indonesia in terms of economic, environmental, socio-cultural, legal and security. Nevertheless, during this time the sector is still lacking serious attention when compared with land sector.[6]

Regard to the maritime sector, Indonesia is a market place for foreign states, not only for trading but also for shipping traffic. In fact, Indonesia's logistics system is weak compared to neighboring countries such as Singapore and Malaysia. Therefore, the government must anticipate it by strengthening the international ports in Indonesia to serve the commerce from

[1]Concept "*Mainstreaming Ocean Policy"* into National Development Plann,.p.2
[2]Indonesian Rectors Forum. Enforcing Sovereignty of Indonesian as Archipelagic state to the dinified Maritime State. 2015. Academic Paper. p. 1.
[3]*Ibid.*, p. 3.
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Atlantic and Pacific and also enforcing cabotage principle for distribution to the areas served by national vessels.

According to Mochtar Kusumaatmadja, Cabotage Principle defined as a principle that states shipping activities in the territorial waters of a country can only be carried out by vessels from the countries concerned. Cabotage Principle is a principle recognized in law and practice of worldwide shipping and also embodiment of the sovereignty of a state to take care of itself, in this case, the domestic transportation (land, sea and air), so it can not simply be regarded as a protection, that protection or preferential treatment that is less fair for domestic companies, so causes the unfair competition.

In the 1960s, Indonesia recorded once experienced a heyday in the marine transportation after the nationalization of a Dutch shipping company, NV.KPM (Koninklijk Paketvaart Maatschappij), based on Government Regulation No. 34 of 1960, On September 24, 1960. But then dimmed along with the issuance of the Minister Decree No. 57 of 1984, which prohibited the operation of the ship above the 25 years old. This caused enterpreneurs must use foreign ships to fill the void of conveyance and this occured at least through 2005. The legal framework of the cabotage principle can be seen in Presidential Instruction No. 5 of 2005 on Empowerment the National Sailing Industry. As a follow up of the Presidential Instruction No. 5/2005, then issued Decree of Minister of Transportation No. 71 of 2005 on 13 types of goods that must be transported by vessels flagged red and white. Cabotage principle is then accommodated in Shipping Law No. 17 of 2008. This law also includes sanctions for violations of cabotage, namely administrative and criminal sanctions.

However, based on the Ministerial Decree No. 48 of 2011 on Implementation of the Cabotage Principle in Upstream Oil and Gas, government remain granting a dispensation in operation of foreign vessels for offshore activities and workmanship under water until the end of this year. In addition, the dispensation of the use of foreign vessels for oil and gas surveys also ended in December 2015.

Cabotage implementation proven to stimulate the national shipping industry and has a major impact on the national economy. Data from the Department of Transportation showed that the number of Indonesian-flagged vessel ownership on February 2014 was 13.244 units, while on May 2005, the number reached 6,041 units. This implies a significant increase, as many as 7.203 units or an increase of approximately 119%. This has a positive impact on the the red and white flag ships that reached 19.2 million Gross Tonnage (GT) or an increase of 238% compared to 2005 which recorded only 5.67 million GT. Other positive impacts, according to Nova A. Mugijanto[7], within a period of 8 years, the growth of ship with type AHT (Ancohr Handling Tug) in red-white flagged, shot up 1,400% to 45 units per June 2013 compared with 2005 when there were 3 units. AHT is a type of vessel fleet operated for towing or pulling the barge or rigs even offshore platforms in Indonesia. The investment value of ship with type AHT in supporting cabotage from 2005 to June 2013 reached US$ 252 million or Rp 2.82 trillion, while investment for AHTS (Anchor Handling Tug & Supply) reached US$ 1.001 billion or around Rp11.2 trillion.[8] Prospects of cabotage implementation is still wide open and Indonesia should be able to take these opportunities to be fully utilized.

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There are two facts about Indonesia that need serious concern, first; Indonesia is the biggest archipelagic state in the world, wherein, Indonesian marine area covering two thirds of the whole of the state; Second; Indonesia is located between two oceans and two continents that makes Indonesia as a state with the crowded shipping and trading lines. From those two facts, it could be a big potential on economic values, but it could be a serious threat on defense and security of Indonesia. Hence, it needs an application of the cabotage principle in Indonesian marine area comprehensively, so that the needs of Indonesia from the two aspects can be fulfilled equally.

2. Discussion

2.1 Implementation of Cabotage Principle in in the waters of a State by Convention on the Law of the Sea 1982

In ancient times, the legal status of the sea has never been questioned by anyone. Everyone is free to take advantage of the sea to meet their needs. At that time, the sea was more widely used for the benefit of shipping and fisheries. Along with the increasing in development of science and technology in maritime and the increasing of human population in the world, claims to the ownership of the sea became things that could not be inevitable. In the early days of exploration of the hemisphere, as well as the height of the shipping across continents and oceans, legal status of the oceans began to be questioned. Spain, Portugal, Italy and the United Kingdom found that the oceans could be owned. On the theorem, then those countries began to claim sovereignty over the middle sea. Spain on the Pacific Ocean, Portugal on the Atlantic Ocean, England on the North Sea. These claims were supported by most college as contained in his books. For example, John Selden who defended British claims on the North Sea as stated in his book ***Mare Claussum*** (Closed Seas).

Between those countries, there is a small country that feels itself wedged and trapped, namely Dutch/Netherlands. As a small country that is also equally across the sea, the Dutch no longer free to sail in the North Sea and the Atlantic Ocean. Therefore, the Netherlands opposed the claims of the countries by saying that the sea can not be owned by anyone and is open to all nations. Dutch leaders who defended this claim is Hugo de Groot alias Grotius, in his book ***de Jure Praedae***, titled ***Mare Liberium***.[9] For that pursued a middle way that if it could ensure a balance between the interests of all parties, it gave birth to legal institutions of the oceans where there are parts of the ocean that is the territory of a country, and there are parts of the ocean that is not a territory of a country.

Development of the law of the sea is rapidly increasing, international communities began to realize that it needs further guidance on marine issues, then formulated some conception of the sea in the form of a convention, it gave birth to the conventions governing the issue of ocean[10], among others: Hague Codification Conference in 1930, Geneva Convention 1958, Convention on Law of the Sea 1960, Convention on the Law of the Sea 1982.[11]

In connection with the fourth law of the sea conventions, Indonesia has ratified the Law of the Sea 1982 (KHL 1982) by Law No. 17 of 1985 on Ratification of the United Nations

[9]I Wayan Parthiana, International Sea Law dan Indonesia Sea Law. Yrama Widya. Bandung. 2014. p 3-7
[10]Heryandi. International Law Sea - United Nations Convention on the Law of the Sea 1982 and the Implementation in Indonesia (textbooks).University of Lampung. Bandar Lampung. 2005. p 9.
[11]Chairul Anwar. New Horizon forInternational Law Sea on CLS1982. Djambatan. Jakarta 1989. p.6.

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Conventions on the Law of the Sea 1982, which was enacted on December 31, 1985, which clarified that for the Nation and the Republic of Indonesia, this Convention is very important because for the first time the principle of archipelagic state during twenty-five years continuously championed by Indonesia has managed to gain official recognition from the international communities. The concept of an archipelagic state was not recognized in international law prior to the enactment of the Convention on the Law of the Sea (CLS)1982. Recognition of the concept of archipelagic state is one of the biggest lobby of Indonesia in sessions of the UN (the United Nations) on the law of the sea. Thus, the recognition of the concept of an archipelagic state in the CLS 1982 is something historical; it was fought fiercely. With the recognition then all legal consequences relating to archipelagic baselines are in force to Indonesian that meets the archipelagic requirements .[12]

Indonesia is expressly declared itself as an archipelagic state in its constitution. Article 25A of the Constitution of the Republic of Indonesia 1945 (UUDNRI 1945), stipulated that the Unitary Republic of Indonesia (NKRI) is an archipelagic state that characterized the archipelago with the area boundaries and rights are defined by law. This statement is de jure statement, where Indonesia legally has declared itself as archipelagic state. The Constitution as the supreme legal basis in this case is a legal footing. By de facto, the statement is supported by the geographical condition of Indonesia which is mostly composed of water region (75.26%). Indonesia has 17,508 islands with a total coastline length of approximately 81,000 km with an area of 5.19325 million km2.[13] Admittedly Indonesia as an archipelagic state in CLS 1982, then Indonesian territory be expanded, which became 8.19325 million km2 consisting of 2,027,087 km2 6,166,163 km2 of land and water areas.[14]

The concept of Indonesian as an archipelagic state should be seen as a different concept with other maritime nations. This is important because if Indonesia is not recognized as an archipelagic state, then it is geographically, politically, economically and historically, the existence of those islands into separate, so it will give rise to space of high seas in and between the islands in Indonesia, in the sense that there is international territory within Indonesia. This can endanger the security, order and peace of Indonesia as a sovereign state.[15]

The sovereignity of Indonesia includes the authority to regulate territorial waters by applying the cabotage principle in the context of international arrangements based on CLS 1982, divided into some maritime zones as follows;

[12]Khaidir Anwar. Boundaries of State in the waters of the sea. Publisher University of Lampung. Bandar Lampung. 2011. P. 3.
[13]Usamawadi, Progressive mechanisms of conflict prevention due to overlapping claims on sea areas between Indonesian and neighboring countries. Papers. Progressive law journal. Vol 2 No. 2 October 2006. Semarang. p. 99. It was quoted as in Khaidir Anwar. Ibid. p. 4
[14]*Ibid.*
[15]*Ibid.* P. 4-5.

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a. Inland Waters Zone

Inland waters are essentially the waters that are part of the land or is on the ground. The waters consist of rivers, lakes, channels and marshes. Similarly to estuaries, bays, harbors, waters located on the inner side of the line of islands, waters located on the side of the line on the islands situated on atolls, coral dry or height of low tide, the waters located on the inner side a straight line connecting the dots right on the low-water line that fell into the sea on parts of the beach for their delta or natural state of other so coastline changing, waters located on the inner side of a straight line drawn across the sea between the dots of lowest water line on the outer edges and waters located among a cluster of small islands.[16] In inland waters, the sovereignty of a country is not accompanied by the necessity to ensure innocent passage for foreign ships.

The regulation of inland waters is contained in Article 8 (1) and (2) CLS1982. For an archipelagic state, there are specific rules on the delimitation of the hinterland waters as stated in Article 50 CLS 1982. Thus, the inland waters of an archipelagic state would be located on the inside of the closing line. So that the inland waters of a coastal state or archipelagic state have full sovereignty which includes the inland waters, the air space above it and its existing seabed and subsoil under it.

b. Territorial Sea

The arrangement of the territorial sea in the CLS 1982 set out in Article 2 Verse (1), (2) and (3). The Convention also confirms that the legal status of the territorial sea, the ground beneath and the air space above, it is part of the coastal states, and therefore subject to the sovereignty of the coastal State. The width of the territorial sea based on CLS 1982 is as far as 12 miles as stated in Article 3, and the setting on how to set the width of the territorial sea is stipulated in Article 4, 5, 6 and 7. In the case of an archipelagic state, then its territory and sovereignty also includes the sovereignity in its archipelagic waters. Arrangements on archipelagic state set out in Articles 46, 47 and 48 of CLS 1982. In the regime of the territorial sea and archipelagic state, sovereignty of coastal states and archipelagic states limited by an obligation to give the right of innocent passage of foreign vessels in the territorial seas and archipelagic waters.

CLS 1982 regulates three kinds of cross of foreign vessels, namely:[17]

(1) Innocent Passage, in CLS 1982 regulated in Chapter II on the Territorial Sea and the Contiguous zone, Section 3, which is divided into Sub-Sections:
   a. Regulations applicable to All Ships (Article 17-26);
   b. Regulations applicable to ships of Commerce and other government ships operated for non-commercial purposes (Article 27 - Article 28);
   c. Regulations applicable to warships and other government ships operated for non-commercial purposes (Article 29-32);
(2) Transit Passage, in CLS 1982 regulated in Chapter III on the Strait used for International Shipping, Section 2, from Article 37-44.
(3) Right of archipelagic sea lanes passage, in CLS 1982 regulated in Chapter IV on Archipelagic State, Article 53.

c. Strait Used for International Navigation

[16]Roesdi Roesli as quoted by Heryandi. Op.cit.hlm.34
[17]Abdul Muttalib Tahar, Maritime Zones based on CLS and the development on Law of the Sea of Indonesia. University of Lampung. Bandar Lampung. 2009. p.53.

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Set out in Article 34-45 CLS 1982. There is really no standard criteria of the straits around the world. In general, the strait could be regarded as part of the narrow sea and flanked by two lands or more. The land can be partly or wholly part of the territory of a single country, such as Sunda Strait,Bali Strait, Lombok Strait, Ombai Strait that all was in the waters of Indonesia. Strait could also involves more than one country such as the Malacca Strait, Gibraltar Strait, Ormuz Strait, and others. Strait in general, linking two or more sea / ocean, that was geographically wider than the strait itself.[18]

According to Article 37 of the Convention on the Law of the Sea 1982, which can be considered as strait used for international navigation is the waters that connect one part of the high seas or an exclusive economic zone to another part of the high seas or an exclusive economic zone. While Article 38 specifies that for the straits meet such provision will apply the so-called navigation regime of transit passage. However, if any part of the strait located closer to the mainland and there is the sea channel separating the mainland with something and can provide the same comfort for the navigation, then the innocent passage is in force. Both of transit and the right of innocent passage, the convention does not permit the suspension or interruption of any kind from the countries of the strait edge.

d. Contiguous Zone

Article 33 Verse (1) and (2) CLS 1982 states that the contiguous zone is a zone that is adjacent to its territorial sea called contiguous zone, the coastal State may exercise the necessary oversight for; (a) prevent violations of legislation on customs, fiscal, immigration or sanitary in the territory or territorial sea, (b) punish violations of the legislation mentioned above, which is carried out in the territory or territorial sea. Contiguous zone can not exceed over 24 nautical miles from the baselines from which the width of the territorial sea is measured.

e. High Seas

The arrangement of the high seas contained in Chapter VII Article 86 - Article 115 CLS 1982. High seas is all part of the sea that is not included in the exclusive economic zone, in the territorial sea or in inland waters of a country, or in the waters of archipelagic state. This article does not lead to any reduction. The legal status on the high seas are open to all countries, it is stipulated in Article 87 of the CLS 1982. Type of freedom on the high seas, among others; freedom of navigation, freedom of flight, freedom to lay cables and pipelines under the sea, freedom to construct artificial islands and installations permitted under international law, freedom of fishing which subject to the requirements set forth in section 2 CLS 1982, freedom of Scientific Research which subject to the Chapters VI and XII CLS1982.

[18]I wayan Parthiana. Op cit. p.119

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2.2 Implementation of Cabotage Principle in Indonesia

a. Law No. 17 of 2008 on Navigation

Law No.17 of 2008 on the Navigation is the legislation in force as of the date made, on May 7, 2008. This Law is a legislation created to revoke Law No. 21 of 1992, which was motivated by strategic environmental development of national and international demanding the implementation of navigation in accordance with the development of science and technology, private sector participation and business competition, regional autonomy and accountability of state officials, while maintaining the safety and security of navigation in the national interest, and Law No. 21 of 1992 on the navigation is no longer appropriate to the needs of the current organization of the navigation, so it needs to be replaced with the new legislation, namely the Law No. 17 of 2008 on the Navigation.This legislation consists of 22 chapters and 355 articles. About the cabotage principle, it is contained in the chapter on sea transport in Article 7 and Article 8. Article 7 states that Sea Transportation includes domestic sea transportation, overseas sea transportation, special sea transportation, and sea transportation of navigation for people. Cabotage principle then amplified by saying that the domestic sea transportation activities carried out by national sea transport companies using Indonesian-flagged vessels and manned by a crew of Indonesian. Foreign ships are prohibited from carrying passengers and / or goods between islands or between ports in Indonesian waters, as stated in Article 8 of the Law No.17 of 2008 on the Navigation.

The provisions on the use of Indonesian-flagged vessels by national sea transport companies are intended for the implementation of the cabotage principle in order to protect the country's sovereignty and support the realization of Archipelago and provide the widest opportunity for national sea transport companies to gain share of loads.[19] In tightening enforcement of the cabotage principle, besides the administrative sanctions set forth in Article 59, there's also criminal sanctions set out in Article 28 of Law No. 17 Year 2008 on the Navigation, stated that every person who operates a foreign ship to transport passengers and / or goods between islands or between ports in Indonesian waters as referred to in Article 8 Verse (2) shall be punished by imprisonment of five (5) years and a maximum fine of Rp 600,000,000 (six hundred million rupiah). Provisions governing overseas sea transportation stated that sea transportation activities from and to abroad carried out by national sea transport companies and / or foreign sea transport companies, these activities can be performed using Indonesian-flagged vessels and / or foreign vessels. This provision is intended to national sea transport companies gain share of loads in accordance with the legislation. In acquiring the share of fair loads for national sea transport, it means that "fair" is not always in the sense of an equal share, but gain share as stipulated in the legislation, for example in the bilateral agreement, international conventions ratified by the Government of Indonesia and other regulations. Especially for items owned by the Government, it is necessary that the transport carried out by national sea transport companies. In this case the national sea transport companies may cooperate with foreign sea transport companies to assign fair share agreement.

Enforcement of the cabotage principle as specified in Law No. 17 of 2008 on the Navigation is not directly effect at the time promulgated by the government. Under the provisions of chapter transitional Article 341 states that "The foreign vessels that are currently still serving domestic sea transportation in the country can still do activities, no later than 3 (three) years since the Law applies", thus, the principle of cabotage applies overall since dated May 7, 2011. National sea transportation companies is expected to prepare everything in serving the existing

[19]Explanation Article 8, Law No. 17 of 2008 on the Navigation.

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market share in the country, and for foreign transport companies, they can finish their contract with companies which the market share is in Indoneisa.[20]

Based on the description in the Law no. 17 of 2008 on the Navigation can be seen that the cabotage principle has several elements, among others;

a. Domestic transportation activities undertaken by national sea transport companies, using the Indonesian flag vessels, manned by a crew of Indonesian.
b. Foreign ships are prohibited for carrying passengers and / or goods to any island or any port in Indonesia waters.
c. The foreign vessels that are currently still serving domestic sea transportation in the country can still do activities, no later than 3 (three) years since the Law applies effectively since May 7, 2011.
d. every person who operates a foreign ship to transport passengers and / or goods between islands or between ports in Indonesian waters as referred to in Article 8 Verse (2) shall be punished by imprisonment of five (5) years and a maximum fine of Rp 600,000,000 (six hundred million rupiah).[21]

b. Governmental Regulation No. 22 of 2011 on the Change of GR No. 20 of 2010 on Transportation in the Water

This regulation applies since the date of promulgation, April 4, 2011. The content is to change two Article contained in GR No. 20 of 2010 which came into force on February 1, 2010, ie Article 5 and Article 206 a. Article 5 in GR No. 22 of 2011 is an which applies the principle of cabotage. Article 5 change the Verse (2) to eliminate the words "as well as other activities" which means to the scope of "other activities" is possible carried out without using Indonesian-flagged vessels. Theoretically it violates the constitutional, because in substance the soul of GR No. 22 of 2011 "wounding" Law No. 17 of 2008 on the Navigation, mainly about the implmeentatio of cabotage principle.

Other articles that are not changed in GR No. 22 of 2011 remain valid, other articles that are not changed and applying the principle of cabotage in GR No. 20 of 2010, among others, Article 3, 4, 6, 7, 39, 41, 45, 56 (3), 61 (2), 64 (3), 80 (3), 90 (2).

[20]----------, Existence of cabotage principle in the legislation of sea transportation in Indonesia. 2005. University of North Sumatra. p 36-37

[21]www.administrasi publik.studentjournal.ub.ac.id downloaded on 27 September 2016 at 16:11 pm. Rizki Aprilianto, Abdul Hakim and Ainul Hayat. Implementation of cabotage in navigation policies in Inonesia (Studies in the Directorate General of Sea Transportation Ministry and the Indonesian National Ship Owners Association. Journal of Public Administration (JAP) Vol.2 No.4 pp. 758-764

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c. Presidential Instruction of 2005 on Empowerment the Navigation Industry of Indonesia

The policy was issued in order to optimize the implementation of the policy of empowerment of the national navigation industry by instructing the relevant ministers such as the minister of finance and industry to implement Cabotage principle consequently and formulate policies and take the measures required in accordance with the duties, functions and authority of each authority, in order to empower national navigation industry. The substance of Presidential Instruction No. 5 of 2005 consists of 6 (six) field of the regulation, namely; trading, financial, transportation, industry, energy and mineral resources, education and training.[22] The formulation that becomes an outline of the contents of Presidential Instruction No. 5 of 2005 as follows;

1. Trading
   1) Implementation of cabotage principle with consequent to the domestic charge
   2) Using national vessels for goods (exports / imports) financed by APBN / APBD;
   3) Encouraging the long-term partnership contracts between enterpreneurs of sea transport with the owner of the goods.

2. Financial
   1) Reorganising the tax system for navigation industry;
   2) Encouraging the national banks to play an active role in financing the development of national navigation industry.
   3) Developing non-bank financial institutions that engaged in the development of national navigation industry;
   4) Requiring insurance for ships and goods;
   5) Encouraging national insurance to improve the quality in accordance with international standard.

3. Transportation
   1) Arranging national sea transportation to get the cabotage principle;
   2) Arranging the process of change of the flag;
   3) Providing support for the development of navigation of the people;
   4) Providing subsidies and services to ships that do trajectory constantly and regularly;
   5) Creating a forum of information of cargo and ship space;
   6) Providing effective and efficient port services;
   7) Arranging the opened port to overseas and cross-border trading;
   8) Applying no pay no service in port.

4. Industry
   1) Improving the domestic navigation industry;
   2) For vessels charged to APBN / APBD shall be built in the national shipyard;
   3) For ships built in abroad with the funds of APBN / APBD attempted to use a lot of local content.

[22] *Ibid.* P. 760.

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5. Energy and Mineral Resources

Ensuring availability of fuel in accordance with the route and the number of days the national ship sailing in the country.

6. Education and Training
   1) Encouraging local governments and private sectors to develop the marine training centers with international standards;
   2) Developing cooperation between marine training with the marine services.

d. Regulation of the Minister of Transportation (RMT) No. PM 10 of 2014 on Procedures and the Granting of Licenses for the Use of Foreign Ship for Other Activities that Do Not Include Transporting Passengers and / or Goods in the Activities of Domestic Marine Transportation

This regulation is valid from the date of promulgation, on March 11, 2014 and a regulation that repeal RMT No. PM 48 of 2011 on the Procedures and the Granting of Licenses for the Use of Foreign Ship for Other Activities that Do Not Include Transporting Passengers and / or Goods in the Activities of Domestic Marine Transportation. Article in RMT No. PM 10 of 2014 which applies the principle of cabotage is article 2 and article 13.

e. Regulation of the Minister of Transportation (RMT) No. KM 71 of 2005 on Carriage of Goods or Cargo between Domestic Seaports

This regulation comes into force since November 18, 2005. Article relating to the implementation of cabotage in this regulation is Article 12.

Legal Enforcement against the Implementation of Cabotage Principle in Indonesia

Indonesia as an archipelagic state should be able to sort out the rules or laws that used for regulating different activities in the waters. Please keep in mind that the Ships are different types of buildings and floating tools with different function and use in waters and offshore. Because of the difference in form, function, and activities that carried out by every kind and type of vessel, it's different from one another. Thus, the operating activities of vessels of different types and activities should not be regulated by just one regulation.

However, in some respects, there are similarities such as environmental protection and safety regulations. All types of vessels have to be registered by the owner (flag of the ship). That state is responsible for the eligibility of the ship, expressed in the form of certificates consisting of two types, namely the certificates of statutory and class.

Ministry of Transportation cq Directorate General of Sea Transportation that became partners of IMO in Indonesia tend to not take advantage of the ease and regulations made by the international organization. The government made its own rules on the pretext of interests and

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national pride. In fact, in the era of globalization, needed is a national entrepreneurs can compete unhindered by foreign businessmen, compete for the available market share, particularly in transporting goods / passengers domestically, exported and imported commodities and mining activities in offshore. National pride is carried out through the use of standard competition rules and the same ease.

Likewise, the survey and certification of ships, education and certification of seafarers, the task of Port State Control is still monopolized by the government to rely on inspectors Government (harbor master), but they are very limited manpower and knowledge to examine the responsibility of various kinds and types of ships in and out ports in Indonesia. As a result, the main task of the Government to maintain and oversee the safety of domestic navigation is overlooked; so, that is the reason a lot of accidents at sea.

If traced back the history of regulation of navigation in Indonesia, it was started by the Law on the First Navigation, No. 21 of 1992, Presidential Instruction No. 5 of 2005, and efforts for improvement in Law No. 17 of 2008 on the Navigation and Government Regulations, all require nationwide commercial ships competing uses Indonesian flag.

Presidential Decree No. 5 of 2005 was made with the aim of empowering the national shipping company which is nationalist and can compete for the global market with one condition, it should be national vessel with Indonesian flag,and Class of Indonesian Classification Bureau (ICB), generalize all types of ships to apply the principle of cabotage. But it was all in vain, because the reality of globalization in the navigation industry was not accepted to which the national vessel must be flagged Indonesian and class of ICB.

To establish the objective of the Presidential Instruction No. 5 of 2005, then the Government issued the Regulation of the Minister of Transportation (RMT) No. KM 71 of 2005 on Carriage of Goods or Cargo between Domestic Seaports, in order Empowerment the National Navigation Industry, in particular the implementation of the cabotage principle consequently and it has been the policy of the Government to create a "Road Map" which states: "The supporting transportation for business activities in upstream and downstream of oil and gas uses Indonesian-flagged vessels and ICB's class, implemented not later than January 1, 2011". What is meant here is the special ships.

Special ships are ships with high mobility to support the offshore oil and gas operations, and not to transport goods or passengers from one port to another. The use is specific and very limited, after completion the contract in Indonesia, then they should immediately seek employment in oil and gas fields in other countries.

Following the enactment of Law No. 17 of 2008 on the Navigation on the same terms. After the government issued Government Regulation No. 10 of 2010 on the Sea Transportation in the waters of Indonesia, confirmed that mining activities of Oil and Gas have had to use Indonesian-flagged vessels, began January 1, 2011 as planned in the "Road Map". It turned out there are no special ships with Indonesian-flagged. Navigation companies remain unable to meet the regulations for the reasons mentioned above. If the rules remain in force, then, offshore oil and gas activities will be completely stopped. Up to now, we know that the condition of the National Navigation Company might not have that much money to buy thousands of vessels. There needs to be a change in the legislation. At the suggestion of the Minister of Transportation to revise Law No.17 of 2008 on the Navigation, especially for the use of special ships. However, Commission V of House of Representatives is indisposed. Then,

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the shortcut to revise the Government Regulation (GR) No. 10 of 2010 is implemented by issuing GR No. 22 of 2011.

Furthermore, the concept of revision of GR No. 10 of 2010 (GR No. 22/2011) contains the following rules: "Foreign ships can perform other activities that do not include transporting the goods and passenger in the marine activities in the territorial waters of Indonesia during the Indonesian-flagged vessels yet available or insufficiently available ".

In this GR, Government gives extensive freedom without a time limit to foreign ships that used for business of oil and gas offshore in Indonesia. This proved that the regulation on "Dispensation Terms Flag" with all its negative impacts over decades was very wasteful, pointless and harm the nation. National navigation company still can not have special ships with national flag. The revision will cause more problems as the Minister of Transportation commissioned to make its implementing regulations. Obviously it will be followed again by another dispensations. At the end, extortion will appear more powerful.[23]

An amendment of Government Regulation No. 22 of 2011 was carried out due to the unpreparedness of national marine transport fleets in the offshore oil and gas activities, wherein, foreign sea transportation is still permitted to operate, but in practice, it's imposed the strict permissions that set on the Regulation of the Minister of Transportation and given a period of operation until 2015. So that, it's expected that the national sea transportation is ready to serve the activities of offshore oil and gas.

Development of sea transportation in Indonesia is still dominated by foreign parties. This condition is exacerbated, because Indonesia does not have an adequate fleet, both in terms of quantity and capacity. Besides competing with foreign vessels which is technologically more advanced, the complexity of the problems faced by the national navigation fleet caused alarming development. Because of the importance and strategic of navigation industry, then the empowerment of national Navigation industry becomes a matter of an obligation for the government and people of Indonesia in supporting and encouraging not only in terms of regulation, but also concretely. In the general provisions of the Navigation Law stated that the navigation is a unity system consisting of transport in the waters, harbor, safety and security, and protection of Maritime environments. Navigation activities in general is to transport goods or passengers from one location to another or from the port to other ports, safety of navigation and protection of the maritime environments from pollution of pollutants ships. Those activities are regulated in the Navigation Law. Special navigation consists of construction or installation the equipment in the waters in supporting the implementation of the safety of navigation inside / outside the port or in the waters. Those activities above should be regulated specifically in the legislation of navigation.

3. Conclusion

Implementation of cabotage principle in the territorial waters of a country set in the Convention on the Law of the Sea 1982,which is divided into inland waters zone, territorial sea, straits used for international navigation, contiguous zone and the high seas. Whereas, the implementatation of cabotage principle in Indonesia can be seen by Law No. 17 of 2008 on the Navigation, Governmental Regulation No. 22 of 2011 on the Change of GR No. 20 of 2010 on Transportation in the Water (Article 5 and Article 206 (a)), Presidential Instruction No. 5 of 2005 on Empowerment the Navigation Industry of Indonesia, Regulation of the Minister of

[23]http://www.hukumonline.com/berita/baca/lt4dfb22c545ed4/masalah-dalam-penerapan-uu-pelayaran-broleh--pieter-batti- downoaded on October 27, 2016, at 17.29 wib

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Transportation (RMT) No. PM 10 of 2014 on Procedures and the Granting of Licenses for the Use of Foreign Ship for Other Activities that Do Not Include Transporting Passengers and / or Goods in the Activities of Domestic Marine Transportation (Article 2 and 13), RMT No. KM 71 of 2005 on Carriage of Goods or Cargo between Domestic Seaports (Article 12).

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Due Diligent, Tolls to Corporate Responsibility on Human Right

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Abstract

United Nations (UN) establishes a human right framework on Protect, Respect and Remedy. This UN Framework "Protection, Respect, Remedy was a result of the work of the UN Human Rights Commission for 6 years through UN representative John Ruggie. UN framework is a provision that regulates the state's obligation to protect the human rights of its citizens which might violated by

a third party (in this case the corporation), the obligation of the corporation to respect on human rights (both regulated by the state or not) and the right to the recovery of the victim either by judicial or non judicial. One of corporation obligation through UN Framework on human right is taking action to due diligent. Thus, this paper wants to find an answer to the question what is the meaning of due diligent and through which instrument corporation proven that the corporation has done due diligent action.

1. Backgrounds

Protection of human rights is a form of state protection for the citizens for the actions of the state apparatus through both policy and action. Human rights are intended to limit the authority of the government against citizen. The aim is to protect citizens from arbitrary actions which may be undertaken by the state (through its institutions) whether committed intentionally or not. This form of protection outlined in the legislation as contained in the principle of legality.[2]

Protection of citizens is the obligation of the state, in legal theory rights of the human family, the country has three obligations that respect (to protect), protect (to respect) and fulfillment (to fulfill).

The opening paragraph of the Act IV of 1945 (Constitution 45)

[1] Junior Lecturer at international department faculty of law Lampung University
[2] The principle of legality is the principle which government action should be based on legislation that is enacted by the parliament (the judiciary) (in Indonesia made by exsekutif and judicial)

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> "Reviewed After this the State Government to establish an Indonesia that protect the entire Indonesian nation and the entire homeland of Indonesia and to promote the general welfare, educating the nation and participate in implementing world order based on freedom, lasting peace and social justice ..."

This provision asserts or implies the state has an obligation to protect their citizens from various parties, including corporations. The corporation is a company which carries on business in order to gain as much as possible. Corporation (in this case a multinational corporation). Sometimes has a greater wealth of the home country and with its wealth he might be able to press the state to create conditions that meet their individual needs.

There are at least two (2) reasons why corporations should have a responsibility under international law; First, multinational corporations have a very strong influence on the economic activity of a country (especially in developing countries); The second, in many developing countries, corporations (multinational) manages the business activities associated with public services such as transportation, power and telecommunications.[3]

State as a subject of international law which mainly has a function to protect its citizens, it can only protect nature, however, the author is also aware that there are international obligations that need to be in charge to MNCs because its operation one of which is human rights. As MNCs realized a supporting factor increasing economic sector in a country, therefore many of the multinational companies have a very strong influence and capable of affecting the economy, especially the emerging countries and backward. MNCs influence this impact, both positive and negatives.

The positive impact of MNCs is increasing the economic sector receiving countries; work opportunities for citizens, the transfer of technology and knowledge transfer from foreign parties to citizens also improve the skills of citizens. Besides a positive factor where MNCs also impacted negatives, impact negatives most common include environmental pollution and small businesses that lost capital with large companies.

On the other hand human rights law which is part of public international law only recognizes state (carrier liability) and individuals (bearers of rights) in the subject, which means Bearer of

[3] Nancy L. Mensch, *Code, Lawsuits or International Law: How Should The Multinasional Corporate be Regilated with Respect to Human Right, 14 U. Miami Int'l, Miami, 2006, hlm. 249 dalam Imam Priambodo dan Andi A Khairunnisa, Tanggung Jawab Multinasional dalam Ham Internasional, Airlangga University Press, Surabaya, 2016, hlm. 12*

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obligations in human rights is the state, whether done intentionally through the state apparatus or inadvertently through policies made by law. In conclusion, until now international law considers that only countries that are subject to human rights law. Countries said to be the bearers of obligations in human rights because the state has the power to commit human rights violations. Therefore only the states that can be prosecuted as a violator of human rights and ask for a defense response against it.

In its development, as well as the legal subject of international law talks about the entry of MNCs as a subject of human rights in the sense of the carrier of liability began debated, this happens because of the widespread influence of MNCs (due to its equity, often MNCs can influence the policies of the recipient country capital is also due territorial extent, because they have subsidiaries in more than two countries) as well as public awareness and responsibility of the business community and the negative impact of business operations

2. Human Right in international law

Human rights usually define as a basic right of every human being since he was born. The general objective of the birth of the provisions on human rights is to give protection and ensure non discriminations among communities. Human right defined as a right of man since she/he was born, it implies that the rights embodied in human rights are rights are innate such as the right to life, the right to life have consequences for the right to food, clothing and shelter adequate for someone to live.

An understanding of human rights has been around a very long time, and many countries have included human rights principles into domestic law, but the setting is internationally started since the end of World War II, especially when the countries agreed to declare human rights through the Universal Declaration of Human Rights (Universal Declaration of Human Rights), initiated by the United nations (UN) in 1948 and the two conventions derivatives such as International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic Social Cultural Rights (ICESCR) and protocols which until now has been ratified by more than 150 countries in the world, many countries that ratified implies the provisions of the covenant can be applicable as customary law.

ICCPR and ICESCR are often distinguished as two different rights; the following table rights this second distinction.

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Table 1: Differentiation ICCPR and ICESCR[4]

Economic Right /ICESCR	Political right
Achieved gradually	Achieved immediately
The state is active	Countries are passive
Cannot be submitted to the court	Can be submitted to court
Depending on resources	Not dependent on resources

Furthermore in fact this division is not quite right, the following is a brief explanation on this matter[5], the understanding of the economic rights are positive rights are not fully true, because quite a lot of the rights recognized therein sue the state for not taking action to protect economic rights, such as freedom of choice schools, freedom to do research ban on using children for hazardous work and so forth, well that article 2 (1) ICESCR says each party to the present covenant undertakes to take steps both individuals and through the help of regional cooperation, especially in economic and technical all available progressively to achieve full approval of the rights recognized by this covenant in ways appropriate, by taking legislative measures. However the provisions of the "promised to take steps" This needs to be viewed in their entirety by looking at other articles, it can be said not only the country but also take active measures fasif action. As for the court filed in advance of the ICESCR rights are rights that can actually be prosecuted fulfillment court upfront especially for the rights set out in article 3.7 (a) (1), 8.10 (3), 13 (2-4), and article 15 (3). While the argument relies on natural resources cannot be used to override this right.

On the other hand the demands on under the ICCPR can not entirely be taken as the state's obligation not to do something, for example relating to arrest, arrested and other nations have an obligation its legislation in legislation in place to fulfill the protection of citizens ,

Thus exposure above can be said that the division rigidly to the two (2) these covenants cannot be done, because the right to the economy would be affected by civil and political rights and vice versa. This means that somehow the state that has the obligation to protect, to respect and to fulfill citizen’s human right.

[4] Ifdal Kasim, ed, *Hak Ekonomi Sosial dan Budaya Esai-esai Pilihan buku 2*, ELSAM, 2001, hlm. xv
[5] Ibid.,

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First, the state's obligation to respect, protect and implement human rights. Respect, honor is intended to require the state to enforce the ICCPR and ICESCR, either directly or indirectly to the rights set out in the convention. Protect, the state must protect the rights of citizens by preventing infringement by various parties, either intentional or unintentional by state officials or by a third party while the obligation to implement requires that states take various action from both legislative, administrative, budgetary, legal and action Additional to the implementation of human rights set out in the convention.

Secondly, the obligation to act or act (obligation of conduct) and achieve results (obligation of result). The obligation to act is an obligation to carry out the fulfillment of a particular right, for example that all children has access to primary education without discrimination, the government should have to take certain policies or actions, such as a literacy program for knowing illiteracy[6].

Third, minimum core obligations, minimum core obligation is mainly setting the implementation ICESCR which requires states to at least give the right to economic, social and cultural minimum and continue to take steps to fulfill the right to economic, social and cultural rights can be met.

ICCPR and ICESCR are often referred to as ham first generation and 2nd generation of human rights, in the later development of human rights comes the third generation known as communal rights, rights relating to the right with the people of the world including the human environment

3. Corporation on overview

The first use of the term 'multinational' in relation to a corporation has been Attributed to David E. Lilienthal, who, in April 1960, Gave a proper to the Carnegie Institute of Technology on 'Management and Corporation 1985', which was later published under the title 'The Multinational Corporation' (MNC).[7] Lilienthal MNCs defined as' the corporation which have their home in one country but which operate and live under the laws and customs of other country as well. On the other hand, Black's Law Dictionary gives the definition of MNCs as a

[6] Harry Wobowo dan Anharudin, ed, *Meneropong hak atas pendidikan dan layanaan kesehatan: Analisis Situasi di Tiga Kabupaten: Indramayu, Sikka dan Jayapura*,CESDA-LP3ES, Jakarta, 2005, hlm. 21
[7] Peter Muchlinski, *Multinational Enterprises and the Law*, Blackwell Publishers Ltd, Malden, 1999, hlm. 3

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Company with operation in two or more countries, generally allowing it to transfer funds and products according to price and demand conditions, subject to risks such as changes[8]

MNCs is currently growing very rapidly, at least have reached the number of more than 50,000[9] companies and from statistical data seen increasing development of nearly 20% per year, especially in countries bleak Asia, Africa, the Caribbean and others.

Subject law national law (civil) is a legal and natural persons, legal and natural persons is said to be the subject of law because they are the bearers of rights and obligations under the law and stakeholders in the law, it means the status of legal entity as a legal subject. Legal entity itself is defined as a group of individuals who by law are treated as a unity, namely as a "person" who have rights and obligations which are different from the rights and obligations of the individuals that make it up[10]. In the field of civil law legal status as a legal subject was not debated, because they have the same rights and obligations to the people. Once home to the MNC, Black's Law Dictionary defines as a Company MNCs with operations in two or more countries, generally allowing it to transfer funds and products According to price and demand conditions, subject to risks such as changes. From the definition above can be concluded that the MNCs is a company that operate in two (2) or more countries and can be interpreted as a legal entity. Legal entities that have many branch offices in different countries, which means that MNCs are subject to the law of national law which can be prosecuted upfront court and held responsibilities when it violates the provisions are violated.

As a legal entity, the personal status or legal personality attached to the MNCs to rely on the provisions concerning the position of a country's legal entity. In literature known as 2 (two) theory to determine the personal status of legal entities, namely[11]

1) *doctrine of place of incorporation*
2) *Law of the place of central control*

Indonesia for example scoop incorporation principle, which means typing MNCs operate in Indonesia law attached to it, is the law of Indonesia as stated in the Law on Limited Liability Company. So when one of the branches of international scale companies domiciled or carrying

[8] *Black's Law dictionary*, West Publishing Co, St. Paul, 2004, hlm. 393
[9] Ibid., see Hellen, The Socialist Challenge, Quartet, 1976
[10] Ibid.,
[11] Ahmad M. Ramli, 1994, *Status Perusahaan dalam Hukum Perdata Internasional Teori dan Praktek*, Mandar Maju, Bandung, hlm. 9

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out contracts in Indonesia the company must comply with the laws and regulations of Indonesia, including provisions on human rights (including the application of the minimum standards of human rights)

4. UN Framework protect, respect and remedy

Contestation between business and human rights reached its peak in early 2011 when the UN Human Rights Commission unanimously and full, legitimate guiding principles on business and human rights: UN Framework on protect, respect and remedy. This endorsement comes after UN special representative John Ruggie H finishing and produce global standards for business and human right. Ratification of this principle is the result of in-depth consultations with various stakeholders, including civil society, governments and investors. Long before Ruggie has succeeded. The UN and international organizations have several times made provision internationally arrangement of MNCs associated with the enforcement of human rights, among others:

1) *UN Draft Norm on the Responsibilitities of Transnational Corporations and other business enterprises with Regard to Human Right*
2) *OECD Guidelines for Multinational Enterprises*
3) *ILO Tripartite Declaration of Principle Concerning Multinational Enterprises and social policy*

UN Draft Norm on the Responsibilitities of Transnational Corporations and other business enterprises with Regard to Human Rights has not worked because there are no agreement between the formers. OECD Guidelines for Multinational Enterprises and the ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and social policy is still valid despite beberpakali has undergone revisions.

In addition to the three (3) forms above are International Initiatives on Business and Human Rights; UN Global Compact (2000) Ten principles on human rights, labor environment, and anti-corruption for business; Voluntary Principles on Security and Human Rights (2000) Guidelines for companies in the extractive industry to maintain the safety and security of Reviews their operations with respect for human rights; ISO 26000 (2010) ISO guide for companies with regard to social responsibility; Extractive Industries Transparency Initiative

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(2010) International Organization roommates maintains a transparency standards for extractive industries.[12]

On this occasion the author will only focus on international initiatives on human right enshrined in the UN Framework protect, respect and remedy. the UN framework spawned three pillars, namely; First, the state duty to protect, from human rights abuses by third parties, including business enterprises through policies, regulations and a fair trial; The second responsibility of MNCs to respect human rights, which means that the company must act with due diligence to avoid the execution of trades on the other party and to address the adverse effects which they are involved; and third, the need for wider access to victims to an effective remedy, both judicial and non-judicial.

MNCs may be the subject of human rights (the public) in a limited sense, limited herein is based on field studies and history / background formation, for example, the Vatican and the International Red Cross, the two subjects of international law have become a subject of international law in a limited sense. The Vatican, for example, authorities are only related to the fields of spirituality/religious (Catholic) and the Vatican regard it as a subject of international law because of its historical background and a representative of the Vatican alone there are over 100 (one hundred sovereign states)

The multinational company has a very important influence in international trade policy, with its role as the main lobbyist important in moving and in the name of free trade. In accordance with the character it has, multinational companies can affect government legislations or states by limiting the ability of state or government to freely carry on the movement of goods, services and capital is done by passing the state borders when and where the company's strategy can be applied. There are four interrelated factors why multinational companies be liable to respect of human rights, namely[13] (1) the economic power of multinational corporations; (2) The international nature of multinational companies; (3) the impacts of operations of multinational corporations; (4) the limited ability of states regulate multinational companies. According to this argument: "The size and power of Multinational Corporation and the impact of such

[12] Director for Human Rights and Humanitarian Affairs Ministry of Foreign Affairs of the Republic of Indonesia, Global Framework on Corporate's Human Rights Due Diligence, diampaikan pada International Conference On Corporate–Human Rights Due Diligence, Surabaya, November 2016

[13] Asep Mulyana, Mengintegrasikan HAM ke dalam Kebijakan dan Praktek Perusahaan, https://kajiankomnasham.files.wordpress.com/2012/12/asep-mulyana-bisnis-ham.pdf diunduh pada 28 April 28, 2015

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corporation on human rights is equivalent to that of many nation-states. As result, broadening the scope of liability for human rights violations under various international covenants so as encompass multinational corporations [as well as the nation-state] should be considered".[14]

In human right state has three obligations, namely: to protect (Protection) to promote (promotion) and to fulfill (Compliance), if applicable ICESCR can be done through a series of programs that allow for the fulfillment of human rights, such as requiring the state to use some money to protect rights these rights or to require investors who operate to respect human rights or obliging investors that operate to respect those rights. As described in the above countries is a major subject in the fulfillment, promotion and protection on human rights, but MNCs as a company that (sometimes) have the ability to affect the state through policies have an obligation to respect human right, which means that MNCs are not charged for harm citizen human right or promote ham citizens.

Ruggie add more work on this framework. Human right council agreed to extend his work for the next three years. At the end of his work ruggie report his work and add human right guiding principles on business and human right. This principles accepted by UN Human right councils. This guiding identified the UN Framework with three ways:

a. analyzed by mapping the various regulations
b. seen the possibilities the gap between the existing regulations with the demands / guide of the three pillars
c. Based on the first step and the two countries establish a specific action plan for the country.

5. Due diligence on corporation responsibility to promote human right

The detailed examination of a company and its financial records, done before becoming Involved in a business arrangement with it or the action that is Considered reasonable for people to be expected to take in order to keep Themselves or others and their property safe[15]. From this define that due diligence is an initial act or an act of preventive before doing need or activity. Indonesian dictionary 'due diligence' means

[14] Ibid.,
[15] Wib Cambrage online dictionary, http://dictionary.cambridge.org/dictionary/english/due-diligence, downlode on Saturday, 29 Oktober 2016, Pukul 08.02

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Due diligence is not a courtship, a negotiation, or an inquisition; it's a fact finding mission, and after your company submits its letter of intent Reviews those facts start coming in fast and heavy. Your business review of the targets Becomes a true audit, Aimed at gaining a thorough understanding of the target's operations, assets, liabilities and outlook. Your due diligence team will be looking to confirm the target's representations, validate its valuation, probe any legal, regulatory and compliance concerns, and at expected synergies and integration plans[16].

Pillar 2 (two) of the UN Framework on business and human rights is a responsibility to respect. The responsibility to respect means that the company should not be rights of others when doing business, as outlined by the standards of universal human rights instruments.[17]

21 Principal on guiding principle state;

> "in order to identify, prevent, mitigate and account for how they address their adverse human right impacts, business enterprises should carry out human right due diligence. The process should include assessing actual and potential human rights impact, integrating and acting upon findings, tracking responses and communicating how impacts are addressed. Human right due diligence:
> a. Should cover adverse human right impacts that the business enterprise may cause or contribute to through its own activities, or which my directly linked to its operations, products or services by its business relationship;
> b. Will vary in complexity with size of the business enterprise, the risk of severe human rights impacts and the nature and context of its operations;
> c. Should be ongoing, recognizing that the human rights risks my change over time as the business enterprise's operations and operating context evolve

The obligations of due diligence does not only apply to activities in which the company his supply chain alone but also, as stated principle 18:

" in order to gauge human right risks, business enterprises should identify and assess any actual or potential adverse human right impacts with which they may be involved either through their own activities or as a result of their business relationships. This process should:
a. Draw on internal and/or independent external human right expertise;
b. Involve meaningful consultation with potentially affected groups and other relevant stakeholders, as appropriate to the size of the business enterprise and the nature and context of the operation."

[16]GE Capital, *Due diligence: Main steps and success factors,* http://www.gecapital.eu/en/docs/GE_Capital_Overview_Due_Diligence.pdf, di unduh pada Rabu, 19 Oktober 2016 Pukul 12.07 Wib Cambrage online dictionary, http://dictionary.cambridge.org/dictionary/english/due-diligence, downlode on Saturday, 29 Oktober 2016, Pukul 08.02

[17] Rully Sandra petj, Global Compact Network Netherlands, *Bagaimana Menjalankan Bisnis dengan Menghormati ham; Sebuah Alat Panduan bagi Perusahaan, Elsam, Jakarta 2014, hlm. 21*

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The scope of the responsibility to respect human rights is determined by three factors (inter-related), i.e.[18]

a. How the company's own activities affect human rights
b. How companies can contribute to human rights violations of human through relationships associated with its activities (suppliers, contractors, government and others)
c. How a particular country context and local conditions (social, political and economic) could have implications for human rights

6. Conclusion

a. Due diligence Mean the diligence reasonably expected from, and ordinarily exercised by a corporation who seeks to satisfy a legal requirement or to discard an obligations. Due diligence in Corporation mean corporation made or measures that the company has make sure that its activity does harm human right.
b. The Corporation may prove its due diligence regulation trough its actions and its regulation (*peraturan perusahaan*) and ensure that its supply chin not violating the human rights on its activity.

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The Legal Status of Land Title Transfer That is Obtained by Auction Based on Country's Precedence Right

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Abstract

Tax is one of the biggest fund sources proponent in Indonesia's development activities. Tax payment is an obligation for every Tax Subject. They would be reputed to have debt to Country once they don't pay the tax. Tax liability is a debt that particularly arise because of law, so it has the precedence characteristic over other debts. If a Taxpayer don't pay their tax, Government can sell their valuable assets off by the auction based on Country's Precedence Right. In Bandar Lampung City, land title transfer registration that is obtained by auction based on Country's Precedence Right happened to the ownership land of a personal property on behalf of individual belonging, which became a company's tax liability payment, and also an object of inheritance dispute. The land title transfer registration validity then became legally questionable, because the auction object is recorded on behalf of individual ownership, not the Company's. Moreover, it was under inheritance dispute and has been blockaged at The Bandar Lampung Land Affair Office.

Keywords: Country's Precedence Right, Auction, Land Certificate Blockage.

1. Introduction

One of principal characteristic of tax is that the fund collecting should be based on law. This is because basically, tax is a burden people must bear, so they should have participated in formulating the tax rate by determining and approving it through their representatives in Parliament or House of Representatives.[1]

Tax payment is an obligation for every tax subject, but in fact, many of them arrears it, so they are considered to have debt to the country. Tax liability is a debt that particularly arise, because country (creditor) is bounded and can not choose freely whom to be the debtors as in civil law. It is because tax liability is set in law.[2] As the impact, it has precedence characteristic over other debts.

If a Taxpayer don't pay their tax liability, Government can sell their valuable assets off by the auction. The valuable assets can be form as movable or immovable assets, such as land.

[1] Safri Nurmantu, 2005. *Pengantar Perpajakan*, (Jakarta: Granit), Page. 14.

[2] Rochmat Soemitro, 1998. *Asas dan Dasar Perpajakan 2*, (Bandung: PT. Refika Aditama), page. 2.

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Land is an important thing to Indonesian people. As the Indonesia's current development, the human population continues increasing. The demand of land growing as well, but the conditions and circumtances of land is fixed, not increased. Hence the importance of land, people then need a legal guarantee against their rights to the land.

The legal protection from Government in agrarian sector is an obligation to proceed the land registration. Associated to land auctioned to be the tax liability payment based on Country's Precedence Right, then it has to be followed by proceeding the land registration. Land registration is held to ensure legal certainty, to fulfill the needs of either society and Government.[3]

The proceeding of land registration includes the initial and maintenance registration.[4] In Bandar Lampung City, generally the land title transfer by auction occurs because of non-performing loan of security title. However, land title transfer by auction based on Country's Precedence Right ever happened in Bandar Lampung Land Affair Office, to the ownership land on behalf of individual belonging in the name of Mr. A. The land is also under inheritance dispute, and has been recorded in The Land Books within 30 (thirty) days at Bandar Lampung Land Affair Office by one of the disputing parties, in the preparation for submission blockage with sequestration.

At the same time, the land was auctioned by Bandar Lampung State Assets and Auction Service Office (hereinafter referred as SAASO) on request of Tanjung Karang Tax Service Office (hereinafter referred as TSO), to be the payment of Article 25 Tax Income and The Value Added Tax arrears of Limited Liability Company (hereinafter referred to Company/XYZ, Ltd.) belongs to Mr. A.

The disputing land then auctioned after the thirty days of land books recording period was over, and now has been conveyed to the third party (auction winner). The blockage invoking party feels aggrieved of the land title transfer, and claim the legal validity over it, because the land is registered on behalf of individual ownership, not the company's. Moreover the land is under blockage in Land Affair Office due to inheritance dispute.

Issues

Based on the description above, the issues of this research are:

a. What is the legal status of land title transfer that is obtained by auction based on Country's Precedence Right against a disputing land?
b. What is the legal protection to the related parties in the implementation of land title transfer that is obtained by auction based on Country's Precedence Right against a disputing land?

2. Research Methodes

This research adopting normative and empirical approach. This research type is exploratory. Data sources used in this research is primary, secondary, and tertiary datas. Data collection procedures performed by literature, the study documents, and interviews. Data processing was performed using data selection, data classification, and data compilation. This research using qualitative analysis.

3. Result

Legal Status Of Land Title Transfer That Is Obtained By Auction Based On Country's Precedence Right Against A Disputing Land

[3] Adrian Sutedi, 2014. *Peralihan Hak Atas Tanah*, (Jakarta: Sinar Grafika), page.114.

[4] FX. Sumarja, 2010. *Hukum Pendaftaran Tanah*, (Bandar Lampung: Unila), page. 20.

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XYZ, Ltd. is a business entity, the form of Limited Liability Company. A Limited Liability Company (Company) is a legal entity, constituting a capital partnership, established based on agreement, conducting business activities with all of it authorized capital being divided into shares, and meeting the requirements stipulated in Limited Liability Company law and its implementing regulations.[5]

As a legal subject, XYZ, Ltd. is a taxpayer that has rights and obligations of taxation.[6] The fulfillment of tax obligation is by paying some taxes, such as the payment of article 25 of tax income, and value added tax payment. According to the Tax Law, to fulfill the rights and obligations of tax, a company needs people who act as it's entity management, whom be a representative and act in the name of company. The *people* is referred to Company's Organs.

The Company's organs in Company law are consist of:

1. The General Meeting of the Shareholders (GMS) is the company organ holding the authority not conferred upon the Board of Directors or Board of Commissioners within the limits determined under this law and/or the articles of associations. GMS shall not be individually responsible for commitments made on behalf of the Company and shall not be responsible for company losses exceeding the nominal value of the shares subscribed by each of them.[7]

   According to I.G. Widjaja, since a company gained legal entity status, then the law treats the GMS and the Board of Directors is separate from the company itself, known as the separate legal personality, or an individual stand-alone. Thus GMS who have interest in Company's wealth, also not responsible for the debts of company's. [8]

   Responding to the content of Article 3 title (1) above, Yahya harahap give an opinion on what the meant of "limited liability, that are:[9]

   a. Company doesn't liable of its shareholders, vice versa;
   b. The shareholders loses are limited to their investment;

   The shareholders shall not take further responsibility to the creditors on their personal belongings.
2. Board of Directors (BOD) is the Company Organ that is fully responsible for and has the authority to manage the Company for the Company's interest and in accordance with its purposes and objectives and to represent the company, both within and outside the courts of law, based on the provisions of its articles of associations.
3. Board of Commissioners is The Company Organ in charge of conducting supervision in general and/or in particular in accordance with articles of association and providing advise to the BOD.

The obligation of tax payment hasn't been fulfilled by XYZ, Ltd. when the Company still active, and even after it filled for bankruptcy. Country, presented by TSO, immediately take the securiy action of XYZ, ltd. assets so it won't fall into the other creditors prior the tax liability been paid. After all the assets are being used entirely to paid the tax debt off,eventually the amount of the assets still haven't cover all the tax liability. TSO then proceed the auction of some personal properties of Mr. A, as the owner of XYZ, Ltd.,

[5] Article 1 title (1) of Law Of Republic Of Indonesia No. 40 of 2007 Concerning Limited Liability Companies (herein after referred to Company Law)

[6] Article 2 Law of The Republic of Indonesia No. 28 of 2007 Concerning The Third Amendment of The law No. 6 of 1983 Concerning The General Provision and Tax Procedure (hereinafter referred to Tax Law).

[7] Article 3 title (1) of Company Law.

[8] Kurniawan, 2014. *Hukum Perusahaan Karakteristik Badan Usaha Berbadan Hukum dan Tidak Berbadan Hukum di Indonesia*, (Yogyakarta: Genta Publishing), page. 64

[9] M. Yahya Harahap, 2009. *Hukum Perseroan Terbatas,* (Jakarta:Sinar Grafika), page. 59.

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including his freehold title. The land title transfer registration in Bandar Lampung Land Affair Office then being proceed by the auction winner right after the auction completed.

The land title transfer then raised an objection from one of the disputing party, which stated that it's not legally valid. The objections filed by one of the heirs are:

1. The auctioned land is an individual property, not the Company's, and it was clear of debts from any parties.
2. The auctioned land is under inheritance dispute, and has been registered to recored the blockage on Land Books at Bandar Lampung Land Affair Office. The land title transfer was violate the right of the Heirs of Mr. A whom are entitled to the land.

To determine the validity of the land title transfer, firstly should be examined the cause of action of Country to auction a personal belonging property to pay the Company's tax liability.

The term of limited liability company consist of two words: Company and Limited. The Company referred to the capital of stocks. The Limited is referred to the limited liability of shareholders that is extent only to the value of all shares they owned.[10]

A limited Liability Company as a business enterprise should have at least five structural characteristics, such as:[11]

1. Legal Personality;
2. Limited Liability;
3. Transferable Shares;
4. Centralized Management;
5. Shared Ownership.

The Company's limited liability is not absolute. Under certain circumstances, it is possible to remove such a liability because of some exceptions. Here we see that Company law adheres the piercing of corporate veil doctrin. In simple terms, Company's Organs liability is being limitless in certain conditions.[12]

Piercing means to rip or cut through, while *veil* means a headscarf. Piercing the corporate veil literally mean is to torn the corporate veil. This doctrine states that that there are possibilities to imposing the liability to another party whom is not the Company itself, even though the act was legally carried by and on behalf of company as legal entity.[13]

This doctrine aims to avoid unfair things, especially to the parties outside the Company from the arbitrarily and improper actions conducted on behalf of company, both rises from the transaction with the third parties or arise by a misleading or unlawful acts. Basically, this doctrine will be applied if there is a very unfair situation where the liability only requested to company as a legal entity.[14]

The existence of this doctrine can be seen in several articles of Company law, such as:

1. Shareholders
   This doctrine is provided in Article 3 title (2) which is an exception of Article 3 title (1) Company Law which states that the Shareholders shall not individually responsible for the losses of company exceeding the nominal value of the shares they have. This limited liability shall not applied if:

[10]Ridwan Khairandy, 2007. *Perseroan Terbatas Sebagai Badan Hukum*, Business law Journal, Volume 26, page. 5.

[11] Henry Hansmann dan Reiner Kraakman, *"What is: Corporate Law?"* In Kurniawan, 2014. *Op.Cit.,* (Yogyakarta: Genta Publishing), page. 58.

[12] Chatamarrasjid Ais, 2004. *Penerobosan Cadar Perseroan dan Soal-Soal Aktual Hukum Perusahaan*, (Bandung: PT. Citra Aditya Bakti), page. 8.

[13] Steven H. Gifis In Munir Fuady, 1996. *Hukum Bisnis Dalam Teori dan Praktek, Third Book*, (Bandung:PT. Citra Aditya Bakti), page. 97.

[14] Kurniawan, 2014. *Op.Cit.*, page. 81

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a. The Company's requirements as a legal entity have not been or are not fulfilled;
b. The relevant Shareholders either directly or indirectly and acting in bad faith take advantage of the company for their personal interest;
c. The relevant shareholders are involved in unlawful acts conducted by company; or
d. The relevant shareholder either directly or indirectly unlawfuly use the company's assets, causing the company assets to be insufficient to settle the company's debt.

The provisions of Article 3 title (2) of Company Law doesn't stated which party is actually protected with the implementation of piercing the corporate veil principle. However, by looking into Article 3 title (2) of Company law, we could say that the protection is given to the creditors.[15]

2. Board of Directors

In performing its duties, the BOD must implement it in good faith and full of responsibility, as stipulated in Article 97 title (2) of Company Law. There is no clear formulation of *good faith* and *fully responsibility* terms in that article. Sutan Remy Sjahdeini stated that these two elements can be linked in the standard of care or prudential standards, such as:[16]

a. The BOD members can not perform such activities on Company's expenses, if it does not give a very small benefit that gained the relevant BOD members.
b. The BOD members may not be a contenfer of the company they lead.
c. The BOD members shall refuse to make a decision about something that is known or should be known that the Company to be able to do unlawful acts so that company may be subject to sanction by competent authority.
d. The BOD members with its deliberately or due to its negligence has not done or has not done enough to do an effort or action to prevent the company's loses.
e. The BOD members either deliberately or due to negligence has not done or has not done enough to do the effort or action that is necessary to increase the profits of the company.

If BOD members carry out their duty with a bad faith and unresponsible, then they shall be fully personally responsible as stipulated in Article 97 title (3), also jointly responsible as stipulated in Article 97 title (4) of Company law.

Personal responsibility of BOD also provided in Article 104 title (2) of Tax law, which states that, "In event of bankruptcy due to the mistakes or negligence of the BOD and the Company bankruptly assets are insufficient to settle all the Company's liability, each member of the BOD shall be jointly and personally responsible for all outstanding liabilities of the bankruptcy assets."

Billing payment of Company is provided in Article 32 of Tax law and its explanation which stated that representative of company shall be responsible individually and/ or jointly or severally upon the payment of tax payable, unless if they can proving and ensuring the Director General of Tax that in their position, it is impossible for them to bear such the payment of tax liability.

3. Commissioner

Commissioner shall be fully personally responsible as stipulated in Article 114 title (3), also jointly responsible as stipulated in Article 114 title (4) of Company Law if in carrying out the task of monitoring and providing advice to BOD, not in good faith, prejudence, and fully responsible.

[15] Kurniawan, 2014. *Tanggung Jawab Pemegang Saham Perseroan Terbatas Menurut Hukum Positif,* Law Rostrum Journal, Volume 26 No. 1, page. 80-81.

[16] Sutan Remy Sjahdeini, 2001. *Tanggung Jawab Pribadi Direksi dan Komisaris*, Business Law Journal, Vol. 14, page. 100.

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> Based on the regulations above, the auction to the personal property belonging as a payment of limited company's tax liability is legitimate, because it is in accordance and uncontrary to law. Although the Company law states that private property separates to Company's assets, but it still open the possibility to charge the payments to Company's organs as long they proceed their duties in bad faith and/or in unresponsible acts.

The principle of limited liability is not being threatened despite the excistence of piercing the corporate veil principle. Limited liability principle will remained solid, because the piercing the corporate veil only been used if the company only be an instrument that is as a mask or conceal the real intent of it's organs. [17] Thus, law will protect the shareholders, BOD, or commissioners who has good faith.

Regarding the element of fault and negligence of tax liability payment is not yet given a clear limitation by Tax Law. It means, there should be a proof in advance that there is an intent or negligence by BOD on tax liability arrears, which led to do the auction.

Basically, tax payment is an obligation arise by legislation to every tax subject, either individual or legal entities, which the amount and the calculation method has been regulated in the Tax law. Arrears of the Income Tax and the Valuable Added Tax payment by XYZ, Ltd. is a form of the mistakes and negligence of Company's management, so TSO has a solid cause of action to auction off Mr. A's personal property to be the payment of XYZ, Ltd. tax liability.

The implication of the legal of the prosecution using personal land property of Mr. A as a payment of XYZ, Ltd. tax liability is causing SAASO can auctioning the land, also the transfer of land title can be registered at the Bandar Lampung Land Affair Office. So far, it can be said that land title transfer is legitimate, because it is meet the formal requirements of auction.

The Legal Protection To The Related Parties In The Implementation Of Land Title Transfer That Is Obtained By Auction Based On Country's Precedence Right Against A Disputing Land

In land registration, either in the initial registration (first time registration) as well the maintenance registration, it is possible happened a dispute or a conflict interest between the relevant parties, so as the land title transfer by auction based on Country's Precedence Right to the former land of Mr. A to the hands of third party (auction winner). It then creates a dissatisfaction feeling among the heirs. It is understandable, because everyone reserve the right to maintain their right over land.

On the other hand, the Bandar Lampung land Affair Office, TSO, and SAASO, as the associated institution to the auction process implementation over the land title transfer, will also maintain their administrative act. As well as the auction winner as the rightful owner.

Land title transfer that is obtained by auction based on country's precedence right carried out by Bandar Lampung land Affair Office is legitimate because it fulfill the mistakes and negligence elements as stipulated in Article 32 title (2) Tax Law, also the Article 97 title (3) and (4) the Company Law. So, the legal protection for the three associated institutions is free from all lawsuits.

Country's Precedence Right is stipulated in Article 21 title (3a) of Tax Law, which states that country has the precedence right upon properties belong to tax bearer, over other creditors

[17] Chatamarrasjid, 2004. *Op.Cit.,* page. 16.

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Furthermore, the Article 21 title (3b) states that In the terms of the Taxpayer is certified in bankruptcy, disband, or liquidated, then the curator, liquidator, person or agency that is assigned to carry out revamping shall be prohibited to divide the asset of Taxpayer in bankruptcy, issolution, or liquidation to the shareholder to the other creditors before using the assets to pay the taxpayer tax liability first.

According to the contents of the article above, Country has the privilege right to be precedence among other creditors due to tax liability payment. Tanjung Karang TSO as a fiscus has the authority to issue the Distress Warrant and Warrant for the Implementation of seizure confiscation. In the event that the taxpayer doesn't pay off the tax liability as determined in Underpaid Tax Assessment after the payment due, fiscus has authority to issue distress warrant within specified period that is 2x24 hours to pay off tax liabilities. If within this period the taxpayer still does not pay the tax liability, fiscus will follow up by issuing Warrant for the Implementation of Seizure confiscation, against taxpayer assets as collateral to pay off his tax liability. [18]

Law of Republic Indonesia No. 19 of 2000 Concerning the Amendment of Act No. 19 of 1997 Concerning Tax Billing With Distress Warrant provides a very strong position against distress warrant. This can be seen in the content of Article 7 title (1) of that act, which stated that:

" The letterhead of Distress Warrant had the words" FOR THE SAKE OF JUSTICE UNDER THE ONE ALMIGHTY GOD," has the executorial power and legal position equal to a court decision that is legally binding."

Distress warrant position is being clarified in article explanation above, that stating the purpose of giving the excecutorial power equals to distress warrant is to achieve effectiveness and efficiency of tax billing based on distress warrant. This provision provides executorial power and legal position as same as the grosse deed of legally binding decision of civil court. Thus, direct distress warrant can be implemented without court decision and can not submitted appeal request letter.

The land title auction based on Country's Precedence Right is held by TSO after the billing to the arrears of tax liability payment, that consist of the issuing of warning letter, immediate and total tax collection order, distress warrant, foreclosure, and aucion.

Implement the auction is an obligation for the Chief Officer KPKNL Auction or Class II, along petition submitted to the auction is complete and in compliance with the Formal Legality Subject and Object Auction.

Auction implementation is an obligation to The Chief of State Assets and Auction Service Office, also The Auction Officer Class II, as long as the auction petition submitted is complete and in compliance to the Formal Legality Subject and Object of auction. [19]

In Bandar Lampung Land Affair Office, inheritance problem tends to inflict the dispute, both between the heirs itself; the heir to a third party who has an interest in inheritance land, as well as between the heirs to legal entities. [20]

The disputes over land can be formed as an administrative dispute, civil disputes, and criminal disputes, relating to the ownership, transactions, registration, underwriting, utilization, tenure, and customary land title disputes. A dispute subjects certainly more than

[18] Wirawan B. Ilyas dan Richard Burton, 2007. *Hukum Pajak, Third Edition*, (Jakarta: Salemba Empat), page. 160-161.

[19] Article 13 PMK. 27/PMK.06/2016.

[20] Interview with Badarudin Umar, Head Of Section of Land Title and Land Registration of Bandar Lampung Land Affair Office, Agustus ,18th 2016, at 13.10 pm.

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one parties, either the individual subjects, groups, organizations, even the large institutions such as the State Owned Enterprises (SOEs) or the state. [21]

Inheritance dispute is a civil law dispute, as to who is entitled to a plot. Generally, in an inheritance dispute, one of the parties will file a registration of certificate blockage in Bandar Lampung Land Affair Office.

Land title certificate blockage itself is often inflicting some misunderstandings in the community. The misconceptions are include: [22]

1. That the blockage is timeless. Once a land title object are being blockaged, the land would remain status quo until the blockage applicant itself repeal it;
2. Blockage will be valid for 30 (thirty) days and thereafter can be further extended continously after completion of another 30 (thirty) days period.

Responding to public misunderstanding about the land certificate blockage, Mr. Badarudin Umar as Head Of Section of Land Title and Land Registration of Bandar Lampung Land Affair Office, explained about land certificate blockage as referred in Article 126 title (2) of Regulation of state Minister of Agrarian/ Head of BPN No. 3 of 1997 concerning The Provision of Government Regulation No. 24 of 1997 On Land Registration.

"Actually, the blockage contemplated in Article 126 title (2) was not the 30 (thirty) days of recording on Land Books, but a blockage due to the status quo order by the judge followed by sequestration. So, the 30 (thirty) days of recording on Land Books meant is the time provided by the Land Affair to prepare sequestration filing in court. If after a period of 30 (thirty) days granted by the Land Affair Office was over and the applicant did not follow the blockage up in the form of sequestration filing in court, then the blockage will automatically fall by itself. [23]

Sequestration (*Conservatoir Beslag*) is a precedes ruling legal action taken by Court. It means, the foreclosure was carried out on the property of the Defendant before the principal case being inspected or can be carried out during the proceedings runs, before the court handed down the verdict. The sequestration role is very important in the court practice. By doing so, Defendant will temporarily lost the control authority over his goods/assets, and these assets are stored (*diconserveer*) to be a guarantee and shall not be conveyed, embezzled or transferred to another person.[24]

Sequestration intended to ensure the Plaintiff right and interests, in case a lawsuit will being granted and the law provides efforts to guarantee it by doing foreclosure (*arrest, beslag*).[25]

Based on the rule of law, If after the 30 (thirty) days of period given by Bandar Lampung Land Affair Office has ended but the applicant has not submitted seizure confiscation from court to blockage land certificate, so then the land status is back to its original state, thus towards it, some legal acts can be implemented, for example to proceed the auction.

Auction conducted by the principle of prudence, after the 30 days period of recording in land books end. Regarding the auction object are being blockaged at Land Affair Office, doesn't directly stop auction execution.

[21] Bernhard Limbong, 2014. *Politik Pertanahan*, (Jakarta: Margaretha Pustaka), page. 65.

[22] Interview with Luthfi Muchtaedy, Officer of Land Right Registration Counter of Bandar lampung Land Affair Office, Agustus, 16th 2016 at 14.10 PM.

[23] Interview with Badarudin Umar, Head Of Section of Land Title and Land Registration of Bandar Lampung Land Affair Office, Agustus ,18th 2016, at 13.10 pm.

[24] R. Soeparmono, 2006. *Masalah Sita Jaminan (C.B) Dalam Hukum Acara Perdata*, (Bandung: Mandar Maju), page. 3-5.

[25] Sudikno Mertokusumo, 1998. *Hukum Acara Perdata di Indonesia*, (Yogyakarta: Liberty), page. 48-58.

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"The State would be considered to have a small and trivial position if each blockaged cancelled the auction. SAASO respects the blockage procedure applied in the Land Affair Office, but not all blockage can cancel the auction. Anyone who has interest over land could apply blockage, but SAASO will examine wether there are other greater interest than the applicant's.[26]

The Chief of Land Affair Office can only refuse a file application if the submitted document is incomplete and doesn't meet the requirements set in regulation.[27] If the procedure of gaining the land title is according to the law and all the requirement documents of land titl transfer is complete, then the conveyancing should be done.

The form of legal protection to the auction winner is a legal guarantee of land ownership by the land title transfer registration/countinous recording in Land Affair Office. As explained above, that a land registration is held to ensure legal certainty.

In accordance with the secure principle of land registration that set in Article 2 of Government Regulation No. 24 of 1997 concerning Land Registration and its explanation that the land registration in Indonesia is implemented by purpose to demonstrating that land registration should be organized carefully and meticulously so that the result can ensure legal certainty as the purpose of land registration itself.

4. Conclusion

After doing research, the can be drawn some conclusions, among others:

1. The land right transfer that is obtained by auction based on Country's Precedence Right conducted by Bandar Lampung Land Affair Office is legitimate because it has mat the formal requirements of auction.
2. Tanjung karang TSO in proceeding auction over land to be payment of Company's tax liability is in accordance to requirements set in Article 32 title (2) of Tax Law dan in Article 97 title (3) and (4) of Company law, so the legal protection to TSO, SAASO, and Bandar Lampung Land Affair Office is freed of all law charges. The legal protection to auction winner is a a legal guarantee of land ownership by the land title transfer registration/countinous recording in Land Affair Office.

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[26] Interview with Andri Dwinanto, Head Of Section of Auction Bandar Lampung State Assets and Auction Service Office, Agustus, 5th 2016 atl 15.00 pm.

[27] Article 6 title (3) Regulation of State Minister of Agrarian/Head of BPN No. 1 of 2010 Concerning Service Standart and Administration Of Land.

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Kurniawan; 2014; *Tanggung Jawab Pemegang Saham Perseroan Terbatas Menurut Hukum Positif*; Law Rostrum Journal; Volume 26 No. 1.

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The Urgency of Sanctions for Violators of Corporate Social Responsibility (CSR) for Improving of The Welfare of Society

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Abstract

The aim of this research is to know connection between the sanction and CSR implementation for improving of the welfare of society. In Indonesia, the implementaton of CSR in Limited Company based on Article 74 The Law No. 40 of 2007 regarding Limited Liability Company, this article obliges companies whose activities related to natural resource management to implement Corporate Social Responsibility (CSR). This is the starting point of mandatory CSR program in Indonesia. CSR is a commitment to improve community well-being through discretionary business practices and contributions of the company's resources. The method of this researh is empiric/nondoctrinal. Based on the result of this research that CSR in Indonesia can essentially be directed at strengthening the people's economy is based on small and medium enterprises as well as improving the quality of human resources through improved public education facilities and infrastructure. The problem is the absence of sanction. The existence of legal substance of CSR will not succeed if there is no legal sanctions. The Law and Goverment regulation on CSR are not set on sanctions for the corporation that non-performance in CSR implementation. Many companies will ignore the CSR implementation when there are no rules forcing them.

Keywords *: sanction, CSR, implementation, welvare of society*

1. Introduction

The enactment of Law No. 19 of 2003 about State-Owned Enterprise (State-Owned Enterprise Law), Law No. 25 of 2007 about Investment (Investment Law) and Law No.40 of 2007 about Limited Incorporation (Limited Inc. Law) has changed the moral obligation in the implementation of Corporate Social Responsibility (CSR) in Indonesia into legal responsibility, meaning that the implementation of CSR is an obligation to a company. The obligation, consistent with the Article 33 of 1945 Constitution and the fourth principle of Pancasila, Social justice for all of the people of Indonesia, is the spirit of CSR implementation. Considering the provision of Article 33 of 1945 Constitution, government is the one primarily responsible for the welfare of Indonesian people, however government can required all stakeholders such as companies that enjoy the Republic of Indonesia

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country's wealth to participate and to be responsible as well. One form of corporate responsibilities to the society is social and environment responsibility, popularly called CSR[1].

As one of legal subject, the company has legal right and obligation, just like *natuurlijke persoon*, to which civil right and obligation inherent; as the legal subject the company is called *recht persoon*. Civil obligation is a legal responsibility that should be complied with and fulfilled. As the legal subject, it of course has some unquestioned legal responsibilities; the more important thing is to address the following questions: does the company has moral responsibility as well? In order to have moral responsibility, the company should have moral status or in other words moral behavior. Moral actor (moral agent) can do some action qualified as ethical or unethical[2]. The presence of Limited Inc. Law and Investment Law is actually the bridge of moral/ethical responsibility and legal responsibility. Although there has been a bridge between the legal and moral responsibilities, the implementation of CSR has not been maximal in Indonesia.

For example, in Kutai Barat (Kubar) regency, East Borneo, out of hundreds companies in Kubar affiliated with mining, plantation, and wood. In reality, many companies still ignore CSR implementation. Meanwhile, there has been an agreement that the companies are willing to report any CSR activity to Kutai Barat Regency Government, through CSR forum of Kutai Barat. However, that has not been implemented completely.[3] Similarly, Serang Regency, Banten Province, has had Local Regulation Number 12 of 2011 about Corporate Social Responsibility. But the limited sanction leads to the less maximum implementation. Many companies in Serang Regency underestimate or even ignore CSR implementation. Out of hundreds companies, many companies do not implement CSR despites its advantage to the public.[4]

[1] Umar Hasan, *Kewajiban Corporate Social Responsibility (CSR) Dilihat dari Perspektive Hukum*, Majalah Hukum Forum Akademika, Vol.25. No.1 March 2014, p.2

[2] Bertens, K. 2000. Pengantar Etika Bisnis, Kanisius, Yogyakarta. p.290.
See also in French, Peter. 1979. The Corporation and Moral Persoon. American Philosophical Quartery. pp.207-215.
The business ethicists, particularly Peter French, formulated his opinion firmly "*Corporations can be full-fledged moral persons and have whatever privileges, right and duties as are, in the moral course of affairs, accorded to moral persons.*

[3] Kornelius Yan Sinyal, Daily Chairman of CSR Forum of Kubar Regency, See also in http://kaltim.prokal.co/read/news/124994-banyak-perusahaan-mengabaikan-csr.

[4] Zaenal Abidin, Chairman of Social Corporate Responsibility Team of Serang Regency, Banten Province. See also in http://inilahbanten.com/2016/05/22/di-kabupaten-serang-banyak-perusahaan-abaikan-csr/

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It is also similar to Muko-Muko Regency, Bengkulu Regency. In the regency categorized into retarded one, there are some Sawit companies, but the implementation of CSR has not contributed yet to the improvement of public welfare. For the companies, business is business, like a usual[5]. CSR is still considered as another part of company management, so that its existence is considered to contribute positively to the company's sustainability. Meanwhile, according to the existing law, the presence of CSR is inherent to company management, so that the activities in CSR are still under company's management control. So is it in Ponorogo Regency, East Java Province. Some companies implement CSR only as the element implemented minimally, without coordinated program with sustainable target.[6]

In Surakarta City, Central Java Province, the implementation of CSR has been coordinated with Surakarta city government. For example, there has been CSR fund submission to Surakarta City Government to Develop Temporary Market for Klewer Market Sellers by some companies in Surakarta City reaching billions rupiahs by some banking companies, banking associations and companies. But not all companies are involved in CSR implementation, so that the potential fund of CSR has not been explored maximally.[7]

In Jakarta, Suprapto and Siti Adipringadi Adiwoso's research entitled *Pola Tanggung Jawab Sosial Perusahaan* on 375 companies in Jakarta found that 166 or 44.27% companies stated that they do not conduct CSR activity and 209 or 55.75% do so. Meanwhile, the form of CSR implemented includes: firstly, kinship activities (116 companies); secondly contribution to religious institution (50 companies); thirdly, contribution to social foundation (39 companies); and fourthly, community development (4 companies)[8].

Article 74 of Limited Inc. Law jo. Government Regulation Number 47 of 2012 about Social Responsibility and Limited Inc. Environment has accommodated CSR as moral responsibility, even in Article 74 of Limited Inc. Law has given obligation to the companies running in natural resource or natural resource-related areas. "The incorporation running its business in natural resource area" is defined as the one the business activity of

[5] Khoirul Huda, Bupati Muko-Muko, Bengkulu Regency. Interview was conducted on August 12, 2016.
[6] Sumarno, The Head of District Development Planning Agency of Ponorogo Regency, East Java Province.
[7] FX Hadi Rudyatmo, Surakarta Mayor, interview was conducted on July 9,1026.
[8] Suprapto, Siti Adipringadi Adiwowo, *Pola Tanggung Jawab Sosial perusahaan Lokal di Jakarta*, Galang Vol.1 No.2, January 2006.

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which is managing and utilizing natural resource. Meanwhile, "the incorporation running its business activity in natural resource-related area" is the one not managing and not utilizing the natural resource, but its business activity impacts on the function of natural resource ability. This law also stated that CSR is the obligation of incorporation budgeted and calculated as the cost of incorporation, the implementation of which is conducted by taking the decency and the fairness into account. Meanwhile, in relation to sanction, it is stated that the incorporation not implementing CSR obligation will be imposed with sanction according to the provision of corresponding legislation. The problem is firstly that there is a limitation of obligation for the companies obligatorily implementing CSR, running their business activity in natural resource or natural resource-related areas. Secondly, the sanction is not governed in detail. As a result, many companies are still reluctant to implement CSR.

The existing regulation finds success difficultly when it does not govern the sanction. Anthony Allot suggested effectiveness, that is, "Law will be effective when the objective of its existence and its application can prevent unexpected action (remove disorder/disorganization). Generally, the effective law can realize what has been drafted[9]. Sanction is always related to legal norm or other norms, such as moral, religion or belief, and modesty norms (Zainuddin, 2008: 43)[10]. Through sanction, legal norm can be distinguished from other norms, as Hans Kelsen suggests that

The fundamental difference between law and moral is: that law is a compelling order, a norm order attempting to realize certain behavior by giving organized compelling action socially to the opposite behavior, while moral is a social order not having such the sanction. The sanction of moral order is only agreement for the behavior consistent with the norm and disagreement to the behavior in contradiction with norm, and no compelling action applied as sanction[11].

State-Owned Enterprise Law, Investment Law and Limited Incorporation Law have pertained to CSR, but the regulation of sanction concerning those not implement CSR is governed firmly only in Article 34 of Investment Law, in the form of sanction administration that should be complied with when no CSR activity is implemented. Considering this, it can be seen that the regulation of CSR in Indonesia is less obvious.

[9] Antony Allot: The Limit of Law, Butterworths, London, 1980. P.23.
[10] Zainuddin Ali. 2008. *Filsafat Hukum*. Sinar Grafika, Jakarta, p.43.
[11] Hans Kelsen. 1978. *Pure Theory of Law*. California. University of California Press

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Meanwhile, CSR is the parameter of company's commitment to support creating the sustainable development. In the main regulation, Article 15 clause (1) of Law No.12 of 2011 about Legislation Development confirms that law should include the provision of sanction within it.

2. Research Method

This paper was based on empirical/sociological legal research. We studied the regulations and principle by using the approach of law and social sciences (Irianto & Shidarta, 2009). Approaching the legal issues is in accordance with the fact in social life. The characteristic of research was descriptive evaluative providing a systematic overview of the object to be examined (Sunggono, 2005). The primary data was taken from interview with Khoirul Huda, the Regent of Muko-Muko District, Bengkulu, FX Hadi Rudyatmo, the Mayor of Surakarta City, Central Java, and Sumarno, the Head of District Development Planning Agency of Ponorogo District, East Java. Secondary data was obtained from the review of literatures pertaining to the material. Secondary data consisted of legal materials such as regulations, books, papers, and other references. Technique of collecting data used was in-depth interview and document study (Neuman, 2006). Technique of analyzing data used was theoretical interpretative one. The analysis was conducted by interpreting the data collected based on theoretical background as a framework. This paper intended to provide an overview of existing condition, rules and implementation of CSR, especially discussing the urgency of sanction for CSR violators to improve the society welfare.

3. Discussion

3.1 CSR, Care and Obligation of Corporation

Corporate social responsibility or CSR is one of actual topic closely related to corporate legal and business ethical issues as an activity aiming to get high profit, but it should think of the interest of society surrounding, because the company is actually the part of society (Tjager, 2002: 144)[12]. As an institution and a legal subject all at once, the company is inseparable from the society. Recalling the close relationship between

[12] Tjager, I. Nyoman et.al. 2002. Corporate Governance, Tantangan dan Kesempatan Bagi Komunitas Bisnis Indonesia. PT. Prenhallindo. Jakarta. JURNAL EQUALITY, Vol.13 No.1 February, 2008. p.144.

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company and society, ideally there should be a harmonious relationship between company and society, particularly surrounding society (Yoserwan, 2006: 215)[13].

Carroll (1979) said that "CSR is the social responsibility of business encompasses the economic, legal, ethical, and discretionary expectations that society has of organizations at a given point in time" (p.500)[14]. World Bank Describes CSR as follows "socially responsible companies consider the full scope of their impact on communities and the environment when making decisions, balancing the needs of stakeholders with their need to make a profit"[15].

The establishment of harmonious relationship between company and surrounding society becomes the Corporate Social Responsibility or CSR. John Elkington brings up an idea through "3P's" concept (profit, people, and planet) as outlined in his performance book "*Cannibals with Fork: The Triple Bottom Line of 21st Century Business* (John Elkington, 1998). This concept shows that to build a sustainable business, the relationship between profit, people, and planet is inseparable from each other. Elkington (1998) argues "that to be a sustainable a company should developing "win-win-win" strategies to simultaneously benefit to the company, its customers and the environment"[16].

The characteristic of modern constitutional state is that its constitution contains sovereignty in political and/or economic areas. Therefore, there are two types of constitution: the constitution containing political sovereignty only and the constitution containing political and economic sovereignty (Asshiddiqie, 1996: 41-58)[17]. In the presence of firm constitution about national economic regulation, the existence of CSR becomes more important to be explained in Indonesian positive law. So far, the problem of corporate social responsibility is still limited to the value practiced as one of ethics in economy (business). Recalling that the principle of Corporate Social Responsibility is only an appeal, its application is still very weak practically. Only few companies

[13] Yoserwan, 2006. Hukum Ekonomi Indonesia Dalam Era Reformasi dan Globalisasi, Andalas University Press, Padang. p.2015.
[14] Yosefa Sayekti, *Strategic Corporate Social Responsibility (CSR), Company Financial Performance, and Earning Response Coefficient: Empirical Evidence on Indonesian Listed Companies,* Faculty of Economics Jember University, 2015, p.411.
[15] Ibid
[16] John Elkington. 1998 *Cannibals With Forks: The Triple Bottom Line in the 21st Century Business*. Gabriola Island, BC: New Society Publishers.
[17] Asshiddigie, Jimly. 1996. Gagasan Kedaulatan Rakyat Dalam Konstritusi dan Pelaksanaannya di Indonesia. Ichtiar Baru, Van Hoeva. Jakarta. pp.41-58.

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make CSR one of Social Investment programs, even many companies consider it as additional burden with no relation at all to the company's product or service producing process, and furthermore CSR is considered as high cost economic.

CSR is not only the attempt of showing an organization's caring about social and environmental issues, but it can also support the realization of sustainable development by balancing economic aspect and social development supported with the protection of living environment. In the attempt of responding to the change and of creating trust relationship, the attempt the organization (particularly business organization) takes currently is to design and to develop a series of program leading to a social responsibility form.

This program becomes a parameter of organization's care by expanding socially to the public. Care and this expansion is not the framework of distributing "wealth/property", thereby pleasing many parties, but emphasizing more on empowering the community in order to care about social domain along with the organization.

Many factors becoming the reason of why Social Corporate Responsibility is so important in organization setting are[18]:

a. Globalization stream providing a description about the disappeared border between many areas in the world thereby generating universality. Thus, it is very possible for multinational companies to develop everywhere as the globalization chain;
b. Consumer and investor as the primary public of profit organization needing representation about organization's responsibility for its social and environment issues;
c. As the part of organizational ethics, and organizational responsibility is required to manage the organization well (called good corporate governance);
d. The public in some states considers that organization has fulfilled the standard organizational ethics, when the organization cares about environmental and social issues;
e. Social responsibility at least can reduce the crisis potentially occurring in the organization;
f. Social responsibility is considered as improving the organization reputation.

[18] Sulistyaningtyas, I.D. (2006). Tanggung Jawab Sosial Perusahaan dalam Program Kampanye Sosial. *Jurnal Ilmu Komunikasi, Vol.3 No.1*, pp.63-76.

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3.2 The Urgency of Sanction Application in CSR Implementation

Corporation plays important roles in a state's growth, such as improving and creating job opportunity, in this case making the people prosperous as well. It is because when a corporation improves and creates job opportunity, it means that it makes the community having opportunity of getting reasonable job in order to meet their living need. Business competition between one corporation and another becomes tighter in the presence of a variety of products offered to the public[19].

As the economy progresses, what is prohibited is the offense against the people welfare. The intended offense includes the corporation's way of getting profit for either personal or group interest by means of breaking the law, either directly or indirectly harming others. Corporation plays an important role to support the growth of people welfare by fulfilling the social responsibility, as the one doing activity in the area surrounding corporation should pay attention to the surrounding society. Corporation should participate and maintain the people's economic welfare and safeguard environment from damage resulting from corporation activity. Corporation has an obligation in the attempt of preventing living environment pollution from occurring due to corporation activity. Therefore, there should be a policy in managing living environment by corporation over the activities it does. Preventive and managerial attempt requires the participation of all stakeholders including corporation, government and society (community). In order to create a balanced and harmonious relationship, there should be a good relationship between society and corporation. One of activities that can improve the relationship between the corporation and the public without conflict is to implement CSR; so in the presence of CSR, the corporation can involve the community in CSR activity. Here CSR is defined as the corporation's commitment to contributing to a sustainable economic development by considering corporate social responsibility emphasizing on economic, social, and environment aspects. Corporation not implementing CSR will impact on the surrounding society and environment. In addition, when the corporate doe not implement CSR, it means that the corporation breaks the rule obliging the corporation to implement CSR. Corporation takes some

[19] Setiyono, Kejahatan Korporasi, Banyumedia Publishing, Malang, 2009. p.63.

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attempts to maximize economic benefits. However, the objective of corporation is not only to get profit but also to have moral commitment to build local community, because the community can require the corporation to responsible socially. The importance of criminal sanction regulation in relation to the corporation not implementing CSR is viewed from the corporation's evil, the corporation's greed in getting as much as possible profit regardless CSR aspects including economic, social and environmental ones. In addition, the corporation's evil can be seen from its greed in recruiting local people. Therefore, it can be seen as a return to local people as the corporation has run its business around the people's settlement, so that the corporation should fulfill three aspects of CSR. It is intended to create the balance between what the corporation does and the utilization of both natural and human resources taken by corporation in the attempt of conducting corporation activity. In addition, the corporation's social sensitivity in conducting its business activity should be taken into account. It is different from other countries such as United Kingdom, Canada, and France in which the corporations have had feeling of participation in the importance of environment and the presence of social sensitivity so that there should be a regulation on obligation concerning the obligation of CSR implementation generating the sanction against those breaking it.

For that reason, there should be an emphasis for Indonesian people to implement this CSR, because the regulation about CSR for corporation will affect positively the sustainability of state economy, people welfare, and corporate business. The emphasis on the importance of CSR regulation concerns the obligation of CSR that should be implemented by corporation and the sanction against the corporation not implementing it.

In addition, the effect of good CSR implemented by corporation on the society is that CSR can help deal with the social societal problems. CSR is a business commitment to implement activities ethically and to contribute actively to sustainable development by means of cooperating with the stakeholders[20]. The business realm's active role is required in the attempt of alleviating poverty and empowering the community. The strategic planning of CSR will make this program the social investment to empower the society in order to support economic and social life

[20] Hendrik Budi Untung, Corporate Social Responsibility, Sinar Grafika, Jakarta, 2009.p.17

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independently and sustainably[21]. CSR contribution can be the contribution to sustainable economic development, cooperating with employees, employee families, local communities, and public to improve the quality of life by means of acceptable way to business and development.[22] However, CSR can also be beneficial to the corporation here, for example, maintaining and boosting its reputation and brand image, acquiring license to operate socially, reducing the risk of business, expanding the access to resource for business operation, opening broader market chance and the relationship with stakeholders, reducing cost related to waste disposal, improving the relationship with regulator, improving the employees' spirit and productivity, and opportunity of getting reward.[23]

3.3 The urgency of sanction for law certainty and harmony in the implementation of CSR

Originally, the support to CSR implementation is moral support, the corporation's awareness resulting from its existence amid environment and society where it runs its business so far, and even economic exploitation. This awareness changes into the voluntariness to give positive reward or business ethics. Because they realize that when the companies develop more, the social gap and environmental damage may occur as well at that time. The existence of business ethics voluntariness is basically the part of the attempt of reducing this negative effect, even when they can restore the original better condition. Many private companies now develop CSR not as a cost but as investment.

CSR is a mechanism for the corporation to integrate voluntarily the attention to environment and social aspect into its operation and interaction with stakeholders, exceeding the organization's responsibility in law area. According the World Business Council for Sustainable Development (WBCSD), Corporate Social Responsibility is revealed in the report called Sustainability Reporting. Sustainability reporting is the one concerning economic, environmental and social responsibility, effect and sustainability (sustainable development). Sustainability reporting includes the reporting on economic, environment and social effect on the organizational performance. The report should be

[21] Ibid. pp.35-25
[22] Ibid. pp.35-36
[23] Ibid p.6

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a high-level strategic document putting issue, challenge, and opportunity of Sustainable Development bringing it toward its core business and industrial sector. The problem is that not all companies see and implement CSR as business and social investment for the sake of sustainable development/business, so that many companies does not or still implements CSR reluctantly.

The government regulation can change voluntariness into obligation. The legal obligation can be implemented effectively when other legal subsystems not accommodated well. Considering Lawrence Friedman's theory, there are three legal subsystems that can ensure whether or not a rule can be implemented effectively: legal substance, structure, and culture.[24] This article will discuss the legal substance subsystem. There are some footholds to reinforce the legal substance foundation: John Austin and Hans Kelsen's arguments.

According to John Austin's legal theory, law is the instruction of the state ruler. The essence of law lies on the element of instruction. The law is considered as a permanent, logical and closed system. Some laws derive from God and some others are made by human beings. The man-made law is divided into: actual and non-actual laws. The actual (positive) law has four elements: instruction, obligation, sanction, and sovereignty. The non-actual law is the one not fulfilling the requirement to be law; therefore the law without sanction is not-actual one.[25] Hans Kelsen's Pure Law Theory concentrates themselves to the law only and attempts to free the science from foreign sciences' intervention such as psychology and ethics. Justice should be identical with legality, justice as the legal objective should be escorted in written manner in normative regulation.[26] Normative regulation constituting the law substance can be implemented well when it contains law certainty substantially. Law certainty can be seen from two perspectives: the certainty in the law itself and the certainty due to law (law-induced certainty). The certainty in law is defined as a legal norm that should be formulated with the sentences containing different interpretation. In the implementation of law, different interpretations lead to law uncertainty. Meanwhile, law-induced certainty is defined as the certainty is due to the law itself. Law ensures the acquisition of a certain right or the loss of a certain right.

[24] Lawrence M. Friedman. 2009. *Sistem Hukum Perspektif Ilmu Sosial*. Jakarta: Nusa Media. p.2.
[25] W. Friedman, *Teori-teori Filsafat Hukum*, Kanisisus, Yogyakarta, 1998
[26] Muh.Muslehuddin, *Filsafat Hukum Islam dan Pemikiran Orientasi, Studi Perbandingan Sistem Hukum Islam*, Tiara Wacana, 1991, p.29.

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Law certainty is identical with legality principle. In civil law system tradition, according to Roelof H. Haveman, there are four legality aspects applied tightly: *Lex Scripta/statutory/law, Lex Certa/bestimmtheitsghebot, Non retroactivity and analogy*[27]. Nevertheless, the writer does not agree with the emergence of analogy as the precondition, because analogy can generate different interpretation. Lex Scripta means that without the law governing the prohibited action, the action cannot be said as the crime. *Lex Certa* means that the legislators should define clearly without vagueness (*nullum crimen sine lege stricta*), so that there is no ambiguous formulation. The word non-retroactive means that legislation formulating the crime cannot be enacted retroactively.

From the explanation above, the weakness of substance in CSR regulation is the lack of sanction, so that before the regulation is implemented, it has generated apathy. As a result, the data obtained from this research shows that the companies in various Indonesian areas have implemented CSR less maximally, even in some areas, many companies have not implemented it. To them, CSR is cost, thereby reducing net/profit.

3.4 An effective model of legal sanction regulation for the corporations violating the CSR: *Imposition of Penal Sanctions and/or Financial Penalties*

The existence of law, as an instrument, is desirable and inherent to every society's social life. The law is needed to realize, to restore, and or to maintain the harmonious mutual life order. The harmonious condition is created when the organized society is established. Legal norm contains command and prohibition aiming to make individual members of society maintaining the harmonious mutual life or vice versa. When the commanded action is not implemented or the prohibition is broken, sanction can be the guardian to restore the orderliness or harmony in the social societal life. In the implementation of CSR, the command of CSR implementation has been clear, but the sanction is very limited because of limited command parameter. There is no standard on sanction parameter imposed. There are some models of sanction regulation procedure: the CSR audit reinforcement and the clarity of Legal Sanction Imposition Model for CSR offender.

The implementation of CSR is no longer a voluntary moral calling for the company. The regulation in Indonesia has obliged the companies to implement CSR.

[27] Roelof, H. Heveman, *The Legality of Adat Criminal Law in Modern Indonesia*, Tat Nusa, Jakarta, 2002, p.50.

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However, the parameter has not been determined. Such the parameter should be started with determining standard audit reporting of social performance/CSR implementation to the company. Martin Freedman stated that there are three approaches in social performance reporting[28]:

a. Social audit: measuring and reporting economic, social, and environmental effect of the socially oriented programs in the company's operating activity. Audit is started with organizing the corporate social activity and then auditor will estimate and measure the effects of such the activities.
b. Social report: is the reporting of CSR activity by company. The manifestation of Social report is the one containing All of CSR activities, Cost of All of CSR activities, Programs, aims, and benefits of All of CSR activities.
c. The social disclosure in Annual Report. Social disclosure is the disclosure of information on corporate activity related to the corporate social environment. Social disclosure can be conducted through various media including annual report, interim report, prospectus, announcement to stock exchange or through mass media. The companies tend to disclose information related to its activity and the effect generated by the companies.

The problem is who is authorized to make audit. Audit should be conducted by independent institution obtaining license from the government to supervise and to audit the implementation of CSR by corporations. To prevent the moral hazard from occurring, a tight and measurable rule/standard should be developed to get license from government and this institution should always be controlled and evaluated periodically by government. This audit institution should determine instrument and proportion of CSR obligation based on 2 (two) categories: based on the proportion of corporation's profit and the proportion of CSR budget and based on the CSR's objective: to promote or to empower the community.

In implementing CSR activity, there is no standard or certain practices considered as the best ones. Every corporation has unique characteristics and situation affecting how they consider the social responsibility. Every company has the diverse condition in the term of the awareness of various issues related to CSR and what has

[28] Look at Marc J.Epstein, Martin Freedman (1994) "Social Disclosure an the individual Investor", Accounting, Auditing & Accountability Journal, Vo.7 Iss: pp.94-109.

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been done in implementing CSR approach.[29] However, the dull administration sanction makes CSR implemented less vigorously. Corporation implements it minimally. For that reasons, the regulation should be encouraged by imposing Criminal Sanction and or Fine. The urgency of criminal sanction imposition when the company did not implement CSR is when it is viewed from the location of the corporation's evil, the corporation's greed in getting as much as possible profit regardless the "3P" aspects in CSR. Meanwhile, the fine sanction is imposed as the result of audit calculation due to the CSR not implemented by company.[30]

a. Administrative sanction has not been effective

In the legislations such as Limited Inc. Law, State-Owned Enterprise Law, Investment Law, Government Regulation No.47 of 2012 about Social and Environmental Responsibility (PP TJSL), State-Owned Enterprise Minister's Decree No. 236/MBU 2003 about Partnership and Environmental Building Program (KEPMEN BUMN PKBL) and Minister Regulation No.05/MBU/2007 about Partnership and Environmental Building Program (KEPMEN BUMN PKBL) discussing about CSR, it is mentioned the sanction imposed to those not implementing the activity. However, the sanction imposed to those not implementing CSR is delegated to the corresponding legislation, the rule concerning the sanction is fragmented so that further regulation should be considered in the legislation. The sanction existing is still administrative in nature, enacted to the corporations not implementing CSR. For example, Investment Law mentions that CSR is the Corporate Social Responsibility. When the provision of CSR is not implemented, administrative sanction will be imposed, consisting of written warning, business activity limitation, suspension, or retraction of business license and/or investment facility.

Administrative sanction results from the relationship between government and citizen, and stipulated by previous ruler, but can be implemented directly by the administration. The difference of Administrative sanction and Criminal Sanction is that Administrative sanction is intended to the prohibited action; this sanction is

[29] A.B. Susanto, *Corporate Social Responsibility. A Strategic Management Approach*, The Jakarta Consulting Group, Jakarta, 1007. p.73.
[30] Pujiyono, Jamal Wiwoho, Triyanto, Model Pertanggungjawaban Hukum Pelaksanaan Corporate Sosial Responsibility (CSR) Untuk Meningkatkan Kesejahteraan Masyarakat. *Jurnal Hukum YUSTISIA*. Edition 94. January-April 2016, p.50.

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repatoir-dondemnatoir in nature and the procedure is implemented directly by the State Administration Officials directly without judicature. Meanwhile, Criminal Sanction is intended to the perpetrator of crime; it is condemnatoir in nature, and it should be managed through judicature process.[31]

The application of administrative sanction in addition to be highly dependent on the authorized officials also has weaknesses in which it is very vulnerable to lawsuit through State Administration Court. As a result of potential lawsuit filed to the State Administration Court, many officials that should imposed sanction to the corporations violating the implementation of CSR do not impose it bravely. For example, some cases of corporation not implementing or implementing CSR minimally are: Lumpur Lapindo in Porong, conflict between Papua people and PT Freeport Indonesia, conflict between Aceh people and Exxon Mobile managing petroleum gas in Arun, environmental pollution by Newmont in Teluk Buyat and etc.[32] The imposition of administrative sanction still reduces less optimally the number of corporations not implementing CSR well. Most administrative sanction has inadequate compulsive power.

b. Breakthrough in Criminal Sanction: Criminal Sanction has compulsive power

CSR that can be provided by corporation has been governed widely in legislations, such as Law No. 19 of 2003 about State-Owned Enterprise (State-Owned Enterprise Law), Law No. 25 of 2007 about Investment (Investment Law) and Law No.40 of 2007 about Limited Incorporation (Limited Inc. Law). Those laws explain the corporation's obligation to implement social responsibility. These laws govern sanction, but the sanction has not been govern clearly in State-Owned Enterprise Law and Limited Inc. Law. Meanwhile, the Investment Law has imposed administrative sanction for the corporations not implementing CSR, but the administrative sanction applied is considered as less effective to make the corporation aware of the importance of CSR implementation for the balance or harmony between corporation and society so that the criminal sanction as ultimum

[31] Elektison Somi, Helda Rahmasari, Wida Pebrianti, Efektivitas Upaya Pemberantasan Tindak Pidana Perdagangan orang di Kota Bengkulu sebagai wujud Perlindungan Hukum terhadap perempuan berbasis gender, unpublished journal, *Supremasi Hukum*, Vo.20. Number 2. August 2011, p.11.
[32] Hukum Online, CSR, Kegiatan sukarela yang wajib diatur (online) http://www.hukumonline.com/berita/baca/hol18664/csr-kegiatan-sukarela-yang-wajib-diatur, accessed on March 9, 2014 Op.Cit.

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remidium is necessary to create the law certainty. The importance of imposing criminal sanction to those not implementing CSR is viewed from the strategic function or role to corporation as the legal subject of CSR executor. Corporation has strategic role in implementing or not implementing CSR. When CSR is not implemented, the environment harmony is disrupted by irreversible exploitation made the corporation. Just like social harmony, the existence of CSR as the part of society welfare improvement will not be brought into reality. CSR is a means of maintaining the environmental and social harmony.

Considering the criminal sanction governed in the article 10 of Indonesian regulation, Penal Code (KUHP), it can be said that the basic punishments that can be imposed are: death sentence, imprisonment, jailing, and fine. However, the punishment that can be imposed to corporations, based on Article 10 of KUHP, is only fine. As Barda Nawawi Arief suggested, although corporation is recognized as a legal subject that can act on corresponding to the law and can be asked for accountability, the accountability contains some exception:[33]

1) In the cases that cannot be done by the corporation, such as raping and counterfeit oath.
2) In the cases in which the only punishment that cannot be imposed to corporation is imprisonment or death sentence.

Although corporation is the legal subject that can be imposed with sanction/punishment, imprisonment, death sentence, and jailing cannot be imposed to the corporation not committing crime. The sanction that can be imposed to corporations is fine, additional punishment in the form of the announcement of court decision, additional punishment in the form of closing entire or a part of corporation, the retraction of all/some of certain facilities that has been or can be obtained by the corporation under the control of the authorized. Criminal sanction has compulsive power because it is stipulated by court and is executorial in nature.

4. Conclusion

Corporate Social Responsibility (CSR) is a program that became parameters concern the Organization of the company care by expanding socially to the public, that is how empowering the community in order to care about social domain along with the

[33] Barda Nawawi Arief, Perbandingan Hukum Pidana, Rajawali Press, Jakarta, 1990, p.37.

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organization of the company. It means that the Organization of the company shall contributing to a sustainable economic development by considering corporate social responsibility emphasizing on economic, social, and environment aspects. The weakness of substance in CSR regulation is the lack of sanction, so that before the regulation is implemented, it has generated apathy. As a result, the data obtained from this research shows that the companies in various Indonesian areas have implemented CSR less maximally, even in some areas, many companies have not implemented it. To them, CSR is cost, thereby reducing net/profit.

In the implementation of CSR, the command of CSR implementation has been clear, but the sanction is very limited because of limited command parameter. There is no standard on sanction parameter imposed. There are some models of sanction regulation procedure: the CSR audit reinforcement and the clarity of Legal Sanction Imposition Model for CSR offender.

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Forum Non Convenience: Can International Organization be Sued in Indonesian (Industrial Relation) Court of Law? A Case Study

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Abstract

The concept of Forum non convenience arose, developed and used widely in common law legal tradition. Indonesia as a civil law legal tradition country traditionally and historically does not recognize the concept of Forum non convenience. Today, there are many international organizations in Indonesia. A dispute with these international organizations may happen at any time. One among them is industrial relation disputes. The issue of this research is to find out whether international organization can be sued in Indonesian (industrial relation) court of law, and if Forum non convenience can be used in Indonesian court of law. This research is a normative legal research. It conducts literatures review, including the prevailing rules and regulations in Indonesia, in relation to Forum non convenience and international organization. This research starts with the study of the concept of Forum non convenience developed in common law legal tradition, and then compares it using comparative legal method, to find out whether there is the same institution is available in Indonesia. This research focuses only to the application of Forum non convenience in a law suit against international organization in common law legal tradition and the possibility of its application in Indonesian court of law. This research proves that Forum non convenience can be used in Indonesian court of law. However a Supreme Court Regulation must be made to implement it.

***Keywords**: Forum non convenience, international organization*

1. Introduction

In domestic civil case, where the parties are with the same nationalities, having domestic issues or problems, which are to be executed domestically, then, unless it is clearly proven that the case belong to other jurisdiction, such as arbitration, hearing must be conducted in the domestic court of law. The situation will be different when foreign parties are inolved. They could act as plaintiff and/ or defendant.

With the development in international law, where nationals, companies and/ or corporations from different states transact among them, dispute over international transactions cannot be avoided. These disputes become more complicated and complex when they involved international subject persons such as states and or representation of states. These international subject person are very much different from private person, companies or corporations.

The acknowledgement of state as international subject person has raised new legal issues on the immunity of foreign state representative in other state. It is the diplomatic law which provides the immunities to the foreign state representative in other state, the host country. This has made domestic court of law of the host country has no jurisdiction to conduct a trial against the foreign state representative, unless it has released its immunities.

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In doing private transaction, a state is subject to private law. In the event that a foreign state representative is buying goods in a host country's market and does not pay the price; it is subject to civil court proceeding for the default of non-payment. A private international law comcept will apply.

Further development in international law is the acceptance of international organization as international subject person. Diferent from foreign state representative, international organization is stateless and has no nationality. Nowadays there are many international organizations that stay in one or more countries. These international organizations play many and different roles worldwide. Some are established regionally, some are established based on common interest, some are established for certain purpose, some even established for mutual cooperation among states.

These international organizations are not free from doing private transaction, including to hire person to become their employee which will perform their functions. It cannot be denied that these international organnizations may get into one or more disputes with their private partners in every private transactions. They can also disagree with their employess during or after the employement periods. These matters may raise civil litigation, in which these international organizations may act as plaintiff or defendant.

The doctrine *forum non conveniens* is a principle in private international law that gives the court of law a discretionary power to disallow or stay cases whenever the court of law find it to be unsuitable or otherwise[1]. The *forum non conveniens* may dismiss a court case from hearing because there exist another disputes settlement forum that has more relevant jurisdiction over the case. There are several reasons that a court may accept the *forum non conveniens* exception. One among them is the reason to avoid forum shopping for plaintiff.

Todays, there are many international organizations that have their headquarter or representative in Indonesia. Several months before, an industrial relation claim was brought against an international organization which the headquarter is hosted in Jakarta, Indonesia. The claim was made based on the assumptions that the international organization shall comply with and follow Indonesian law that regulate manpower. If Indonesian law and regulation wers assumed to be applicable, then should Indonesian court has jurisdiction over the case?

2. Problems Identification

From the above background, there are at least three problems that can be identified. There are as follows:

1. Does Indonesian law apply for international organization?
2. Does Indonesian (industrial relation) court of law have jurisdiction over international organization?
3. Does *forum on conveniens* can be used in Indonesian (industrial relation) court of law?

[1] Puja Soni. "Application of the Doctrine forum non conveniens in the perspective of Multinational Enterprises".. http://www.manupatra.co.in/newsline/articles/Upload/C4181160-DF8B-474F-B757-2400551A9750.pdf accessed on 25 July 2016

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3. Research Method

The research method used in this reseacrh a qualitative research method, using secondary data, including laws and regulations as primary legal sources. It also used secondary legal sources such as books, articles, journals etcetera. Some tertiary legal sources such as encyclopedias or dictionaries ware used as references. To understand legal documents and the interpretations of the documents, normative legal reseacrh is used. To seek the existence of *forum non conveniens* in Indonesia, a comparative legal method is used.

This research was conducted in several steps as follows:

1. Collection of secondary data, especially primary legal sources;
2. Selection of required secondary data;
3. Grouping of secondary data based on its connection to the subject matters to be analyzed;
4. Analyzing the secondary data to answer the identified problems using normative interpretation and comparative legal method;
5. Making a conclusion based on the analysis.

Some of the primary legal sources used as basis of the research are as follows:

1. Indonesian Civil Procedure Code (HIR)[2];
2. Law No.30 Year 1999 regarding Arbitration and Alternative Disputes Resolution[3] (ADR Law)
3. Law No.37 Year 1999 regarding Foreign Affairs[4] (FA Law);
4. Law No.24 Year 2000 regarding International Agreement[5] (IA Law);
5. Law No.13 Year 2003 regarding Manpower[6] (Manpower Law);
6. Law No.48 Year 2009 regarding Judicial Authority[7] (JA Law);
7. The Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations (1986) (Vienna Convention 1986).

4. Teoritical Framework

4.1 International Organization

International organization is a legal subject in international law. International organization is unique. It is different from state. Unlike a state, which have its own territorial, people, language, resources and a souvereign government, an international organization is lack of those.

MacKenzie in A World Beyond Borders: An Introduction to the History of International Organizations mentions that states created international organization to do things that states could not do on their own or to prevent states from doing something beyond the state's interests. It is clear that international organization can not create itself or exist on their own. This international organization was designed, supported, and operated by the states that created them[8]. The existence of international organization is based on

[2] Known as Het Herziene Indonesisch Regelement, published in Stb.1926-496 jo. Stb.1941-31 and Stb.1941-32 jo. 98 jo. Stb.1941-44.
[3] Published in LN.RI Year 1999 No.138 TLN No.3872
[4] Published in LN.RI Year 1999 No.156 TLN No.3882.
[5] Published in LN.RI Year 2000 No.185 TLN No.4012.
[6] Published in LN.RI Year 2003 No.39 TLN No.4279.
[7] Published in LN.RI Year 2009 No.157 TLN No.5076.
[8] David MacKenzie *A World Beyond Borders: An Introduction to the History of International Organizations*, Toronto: University of Toronto Press, p.1 (2010).

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agreement made, executed and enforced by two or more states that have common interests, who established the international organization. Its existence is merely to fulfil the objective set out by states in their agreement. This agreement will become the only rule for the international organization which will be used as the Article on how the international organization shall behave and conduct in the world. It may have its domicile at any member states that established the international organization, which acts as the host country for the international organization. The host country agreement along with the establsihment agreement will become the documents that secure the international organization activitoes within the host country for the benefit of all member states. International organization does not have and is not able to create its owned assets. International organization assets is merely come from contribution of its member states, and must be used accordingly based on the approval of the member states.

For internal purposes, to regulate how the international organization shall run, the international organization may establish its internal regulation, such as employee matters, financial matters, and also internal dispute settlements procedure to settle all its internal affairs. For external matters, host country shall be responsible for the fulfilment and compliance of the international organiztion during its existence in the host country. Based on the host country agreement, any and all complaints to the international organization about anything happened to the international organization activities in host country, shall only be filed to the Ministry of Foreign Affairs of the host country.

In view that international organization does not have nationality and therefore cannot be held responsible legally, it should also noted that international organization is never a legal subject to national law. Under national law, a legal subject, except for human being must follow certain acknowledgement or incorporation by state. Meanwhile international legal subject such as international organization no acknowledgement has ever happened domestically. From these point of view, an international organization shall enjoy privileges and immunities from host country, and is not subject to the law and jurisdiction of the host country. Such immunities shall be goven to the organization itself, including any and all assets owned and registered under the name of the international organization; to the member states' representatives that stay in host country; and all foreign employess of the international organization.

4.2 Employee – Employer Relations

According to human resources management, employee issues are internal affairs issues of an organization. Human resources management deals wtih the recruitment, administration, training and career development, remuneration, until retirement or termination of the workers or employees in the organization. In the event there are disputes or discrepancies in human resources matters, they must be solved using the prevailing internal regulation of applicable to all employees.

However from the perspective of the contract law, the relation between employee and employer is an equal relation. Both employee and employer have the same capacity and capability before the law to enter or not to enter into the employment contract. None is superior to the other. The terms and conditions in the agreement are mutually agreed and accepted. The freedom of contract become the very basic principle applied to the employee and employer relation.

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From human rights perspective, employee is subordinated to employer. Employer has authority over the employees, especially with un-skill and un-educatsed employee. The supply and demand rules applied. These un-skill and un-educated people do not and cannot protect themselves, especially their rights from the superiority of employer. In order to provide the minimum rights for these people, government shall be involved. Government must issues law and regulations to protect the employees. These law and regulations will determine the minimum rights that must be granted to the employees, including remuneration package, working hours, leaves and holidays, and retirement plans.

5. Doctrine Of *Forum Non Conveniens*

The origin of the doctrine of *forum non conveniens* is not very clear, however its roots have been traced as far back as the sixteenth century and the plea of *forum non competens* in Scottish law[9]. Its origin has also been linked to several nineteenth and early twentieth century cases decided in the United States in which various courts of law declined jurisdiction over a matter in favour of other forum.

It can be said that *forum non conveniens* is a common law doctrine and a part of private international law. The doctrine has repeatedly confirmed to be a major barrier for the plaintiffs to bring a suit in the court of law, whilst it is a weapon of argument for the defendant[10]. Under the doctrine, a district court in the United States possesses discretion to dismiss a case in the event that there is another forum or jurisdiction that is both adequate and available to hear the case; and both the public interest and the parties' private interests weigh that the case is better heard by the alternate forum or jurisdiction[11].

Accordingly, *forum non conveniens* is a matter of procedural law and not substantive law. Judges who dismiss the case based on *forum non conveniens* never discuss about the real claim of the parties (especialy the plaintiff), but merely on the conpetency of the court of law to settle the case. There is no standard regulation on what basis will the *forum non conveniens* be used. The answer to the *non conveniens* is made by comparing the choosen forum (by plaintiff) with the other possible forum available. The defendant must prove that there exists another forum and that forum is the adequate and more suitable forum to settle the case. The court may reject the use of *forum non conveniens* if the court of law is not satisfied by the defendant argument of the other adequate and suitable forum.

In civil law tradition, the concept of *forum non conveniens* was rejected, as can be read from European Council Regulation and Jurisdiction and Lugano Convention. However in some European courts of law, judges shall have the competency to grant dismissal of a case based on the assumption that the case can be litigated more conveniently in other jurisdiction. This proves that somehow *forum non conveniens* doctrine is use in civil court of law.

6. Analysis

According to IA Law Article 1 point 7, international organization is defined as intergovernmental organization which is acknowledged as internation legal subject and has

[9] John R. Wilson, *Coming to America to File Suit: Foreign Plaintiffs and the Forum Non Conveniens Barrier in Transnational Litigation*, 65 Ohio St. L.J. 659, 673 (2000);
[10] Puja Soni, op. cit
[11] Cassandra Burke Robertson, "Forum Non Conveniens on Appeal: The Case for Interlocutory Review" (2012). *Faculty Publications* Paper 57, http://scholarlycommons.law.case.edu/faculty_publications/57

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capacity to make international agreeemt. The term international organization as intergovermental organization is also used in Article 1 point 5 of FR Law. The same definition can be found in Article 2 point i of Viena Convention 1986. These definitions have absolutely placed international organization as an organization established by two or more states.

Article 16 of FA Law states that the granting of immunities, privileges, and release from specific duty or obligation to international organization will be conducted in accordance to the national legislations and international law and conventions. This means that the Republic of Indonesia acknowledges the granting of immunities and privileges to international organization, among them are immunities to be subject to the law and regulations in the Republic of Indonesia. To enjoy these immunities and privileges, a written agreement must be made between the Republic of Indonesia dan the international organization, in which the Republic of Indonesia will be become the host country to the international organization. This also means that Indonesia acknowledges and signs host country agreement with international organization and may have provided immunities and specific privileges to the international organization.

As mentioned above, to conduct its activities according to the purpose of its establishment, international organization needs people who will become its employees. These workers may come from different nationalities and/ or countries, and they shall enjoy the same advantages whereever these employees work. There will be no difference with respect to their scale of remuneration, career development, and other rights upon their termination or retirements. In such event, Indonesian nationalities who work with international organization which headquarter hosted in Indonesia shall have the same career path development and all other rights as may be enjoyed by all employee as regulated in the international organization's internal regulations.

In view that working in international organization required special and/ or specific skills and/ or educations, it should be noted that those who work with international organzations are not common labours that their minimum wages and rights must be protected by government through the enactment of law and regulations (the Manpower Law). These people have capacities and capabilities to determine what they want to achieve by working in an international environtment with an international organization. These people are educated enough to understand all the terms and conditions of their work and employement relations and the consequences of signing the agreement, and they also aware that all their employment relations with the international organization are subject to internal regulations of the international organization. Government of the Republic of Indonesia and other governments have no involvement in the terms and conditions of works regulated by the international organization.

The above explanations raise understanding that all employees or workers are equals during their employement in the international organization. It is the most important concept among people who work with an international organization. This means that any disputes or discrepancies arising out from the employee employer relations in international organization will be settled internally using the same standard, applicable for all employees and employer. Equality before the law can only be established by means of using internal rules and mechanism to settle all the disputes related to any and all employees. Owing the same rights and obligations means owing the same procedure for disputes settlement.

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The involvement or the possibility of using Indonesian law and regulations on manpower, i.e. Manpower Law, will indeed destroy the meaning of equality for all employees working with an international organization. Indonesian nationalities who work with any international organization have enjoy the same rights and obligations with other people with different nationalities working with any international organization. In view of tax matters, their incomes are exempted from witholding tax, the same as applicable to other people of different nationalities who work with any international organization.

The possibility to sue the international organization before Indonesian (Industrial Relation) Court of law by Indonesian nationality who work with any international organization will confuse and somehow increase uncertainty for other employees that work with the international organization. This may increase the possibility that each employee will try to seek settlement through his/ her own national court of law. At the end there will be no more international organizations who will take employees from host country nationality as their employees.

Article 134 of HIR regulates that in the event a claim raises from a dispute that does not include in the jurisdiction of general court of law, then at any time during the hearing, judges may be required to admit that the general court of law does not have competency to trial the case, and the judge, ex officio, shall dismiss the case from the general court of law. This article shall be read in line with JA Law and ADR Law. According to JA Law there are religion court of law, administrative court of law and military court of law, besides the general court of law. In general court of law, besides the general court of law itself, there are other special courts of law which incorporated within general court of law in form of rooms, they are room for commercial court of law, room for industrial relation court of law, room for human rights court of law, room for corruption court of law and room for fishery court of law. Each room within the general court of law has its own jurisdiction. According the ADR Law, general court of law shall refuse any commercial dispute, which the parties have choosen to settle the dispute through arbitration or alternative dispute resolution. This means that Article 134 of HIR will only applied in condition that:

1. a specific law states that a specific kind of dispute must be settled through another court of law besides the general court of law, or other room within the general court of law; or
2. a clause in an agreement or an agreement has specifically mentioned that the parties to the agreement have agrees to settle the disputes arising from the agreement out of court of law, by using arbitration or alternative disputes resolution.

Following the given fact of law and regulations and the normative concept of law, it is clear that Indonesian regulation acknowledges the existence of international organization as international legal subject that have the capacity to act. Such international organization may be given immunities and certain kind of privileges as may be regulated, based on international law and conventions. Such immunities and certain privileges are subject to Indonesian law and agreement made and signed between the international organization and the Republic of Indonesia. By signing the agreement, Republic on Indonesia will become host country to the international organization, and will be responsible for matters that related to the existence of the international organization in the Republic of Indonesia; and the capability of the international organization to do, act and conduct activities to achieve the goal of the international organization, for what it was first established. Since international organization shall have headquarter in member states, it will mean that any international organization that have headquarter in Indonesia must have the Republic of Indonesia as its

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members. As member states, the Republic of Indonesia shall ensure that the establishment of the international organization shall achieve its purpose of establishment.

7. Conclusion and Recomendation

It comclude that:

1. Indonesian law and regulations may apply for international organization. The law and regulations that may apply is the law and regulations that provide immunities and privileges to international organization. The existence of other laws and regulations shall be in line with the law that provides immunities and special previleges to the international organization.
2. In view that there exist immunities and special privileges for international organization hosted in Indonesia, and the equality before law that applied to all employees of the international organization, Indonesian (industrial relation) court of law in general shall have no jurisdiction to trial any international organization.
3. *Forum on conveniens* can be used in Indonesian (industrial relation) court.

It is recommended that:

1. It would be better if all work agreements made by international organization with any and all employees, irrespect of their nationalities, must incorporated a clause that all disputes and discrepancies in relation to employee employer relation will be settled using the internal regulations of the international organization, and such internal regulations shall be the only prevailing regulations.
2. It will be helpfull if international organization makes its own mechanism for internal disputes settlement which provide fairness to all employees, irrespect of their nationalities.
3. Supreme Court shall issue regulation on the implementation of Article 134 HIR to dismiss a court of law claims based on *forum non conveniens* exception.

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Digital Sharing Cases and Japanese Copyright Enforcement

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Abstract

The exploitation of Internet technology is widely practiced by the entire population, including Indonesia, Japan and United States. During its development, it becomes a "double-edged sword", as well as for mankind welfare; it is used for unlawful acts. Most copyrighted works, which can be reformed to digitize, have big probability to duplicate over the Internet and physical piracy. Illegal downloading, uploading and file sharing became common activities among the citizenry. Indonesian legislation was low respond to follow the advance of Internet technology. Consequently, legal enforcement is performed only among physical distribution of illegal contents and pirate products. While, copyright industries face new growing problems with digital piracy, flash drivers, smartphones, tablets and other high mobile technologies. In some countries, these devices are preloaded with illegal content even before those are sold. Accompanying with the government, stakeholders attempt to find the solutions to stop, or at least decreasing the number of physical and online piracy. The paper highlights the digital copyright enforcement with the cases analysis in Japan and Indonesia. It also describes how copyright associations give influence to the members in enforcing the criminal penalties and fines. It is also valuable that copyright legislation itself will not answer all the Internet's challenges. A concrete harmonization both, efficient enforcement system, technology, procedurally, society and institutionally, are indispensable.

Keywords: *Digital sharing, copyright, law enforcement*

1. Introduction

Japan and United States are the model countries, which fought tightly against digital copyright infringer. Since 2010, Japan declare that Internet users who download copyright infringing files will dealing with two years in prison or fines up to two million yen. Hence, even there was protest about its policy by the cyber activist,[1] on 2012 Japan briefly

[1] Technology news,*Japan Introduces Piracy Penalties for Illegal Downloads,* October 1, 2012, *available at* http://www.bbc.com/news/technology-19767970, (last visited December 11, 2015)

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amendment their copyright law regarding criminal enforcement of illegal downloading. The clause explains a person who intentionally/knowingly download illegally uploaded movie, music or copyrighted files will be penalized. However, even RIAJ (the Recording Industry Association in Japan) claimed that illegal file sharing decreased 40 percent on 2013-2014.

In the past five years, American copyright legislation and trade negotiation had been proposed significantly. Starting with SOPA (Stop Online Piracy Act), the agreement highlights about penalties for not only sites or web which facilitate directly infringer but also those who help others.[2] Consequently, on January 18, 2012, technology companies; YouTube, Google, Drop box, Yahoo, Flickr etc., launched a massive protest by shutdown their web. Google got seven million signatures on its websites for SOPA cancelation.[3] Congress deferred the legislation, but bill debate continued.[4] PIPA (Protect IP Act) also delivered the Attorney General could be suing an operator/owner of an Internet site due to copyright infringement.[5] The same as SOPA, PIPA intruded more specific requirement for implementation. Next, ACTA (Anti Counterfeiting Trade Agreement) were designed to international copyright problems, online copyright infringement, online trafficking counterfeiting goods including trademark enforcement measures. The new agreement is Trans-Pacific Partnership, Digital copyright and the Internet is one of the chapters on TPP. Like ACTA, TPP involves each participating nations to guarantee the criminal liability for encouraging and promoting exists under its law. The provision also strongly recommend to members for creating safe harbor at ISPs (Internet Service Provider).

October 16, 2014, the Former President Yudhoyono signed Indonesia's new law regarding copyright amendment the prior of copyright law 2002. The new provision delivered some strength to possibly implement immediate relief against digital form and infringement of cyber networking, in accordance with the TRIPS Agreement, Berne Convention, The WCT and WPPT. Even though Indonesia is still not join the ACTA and TPP, the legislation had been stand up for change the copyright situation. Through dramatically moving due to diversification of digital copyright infringement, the government should explore the possibility of future law enforcement, technological measures and distribution of digital content. Furthermore, we should extra concern to build some projects and perception of society and market to respect more on digital copyright protection. However, innovative businesses of copyright industries were introduced, which sometimes it

[2] Stop Online Piracy Act, H.R. 3261, 112th Cong. § 103(a)(1)(B) (1st Sess. 2011), *available at* http://www.gpo.gov/fdsys/pkg/BILLS-112hr3261ih/pdf/BILLS-112hr3261ih.pdf, (last visited December 11, 2015)

[3] Dara Kerr, *Millions sign Google's anti-SOPA petition*, Cnet News, January 18, 2012, *available at* http://www.cnet.com/news/millions-sign-googles-anti-sopa-petition/, (last visited December 11, 2015).

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is not friendly with developing countries. Thus, stakeholders must be regulating the process and the result is accordance with the national interest.

2. The Current Issue of Digital Sharing in Japan

Throughout 2000 period, RIAA active to do lawsuit against file sharers and file sharing programs. Instead, file-sharing scene in Japan was relatively quiet, while Japan boasted the fourth-highest share of world Internet users (behind the India and United States), its share of downloads was naturally less than that of the United States.[6] Japan's Copyright Law being principally harmonized with the States, and the same willingness of music, movie and software for copying and sharing as their American counterparts.[7]

As noted in previous discussion, Japan has prevented to sue large-number against alleged individual file sharer. Truthfully, copyright owners have not filed any lawsuit directly against individual, but put forward to Association for the best legal action. In spite of the fact showed file sharing extremely increased since the early 2000s.[8] According to statistics held by the RIAJ in 2014, Japan's file sharing of music software and audio increased from 89 percent on April 2014 to 91 percent expectation on 2015.[9] A 2008 survey on the status of file-sharing software users, shown by the Association of Copyright for Computer Software (ACCS) in Japan, revealed that 10.3% of all Japanese Internet users also utilized file-sharing software. But on 2014 survey file sharing showed slowly decreased. There are five file-sharing software program that most used by public to illegal copyright activity; Winny, Share,[10] PerfectDark,[11] Gnutella and Bittorent. Practically, those P2P software program had great number of files that exchange everyday. Winny was about 1,2 million units per day (2 million units in the January 2013 survey), Share was about 4,4 million units (59.000 units in the January 2013 survey), and PerfectDark was 24.000 units (34.000 units in the January 2013 survey). On September 27 to 28, NetAgent Co.Ltd with 21 prefectural police department made massive crack down upon child prostitution and pornography, 18 suspects were arrested with the consideration of distributing over P2P-network.[12] It showed that over 20,000 people were actually using Share network to exchange child pornography. It means over 20% out of the estimated total of 100,000 Share users are the collectors. The nature of anonymous P2P file sharing software, a user may unintentionally relay picture files or movie files which include child pornography. For the family member who is sharing the home PC may hold one responsible for the transmission of illegal files.

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[6] Ian Condry, *Cultures of Music Piracy: An Ethnographic Comparison of the US and* Japan, Intl Journal Cultural Studies 7, 3, Sept 2004, at 13-14.
[7] *Id, see also* Christopher Siebens, *Divergent Approaches to File-Sharing Enforcement in the United States and Japan*, Virginia Journal of International Law 52,1, 155-192, 164, (2011).
[8] Thomas Mennecke, *File-Sharing Surges in Japan*, Sylck News, July 26, 2006, *available at* http://www.slyck.com/story1249.html, (last visited, June 23, 2015)
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[10] http://eng.share.benri-tool.net/, (last visited, June 10, 2015)
[11] http://perfectdark.benri-tool.net/, (last visited, June 10, 2015)
[12] http://www.netagent.co.jp/news_eng.html, (last visited, June 23, 2015)

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Separately from intensified of police enforcement and copyright association, the Diet targeting illegal downloads of copyrighted material was recently endorsed. Amendment to the Japanese Copyright Law went into force in January 2010, making it illegal to knowingly download copyrighted material without permission. The Diet approved the amendment in June 2009, stating two years of pressure by influential associations including the Motion Picture Producers Association of Japan (MPPAJ) and RIAJ. Japanese law previously accepted prosecution against those uploading copyrighted material without authorization, but downloading the same material for private use was legal.[13]

Additionally, on October 1st, 2012, copyright law amendment took place concerning criminal enforcement of illegal downloading.[14] Illegal downloading is also infringing a private use with the limitation. The provision penalizes person who intentionally/knowingly download illegally uploaded movie, music or copyrighted files. If we knew the contents are sold or getting paid-delivery online, and we still distributed illegally by downloading or uploading such things, we are subject to punishment.

Uploading illegal content into Internet had been illegal from before, the punishment was maximum ten years in prison and/or a fine up to ten million yen. Since January 2010, downloading illegal contents online was illegal without punishment. Moreover on October 2012, even for personal use, downloading illegal contents with consideration: 1) we knew the contents are sold or getting paid-delivery online, 2) we distributed illegally by downloading or uploading the contents, we are subject of criminal with two years limit in prison and/or a fine up to two million yen.[15] Most stakeholders are curious the effectiveness of new provision. Even though unauthorized downloading of copyrighted content is now illegal, users should be aware that the content were uploading illegally, the amendment still open the opportunities any fine or jail for infringement.[16] The other phenomenon that is so attention is streaming. It is not appear to be illegal either, such as YouTube, Vevo and other free stream web. However, copyright industry greeted the amendment, which does provide for claiming damages in civil suits.

[13] Shirley Gene Field, Internet Piracy in Japan; Lessig's Modalities of Constraint and Japanese File Sharing (May 2010) (unpublished thesis, Texas University) (on file with author), *see also*, Kazuaki Nagata, *(Near) Death of Salesman*, Japan Times, December 11, 2009, *available at* http://www.japantimes.co.jp/culture/2009/12/11/music/near-death-of-a-salesman/#.VYjGLBOqqkp (last visited June 23, 2015).

[14] http://www.bunka.go.jp/seisaku/chosakuken/hokaisei/online.html, (last visited, June 10, 2015)

[15] Summary Q&A through copyright content on the internet by Agency for Cultural Affair; 1) Viewing or listening illegal contents like video or music is not illegal, unless you record the content, 2) viewing and caching made from video sharing sites like YouTube, are not illegal, 3) downloading online photos or copying and pasting text are not illegal as it is for private use, 4) it is illegal download even TV programs were broadcasted free and if we knew it was illegal distribution, moreover if the TV programs sold (either as online or disc), we are subject to punishment.
http://www.bunka.go.jp/seisaku/chosakuken/hokaisei/download_qa/index.html, (last visited, June 10, 2015)

[16] Kazuaki Nagata, *(Near) Death of Salesman*, Japan Times, December 11, 2009, *available at* http://www.japantimes.co.jp/culture/2009/12/11/music/near-death-of-a-salesman/#.VYjGLBOqqkp (last visited June 23, 2015).

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ISPs and other the major interest groups are also take place in decreasing illegal file sharing. Japanese ISPs are thought to reduce the available downstream bandwidth for customers who they believe are heavily engaged in file sharing.[17] Applying an automatic reduction to a user's download speed is method for changing their customers' behavior due to minimize file sharing. RIAJ, MPAA, and other associations intensified their efforts to decrease illegal download by spreading the message that file sharing is wrong. Concretely, December 2009, RIAJ Chairman Keiichi Ishizaka gave speech at a Tokyo midtown gathering that illegal downloads is financially hurting musicians and may prevent them from continuing their line of work.[18] The MPAA more recently emphasized the Japanese government to adopt a three-strikes policy, similar to ones implemented in France and South Korea.[19] The policy would let ISPs to ban repeated file-sharing offenders. Japanese ISPs previously attempted in 2006 to ban Winny P2P users, but the government rejected to ban the users.[20]

3. Brief History Analytical Problems of File-Sharing Case

3.1 Winny Case

Copyright infringement in Japan is not much different with U.S. and Indonesia. There was infringement addressing to copyrighted works on the Internet. Started with the famous file-sharing case by "winny" on November 2003, two Japanese used of "winny"[21] and arrested by the Kyoto Prefectural Police. They eventually found guilty of violating copyright law. However, winny case were not stop to the users, on May 10, 2004, the High-Tech Crime Taskforce arrested Isamu Kaneko, a 33 years old, an assistant professor at the University of Tokyo and the inventor of Winny Program.[22] He was suspected as a conspirator who

[17] Christopher Siebens, *Divergent Approaches to File-Sharing Enforcement in the United States and Japan*, Virginia Journal of International Law 52,1, 155-192, 180-181, (2011)., (The ISPs were triggering the reduction in download speed for anonymous downloader. it seems that mobile phone service companies such as Softbank, au (KDDI), and NTT Docomo had implement a capacity limit between 1 to 2 GB/day. Users reportedly experience slow download speeds on their connection, effectively preventing them from further downloading at one day)

[18] Kazuaki Nagata, *supra note* 20.

[19] http://www.myce.com/news/mpaa-pressures-japan-for-a-3-strikes-internet-disconnect-policy-35714/ (last visited, June 23, 2015).

[20] *Id*.

[21] Winny or WinNY is a Japanese peer-to-peer (P2P) file-sharing program. It was claimed as loosely inspired by the design principles behind the Freenet network, which makes user identities undetectable. While Freenet was implemented in Java, Winny was implemented as a Windows C++application, *see* Jun Hongo, *File-Sharing: Handle Winny at Your Own Risk,* The Japan Times, October 27, 2009, *available at* http://www.japantimes.co.jp/news/2009/10/27/reference/file-sharing-handle-winny-at-your-own-risk/#.VXE4n1yeDGc, (last visited Jun 5, 2015)

[22] Takato Natsui, *Winny Case* (*a P2P Software Copyright Case in Japan-Impact on the Information Society and Legal Analysis*), CILS (Center for International Legal Studies) Conference 2004, Sunshine Coast, Australia, (a paper, on file with author), *see also* John Leyden, *Japanese P2P founder arrested, Copyright rap for Winny P2P software author*, The Register, May 10, 2004, available at http://www.theregister.co.uk/2004/05/10/winny_founder_arrested/, (last visited Jun 5, 2015)

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commits copyright violations.[23] He was one of the first software programmers worldwide to fight such lawsuit. The Kyoto District Court held that P2P Programs were value-neutral and a legitimate, meaningful use, simply developing and publicly accessible does not essential qualify as supporting copyright infringement. However, promoting such technologies to the public, whether Kaneko did for research or intentionally offering the software. District court gave four considerations that Kaneko made Winny available on his website with knowledge and acceptance; (1) almost the files on exchanged on the Internet were copyrighted, (2) winny software program was generally used to infringe copyright, (3) winny was the save program for doing copyright violation, and (4) it used for many helpful and efficient features. Therefore, District Court stated that winny was a part to copyright infringement. Kaneko was guilty and were fined ￥1,5 million.[24]

On Appealed process, Osaka High Court overturned Kyoto District Court's decision, and decided Kaneko was not guilty. High Court held that winny program was a value-neutral technology with numerous applications. Winny made by Kaneko for general public, not for specific individual. Kaneko did not unbearable who downloaded winny and how their performance and intention, whether good purpose or had intent to infringe the copyright. Programming winny was not solely for the sake of crimes, however, users individually in choosing their purpose. High courts' consideration on Kaneko's case got appreciation for other software programmer concerning to copyrighted works. It stated that even if a provider value neutral technology (software programs) and recognized the probability for public would use it for illegal purposes, it was prejudicial for the programmer/provider as an accessory to users' infringements. The provider or programmer was only carrying a punishment if they offering their program, advocating their usage for primarily illegal purposes. Finally, High Court held that the provider was free from the lawsuit.

October 21, 2009, Osaka High Public Prosecutor appealed to Japanese Supreme Court.[25] Supreme Court affirmed the Osaka High court of Japan by voted 4-1 to endorse the exoneration, and dissenting opinion from Justice Otani.[26] Based on the facts, Supreme Court was focus on the character of the program and the probability of winny's utilization by users.

[23] Mr. Kaneko was accused of supporting and assisting the infringement of copyrighted works. Penal Code of Japan, Art 62 & 63, and Japanese Copyright Law, Art. 23.

[24] Ridwan Khan, *Pure Software in an Impure world?, WINNY, Japan's First P2P Case,* 8 University of Pennsylvania East Asia Law Review, 20, 24-25, 2013.

[25] Hideki Mitsuyanagi, *Osaka High Public Prosecutor Appeals Winny Decision to the Court*, Internet Watch, October 21, 2009, *available at* http://internet.watch.impress.co.jp/docs/news/20091021_323296.html?mode=pc;%20see%20also%20Press%20Release,%20Japan%20and%20International%20Motion%20Picture%20Copyright%20Association,%20Inc.,%20JIMCA%20Welcomes%20Appeal%20Against%20Acquittal%20Of%20Winny%20Developer%20(Oct.%2022,%202009),%20http://www.mpalibrary.org/assets/Japan_WinnyCase_Oct09.pdf%20(welcoming%20the%20Osaka%20High%20Public%20Prosecutors%E2%80%99%20Office%E2%80%99s%20decision%20to%20appeal%20the%20acquittal), (last visited June 8, 2015)

[26] 5 Saikō Saibansho [Sup. Ct.] Dec. 19, 2011, 2009 (A) No. 1900, 65 SAIKŌ SAIBANSHO KEIJI HANREISHŪ [KEISHŪ]1,1, *available at* http://www.courts.go.jp/app/files/hanrei_jp/846/081846_hanrei.pdf, (last visited June 8, 2015)

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While, Kaneko known that an increasing number of users used Winny for copyright infringement, Kaneko could not be legally responsible as a subject of law. The truth was not enough to prove that Kaneko had intention to facilitate copyright violation, because he had already announced and released Winny as experiment to confirm whether Freenet P2P can be take place in practical application. Moreover, Kaneko posted important warning to the users, not to share/trade copyrighted files.

Countering the prosecutors' charge, the Supreme Court noted that even though Kaneko used Winny to download files that were probably copyrighted, his usage would not give rise to a claim that Kaneko knew the number of infringement taking place on the Winny network. He did such files downloading just to ensure that the software functioning smoothly. Thus, it would be mistaken to reversed the Osaka High Court's Judgments because he have not known that the misappropriation of Winny software had increased that he could be stated liable for its usage.[27] Therefore, the majority judges agreed that Kaneko did not have any required intent and he interested in establishing a P2P network than distributing of copyrighted files.[28]

On the contrary, Judge Otani stated that Kaneko was guilty. Otani was no doubt to the majority's legal framework, but emphasized that Kaneko would knew and recognized that more than a few people would use Winny for copyright violation. Otani agreed that Kaneko did not have intention for his program to be largely used for infringement, nor did he inspire the public to use Winny unlawfully. However, Otani highlight that Kaneko had continued to establish Winny without restraining the illegal copyrighted usage. Therefore, Kaneko must have had knowledge of copyright infringement.[29]

In my view, winny case will become good precedent for other P2P cases. Regardless of the evidence, I just want to make point of view from technology and intellectual property sides. Kaneko as a researcher at University and naturally his works are creating new research, making innovation, building method and resulting a product (scientific paper or goods). Creating a machine, tech goods and other object could be aimed for good or bad (value-neutral). In Kaneko's case, he already answered that he was not intentionally creating and developing winny software with bad purpose. He stated in his defense that even the winny software used for sharing content, he suggest and warn to all the users "do not exchange illegal files". From the warn statement above, clearly conclude that Kaneko known the legal consequence if do illegal file sharing. This interpretation also gave by Osaka High Court. Even Japan already adopted contributory infringement; Kaneko was not proven use winny for profit oriented and the manufacturer did not utilize substantial infringing-uses. If we compare with the contributory infringement case in U.S. between Napster with A&M Recording Studio, Napster was judged as a contributory infringer. It was because Napster was a control system between users and websites. Napster gave the facility and agreement

[27] *Id*, *see also* Ridwan Khan, *supra note* 28, at 28-29.
[28] *Id*.
[29] *Id*.

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access for infringing activities for the user. It will be different judgment if Napster give warn and shutdown or stop the user activities whose known illegal file sharing. Conversely, Kaneko was not the person to control its situation.

Based on survey and investigation of Illegal Trade Measures Council the General Association of Copyright for Computer Software on May 2014, file users sharing continued decrease from 2011.[30] There are five file-sharing software program that most used by public to illegal copyright activity; Winny, Share,[31] PerfectDark,[32] Gnutella and Bittorent. Practically, those P2P software program had great number of files that exchange everyday. Winny was about 1,2 million units per day (2 million units in the January 2013 survey), Share was about 4,4 million units (59.000 units in the January 2013 survey), and PerfectDark was 24.000 units (34.000 units in the January 2013 survey). The Anti-Counterfeiting Association (ACA) and Consortium against Copyright Infringement via File-sharing (CCIF) cooperated with commercial fraud measures council from the NPA with 38 prefectural police nationwide was carried out simultaneous crackdown for copyright law violations such as; business software, file-sharing infringement through the internet (etc. movies, music, manga, anime and games) since February 2015. They searched 133 places and 40 people were arrested.[33]

Japanese Society for Rights of Authors, Composers and Publishers (JASRAC) with ACA, CCIF and other related organizations will continue that effective enforcement by working closely with related ministries and agencies of the National Police Agency. They active to send enlightenment mail to each group of ACA and CCIF members to carried out and participate by promoting to the public for not infringe the copyright, and intellectual property.[34] Additionally, on October 1st, 2012, copyright law amendment took place concerning criminal enforcement of illegal downloading.[35] Illegal downloading is also infringing a private use with the limitation. The provision penalizes person who intentionally/knowingly download illegally uploaded movie, music or copyrighted files. If we knew the contents are sold or getting paid-delivery online, and we still distributed illegally by downloading or uploading such things, we are subject to punishment.

Uploading illegal content into Internet had been illegal from before, the punishment was maximum ten years in prison and/or a fine up to ten million yen. Since January 2010, downloading illegal contents online was illegal without punishment. Moreover on October 2012, even for personal use, downloading illegal contents with consideration: 1) we knew the

[30] Association of Copyright for Computer Software (ACCS), *File Sharing Users Continued Decrease*, *Result of Crawling Survey of File-Sharing Software*, May 2014, (original text in Japanese), *available at* http://www2.accsjp.or.jp/research/reserch13.php, (last visited, June 9, 2015)
[31] http://eng.share.benri-tool.net/, (last visited, June 10, 2015)
[32] http://perfectdark.benri-tool.net/, (last visited, June 10, 2015)
[33] *See* http://www.aca.gr.jp/, (last visited, June 10, 2015)
[34] CCIF gives guidance to delete the file and the software program, *see* http://www.ccif-j.jp/activity.html, (last visited, June 10, 2015)
[35] http://www.bunka.go.jp/seisaku/chosakuken/hokaisei/online.html, (last visited, June 10, 2015)

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contents are sold or getting paid-delivery online, 2) we distributed illegally by downloading or uploading the contents, we are subject of criminal with two years limit in prison and/or a fine up to two million yen.[36]

3.2 *File Rogue* and *StarDigio* Case

These cases were having common or less similar with the Sony and Napster cases in the United States. The two proceeding cases were about private copying, but the court resulted opposite decision. The *StarDigio* case showed guarantee freedom by the private copying exemption provision and *File Rogue* case demonstrated that the court followed legislative judgment that private copying in order to digital distribution should not be excused.[37]

StarDigio case started in 1998 and settled in 2000 by Tokyo District Court. Plaintiffs (Victor and eight famous labels in Japan) sued Daiichi Koushou, a provider of satellite digital radio programs (*StarDigio* 100) for alleged as a contributory infringement by letting audience made private copies from the radio stream. The Defendant provide a pay satellite radio program (*StarDigio* 100) which composed more than one hundred channels to broadcast variety of music in digital form. However, he collected the music by purchasing legally song sold in the market, re-recording the analog format into digital music format. He put the digital music compilation on the radio server for three months. By this arrangement, the digital music compilation was stream via a pay satellite broadcasting service named *SkyperfecTV*.[38] Most of the *SkyperfecTV'*s audiences have receiver facility, which can plug in a mini disc (MD) recorder to reproduce the music compilation. *StarDigio* 100 provided some features to assist the audience made private copies: (1) the radio was providing the full length of album; from popular hits to old songs, (2) every week the radio repeated the same set of music, (3) the radio gave pause in every 60 minutes, (4) there was no the radio broadcaster like such as radio in common.[39]

The fact from this case showed that recording company did not have exclusive right for broadcast. Phone records are subject of neighboring rights; therefore, it does not include a right to manage the broadcast,[40] because it is under compulsory licensing system.[41] Plaintiff

[36] Summary Q&A through copyright content on the internet by Agency for Cultural Affair; 1) Viewing or listening illegal contents like video or music is not illegal, unless you record the content, 2) viewing and caching made from video sharing sites like YouTube, are not illegal, 3) downloading online photos or copying and pasting text are not illegal as it is for private use, 4) it is illegal download even TV programs were broadcasted free and if we knew it was illegal distribution, moreover if the TV programs sold (either as online or disc), we are subject to punishment.
http://www.bunka.go.jp/seisaku/chosakuken/hokaisei/download_qa/index.html, (last visited, June 10, 2015)

[37] Yuko Noguchi, Digital Copyright in the US and Japan, 100, 85, VDM 2009.

[38] *Id*, at 86.

[39] *Id*.

[40] *Id*, at 87, *see* Art 96 (the neighboring rights for recording companies are the following; reproduction right), Art *96bis* (right to make the work transmittable), Art 97 (Record companies only have a right a receive a certain fees for broadcasting use "secondary use fees", Art 97*bis* (right to transfer ownership of the copies for), Art 97*ter* (right of lending)

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claimed that the secondary use fee from the broadcasting companies was not enough as compensation at market loss.[42] The interesting point influenced the copyright law from this case was about the absence of secondary liability like in the U.S. and winny case.[43] Hence, court found basic difficulty to formulate an injunction and damages against broadcasting companies based on authorization reproduction by the radio's audience. Next, plaintiff also claims about permissible of private use.[44] Reproduction can be allowed if "such reproduction does not conflict with a normal exploitation of the work and does not unreasonably prejudice the legitimate interest of the author".[45] Plaintiff thought by providing the feature, which is made the audience easy to reproduce music compilation into CD, it was substantially regarded as infringement of reproduction.[46]

Tokyo District Court stated held that private copying by public or audiences was regulated by article 30 about private copying exemption and denied the liability of Daiichi because it is legal and it just helped the legal reproduction of their users. Berne Convention article 2 give discretion to the members to how implemented the provision into their own legislation. The court concluded that private copying conducting by the audiences should not be influenced or changed by the manner of broadcasting of the music they were record.[47]

File Rogue case well known as Japanese Napster case. It started when the service provider of file rogue belongs to MMO Japan Ltd gave features to the users for file sharing and distributed software, which can be used for share files through the index site. To use the service, users had to download and install the File Rouge software from the MMO's website on the user's computer. Then, a user name and a password registered without providing the actual description. User was also needed to agree to MMO's user agreement including the provisions that we would not illegally share copyrighted files. The user agreement provided that if another user claims infringement of a file, MMO's notice and take down procedure provisions in the user agreement would apply. Despite JASRAC request to the owner for deleting the feature, the provider did not delete the linked listed files shared without authorization. JASRAC with 19 record companies, most of them are RIAJ's members sued copyright infringement against the Japan MMO Ltd. as a direct infringer and requested for an injunction order.[48] In fact, more than seventy thousands of MP3 files have been shared via

[41] *Id*, at 88, *see* Art 95 Paragraph 5-13 and Art 97 Paragraph 4 (the process of secondary use fees decision), broadcasting companies do not need to ask permission or licenses to use phone records in their program. They just have to pay secondary use fees, whose amount is settled by agreement between broadcasting companies and recording companies or the settlement from the Commissioner of the Agency for Cultural Affair.
[42] Art 30, Paragraphs 2.
[43] Kaneko was suspected as a conspirator who commits copyright violations based on Penal Code Art 62-63.
[44] Art 30, Paragraph 1 Japanese Copyright Law.
[45] Berne Convention, Art 9 Paragraph 2.
[46] Yuko Noguchi, *supra note* 40, at 89.
[47] *Id*, at 90.
[48] Takashi B. Yamamoto, *Legal Liability for Indirect Infringement of Copyright in Japan,* Comparative Law Year Book of International Business 35, 2013, at 13.

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"File Rogue" index server. Almost MP3 files in it were copyright-infringed ones, which have been copied from commercial music CDs etc. without authorization.[49]

The court held that users' infringed the neighboring rights of the plaintiffs, namely reproduction rights and their rights to make works transmissible.[50] Moreover, Tokyo court determine the criteria for contributory infringement determine whether the defendant MMO's conduct infringed plaintiff's transmissibility rights; (1) the contents and nature of the MMO conduct, (2) the degree of MMO's control/supervision over the users' conduct to make works transmissible, and (3) MMO's profits through its conduct had to be taken into consideration by assessing the overall situation. In the result, the Court held that MMO provided its service although it expected such infringements and it also had control over those conducts. The Court found that defendants were aware of the nature of the files shared based on the names and song titles, and that they had excursive control and supervision over their users' because they were in a position to rollover the necessary steps to prevent copyright infringement, even impossible to detect all infringements. On that legal framework, the court held that the provider had contributory infringed the music right holders' right.

Amendment to the Japanese Copyright Law forced in January 2010, stated it illegal to knowingly download copyrighted material without permission. It was stating two years of pressure by influential associations including the Motion Picture Producers Association of Japan (MPPAJ) and (Recording Industry Association of Japan) RIAJ. Japanese law previously accepted prosecution against those uploading copyrighted material without authorization, but downloading the same material for private use was legal.[51] October 1st, 2012, copyright law amendment took place regarding criminal enforcement of illegal downloading.[52] Illegal downloading is also infringing a private use with the limitation. The provision penalizes person who intentionally/knowingly download illegally uploaded movie, music or copyrighted files. If we knew the contents are sold or getting paid-delivery online, and we still distributed illegally by downloading or uploading such things, we are subject to punishment. Uploading illegal content into Internet had been illegal from before, the punishment was maximum ten years in prison and/or a fine up to ten million yen. Since January 2010, downloading illegal contents online was illegal without punishment. Moreover on October 2012, even for personal use, downloading illegal contents with consideration: 1) we knew the contents are sold or getting paid-delivery online, 2) we distributed illegally by

[49] *See* RIAJ news, *available at* http://www.riaj.or.jp/e/whatsnew/20020129.html, (last visited June 22, 2015)
[50] Japanese Copyright Law 1970, Art 92*bis* (1)
[51] Shirley Gene Field, Internet Piracy in Japan; Lessig's Modalities of Constraint and Japanese File Sharing (May 2010) (unpublished thesis, Texas University) (on file with author), *see also*, Kazuaki Nagata, *(Near) Death of Salesman*, Japan Times, December 11, 2009, *available at* http://www.japantimes.co.jp/culture/2009/12/11/music/near-death-of-a-salesman/#.VYjGLBOqqkp (last visited June 23, 2015).
[52] http://www.bunka.go.jp/seisaku/chosakuken/hokaisei/online.html, (last visited, June 10, 2015)

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downloading or uploading the contents, we are subject of criminal with two years limit in prison and/or a fine up to two million yen.[53]

4. The Forthcoming of Digital Protection

It is now recognized that copyright law and technology influence each other.[54] As the digital ecosystem continues to change rapidly, since 2000 digital media may belong to the public of information, entertainment, devices and smartphones we used to consume it. Likewise, books, scholarly paper written today, music and movies created will eventually be presented in digital form. The rising globalization of the copyright content industry pushed it into new digital land. While, the conventional markets are still placing up resistance, they will soon adapt to the new framework. Stakeholders, businessman and user need to reconsider their purposes and confirm synchronization between regulation, their measures, consumers of digital copyright content and the protection of the content itself.

Nowadays, technology environment and Internet situation between developed and developing country are mostly similar. Most countries around the world practice the Internet in their daily lives, possibly dissimilar on implementation. Regarding to digital content protection, net user might be choose the free content, paid content or illegal content. Consequently, in the future: net users do not too worry about breaking the digital content right. They could be easily to choose the free content on the various webs. The party who should be worry is digital copyright content owner. They have to be work extra to protect their content on the Internet. Increasingly sophisticated technology will always be coupled with the crime, especially hacker for bad purposes. In my view, only major cases which affected huge loss will be proceed by legal action. Copyright industries and government might not be concerned with petty mistake or crime by limited users likes: downloading free contents and distributing them into their personality use. Therefore, the industries should be proactive by cooperating with association for protect their contents from illegal exploitation.

Based on information law point of view, digital content is a part of the information system, which should be distributed freely from limitation. Moreover, if it has to be controlled, the content, scope and protection should regulate by the relevant laws, standard technology measures and good enforcement.[55] Sometime, the government, especially

[53] Summary Q&A through copyright content on the internet by Agency for Cultural Affair; 1) Viewing or listening illegal contents like video or music is not illegal, unless you record the content, 2) viewing and caching made from video sharing sites like YouTube, are not illegal, 3) downloading online photos or copying and pasting text are not illegal as it is for private use, 4) it is illegal download even TV programs were broadcasted free and if we knew it was illegal distribution, moreover if the TV programs sold (either as online or disc), we are subject to punishment.
http://www.bunka.go.jp/seisaku/chosakuken/hokaisei/download_qa/index.html, (last visited, June 10, 2015)

[54] Niva Elkin-Koren, *Making Technology Visible: Liability of Internet Service Provider for Peer-to-Peer Traffic*, 9, N.Y.U. J. Legis, & Pub. Pol, Y, 15, 15-16, 2006

[55] Zhou Lin, *Facing The Future, The Distribution of Digital Content and the New Issues of Intellectual Property System*, Journal of Intellectual Property Association of Japan〈日本知財学会誌〉Vol.5 No.3 ― 2009: 31 ― 35, at 32.

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Indonesia gave no specific laws and regulations, consequently, the policy suffered by the criticism and it would be tough to be recognized by the public. For instance, in 2008, the Ministry of Telecommunication launched the Transaction and Electronic Information Law; the official claimed that this regulation would prevent the cybercrime on the Internet. Unfortunately, this regulation and Copyright Law 2002 gave no clear explanation about what is digital content abuse and copyright infringement on the Internet; additionally those laws were lack of implementation because particularly, there were a lot of cases of digital copyright infringement on the Internet along 2002-2014.[56] Criminal enforcement and fines practices by the Police Department on physical market and infringement on the Internet did not towards better movement. The seller and pirates will return with the new strategies; sell secretly and change the web address become trend between them and consumers.

Nearly, government provides the strategies and mechanism to block the web addresses which provide the illegal content and software. Learning from Japan, U.S., and China, I personally wish Indonesia would adopt "safe harbor" for Internet Service Provider, which controlled networking condition for exemption infringement. As well as government did for phonographic content on the net. Even though, not all phonographic web could be blocked, but it will reduce the infringement itself. Following the implementation of new Copyright Law amendment on 2014, infringement digital copyright on the Internet and physical market would be significantly decreased. However, government should be creative to establish various approaches for decreasing the infringement. I strongly believed, the criminal and fines enforcement are the last option to be implemented for Indonesia.

As for the further steps to be taken by the government for defeating the infringement; the manufactures' control of retail price on an original content or software is permitted by the national authority. Hence, government could be control the market price as one of the exception for anti-monopoly law. This approach was already taken by Japan since 2007 to prevent the price competition and increasing the CD music sales.[57] Next steps is DRM software is not desirable to the consumers because the limitation of the contents and complicated process. Even though it is legal to make copy for private or personality use, DRM also depends on the manufactures or copyright industries. Other reason is, if a content is downloaded from the Internet, it might be disappear or useless in case device or software incapability. Therefore, online content distributors are projected to prefer build standard of DRM or DRM free distribution. Last approach is creating less price or special price for students or companies or to ordinary people (low-medium welfare) for original goods or online content. Thus, society still can purchase without do such illegal action. To summarize the methods, reasonable price, less obstacle and constrain, and more selection of regulation are the key factors of digital copyright content protection. The alteration of online content

[56] International Intellectual Property Alliance (IIPA), Indonesia 2015; Special 301 Report on Copyright Protection and Enforcement, Feb 6, 2015.
[57] Tatsuhiro Shukunami, *The Transformation and The Future Challenges of Content Distribution in Japan*, Keio Communication Review No. 32, 2010, at 27.

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distribution has established enormous demand. Government and copyright industries should realize that information is a right of every person and business opportunity.

5. Conclusion

Basically, the concept of digital copyright protection is already sufficient by implementing international copyright regulations, which is then ratified by every member. However, harmonization undertaken by some countries was inconsistent with their practice. Indonesia for instance, the number of digital copyright infringement and conventional market piracy are increasing every year. Local government and copyright association are less able to participate active to decrease the copyright infringement. Conversely, in Japan and United States, cooperating between the stakeholders and non-governmental organization can reduce the number of copyright infringements. RIAA movements and "Doe Lawsuits" against the file-sharer in the United States were active role from the copyright non-governmental organization concerning on copyright enforcement. In Japan, ISPs and the interest groups are also playing a part in reducing illegal file sharing on the Internet. Another strategies to change the users' behavior on illegal file sharing, RIAJ and MPAA and other organizations have intensified their efforts to socialize that illegal file sharing is wrong. They also cooperate with the police department to reduce the number of copyright infringement on digital technology.

Moreover, fighting the threat of digital copyright crime entails the intensive actions from all the countries. Appropriated regulation has to be in place and in line with international practice. Yet, the situations between countries are not always similar, economic, and politic and harmonization itself sometimes bring the obstacles to implement. International community and other countries cannot intervene too hard to follow the provision, because every country has sovereignty to manage their home. The objective way is always promote and attract users globally to stop the piracy.

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Juridical Review of International and Transnational Crime Based on International Law

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Abstract

Along with the times and technology, there are various forms of crime often thrive, it's caused by the progress of information and communication technologies that facilitate everyone to reach out to all aspects of life. Even the progress canencourage the formation of various types of crime in the world. Indonesia was also not spared from the development of transnational crimes, it is caused by several factors such as Asean Economic Community's program,which is supported by the Open Skies Agreement, as well as the strategic position of Indonesia. With the formation of various types of crime in the world, then it can be difficult to distinguish between international crime and transnational crime. The distinction of the two crimes are intended to clarify the position of each type of crime, so there is no mistake in the placement of legal principles that apply to both types of these different crimes.

This research was conducted to discuss the issue of howjuridical reviews of international crime and transnational crime nased on international law, which aims to explain the various forms of international crime and transnational crime by international treaty. This research used normative legal approach(literature). The results showed that the scope of international crimes and transnational crime are different. Forms of international crimes since the Nuremberg Court (1945) to the ICTY (1993), ICTR (1994) and the ICC (1998) included four types of crimes namely: genocide, crimes against humanity, war crimes and aggression. While other forms of transnational crime based on the UN Convention on Transnational Crime Organized Crimementioned a number of crimes, namely money laundering, corruption, illegal trafficking of protected plants and

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wildlifes, crimes against art objects of cultural, human trafficking, migrant smuggling and illegal production and trafficking of firearms.

Keywords: *Scope, Statute, UNTOC and Crime*

1. Preliminary

Progressions ininformation and communication technologies affectedsocieties, both in the fields of politic, economic, law and culture. The progression of science and technology is one of the globalization. Globalization as it is known as the process of the entry of world's scope.[1]

In other words, information and communication in the era of globalization do not have significant limitations, sonow whole world can easily access to science and technology. However, with the easily of the globalization era, it can make a threat, one of them is to make access easily to the various types of crime, both at national and international levels.

Transnational crimes due to the progress of science and technologieshad happened in some countries, one of the crimes that occurred in Indonesia in 2015 and that was a cyberneticcrime that used voice over IP (VoIP) or technology of voice conversations remotely via internet, which were being misused with scams. This crime was so organized that made by Japan's largest criminal organization or commonly called Yakuza.[2] But the subjects of this crime are Taiwan-China, so that these crimes included in transnational crime.[3]

The abuse of science and technology also occured in the politics that involved mass media as propaganda activities.Propaganda is communication activities to influence the masses, so that the mass media is the most appropriate tool to do that.[4] Propaganda through mass media had occurred

[1]Indonesia Dictionary
[2]Japanese Yakuza is a criminal organization that has a tremendous influence on various aspects of Japanese society and has extensive powers and can affect everything from sports to business. Yakuza is also called the violent groups for the activities of these groups are involved in extortion, protection schemes, as well as the use of violence to achieve their goals.http://www.amazine.co/24746/apa-itu-yakuza-kisah-organisasi-kriminal-jepang/, accessed on October 5, 2016, at 19:23 pm
[3]http://news.liputan6.com/read/2320521/jejak-kejahatan-yakuza-di-indonesia, accessed on October 4, 2016, 09:42 hours
[4]Mohammad Shoelhi, *Propaganda dalam Komunikasi Internasional*, Bandung: Simbiosa Rekatama Media, 2012, hlm. 117

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in Indonesia, namely by the Indonesian Communist Party (PKI) in order to achieve their goals, i.e. communist revolution.That propaganda is done by through mastery of the elements of the press, among others, between the news agencies and the Indonesian Journalists Association (PWI).[5]

In addition another progress of science and technology abused is a banking crime which today glowing happen and damaging to all parties.[6]The crime occurred must be supported by sophisticated technology is currently being abused, causing losses for others. The losses caused by the crime achieved these banks billions of rupiah.[7]

Misuse of science and technology progress seems to be a new livelihood and cause various types of new crimes in various countries including Indonesia. Even social media which should simplify the range of information throughout the world, it becomes a tool facilitate a crime of fraud. It is experienced directly by Indonesia, where Indonesia was ranked 10th by the number of scams in social media most in the Asia Pacific and Japan.[8]

In addition to the progress of science and technology among the factors that favor transnational crimes, this is due to the ASEAN Economic Community (AEC)[9] as a development program of economic development has an impact both good and bad effects. One of the bad effects of the AEC is often utilized to develop crime offenders.[10] AEC as a vehicle for free trade and free markets in the Southeast Asia region which promotes the mobility of people, goods, services, capital and investment in and out freely between countries without any obstacles.

[5]Habib Mustopo, *Sejarah*, Jakarta: Ghalia Indonesia, 2006, p. 104

[6]https://m.tempo.co/read/news/2015/04/29/087661869/waspada-modus-kejahatan-perbankan-yang-lagi-marak, accessed on October 5, 2016, at 20:12 pm

[7]http://bisniskeuangan.kompas.com/read/2011/05/03/09441743/Inilah.9.Kasus.Kejahatan.Perbankan, accessed on October 5, 2016, at 20:16 pm

[8]http://nationalgeographic.co.id/berita/2016/04/indonesia-jadi-sasaran-empuk-penipuan-di-media-sosial, accessed on October 5, 2016, at 20:34 pm

[9]AEC (Asean Economic Community) is a program that aims to create a region of ASEAN economy that is stable, prosperous as a single market that is competitive and unified production base in which there is free flow of goods, services, factors of production, capital and investment as well as the elimination of tariffs for trade ASEAN countries, thereby reducing the social and economic gap. http://investasean.asean.org/index.php/page/view/asean-economic-community/view/670/newsid/755/about-aec.html, accessed on October 4, 2016, at 9:57 pm

[10]http://news.liputan6.com/read/2514460/polisi-se-asean-bertemu-fokus-bahas-11-isu-transnasional, accessed on October 4, 2016, at 10:02 pm

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Besides the existence of AEC is increasingly supported by the Open Skies Agreement[11] which provides freedom in the mobilization of everyone. That is because the Open Skies Agreement is regulations that can provide the ability for airlines to provide air services convenient and affordable.[12] Enforcement of freedom in the EAC system will not only help in the economic development but also would potentially give transnational crime will increase in the region of Southeast Asia, which then extends to every Asean member countries. So it is very harmful to the country's sovereignty and threatens the Ministry of the Interior (Kemdagri) Indonesia.[13]

State of Indonesia as one of the agents of the EACis formed several policies to attain the objectives of the EAC. One such policy is visa exemption that makes it easy for foreigners entering Indonesia that aims to bring in foreign exchange. The policy can be said to be good for Indonesia in addition to bringing the policy of foreign exchange can also bring foreign investors to support the development of Indonesia, but in spite of the favorable effects that are adverse effects of these policies are threatening the country's security.[14] That is because, with everyone enter Indonesia freely allowing for they also expanded their criminal networks has previous form in each country.

The policy has been a factor of crimes committed by foreigners as the Yakuza. By looking at these conditions, the possibility also turned out other groups that allegedly part of a syndicate on international criminal groups still roam freely like Nigeria, Cameroon and Brazil. So that the current condition of Indonesia could be said to have become a full nest of international crimes.[15] Moreover, the increasing number of cases of drug entry into the territory of Indonesia by all means

[11]Open skies agreement is an international policy concept which calls for the liberalization of rules and regulations on international aviation industry most special flying commercial - the opening of the free market for the aviation industry. Its main purpose is to liberalize the rules for international aviation markets and minimize government intervention - provisions applicable to passenger, all-cargo and combination air transportation and encompass both scheduled and charter services, or to adjust the low state-based regime where the military and others can be allowed.
[12]https://www.reference.com/government-politics/definition-open-sky-policy-8273cd6430d52fb0#, accessed on October 5, 2016, at 21:02 pm
[13] http://terbittop.com/2015/12/01/tajuk-ancaman-kejahatan-songsong-mea/, accessed on October 4, 2016, at 10:09 pm

[14]http://nasional.kompas.com/read/2016/02/16/07161781/Kebijakan.Bebas.Visa.Jokowi.Untung.atau.Rugi., accessed on October 4, 2016, at 10:13 pm
[15]http://indonesianreview.com/ds-muftie/indonesia-sarang-kejahatan-internasional, accessed on October 4, 2016, at 10:17 pm

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and the influx of tens or hundreds or thousands of workers from China is a threat to the security of Indonesia at the expense of the quality of the next generation.[16]

In addition to the science and technology and government policy factors, other factors that encourage a wide range of transnational crime can occur in Indonesia is a factor that is so strategic location of Indonesia. From the geographical point of view Indonesia is a country that has a cross position is strategic, both in terms of traffic of the world economy, and in terms of geopolitics and security, because Indonesia is located between two continents (Asia and Australia) and two oceans (the Pacific Ocean and the Indian Ocean) , Based on this strategic position will have implications on the social, political, economic, cultural, defense and security.[17] So important for Indonesia to identify transnational crime is legally under international law that distinguished the international crime and transnational crime.

The importance of identifying transnational crime is in addition due to the proliferation of various types of crimes that occurred in Indonesia involving even the legal aspects of other countries that require proper law enforcement. That is because in the enforcement of the necessary qualifications appropriate type of crime in order to avoid errors in the placement of this type of crime, where if something goes wrong it will have an impact on a mistake in the placement of the principles of law itself as the ideals of creating a justice. If the errors in qualifying crime then law enforcement will deviate from its purpose in society namely that peace is achieved as a result of formal law enforcement.[18]

In addition, if the errors in the placement of such laws then the offender will also has benefit. If the agent of these crimes can be free from law enforcement because of errors qualification of crimes the offender cannot be prosecuted again, it is supported on a principle in criminal law the principle of *ne bis in idem*, which means people cannot be prosecuted again because of the act which for him has been decided by judge.[19] So that these crimes will be growing both in scope of

[16]http://news.detik.com/kolom/3258993/bebas-visa-kunjungan-ternyata-bermasalah, accessed on October 5, 2016, at 21:21 pm
[17]http://lib.ui.ac.id/file?file=digital/135537-T%2027969-Perjanjian%20keamanan-Pendahuluan.pdf., accessed on October 4, 2016, at 10:25 pm
[18]Syafruddin Kallo, *Teori dan Penemuan Hukum*, Medan: Universitas Sumatera Utara, 2012, p. 50
[19]Article 76 (1) of the Criminal Law Act shrimp

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transnational crime and international crime, it would require an identification that distinguishes the two types of crimes based on the scope.

The importance of placing the principles of the law of international crime and transnational crime as it can be used as an analytical tool in the prevention and combating transnational crime and international crime.[20] So, we need a special study in the context of transnational crime and international developments in this case because transnational crime and international issues can impact on the social fabric of the nation Indonesia.[21]

Based on the above background, the issue will be addressed in this study is how the judicial review of international crime and transnational crime? The method used is a normative legal research method and data were obtained on secondary data derived from literature sources such as literature, articles and Internet sites.

2. Discussion

2.1 The International Crime

International crime often synonymous with crimes against humanity in the form of human rights violations, it is because if a crime against humanity carried out already confirmed no human rights are violated. Acts in violation of international law it is considered as a crime by the state or military condemned the world as less than human behavior.[22]

International crime against humanity is a term in international law that refers to the act of mass murder by torture of the body of the people, as a crime against another attack.Crimes against humanity are often described as very heinous act, on a very large scale, which is implemented to

[20]RomliAtmasasmita, PengaruhKonvensiInternasionalterhadapPerkembanganAsas-AsasHukumPidanaInternasional, Makalahpada seminar asas-asashukumpidananasional.Kerjasama UNDIP dan BPHN DEPKEH HAM RI tanggal 26 April 2004, hlm. 2

[21]*Ibid.*

[22]Jawahir Thontowi dan Pronoto Iskandar., *Hukum Internasional Kontemporer*, Bandung: Refika Adiatama. 2006, p. 25

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reduce the human race as a whole.[23]So basically international crimes have an international element. According to Bassiouni[24] international elements in international crimes include:

1. An actions that have an impact on more than one country;2.
2. An actions that involve or impact on the citizens of more than one country; and
3. Facilities and infrastructure as well as the methods used appeared to have surpassed the territorial boundaries of a country;[25]
4. Measures which interfere with international interests;
5. An actions that threaten the values along the countries in criminal event involving several countries.[26]

In determining the scope of international crime, some experts have different ideas. However, the scope of international crimes earlier agreed upon by the international community through the United Nations which is composed of the crime of aggression, war crimes, genocide, sea piracy, kidnapping and narcotics.[27]

In addition the scope of international crimes contained in the third draft of the International Criminal Law or the International Criminal Code of 1954, has been set to the 13 crimes that can be punished under international law as crimes against the peace and security of all mankind. Thirteenth criminal offenses are as follows:

1. The act of preparation for aggression and acts of aggression.
2. Preparation of the use of armed force against another country.
3. Organize or support weapons intended to enter the territory of a country.
4. Provide support for acts of terrorism carried out in a foreign country.
5. Any violation of the agreement that has been approved pemabatasan weapons.
6. The annexation of foreign territory.

[23]Teguh Sulistia, Peran International Criminal Court dan Kejahatan Terhadap Kemanusian Oleh Militer, *Jurnal Fakultas Hukum Universitas Gajah Mada*, Volume 5, 2007, p.5
[24]Romli Atmasasmita, *Pengantar Hukum Pidana Internasional*, Bandung: Refika Aditama, 2006, p. 46
[25]*Ibid.*
[26]Arie Siswanto, *Hukum Pidana Internasional*, Yogyakarta: Andi, 2015, p. 4
[27]Heni Siswanto, *Hukum Pidana Internasional Teori dan Praktik*, Bandar Lampung: Aura, p. 21

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7. Genocide (Genocide).
8. Violations of the laws and customs of war.
9. Each pemufakatan, soliciting, and attempt to commit the offense in paragraph 8 above.
10. Piracy (Hijacking).
11. Slavery (Slavery).
12. Apartheid.
13. Threat and use of force against internationally protected persons.[28]

One expert who revealed the scope of transnational crime is Dautrricourt in his paper, "*The Concept of International Criminal Jurisdiction- Definition and Limitation of the Subject*" (1973) mentions some form of international crime consists of: terrorism, slavery, the slave trade, trafficking in women and children, illegal trafficking in narcotics, distribution of pornographic publications, piracy at sea, air piracy, counterfeiting of currency, and the destruction of cables under the sea.[29]

However, Robert Cryer[30] give different definitions of international crimes that include four types of international crime, namely the core crimes of genocide,[31] crimes against humanity,[32] war

[28]Maskun, international crime classification, 2013, accessed on http://www.negarahukum.com/hukum/klasifkasi-kejahatan-internasional.html
[29]Romli Atmasasmita, Pengantar Hukum Pidana Internasional, *Op.Cit.*,p. 44
[30]Arie Siswanto, *Loc.Cit.*
[31]The crime of genocide is a crime that covers crimes against political groups (political groups), in the view of the committee, these groups are groups that are not easily identifiable (non readily identifiable), including political groups which would cause international interference in problem- the domestic political problems of a country. Doortje d Turangan, Action Crime of Genocide in Terms of International Law and National Law Scientific Work, University of Sam Ratulangi, 2011, p. 5

[32] Crimes against humanity means the act of murder, enslavement, torture, rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of quite heavy, deportation, apertheid when committed as part of a widespread or systematic attack directed against a group of civilians. Article 7 of the Rome Statute in 1998

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crimes,[33] and crimes against the peace/aggression.[34] It is also stressed that basically raises the crimes of international concern such as piracy, slavery, torture, terrorism, and trafficking of drugs included in the category of international crime, because it is not (yet) be the jurisdiction of the court / tribunal.[35]

The types of international crimes that have been revealed by this Cryer in accordance with what is stated in some of the sources of international law on international crimes. Sources of international law is an important contribution to the definition of international crimes, these sources consist of the statutes of the Nuremberg trials, Tokyo, ICTY, ICTR, and the Rome Statute. Statute[36] of the Nuremberg Tribunal[37] in 1945 was the first to decipher the crimes which until now regarded as international crimes, crimes against peace, war crimes, and crimes against humanity.

International court next contribution is very important in the process of defining offenses including "international crimes" is the *Charter of the International Military Tribunal for the Far East* or the Charter Court International Military Tokyo which gave a definition of international crimes, namely crimes against peace, war crimes, and crimes against humanity.[38]

Additionally Yugoslavia Criminal Court Statute or the Statute of the International Criminal Tribunal for the former Yugoslavia (ICTY) 1993,[39] ICTY Statute contributed greatly to the

[33]War crimes is an act consisting of deeds Murder committed with conscious; Torture or inhuman treatment, including biological experiments; Knowingly causing great suffering, or serious injury to body or health; Widespread destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly. Article 8 of the Rome Statute

[34]Crime Aggression is the use of armed force by a State which attacked keadulatan, territorial integrity or political independence of another State, or in other ways that are contrary to the UN Charter. Thalis Noor, Aggression and Crimes Against Peace, Rule of Law, Rule of Law Journal, Vol. 3, No. 1, June 2014, p. 39

[35]Robert Cryer, Hakan Friman, Darryl Robinson dan Elizabeth Wilmshurst, *An Introduction to International Criminal Law and Procedure*, Cambridge: Cambridge University Press, 2010, p.4

[36]Statute or statutes are a source of international law is written is used as an instrument of the agreement that will establish and underpin an international organization. F.A. WhisnuSituni, identification and reformulation Resources International Law, Bandung: MandarMaju, 1989, p. 49

[37] Statute of the Nuremberg Tribunal formed the legal basis of international military tribunals Nurnberg in shape by the United States, France and Russia as part of the victors in World War II. ArieSiswanto, op.cit., p.76

[38]Article 5 of the Charter of the International Military Tribunal Tokyo

[39]Statute of the International Criminal Tribunal for the former Yugoslavia (ICTY) in 1993 formed the legal basis an ad hoc international criminal tribunals specifically established by the United Nations to enforce the law against the perpetrators of international crimes in the conflict that followed Yugoslavia disintergrasi events. Arie Siswanto, op.cit., p.79

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development of the concept of individual criminal responsibility and command responsibility, where they are considered individually criminally responsible not only those who do but also who ordered to commit a crime.[40] Different from the Statute of the International Military Tribunal Nurnberg and Tokyo Statute of the International Military Tribunal, ICTY Statute provides additional scope in the definition of international crimes, where genocide became one of the forms of international crime. Besides, the other international crimes stipulated in the Statute of the ICTY are war crimes and crimes against humanity.[41]

International crime is also defined in the Statute of the Court of Criminal Rwanda or the Statute of the International Criminal Tribunal for Rwanda (ICTR)[42] in 1994 in the statute it states that the authority of the court is to prosecute those responsible international crimes that fall into the jurisdiction of the ICTR are: genocide (Article 2); crimes against humanity (Article 3); and a violation of article 3 of the entire 1949 Geneva Conventions and their Additional Protocol II of 1977 (Article 4).[43]

Next in 1994 was born as a milestone in the Rome Statute[44] of the International Criminal Court (ICC)[45] which provides wider coverage than the statute of international crimes before an international tribunal. The Rome Statute states that the definition of international crimes and would be within the jurisdiction of the international criminal court is a crime of genocide, the crime of aggression, war crimes, and crimes against humanity.[46]

Although, according to some experts the scope of international crime there is a difference, but based on some of the statutes of the international court is essentially the scope of international crimes have in common. Thus the classification of international crime could be seen from several

[40]See Article 2, 3, 4, and 5 of the ICTY Satuta

[41]Articles 2, 3, 4, 5, and 6 of the Statute of the ICTY

[42]Statute of the International Criminal Tribunal for Rwanda (ICTR) is the legal basis for an ad hoc international criminal tribunal formed by the United Nations. The ICTR was established as a response to the human tragedy in Rwanda. Arie Siswanto, op.cit., p.81

[43]Article4 ICTR

[44]The Rome Statute is an international treaty in order for the establishment of an international criminal justice agencies that is permanent. ArieSiswanto, op.cit., p.83

[45]The International Criminal Court is a permanent institution and shall have the power to exercise its jurisdiction over persons for the most serious crimes of international concern, and it is complementary to national jurisdiction crime.

[46]Article 5 of the Rome Statute

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sources of international law such as the Statute of the Nuremberg and Tokyo, the Statute of the International Criminal Tribunal for the former Yugoslavia (ICTY) in 1993, the Statute of the International Criminal Tribunal for Rwanda (ICTR) in 1994 and the Rome Statute which states that which is included in the form of international crime in broad outline, namely genocide, crimes against humanity, war crimes and crimes of aggression.

Based on the definition of the types of international crimes contained in the Rome Statute, a crime can be said to be an international crime if the crime is widespread in the country. Based on the analysis of international crime writer who was widespread as a crime victim resulting from the thousands of victims and a major impact on peace and security of a country. However, to clarify about the international crime it will be illustrated through the example of a case in a table.

Table 1. International Criminal

No	Cases	The Type of Crime	Explanation
1	The case of Ivory Coast Election 28 November 2010	International crime	- Murder and rape which killed 3000 people.[47] Murder and rape according to the Rome Statute of 1998 is included in an international crime; - Perpetrators of crimes committed in Ivory Coast is a former Ivory Coast President Laurent Gbagbo. For the crimes he committed, Gbagbo adjudicated by the ICC. Gbagbo arrest warrant issued by the ICC court in The Hague on 23 November 2011; - Based on the 1998 Rome Statute of the ICC jurisdiction one is a crime against humanity. So true if the perpetrators brought to justice by the ICC Ivory Coast

[47]http://www.voaindonesia.com/a/mantan-pemimpin-pantai-gading-mulai-diadili-di-icc/3166319.html, accessed on October 25, 2016, at 10:54 pm

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2	War Crimes in Libya early 2014	International crime	- According to the UN report armed groups in Libya of kidnapping and torturing civilians. It was mentioned by an investigation conducted by a team of human rights official (HAM) UN managed to gather evidence of the arrests, assassinations of activists, torture, sexual abuse, kidnapping, military attacks on the civilian population, and torture of children occurring in Libya since early 2014.[48] - Under the Rome Statute crimes committed against civilians constitute war crimes, and crimes of war is the jurisdiction of the ICC. So that the United Nations Security Council decided to report back on war crimes committed in Libya to the public prosecutor of the International Criminal Court in 2011.[49]

2.2 Transnational Crime

Definition of the term "Transnational" in international law was first introduced by Phillip C. Jessup (1968): and the understanding of the term "transnational crime" as a new nomenclature is recognized in international law, namely Convention against Transnational Organized Crime (Convention against Transnational Organized Crime): Convention Palermo 2000.[50] Characteristics of "transnational crimes" is set dalarn Convention against Transnational organized Crime

[48]http://news.okezone.com/read/2016/02/25/18/1321420/pbb-kumpulkan-bukti-kejahatan-perang-di-libya, accessed on October 25, 2016, at 11:10 pm

[49]*Ibid.*

[50]Convention Against Transnational Organized Crime UNTOC is an international convention or formations of the United Nations (UN) in 2000 in Palermo, Italy United Nations through the United Nations Resolution No. 55/25 as a legal instrument in countering transnational organized crime

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(Convention against Transnational organized Crimes), known as the Palermo Convention (2000).[51] In Article 3 of the Convention UNTOC affirmed that the elements of transnational crime are as follows:

a. In more than one region of the country;
b. In a country, but the preparation, planning, direction or control of the offense was committed in the territory of another country;
c. In an area of the country, but it involves a group of organized criminal who commits an offense in more than one region of the country; or
d. In an area of the country, but the impact on the offense is perceived in other countries.

In addition Bassiouni also reveals elements of transnational crime is an international crime that contains three elements namely the elements of international, transnational element, and necessity. International element includes an element of threat to the peace of the world, the threat of indirect peace and security in the world, and to shake the feeling of humanity.[52] While the transnational elements include elements or actions that have an impact on more than one country, acts that involve or impact on the citizens of more than one country, and the infrastructure and the methods used beyond the territorial boundaries of a country. The element needs (necessity) are included in the elements will need cooperation between countries to do prevention.[53]

While G.O.W. Mueller provides a definition Transnational crime is a term juridical about the science of crime, which was created by the United Nation the field of crime prevention and criminal justice in terms of identifying the phenomenon of specific criminal that transcends international borders, violating the laws of several countries, or have an impact on other countries.[54]

[51] RomliAtmasasmita, Extradition in Improving Law Enforcement Cooperation, Journal of International Law, Institute of International Legal Studies Faculty of Law, University of Indonesia, Vol. 5 Number 1 October 2007, p. iii

[52]Maharani Siti Shopia, Transnational Organized Crime, *Buletin Kesaksian*, No. III, Lembaga Perlindungan Saksi dan Korban, p. 4
[53]*Ibid.*
[54]https://wisuda.unud.ac.id/pdf/1103005099-2-BAB%20I.pdf, accessed on October 25, 2016, at 19:30 pm

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Besides I WayanParthiana argued about the nature of transnational crime that knows no boundaries of a country. Some aspects of transnational crime is not limited to certain areas such as the place of occurrence, the consequences thereof, nor the purpose of the crime itself.[55]

Use of the term transnational, specifically used to indicate a crime committed by an individual, where the crime itself, the individual can be charged with the responsibility under national law or international law. Perpetrators of international crimes must be distinguished from international crime perpetrator is the State. This is due that the State can only be charged with the responsibility of an international criminal (international criminal responsibility of states).[56] If linked to international crime, the different transnational crime with international crime although basically an act of cross-border crime but transnational crime have different scope with international crimes. This can be reviewed judicially in the rules of international law.

Transnational as has been the United Nations Identification of the UNTOC consists of 18 types of transnational crime, namely money laundering, terrorism, theft of objects of art and culture, the theft of intellectual property, illegal trafficking of soldiers and weapons, aircraft hijacking, pirates, insurance fraud (fraud), computer crime, environmental crime, trafficking in persons, trading human body parts, illicit drug trafficking, fraudulent bankruptcy, infiltration of legal business, corruption, bribery of public, and bribery of party Officials.[57]

Meanwhile, international crime, as was explained earlier that the scope of the statute of international crimes by some international court composed of genocide, crimes against humanity, war crimes and crimes of aggression. Therefore, from the description of the scope of transnational crime, it can be seen that different transnational crime with a transnational international crime but crime is part of an international crime.

This can be seen in the similarity of certain elements of the determinants of international and transnational crime. The element consists of elements or actions that have an impact on more than

[55]Shinta Agustina, Perdagangan Perempuan dan Anak sebagai Kejahatan Transnasional: Permasalahan dan Penanggulangannya di Indonesia, *Jurnal Hukum Projustitia*, Vol. 24, No.1, 2006, p. 50

[56]NoerIndriati, *Mutual Legal Assistance Treaties* (Mlats) SebagaiInstrumenPemberantasanKejahatanInternasional, *JurnalDinamikaHukum*, Vol. 9, No. 2 Mei 2009, p. 105

[57]Convention Against TransnationalOrganized Crime 2000

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one country, acts that involve or impact on the citizens of more than one country, and the infrastructure and the methods used beyond the territorial boundaries of a country. However, to clarify on transnational crime it will be illustrated through the example of a case in a table.

Table 2. Transnational Crime

No	Cases	Crime type	Explanaion
1	*Lotus Case*, 1927	Transnational crime	- Collision ship "Lotus flag of the French ship" Boz Kurt flagged Turkish state on the high seas. The collision took place at 5 miles from the coast of Turkey as the high seas. This event is the death of 5 people killed Turkish citizens. - This case can be said trasnasional crime because it involves more than one country, namely France and Turkey. With the number of victims 5 Turkish citizens, the resolution of this case carried out by the Turkish national court.[58]
2	Kidnapping cases, persecution, and murder of Special Agent, 1992	Transnational crime	- An agent khususs Drug Enforcement Agency (DEA) in the United States have been kidnapped, tortured and murdered by drug suppliers in Mexico. - The case is said to be a crime trasnasional because it involves victims who are from other countries. And the victims of these crimes produced only one person and not be as widespread as international crime, so that these crimes can be solved by a national court. As the settlement of the case made by the Supreme

[58]Abdussalam, *Hukum Pidana Internasional*, Jakarta: Restu Agung, 2006, p.211

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			Court of the United States as national courts of the state of the victims came.[59]

3. Cover

3.1 Conclusion

1. International Crimes are crimes that have elements of that action having an impact on more than one country and it involves or has an impact on the citizens of more than one country as well as facilities and infrastructure and the methods used appeared to have exceeded the limits territorial boundaries of a country.

2. Transnational crime has elements as stipulated in Article 3 of the Convention UNTOC is a crime in more than one region of the country; in a country, but the preparation, planning, direction or control of the offense was committed in the territory of another country; in an area of the country, but it involves a group of organized criminal who commits an offense in more than one region of the country; or in an area of the country, but the impact on the offense is perceived in other countries.

3. The difference between international crime and transnational crime lies in the scope of the crimes set out in international legal sources. The scope of international crimes by the Statute of the Nuremberg, Tokyo, ICTY, ICTR and the Rome Statute composed of genocide, crimes against humanity, war crimes and crimes of aggression. While Transnational as has been the United Nations Identification of the UNTOC consists of 18 types of transnational crime, namely money laundering (money laundering), terrorism (terrorism), theft of objects of art and culture, the theft of intellectual property, illegal trafficking of soldiers and weapons, aircraft hijacking, pirates , insurance fraud (fraud), computer crime (cyber crime), environmental crime (crimes against the environment), trafficking in persons (human smuggling), trading human body parts, illicit drug trafficking (drug smuggling), fraudulent bankruptcy (cheating), infiltration of legal business

[59] *Ibid.*,p. 214

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(infiltration of legal business), corruption (corruption), bribery of public. (Bribery of public officials), and bribery of party Officials (bribery of party officials).

4. Based on tables 1 and 2 can be seen the difference between international crime and transnational crime in the law enforcement carried out by different courts. International criminal law enforcement carried out in international courts such as the International Military Tribunal in Nuremberg, Tokyo International Military Tribunal, ICTY, ICTR and ICC. While law enforcement transnational crime carried out on national courts.

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KitabUndang-udangHukumPidana

Open Skies Agreement

Indonesia Dictionary

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The Deconstruction of the Law on the Vote Gap Limitation of the Parliamentary Threshold in the Petition For Cancellation in the Determination of Vote Counts in Constitutional Court

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Abstract

The vote gap limitation of the parliamentary threshold is formulated in Article 158 of the Local Leaders Election Act are often reap the problematic elections. Problematic issues of the election also often occur, such as the petition of legal action dispute that is not approved by the Constitutional Court of the Republic of Indonesia. Why it is not approved by the Constitutional Court is because it does not meet the gap of the parliamentary threshold set in the Article 158 of the Local Leader Election Act. However, authority of Constitutional Court should not hinder the active participation of the people in the process of the elections. On the other hand, this scenario portray the Law of Election only emphasizes the procedural aspects. Local Leaders Election Act should not be concerned with only the procedural aspects, but also should be concerned with substantial aspects and it will be a law instrument that hold a justice and legal certainty. This paper will discuss about the deconstruction of the law on the gap of parliamentary threshold in the petition for cancellation in the determination of vote counts and how to reach substantive democracy in Local Leader Election in Indonesia.

Keywords: *The law of the gap vote limitation, substantive democracy, The authority of Constitutional Court*

1. Introduction

1.1 Background

Indonesia is a democratic country. Instruments to organize a democratic state one of them is through local elections (elections) to put the leaders of the society. The election one of which is held by way of voting by each community as an expression of the appreciation of voting rights of the public (Article 5 Act No. 8 Year 2015 on the Amendment of Act No. 1 Year 2015 on Stipulation of Government Regulation in Lieu of Law No. 1 of 2014 concerning

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the election of Governor, Regent, and Mayor Being the Act) in accordance with the democratic system in Indonesia.

Principles in the elections provided for in Article 2 of Law No. 1 Year 2015 on Stipulation of Government Regulation of Law No. 1 of 2014 on the Election of Governors, Regents, and Mayors Become Law as form of an extension of the charge principle of universal suffrage as set forth in article 22 E paragraph (1) 1945. In this article there is the principle of free and fair elections. The elections should be held with the aim of creating freedom of people to achieve a sense of justice is essential. So that the voting rights of these communities is the right constitutional. But in fact, the constitutional rights of communities are often be violated by the rules governing the calculation of the difference in the vote counts.

Authority to deal with the difference in the vote contained in the establishment of the Constitutional Court during yet Special Courts which will deal with the matter. As Article 157 Paragraph (3) Law No. 8 of 2015 stipulates that the determination of the dispute case of votes on election examined and tried by the Constitutional Court until the establishment of a special judicial body. In paragraph (4) stipulates that participants can apply for the cancellation of the election results of the determination of the calculation of votes by the provincial KPU (General Election Commissions) and district to the Constitutional Court. Then in paragraph (5) provides that participants of the election can apply to the Constitutional Court referred to in paragraph (4) a maximum of 3 x 24 (three times in twenty four) hours since announced the establishment of votes on Election by Provincial and Regency / City , Appeals to the Constitutional Court should qualify margin limits set forth in Article 158 of Law No. 8 2015.

Limitation of vote gap set out in the provisions is around of 0.5% -2% for filing the election dispute. The problems that occur are often disputed election petition filing was not accepted by the Constitutional Court. On the basis that it does not meet the margin specified in the legislation. In practice often been fraud by way of deliberately exaggerating the difference in the sound of his political opponents over the terms 2%, as well as petition candidates for

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regional heads in 2015 in four regions in the province of Central Java Pemalang, Pekalongan, Sragen and Wonosobo, rejected by the judges of the Constitutional Court.[1]

Based on data from the decision of disputed elections in 2016 there were 151 election disputes filed with not accepted by 137, rejected 3, granted 5 and withdrawn 6. This means that the number of disputed elections were not acceptable then indirectly the actions of the Constitutional Court already injured the substantive democracy which should also be fought through elections of Constitutional Court in dealing with election disputes not only dissect a request by looking at the acquisition of the voting results, but also examine closely any violation structured, systematic and massive that affect the voting results. Based on the exposure that has been described above, there are several issues to be discussed further.

1.2 Formulation of the Problem

There are the formulation of the problems that the writer propose in this paper :

a. How the deconstruction of the limitation on the vote gap in the petition for cancellation in the determination of vote counts?
b. How the way to realize substantial democracy in the petition of the limitation on the vote gap?

2. Discussion

2.1 The Deconstruction Of The Law On The Gap Of Parliamentary Threshold In The Petition For Cancellation In The Determination Of Vote Counts

Schumpeter stated that "Mainstream democratic theory tends to identify democracy with the democratic process (i.e., means), rather than with a set of democratic ends (i.e., substance). A recent Treatise states, "Democracy means, literally, rule by the people." Thus Spake, the democratic process is Often understood as a "way of ruling" or a "political method.". This theory explicitly acknowledges the shortage of substantive democracy. According to Schumpeter, substantive democracy was indeed the result of a political process. But the political process is accommodated in a substantive democracy not as a driving force of

[1]Diko Oktara, MK Tolak Semua Gugatan Perselisihan Pilkada, diakses dari https://m.tempo.co/read/news/2016/01/25/078739285/mk-tolak-semua-gugatan-perselisihan-pilkada, Pada Tanggal 10 Juni 2016 Pukul 13:34.

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democracy. This means that mainstream democratic theory emphasizes the procedural aspects of democracy or procedural democratic. The concept called mainstream democracy is more empirical, descriptive, institutional and procedural.

Terry Karl opposing theory Schumpeterian stating about the "mistake electoralism" where the democratic mainstream privileging elections over the dimensions of the others, and ignores the possibility posed by elections, multi-party setting aside the right of some people certain to compete for power or improve and defend their interests (such as the protection of marginalized groups and minorities). expanded conception of democracy arises where the opportunities to minority groups to disclose their interests and sovereignty of every citizen to have equal before the law.

Mostly, the concept of democracy focuses on the procedural characteristics. Characters procedural democracy is usually used to make public policy (the concept of democracy is multifaceted, most scholarly definitions focus on the characteristics of the institutions and procedures used to a make public policy). Public policy generated by procedural democracy, often ignore the important role of substantive democracy. In fact, the destination of democracy itself is not enough just filled with the procedural aspects, but must be the achievement of a substantial aspect in the soul of democracy.

Substantial aspects of the spirit of democracy is also discussed in the theory of deliberative. The theory of deliberative democracy advanced by Habermas assert that the consultation is the right mechanism to uphold the pillars of democracy. However, a substantial destination for democracy will not be realized if it still contains restrictions difference in the count. This is due to the difference in vote count limit it only focused on the procedural aspects. That is when the noise limits set out in a regulation that limits the vote is an absolute requirement that must be met in terms of the request for revocation vote counts. As long as this open deliberatory setting is absent, can not in itself carry normative weight. If the determination noise limit becomes absolutely necessary that in this case the procedural aspects are met. The impact is a petition for election disputes are often not accepted by the Constitutional Court by reason of non-fulfillment of the vote count difference limit set by the legislation.[2]

Elections organizing should attach great importance to the civil rights and the principle of freedom of the people in expressing his voice. Organizing elections pursued through two

[2]Nabila Tashandra, *Banyak Sengketa Pilkada Ditolak MK, KPU Bantah Hambat SK Penetapan Hasil Suara*, diakses dari http://nasional.kompas.com/ Pada Tanggal 09 Juli 2016 pukul 01:52 WIB.

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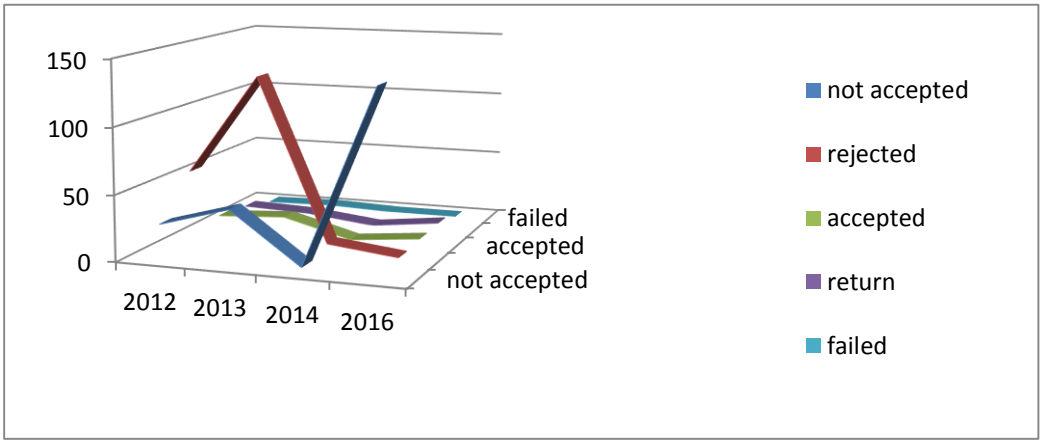
stages, namely stages of preparation and implementation stages. The preparation phase is planning program and budget, the preparation of the implementation of the election arrangements, etc. while on the stages of organizing the elections one of them is the voting public as an embodiment of the aspirations of the people participating in the democratic party.[3] Voting in accordance with Law No. 8 in 2015, especially in Article 158 paragraph (1) letter a that there are limits to the difference in the vote count is a maximum of 2% with a population of two million people.

Provisions concerning the vote count difference limit imposes filing election dispute can not be accepted due to ineligible vote count limit. Limit the difference in vote counting is a necessary condition that must be met in filing the election dispute. That is, if the condition limits the difference in vote count is not met, the application for the disputed elections can not be accepted by the Constitutional Court, as depicted in the chart below.

Graph 1. Data of the submission petition for cancellation on the vote counts in Constitutional Court.



In that graph is clear that the issue of non-receipt of the disputed vote count in the last two years has increased very sharply. Determination margin restrictions contained in Article 158 of Law No. 8 year 2015 has caused many disputes filing the election was not accepted by the Constitutional Court. Limitation of the vote count difference only meets the procedural aspect of Article 158 of Law No. 8 Year 2015. Supposedly, the rules of the organization of the elections must also prioritize a substantial aspect. Election rules of implementation of good it must give priority to the substantial aspect in the implementation. This is consistent with the theory advanced by Brian Z. Tamanaha in his book entitled "On The Rule of Law: History, Politics, Theory."

[3]Peraturan KPU Nomor 2 Tahun 2015 tentang Tahapan, Program Dan Jadwal Penyelenggaraan Pemilihan Gubernur dan Wakil Gubernur, Bupati dan Wakil Bupati, dan/atau Walikota dan Wakil Walikota.

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Brian Z. Tamanaha in his book entitled "On The Rule of Law: History, Politics, Theory" rule of law divides into two versions of the formal version thinnest and the thickest substantive version. According to him "The thinnest formal version of the rule of law is the notion that the law is the means by the which the state conducts its affairs," that whatever a government does, it should do through laws.[4] . "While" The thickest substantive versions of the rule of law incorporate formal legality, individual rights, and democracy, but add a further qualitative dimension that MIGHT be roughly Categorized under the label "social welfare rights.[5]

Limitation difference counting stipulated in article 158 of Law No. 8 of 2015, including the theory of formal thinnest version put forward Brian Z Tamanaha. This means that whatever the government only under the legislation. To a restriction in the election dispute a conflict with the theory of substantive thickest version in which the rule of law should incorporate formal legality, individual rights, democracy and legality, andsocial welfare. Explanation of the theory Tamanaha above, is described in the table below.[6]

Table :*The Thickest Substantive Version*

No	Bentuk	Keterangan
1	*Formal Legality*	Law State characterized as the owner of properties of which include: Principles prospectivity and should not be retroactive, apply common-binding on everyone, obviously the public, and relatively stable.
2	*Democracy and legality*	Vibrant democracy that is offset by a law guaranteeing legal certainty. However, as a procedural mode of legitimation, democracy also contain similar limitations formal legality so that it can also bring bad practices of authoritarian power.
3	*Individual Rights*	The existence of the guarantee and protection of property rights, private contracts, and autonomous person.

[4]Brian Z. Tamanaha, *On The Rule of Law*, (Cambridge : University Press, 2004), p.92.
[5]*Ibid., p.*112
[6] Wahyu Jafar, 2010, *Menegaskan Kembali Komitmen Negara Hukum:Sebuah Catatan atas Kecenderungan Defisit Negara Hukum di Indonesia*, Jurnal Konstitusi, Vol. 7, No. 5, Jakarta, h. 163

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4	*Social Welfare*	Equations that are fundamental and nature, welfare, and preservation of maintaining about a man in the community.

Cancellation difference only quantitative counting without seeing the qualitative nature of these elections. The organization of the elections was not just dwell on the numbers. If the organizer of the elections only refers to the numbers is in itself the organizer of the elections had ignored substantive democracy that need to be prioritized. That is organizing good elections will not be realized if only relying on procedural democracy. There should be a substantive democracy is upheld in order towards the implementation of a fair and definitive.

2.2 Mechanisme On Realizing Of Substantial Democracy In Petition Of The Limitation Of Gap Vote Counts

In any political system, even in democracies, the replacement of one government by another is often difficult.[7] Replacement government in the country's political system, a democracy should be in accordance with the term of office set out in legislation. This means that if during the period of political office takes place it will be a severe disadvantage when choosing a leader who is just full of mere political promises. The realization of the political promises do not materialize increasingly well or even not materialize at all. That is why the elections should not only be enough on the procedural aspects but the struggle to enforce the substantive aspects of the face of democracy is important. In order to realize a good leader then realization towards substantive democracy is a necessity.

"Habermas formulate a theory of democracy in which the substance of democracy has no general defining characteristic and is relative to particular socio-economic contexts. Only the procedural civil rights "are absolutely justified categories".[8] Habermas states that democracy should not only be seen from the procedural side alone, but must be seen in terms of the substance in the form of life, culture, or democratic ideology that characterizes the internal organization of political parties, government institutions, and public gatherings. Democracy substantially realized if people agree on the meaning of democracy, familiar with

[7]Kurt M. Campbell and James B. Steinberg, *February 2010*, "Difficult Transitions: Foreign Policy Troubles at the Outset of Presidential Power". *Australian Journal of International Affairs.Vol. 64, No. 1, http://tn5bn6xp5c.search.serialssolutions.com/*, 11 Juni 2016.
[8]Ibid., p. 285.

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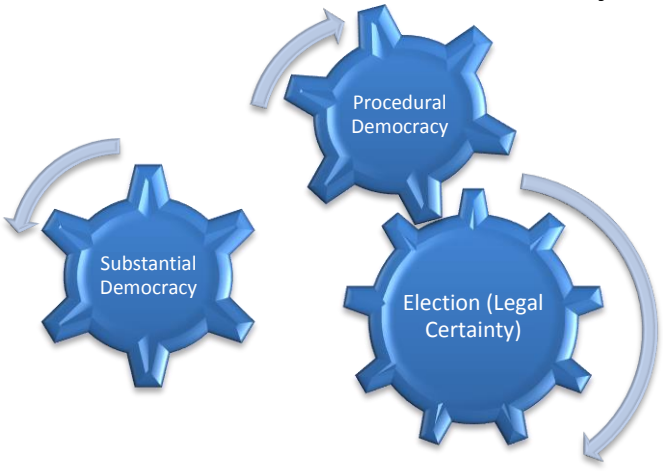
the workings of democracy and the usefulness of democracy to the common life. Democratic society is a society that has autonomy and maturity. Autonomy relates to the collective society reaching consensus in a society free of domination communicative and also the importance of public space in a communicative society and the importance of community participation in the political process and determine the course of power. People's aspirations is one way of upholding the sovereignty of the people in the eyes of the law in a democracy substantial Habermas.

The public space is a social life where public opinion can be formed. Given this theory it is true that the Government of the people, by the people and for the people who put forward by Abraham Lincoln can describe full sovereignty. In Indonesia in the local elections there are restrictions on the maximum difference of 2% of the results of vote counting in which it restricts the right candidates who feel cheated by the other candidates and injuring substantive democracy. On the other hand, the tendency to commit fraud which will deliberate exaggeration of 2% so were unable to stand trial in the Constitutional Court that led to a particular candidate wins an absolute time difference is much above 2%.

Limitation vote discrepancy becomes a dilemma in the legal system in Indonesia Local Leader Election merely procedural means only rules are accomplished without substantive see the essence of democracy itself. If only the procedural aspects take precedence in the organization of the elections, the only legal certainty will be achieved. This can be seen in the chart below.

1: Local Leader Election without Substancial Democracy



The fact that the case if the elections are only concerned with the procedural aspects is only legal certainty will be achieved. The elections should also contain the essential values that

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are not only legal certainty but also to achieve substantive justice can be achieved in the ideals of law. This can be seen in the chart below.

2: Local Leader Election with Substancial Democracy

Das Sollen

To achieve das sollen elections, as has been illustrated in the chart above, the Government and Parliament must corporate in formulate new legislation does not contain provisions about the limitations of the difference in the vote count so as to realize the elections are das sollen. Government and Parliament should formulate new laws, because the Law No. 8 Year 2015 have ever tested material (Judicial Review). Decision of judicial review states that the provisions on limitation difference in the vote count, which in article 158 of Law No. 8 Year 2015 declared no conflict with the constitution, so that in this case the government and the parliament should formulate new laws that contain substantial democratic principles and does not contain provisions on limitation difference vote calculation. The formulation new law is one of the mechanisms embodiment substantive democracy.

The realization of a substantive democracy can also be done through the establishment of the Special Judicial Elections (Badan Peradilan Khusus Pilkada - BPKP). BPKP is already envisaged by Law No. 8 Year 2015, it's just that it is not yet established. BPKP formed under the auspices of the Supreme Court that unite all forms of disputes and disputes the results of

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the elections. By uniting remedies under the Supreme Court, actually open the opportunities for the establishment of a special court to handle election disputes. BPKP formed will be Ad-Hoc. This is because the elections in Indonesia carried out within a period of five years which is contained in every province in Indonesia. This mechanism effectively to help the government in resolving the dispute the elections with a relatively short time and also to minimize the costs incurred in the election dispute resolution. BPKP in Indonesian authority to decide disputes election results are final and binding.

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3. Final

3.1 Conclusion

Implementation of good elections that not only can be realized through procedural democracy but also should attach great importance to substantive democracy. Embodiment of a substantive democracy in the organization of the elections can not be realized by properly organizing the elections are just busy to dwell on margin limits as stipulated in article 158 of Law No. 8 Year 2015. Hence, the need for the holding of the deconstruction of the provisions governing the vote count-gap limit. The deconstruction needs to be done to restructure the rules governing of the calculation of the difference vote gap. Deconstruction against the rules do by government and Parliament to establish a new law elections, which were infused with the principles and contains no substantial difference in the vote count limit, so that substantive good democracy in organizing good elections can be realized.

Implementation of good elections can also be done through the establishment of the Special Judicial elections (BPKP) which is Ad-Hoc. Establishment of the Ad-Hoc BPKP this effectively to help the government in resolving the dispute the elections with a relatively short time and also to minimize the costs incurred in the election dispute resolution.

3.2 Advice

As for suggestions that will be presented in this article are as follows :

1. Parliament as the legislative council should work with the Government to repeal the Act elections there and form the Election Act by inserting new democratic principles and contains no substantial difference in the vote count limit.
2. The government should immediately establish BPKP is Ad-Hoc in addressing the issues disputed elections. BPKP formed under the auspices of the Supreme Court menyatuatapkan all forms of disputes and disputes the results of the elections.

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IUU Fishing in Indonesia, are ASEEAN Member States Responsible for?

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Abstract

Illegal, Unreported and Unregulated Fishing (IUUF) has been a problem to Indonesia and perpetrators come from its own neighbors. This paper aims at describing legal frameworks against IUU fishing within Indonesia and Asean level in order to see how far they concern about combating IUU fishing, to find out if Asean Member States are responsible based on international law and to find a potential key vulnerability/s which become defiance in addressing the issue. This is a juridical normative study that use *statute approach*. Legal materials used are primary and secondary legal material. They are collected by extensive literature research and analysed by analogical reasoning of legal doctrine with deduction reasoning departed from the law of general application. The results show, there are legal frameworks in Indonesia and Asean. Indonesia's concern on IUU Fishing is unquestionable, not only in its waters but also in around the world. It is reflected from the legislations which are in line with the international law regarding the IUU Fishing, and the special court for fisheries cases also from the organizations where it becomes the parties. In Asean, there have been frame works but the key vulnerable is when violation happens it has no procedures and sanctioning which makes difficult to solve the problem. Besides, the frameworks are all in soft laws. However, based on Asean Declaration, RPOA and APSC 2025 every AMS has responsibility to combat IUU fishing at home and manage the fishery so that no fishermen fish beyond its territory illegally, unreportedly and unregulatedly.

Keywords: *IUU Fishing, Asean member States, Responsible*

1. Introduction

Indonesia as one of the biggest archipelago state has high levels of biodiversity thus it is included in one of Mega Biodiversity. Based on the status of Indonesian Biodiversity published by Indonesian Institute of Sciences in 2011 Indonesia has 1.400 fisheries species. Sustainable potential Indonesian marine fish resources of 6.5 million tones per year spread in the territorial waters of Indonesia and the Indonesian Exclusive Economic Zone waters divided into nine major Indonesian territorial waters. Of all the potential of these resources, in order to maintain the sustainability of fish stocks total allowable catches amounted to 5.12 million tons per year.[1]

[1] David Setia Maradong, S., Potensi Besar Perikanan tangkap Indonesia melalui http://setkab.go.id/potensi-besar-perikanan-tangkap-indonesia/ accessed on 5 July 12 2016.

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In the vast waters, illegal, unreported and unregulated (IUU) fishing has been occurring. It is believed driven by economic factors[2] and has been threatening maritime security from 1990s. In Southeast Asia it is a major threat to maritime and resource security and may be of the order of one third of the reported catch.[3]

Indonesia often becomes a victim of IUU fishing. It has been happening in Exclusive Economic Zone and territorial waters. Unlike in territorial waters where 95% of IUUF is committed by small scale Indonesian Fishing Fleet and the other 5% is perpetrated by Foreign Fishing Fleet Flying Indonesian Flag, in the EEZ waters it is found mostly foreign fishing fleets are the poachers.[4] Number of foreign fishing fleet (FFF) are engaged in this activity. Data from Ministry of Marine Affairs and Fisheries for the last 10 years shows in 2005 there were 24 FFF committed IUUF and it continue increased gradually until it reached 124 in 2008. The activity rose slightly to 125 in 2009 and in 2010 there was a significant increase to 159. The most striking point was in 2010 where the practice decreased dramatically to 76, and then it kept dropping slightly to 70 in the next year. A significant decrease to 44 appeared in 2013. In 2014 to 2015 IUU fishing again increased dramatically to 104.[5]This means that Indonesian waters are still very prone to illegal fishing practices and it is ironic the perpetrators are the neighbors, such as Malaysia, Philippines, Thailand, RRC, Vietnam, Papua New Guinea.[6]

Since the world wide community has recognized perilous hazards of IUU Fishing attempts have been made to halt these hazards by concluding international instruments both binding and non binding. These include the United Nations Convention on the Law of the Sea 1982 (LOSC), the Agreement to Promote Compliance with International Conservation and Management Measures for Fishing Vessels on the High Seas 1993 (the compliance), the United Nations Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks (the FSA), the Code of Conduct for Responsible Fisheries 1995 (the Code), the International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing 2001 (the IPOA-IUU), and the Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing 2009 (the PSMA), Voluntary Guidelines of Flag States Performance 2014. The last tool is believed will be the answer for complaints to many of flag states unable to perform their obligation to keep a log of their registered vessels and data on their authorization to fish, whereas the fleets involved in such activities usually dodge such control action by flag hopping – insistently registering with new flag States to evade detection, which undermines anti-IUU efforts.

This paper aims at describing legal frameworks against IUU fishing within Indonesia and Asean level in order to see how far they concern about combating IUU fishing, to find out if Asean Member States are responsible based on international law and to find a potential key vulnerability/s which become defiance in addressing the issue.

[2] Carl Christiam Schmidt (2005) Economic Drivers of Illegal, Unreported and Unregulated (IUU) Fishing, The International Journal of Marine and Coastal Law 20 (2005) 479-508

[3] Meryl J Williams (2013) Will New Multilateral Arrangements Help Southesat Asian States Solve Illegal Fishing?, Contemporary Southeast Asia 35:2 258-283 DOI: 10.1355/cs35-2f p.259

[4] Ida Kusuma, 2014, Indonesia Effort in Commbating IUU Fishing, Talking ASEAN on ASEAN Cooperation on Fisheries Management, Jakarta.

[5] As cited by Ida Kusuma, Ibid.

[6] http://djpsdkp.kkp.go.id/index.php/arsip/c/page/5/?category_id=20 at 10 November 2015

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2. Method

This study focuses on legal frameworks that have been in placed both in Indonesia and Asean in overcoming the IUU fishing. This study used juridical normative method with *statute approach* by observing principle of asas *lex superior derogat legi inferiori,* asas *lex specialis derogat legi generali* and *lex posterior derogat legi priori*.[7] The legal material used are primary and secondary legal material. Legal material collected by extensive literature research using the university's libraries and other resources: reports and publications from Asean study center, previous researches and journals and/or other scientific articles which have any relevant to the legal issue. Analysis of legal materials used analogical reasoning of legal doctrine with deduction reasoning departed from the law of general application, in this case the provisions of the legislation field IUU Fishing.[8]

3. Results and Discussion

3.1 Definition of IUU Fishing

IUU fishing which is adopted by International Plan of Action to Prevent, Deter and Eliminate IUU fishing.

According to the plan, illegal fishing refers to:[9]

Fishing 'conducted by national or foreign fishing vessels in maritime waters under the jurisdiction of a State, without the permission of that State, or in contravention of its laws and regulation;

Conducted by fishing vessels flying the flag of States that are contracting parties to a relevant regional fisheries management organization, but which operate in contravention of the conservation and management measures adopted by that organization and by which those States are bound, or of relevant provisions of the applicable international law;

Conducted by fishing vessels in violation of national laws or international obligations, including those undertaken by cooperating States to a relevant regional fisheries management organization.'

Unreported fishing refers to activities:

'which have not been reported, or have been misreported, to the relevant national authority, in contravention of national laws and regulations; or which have been undertaken in the area of competence of a relevant regional fisheries management organization and have not been reported, or have been misreported, in contravention of the reporting procedures of that organization'.

Unregulated fishing refers to activities:

'conducted in the area of application of a relevant regional fisheries management organization by fishing vessels without nationality, by fishing vessels flying the flag of a State not party to that organization or by any other fishing entity, in a manner that is not consistent with or contravenes the conservation and management measure of that organization; or

conducted in areas or for fish stocks in relation to which there are no applicable conservation and management measures by fishing vessels in a manner that is not

[7] Soerjono Soekanto dan Sri Mamudji, Normative Legal Research A Brief Overview (Penelitian Hukum Normatif Suatu Tinjauan Singkat), Raja Grafindo Persada, Jakarta, 1996, p. 99-101

[8] Bahder Johan Nasution, 2008. Law Science Research Methods (Metode Penelitian Ilmu Hukum), Bandung: Mandar Maju, p.119.

[9] Article 2 to 4, IUU Regulation, and Article 3, International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing

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consistent with State responsibilities for the conservation of living marine resources under international law'.

2.2 Impact of IUU Fishing

IUUF gives negative impacts on the economic, social and ecological attributes of fisheries that affect food security. Based on the world's fisheries report from the FAO in 2014, it is found that IUU fishing has caused 90 percent of the world's fish stock fully or overexploited. The statistics from World Bank illustrates that due to ineffective management of fish stock and IUU fishing there has been loss from US$ 75 billion and $125 billion of global output every year. In Indonesia, the bank report says, IUU incurs loses of about $20 billion in revenues and has affected small scale fishing communities. In decade between 2003 and 2013, the number of Indonesian fishing households dropped to 800,000 from 1.6 million.[10]

Studies conducted by the UNODC identify the fisheries industry as vulnerable to international organized crime.[11] According to the organization, the use of fishing vessels is associated with illegal activities such as drug trafficking (especially during transhipments), human trafficking (especially smuggling migrants), arms trafficking and terrorism. In addition, the ILO, UNIAP and UNICEF have expressed concerns about poor and/or forced labor conditions on board fishing vessels.

Last year in Indonesia, a human trafficking and slavery case invited international attention. Reported by the Associated Press, thousands of migrant fishermen, mostly from Myanmar, Cambodia and Laos, were enlisted in Thailand and brought to Indonesia to work for now-closed fishing company Pusaka Benjina Resources. The fishermen were tortured and locked up in prison-like cells.[12]The seafarers being subject to unsafe working conditions, excessive working hours and low salaries (about one fifth of the local minimum wage). They were threatened with abandonment in port without pay in case they object to their working conditions.

IUU fishing depletes fish stocks, which will have an economic impact on the resources available for all stakeholders involved. Legal fisheries in particular suffer from such activities as depleted fish stocks may lead to increased costs and consequently to lower revenue and ultimately unemployment. This in turn may promote illegality as fishermen may consider breaking the rules in order to survive. Bearing in mind that both legal and illegal catch may end up on the same market, it is necessary to restrict IUU fish access to markets in order to create an equal playing field and avoid unfair competition.

IUU fishing is generally considered an environmental crime. It severely damages ecosystems, and affects society as a whole. Quantification of this damage is complicated, as the crimes often occur far from sight and assessment of fish stocks is based on estimates. However, this does not imply that the problem is not significant. Once critical levels have been reached, the consequences of IUU fishing become painfully visible. IUU fishing jeopardizes the achievement of management goals and the sustainability of

[10] Pandaya, The Jakarta Post, New Accord to Help Curb Illegal Fishing, 13 July 2016 available at: http://www.thejakartapost.com/news/2016/07/13/new-accord-help-curb-illegal-fishing.html, accessed onn 15 July 2016.

[11] UNODC (2011). Transnational organized crime in the fishing industry Available from: https://www.unodc.org/unodc/en/human-trafficking/2011/issue-paper-transnational-organized-crime-in-the- fishing-industry.htm, accessed January 2016

[12] Robin McDowell, Margie Mason and Martha Mendoza, March 25 2015, AP Investigation: Slaves may have caught the fish you bought available at: http://www.ap.org/explore/seafood-from-slaves/ap-investigation-slaves-may-have-caught-the-fish-you-bought.html acsessed April 24 2015.

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fisheries. When assessing fish stocks, estimates are highly dependent on reported data on catch and effort. If catch is not reported accurately, the estimates may be distorted. Consequently, established fishing quotas may be inaccurate, resulting in further depletion of stocks. An evident response to such threats is further restriction of legal fishing. However, such restrictions can also exacerbate illegal fishing.

a. Legal Frameworks to Address IUU Fishing in Indonesia

To address IUU fishing in its waters Indonesia has done endeavors which are in line with international legal frame work.[13] First, Indonesia corresponded national legislations with international frame work by reviewing and revitalizing Fisheries Act.[14] Also, it joint Regional Fisheries Management Organizations like Indian Ocean Tuna Commision (IOTC),[15] The Commission for the Conservation of Southern Bluefin Tuna (CCSBT),[16] Western & Central Pacific Fisheries Commission (WCPFC).[17]Furthermore, Indonesia is among few states established Regional Plan of Action into National Plan of Action to promote responsible fishing practices including combating IUU fishing.[18] In addition, Indonesia actively involved in the Regional and International Forum, including the International Monitoring, Control, and Surveillance [IMCS], Network Implement the EC regulation. Moreover, Indonesia has signed an agreement with Australian authorities to combat IUU Fishing and to promote sustainable fisheries governance across the region especially in the eastern water-around the borders of Papua New Guinea and East Timor, through a joint patrol.[19]

Derivation regulation from Fisehries Act on IUU fishing are set out in:

1. Regulation of the Minister of Marine and Fisheries (RMMF) No. 10 of 2015 concerning Amendment to the RMMF No. 56 /RMMF/ 2014 on Moratorium on Licensing of Fisehries Business in Regional Fisheries Management (RFM) of Republic of Indonesia;
2. RMMF No. 04 of 2015 on Fishing Prohibition on RFM 714 (Banda Sea);
3. RMMF No. 02 of 2015 on Prohibition on Using *Trawls* and *Seine Nets on RFM of republic of Indonesia*;
4. RMMF No. 01 of 2015 on tentang Lobster (*Panulirus spp*), Crabs (*Scylla spp*), and Rajungan (*Portunus pelagicus spp*) catching;
5. RMMF No. 57 of 2014 on Second Amandement of RMMF No. 30 of 2012 on Fisheries Bussiness on RFM of republic of Indonesia;
6. RMMF No. 56 of 2014 on Moratorium of Fisheries Bussiness on RFM of republicc of Indonesia;
7. Letter of Minister of Manire and fisheries No. B.622.MEN/KP/XI/2014 on Request to all Governors and Regents / Mayors to manage resources sustainably;

[13] International Legal framework are UNCLOS' 1982 Law of the Sea Convention , FAO, Compliance Agreement, 1993; FAO, Fish Stocks Agreement, 1995: FAO, Code of Conduct for Responsible Fisheries [CCRF], 1995: FAO, International Plan of Action (IPOA) to Prevent, Deter, and Eliminate IUU Fishing.

[14] Act no. 31 of 2004: Fisheries, as amended by Act no. 45 of 2009 and Act Law no. 27 year 2007: Coastal and Small Island Management, as amended by Act no. 1 of 2014

[15] Indonesia ratified the agreement for the Establishment of IOTC on 5 March 2007 by President Regulation Number 9 of 2007

[16] Indonesia ratified the Convention by President Regulation Number of 2007 on Ratification of Convention for the Conservation of Southern Bluefin Tuna

[17] Indonesia entered WCPFC in October 2013

[18] RPOA IUU was adopted by ASEAN in 2007 and Indonesia implemented it within its NPOA through Ministry Regulation No. 50 Year 2012 on NPOA-IUU

[19]http://www.transformasi.org/en/knowledge-center-menu/news/marine-and-fisheries/1250-indonesia-australia-on-joint-sea-patrol-to-combat-illegal-fishing at 15 December 2015

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Indonesian seriousness combat IUU fishing can also be seen from the trial fisheries were established as a special court in 10 region where the most IUU fishing Occurs. Fisheries court is the Special Court in the General Courts are authorized to investigate, hear and decide criminal acts in the field of fisheries. It was founded based on Act No. 31 of 2004 on Fisheries. There are 10 fisheries court so fa r in Indonesia . The first four courts were founded in 2004, in North Jakarta, Medan court, Pontianak court, Bitung and Tual court. In 2010 two second Fisheries courts were founded based on Presidential Decree No.15 of 2010, in Tanjung Pinang and Ranai. And in 2014, based on Presidential Decree No. 6 of 2014 Fisheries Courts were founded in Sorong and Merauke.

Therefore, it is clear that Indonesia is really concern about cracking IUU fishing at home and other regions of the world.

b. Legal Frameworkds to Address IUU Fishing in Asean

i. Regional Plan of Action to Promote Responsible Fishing Practices including Combating IUU Fishing in the Region

In 2007 Regional Plan of Action was set up with members consisting of the 10 ASEAN members plus Australia. The plans reaffirms what have been in International Plan of Action on IUU Fishing.

The plans main point provide:

1. Coastal States through their flag State responsibilities in the region are at the forefront in implementing sustainable fishing practices and combating illegal fishing. To address this need: all coastal States, relevant flag States and fishing entities operating in the region should actively cooperate in ensuring that fishing vessels entitled to fly their flags do not undermine the effectiveness of conservation and management measures, including engagement in or supporting illegal fishing.
2. Port States play a key role in combating illegal and unreported fishing in the region, given the need to land catch and support fishing activities. In this regard, regional countries and fishing entities need to develop measures to regulate fishing vessels accessing their ports for transhipping and/or landing catch and collect and exchange relevant data. To address this need, countries should consider: adopting port State measures, where appropriate, based on the FAO ‘Model Scheme on Port State Measures to Combat IUU Fishing.
3. Regional market measures In order to minimize unreported and illegal catches, countries should collaborate to implement regional market measures to identify and to track fish catches at all points in the marketing chain in a consistent way with existing international trade laws.
4. As a priority, countries in the region should standardize catch and landing documentation throughout the region and implement catch documentation or trade certification schemes for high value product.
5. In addition, countries should work with organizations such as INFOFISH to produce regular and timely market reports allowing trade flows to be analyzed.
6. Countries should check trade discrepancies regarding export of fish and fish product and take appropriate action and, as a minimum, report these discrepancies to the flag State.

ii. Asean Political-Security Community (APSC)

On 1 March 2009 at the 14th ASEAN Summit the ASEAN Leaders have agreed to establish the ASEAN Political-Security Community (APSC) and have adopted the

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blueprint as well. One of cooperation therein is overcome transnational crimes including illegal fishing. Align and consolidate the agenda and priorities of relevant ASEAN Sectoral Bodies under the APSC Pillar with those of the ASEAN Community Vision 2025 and the APSC Blueprint 2025;

iii. Asean Guidelines For Preventing The Entry of Fish and Fishery Products form IUU Fishing Activities into Supply Chain

The Guidelines was adopted on 25 September 2014. It provides:

1. Managing Fishing Activities within a ASEAN Member States
2. Regulating Transshipment and Landing of Fish / Catch across Borders
3. Preventing Poaching in the EEZs of ASEAN Member States
4. Controlling Illegal Fishing and Trading Practices of Live Reef Food Fish, Reef-
5. based Ornamentals and Endangered Aquatic Species
6. Strengthening the Management of Fishing in the High Seas and RFMO Areas
7. These Guidelines should be reviewed regularly when necessary as proposed

From the three framework they are in the form of soft law which means no binding force to AMS. What is miss in the plan is the procedures and sanctioning measures following up on IUU fishing violations and other measures that can be taken against this issue. This is the key vulnerable of why IUU fishing occurs severly in Indonesia. The frame work should be complemented by principles of dispute settlement.

c. IUU Fishing in Indonensia and AMS Responsibility

Eventhough Indonesia has done great effort in attacking IUU fishing, still it flourishes Indonesia waters. Admitting the lack of resources to support such efforts, Indonesia initiates collaboration with neighbors such Australia to do joint patrol. Yet, it is not easy to guard the vast waters. Base of marine and fisheries resources of Bitung admitted number of fhishing fleets grow each year. In 2015, there were 32 fishing fleets caught. This year so far, there have already been the same number which means there is no detterent effect in poaching in Indonesia water. This reflects the government of The Philippines do not act decisively just like Indonesia's does in against IUU fishing.

Regarding IUU fishing practice by foreign fishing fleets, there are some international environmental law principles to be recalled.

First, Principle of soverignty over natural resources and the responsibility not to cause damage to the environtment of other states or to areas beyond national jurisdiction. This principles is set out in Principle 21 of the Stockholm Declaration. First, this principle allows states within limits established by international law to conduct or authorize such activities as they choose within their territories, including activities which may adverse effects on their own environment. Second, responsibility not to cause environmental damage. This principle has been accepted as an obligation by all state; without prejudice to its applications on case by case basis. This is principle is widely recognized to reflect a rule of customary international law. Placing international limits on the right of states in respect of activities carried out within their territory or under their jurisdiction.[20]

[20] Sands. Philippe. 1995. Principles of International Environmental Law I. New York: Manchester University Press. P. 198

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Second, Good neighborliness principle.

Article 74 of United Nation (UN) charter states the importance of *good neighboorlines* in economic, cocial and trading,[21]including collaboration in the field of environtment. This principle comes from international customary law *sic utere tio et alienum non laedas.*[22] This principle is reflected in various international treaties, the decision of the International Justice and state practice. Urgency cooperation in environmental protection explicitly in the text are non-binding, starting from Principle 24 of the Stockholm Declaration. In Principle 27 of the Stockholm Declaration stated that such cooperation must also be established between States with the society within the framework of good faith. Rio Declaration also stressed the importance of cooperation in Principle 5 and Principle 27 which emphasizes the good faith and the development of international law within the framework of sustainable development. The setting principle of this cooperation is binding in several international agreements, in particular cooperation marine protection stipulated in Article 187 of UNCLOS which states that States should cooperate globally and regionally, directly or through competent international organizations in formulating and explaining the provisions, standard -Standard and recommended practices internationally and procedures consistent with this Convention for the purpose of protection and preservation of the marine environment, taking into account regional characteristics typical.

Actually, this principle is already contained in the Declaration of ASEAN and also a framework to address IUU in Asean, it's just that this principle is not elaborated in more detail about the rights, obligations and responsibilities of each member of Asean. The absence of a clear rules governing such will lead to conflict intra Asean countries.

Meanwhile, according to adherents of Legal Realism is one of the characters John Rawls. John Rawls (A Theory of Justice, 1971) believes there needs to be a balance between private interests and the common good. How does the size of the balance that must be given, it is called justice.[23]Furthermore, Rawls said that an adequate theory of justice should be established by the contract approach, in which the principles of justice are chosen as the handle together is truly the result of a mutual agreement of all persons who are free, rational, and equal.

In relation to the practice of IUU fishing in Indonesia by other states, it shows an imbalance in the pursuit of profit, where the perpetrator take the fish by taking the property of another person and it places an injustice to a nation that become the victim IUU Fishing. Good society according to Rawls is a society that is able to be perceived as an institution of social partnership in which each party trying to contribute and mutually promote each other.[24]

What is more, IUUF practice is a violation of the sovereignty of a country. Jean Bodin said that sovereignty is absolute and supreme power that resides in a country. More broadly, sovereignty is the highest authority in the final stages in making decisions .[25] Sovereignty can also be interpreted as the highest authority in the state administration, the

[21] Members of the United Nations also agree that their policy in respect of the territories to which this Chapter applies… must be based on the general principle of good-neighborliness. due account being taken of the interests and well-being of the rest of the world. in social. economic. and commercial matters. UN Charter 1945

[22] Sands. Philippe. *Op Cit.* P. 249

[23] Ibid. P. 142

[24] Ibid. P. 23.

[25] Soehino. 2010. Contitutional Law: Development on Regulating the Implentation of Public Election in Indonesia (Hukum Tata Negara: Perkembangan Pengaturan Pelaksanaan Pemilihan Umum di Indonesia).Yogyakarta. BPFE. P. 71.

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intention is what and who makes the final decision in the state.[26] Understanding that such a notion of internal sovereignty which includes jurisdiction legislative, executive and judicial branches to its activities and subjects of law in the region.[27] In addition to internal sovereignty, sovereignty also includes external relations, namely the state in its capacity as a subject of international law vis-à-vis other countries or other legal subject, which in turn creates rights and obligations.[28]

Sovereignty is a primary characteristic of a country has been a key principle in international law, including sovereignty over natural resources. Recognition of sovereignty over natural resources was first set out in UN General Assembly Resolution No. 1803 of 1962 on Permanent Sovereignty on Natural Resources. The resolution states that the right of every nation and every country on the permanent sovereignty over their natural wealth and natural resources must be implemented within the framework of the development interests of the country and the welfare of its people. Further stated that the exploration, development, and regulation as well as imports of foreign capital must be in accordance with the rules and conditions of the state and nation. Permanent sovereignty reflects the inherent right and the state-owned major to control the exploitation and use of natural resources, with due regard to the interests of its citizens.
The principle was then accommodated in Principle 21 of the Stockholm Declaration which states that countries under the UN Charter and the principles of international law, sovereign to exploit natural resources and the responsibility to ensure that activities within the jurisdiction or control do not cause environmental damage to other states or to the area beyond national jurisdiction of a country. The addition of the principle of the responsibility to not cause damage to the environment another country derived from customary international law, namely the principle *sic tuo ut alienum utere non laedas* (users of property rights not to cause harm to others). The formulation is then complemented by Principle 2 of the Rio Declaration in 1992 that add a phrase "based on environmental policy and the development of the country". The addition of this phrase gives an obligation for the state to keep attention to environmental sustainability in the implementation of sovereignty. Recognition of the sovereignty of the obligations subject to international law is also contained in Article 2 paragraph (3) of UNCLOS which states that sovereignty over the territorial sea carried out subject to the provisions of this Convention and other rules of international law. Article 193 of UNCLOS requires the implementation of the country's sovereignty over the exploitation of natural resources should be in accordance with the environmental policy without forgetting the liability protection and preservation of the marine environment. This principle is recognized in various international treaties, however, there is a major obstacle to international law regarding the sovereignty of nations, treaties successfully formulated often do not include compliance and enforcement procedures are sufficient.

Practice IUUF happened between ASEAN member is not in accordance with the concept of justice and sovereignty. The concept of fisheries as a common heritage bore collective responsibility (Common Responsibility). Shared responsibility is an obligation borne by two or more countries to protect the wealth of the environment (environmental resources), take action in accordance with the characteristics and nature, physical location

[26] Jimly Asshiddiqie. 2007. Principles of Indonesia Contitutional Law Pasca Reformation (Pokok-Pokok Hukum Tata Negara Indonesia Pasca Reformasi). BIP. Jakarta. P.143.

[27] John O'Brien. 2001. International Law. Routledge Cavendish. New York. P. 227

[28] Anne Peters. 2009. "Humanity as the A and Ω of Sovereignty". The European Journal of International Law. 20 (3). P.516

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and benefit from the wealth of history that environment.[29]Natural resources as part of the environmental wealth is meant here is the natural wealth is owned by the state, or the natural resources that are shared, or the subject of a legal interest shared or not owned by any one country.[30] Collective responsibility can be applied to the wealth that is not owned by any country or to the natural resources that are under the exclusive jurisdiction of a State.[31]

As a country which united on historical experience and the challenges faced together, ASEAN member countries should live in an atmosphere of harmony and peace. Also in Bangkok Declaration mentioned requirements to become a member of Asean is the state should implement and respect the principles and objectives contained in the Bangkok Declaration includes other agreements made within the framework of Asean. In fact the framework to address the IUUF been there, but the elements of justice as defined by Aristotle and Rawls have not seen. To that end, in overcoming IUUF, it is necessary to implement the principles of good neighborliness in the form of agreement (treaty) so as to be fair to all members of Asean.

4. Conclusion

In conclusion, there are legal frameworks in Indonesia and Asean. Indonesia's concern on IUU Fishing is unquestionable, not only in its waters but also in around the world. It is reflected from the legislations which are in line with the international law regarding the IUU Fishing, and the special court for fisheries cases also from the organizations where it becomes the parties. In Asean, there have been frame works but the key vulnerable is when violation happens it has no procedures and sanctioning which makes difficult to solve the problem. Besides, the frameworks are all in soft laws. However, based on Asean Declaration, RPOA and APSC 2025 every AMS has responsibility to combat IUU fishing at home and manage the fishery so that no fishermen fish beyond its territory illegally, unreportedly and unregulatedly.

Acknowledgment

I would like to thank the Faculty of Law University of Bengkulu which has given me support to participate in Shield and publish this article.

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[29]Sands. Philippe. Op Cit. Hlm. 286
[30] Ibid
[31] Ibid

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International Sale and Purchase Agreements According to CISG 1980 and the Implementation in Indonesia

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Abstract

In the history of the law of international contracts has issued contracts for the International Sale of Good (CISG), which regulates the terms of the contract of sale which is devoted to arranging the contract system for parties contracting with a background in national laws differ. Problems in paper this is Agreement international sale of goods according to contracts for the International sale of good 1980. How to implement 1980 in Indonesia CISG writing method used is the method of normative research data collection methods in this paper uses literature study method is based on the books, article, journals, official documents etc.

Keywords:*law, international, contracts*.

1. Preliminary

At first, sale and purchase of goods carried out in a region or nationally. Each country has different characteristics; natural resources, climate, geography, demography, economic structure and social structure. Such differences lead to differences in commodity, fees composition required, quality and quantity of the product. [1] As time goes by, sale and purchase activity is done across borders or internationally. sale and purchase internationally is not out of an agreement / contract. Agreements or contracts have become a bridge of arrangement in a commercial activity.[2]

Sale and purchase agreement is a type of reciprocal agreement involving two parties, ie seller and buyer. Both parties made a sale and purchase agreement, wherein, each party has the right and obligation to implement the agreement that they made. As usually, the agreement is a legal institution based on the principle of freedom of contract, wherein the parties are free to

[1] Gunawan Widjaja dan Ahmad Yani. *Transaksi Bisnis Internasional (Ekspor lmpor dan Imbal Beli)*. 2000. lakarta: PT RajaGrafindo Persada. p. 1.
[2] Ricardo Simanjuntak. "Asas-asas Utama Hukum Kontrak Dalam Kontrak Dagang Internasional: Sebuah Tinjauan Hukum". 2008. *Jurnal Hukum Bisnis*, Volume 27, No. 4, p. 14.

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determine the form and content of the type of agreement they make. But freedom in making an agreement will be different when it's done in a broader scope, that involving parties from countries with different legal systems. Each country has its own provisions that could be different from one another. The difference of course will affect the shape and type of the agreement made by the parties that come from two different countries because what is allowed under a particular country's legal system turn out to be prohibited by law systems of other countries.

CISG is established by the United Nations Commissian on International Trade Law / UNCITRAL in the Vienna Convention on the International Sale of Goods 1980, hereinafter called as Convention or CISG. CISG is a response to the failure of previous attempts to create a uniform international trade law and accepted widely.[3] CISG has been adopted by several countries, and this moment, the amount of participant is 78 countries. P[4]urpose of establishing the CISG is to adopt uniformity in the rules that governing contracts for the sale of goods internationally and by this convention, CISG designers try to eliminate legal barriers and promote the development of international trading.[5]

Sale and purchase agreement in Indonesia has been regulated in the Civil Code in Article 1457 to 1540. In Article 1457 of the Civil Code, sale and purchase is defined as the agreement between the seller and the buyer, where the sellers bind themselves to submit objects and the buyer to pay the price that has been agreed upon it. Sale and purchase agreement is consensual, which means it simply needs a "deal", without formally specific forms. Moreover, the sale and purchase agreement is obligator, which means by the validity of a sale-purchase agreement, it will make a new liability to the parties.[6]

The occurrence of cases in international sale of goods, especially in Indonesia, as in the case of sale and purchase objects of cultural heritage in Sangiran. A case of transnational crimes on sale and purchase of human fossils and ancient animals with the suspect - Dennis Bradley Davis, 52, a US citizen. Foreign citizens born in Baltimore, July 13, 1958, is an American researcher and scientist who traveled and did a kind of fossils business to Indonesia. Dennis

[3] Clayton P. Gillette, Robert E. Scott. "The Political Economy of International Sales Law". 2006. *Elsevier International Review of Law and Economics* xxx, 5.
[4] UNCITRAL. Status-1980 *UN Convention on Contracts for the Sale of Goods, UNCITRAL* (http://uncitral.org/uncitral/en/uncitral_text/sale_goods/1980CISG_status.html) accesed on
[5] Peter J. Mazzacano. "Canadian Jurisprudence and the Uniform Application of the UN Convention on Contracts for the International Sale of Goods". 2006. *Pace International Law Review*, p. 14.
[6] Gunawan Widjaja dan Ahmad Yani. *Op.cit.*, p. 9

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arrival to Indonesia was not as researcher but as a tourist and for business interests, based on the description of the suspect's passport. The second suspect - Wasimin bin Citro Suroto, 49 years old, from the Krikilan village, RT 8, Kalijambe, Sragen who workd as a seller fosil. Dennis bought thousands of items of cultural heritage (BCB) with 43 types to Wasimin as much as Rp 58 million. Such items can be auctioned freely in the United States at a price of up to US$ 2 million. It takes an effort together across countries, in anticipation of selling goods of cultural heritage.[7]

Based on the above, the author is interested in writing on the international sale and purchase agreements according to CISG 1980 and the implementation in Indonesia. The subject matter to be discussed in this paper is how is the provision of the agreement of international sale of goods according to CISG 1980 and how is the implementation of CISG 1980 in Indonesia.

This paper used a normative research methods. Normative legal research as a literature research, which the data obtained by reviewing the materials of library.[8] Source of the data needed is the secondary data from primary and secondary legal materials in the form of books and legal papers related to international sale of goods.

The author used the method of literature that obtained through library research sourced from books, articles, journals, official documents, publications and the Internet.[9] In collecting these data, the author refers to the data sourced from books and the internet because the limitations of authors in getting the original data.

2. Discussion

2.1 Sale and Purchase of Goods according to CISG 1980

In the history of international contract law has published Contracts for the International Sale of Goods (CISG) by the members of the United Nations (UN). CISG is one of the international regulations governing the terms of the contract of sale and purchase, which is devoted to arrange the contract system for parties with the background of different national laws.

The first part of the CISG contains of 13 articles, with regard to the scope of the application of this Convention. Part II concerns the formation of the contract. Part III contains

[7] http://www.solopos.com/2010/10/24/polda-gandeng-interpol-lacak-jaringan-jual-beli-fosil-internasional-65488 Accesed on Tuesday, 26 July 2016.
[8] Soerjono Soekanto dan Sri Mamudji. *Penelitian Hukum Normatif, Suatu Tinjauan Singkat*. 2007. Jakarta: PT Raja Grafindo Persada, p. 12.
[9] Zainuddin Ali. *Metode Penelitian Hukum*. 2014. Jakarta: Sinar Grafika, p. 107.

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several articles that include substantive provisions of the contract. The last part concerns the procedural issues in the CISG. The structure of CISG contains 5 chapters about provisions on the contract of sale of goods, namely; Chapter I General Provisions; Chapter II Seller Obligations; Chapter III Buyer Obligations; Chapter IV Passing of Risk; Chapter V. Provisions Common to the Obligations of the Seller and of the Buyer. CISG does not provide a specific definition of the contract of sale of goods internationally. Article 1 of CISG only imposes limits on the scope of application of the CISG provisions, reads as follows:

1) This Convention applies to contracts of sale of goods between parties whose places of business are in different States:
   a. when the States are Contracting States; or
   b. when the rules of private international law lead to the application of the law of a Contracting State.
2) The fact that the parties have their places of business in different States is to be disregarded whenever this fact does not appear either from the contract or from any dealings between, or from information disclosed by, the parties at any time before or at the conclusion of the contract.
3) Neither the nationality of the parties nor the civil or commercial character of the parties or of the contract is to be taken into consideration in determining the application of this Convention.

Article 2 states that this Convention does not apply to sales:

a. of goods bought for personal, family or household use, unless the seller, at any time before or at the conclusion of the contract, neither knew nor ought to have known that the goods were bought for any such use;
b. by auction;
c. on execution or otherwise by authority of law;
d. of stocks, shares, investment securities, negotiable instruments or money;
e. of ships, vessels, hovercraft or aircraft;
f. of electricity.

From the Article 2, we could know that this Convention only apply to movable sales and tangible goods, except those mentioned above. Transactions concerning immovable goods is more domestic than international.

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CISG only regulates particularly about the obligation of the parties as specified in Chapter II about the seller's obligations and Chapter III about the buyer's obligation. On a reciprocal basis, it can be concluded that the seller's obligations are the rights of the buyer and vice versa.

The seller's obligations under CISG contained in Article 30 which reads:
"The seller must deliver the goods, hand over any documents relating to them and transfer the property in the goods, as required by the contract and this Convention."

If the seller is not bound to deliver the goods at any other particular place, his obligation to deliver consists if the contract of sale involves carriage of the goods - in handing the goods over to the first carrier for transmission to the buyer (Article 31 sub a).

Article 33 states that:
The seller must deliver the goods:

a. if a date is fixed by or determinable from the contract, on that date;
b. if a period of time is fixed by or determinable from the contract, at any time within that period unless circumstances indicate that the buyer is to choose a date; or
c. in any other case, within a reasonable time after the conclusion of the contract.

Article 35 verse (1) states that:
The seller must deliver goods which are of the quantity, quality and description required by the contract and which are contained or packaged in the manner required by the contract.

Article 41 states that:
The seller must deliver goods which are free from any right or claim of a third party, unless the buyer agreed to take the goods subject to that right or claim.

Besides the seller who has the obligation, the buyer also has the obligation under the CISG. As in the following Articles:

Article 53
The buyer must pay the price for the goods and take delivery of them as required by the contract and this Convention.

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Article 54

The buyer's obligation to pay the price includes taking such steps and complying with such formalities as may be required under the contract or any laws and regulations to enable payment to be made.

Article 57 verse (1)

If the buyer is not bound to pay the price at any other particular place, he must pay it to the seller.

Article 59

The buyer must pay the price on the date fixed by or determinable from the contract and this Convention without the need for any request or compliance with any formality on the part of the seller.

Article 59 (1)

If the payment is not determined exactly, then the buyer must pay it when the seller puts the goods in the storage of buyer.

If there any dispute between the seller and the buyer, then the legal remedies of CISG that could be implemented divided into three categories, namely in the case of breach of contract, fundamental contract, and anticipatory breach.

Legal remedies in Breach of Contract for buyer is arranged in Article 45-52 CISG and 74-77 CISG, namely:

- The buyer is entitled to ask the seller to make delivery of the goods.
- The buyer is entitled to request a replacement item and compensation.
- The buyer is entitled to request cancellation of the agreement.
- The buyer is entitled to request for lower prices.

For the seller, the arrangement is in Article 61-65 CISG and 74-77 CISG, namley:

- The seller is entitled to ask for the implementation of the agreement on the buyer to pay the price, took delivery of the goods and determine the extension of time to perform an obligation.
- The seller is entitled to request cancellation of the agreement.

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- The seller is entitled to seek damages, including lost profits (Articles 74-77 CISG).

The legal remedies set out in CISG is interrelated. The right to recovery of damages as provided in articles 74-77 CISG does not disappear when the parties use other legal remedies.

Legal remedies in Fundamental Breach on Article 25 of CISG confirms a breach of contract committed by one of the parties is fundamental if it results in such detriment to the other party as substantially to deprive him of what he is entitled to expect under the contract, unless the party in breach did not foresee and a reasonable person of the same kind in the same circumstances would not have foreseen such a result.

Legal remedies in anticipatory Breach, the parties are entitled to request postponement of the implementation of the agreement. Under the Article 71 of CISG, both seller and buyer may delay the implementation of the obligation if the other party does not carry out an important part of its obligations, as a result of the lack of the ability to implement the obligations or it's not bonafide in preparing the implementation of the agreement. The parties are entitled to request the cancellation of the agreement. According to Article 72 of CISG, if prior to the date for performance of the contract it is clear that one of the parties will commit a fundamental breach of contract, the other party may declare the contract avoided.

2.2 Implementation of CISG in Indonesia

Southeast Asia countries, especially Indonesia will deal with the free trade. Differences in legal systems between regions often being the factor that inhibits the growth of free trade regionally and globally.

The phenomenon of international trade needs the universal and uniform rules that set the rights and obligations of the traders in conducting international trade transaction. The contents of national laws that vary from a country to other ones has resulted in legal uncertainty and difficulties among the traders in contract manufacturing of international trade.[10]

Indonesia has so far not ratified the CISG. This is motivated by the trading activity in the ASEAN (Association of South East Asian Nations) and in AFTA (ASEAN Free Trade Area),

[10] Afifah Kusumadara. "Pentingnya Ratifikasi UN Convention on Contracts for the International Sale of Goods (CISG) oleh Pemerintah Indonesia". 2006. *Jurnal Forum Penelitan* No. 2, p. 1-2

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to which Indonesia is a member of the ASEAN; stated that the trading activity only attained 22% of total trade in the region of AFTA, while 78% of commercial activities carried out by trading partners who come from countries outside the AFTA. Because of the low trading activity among fellows of AFTA, it resulted the absence of the government's urgency for countries of AFTA to uniform the regulation of the international sale of goods. In other words, there is no urgency to ratify the CISG, except in Singapore.

Another reason that Indonesia has not ratified the CISG, it's because of in Article 1 (1) verse (1) (b) of CISG will discuss the clarity to determine which law will be applied if both parties come from countries that ratified the CISG, so that the CISG does apply, if not, then the CISG does not apply. Another reason, the CISG is not a comprehensive agreement. It was not associated with the validity of the contract that discuss any issues such as illegality, fraud, misrepresentation relating to the contract. In addition, the CISG builds a more confusing situation in terms of good faith. CISG is totally silent about the explanation in good faith, whether it was in good faith in connection with the attitude of parties towards fair dealings.

Indonesia has not regulated international sale and purchase, and it seems that the provisions of sale and purchase in the Article 1457-1540 Civil Code, Book III Chapter V is indeed focused to the domestic sale and purchase, instead international. There is no difference in the sale and purchase provisions, either commercial transaction and consumer transaction, as well as in Civil Code, it does not regulate intenational trade usage or customary law of international trade and it doesnt regulate the usage of international civil law to solve the problems in the contract of international sale of goods..

The agreement of sale and purchase of goods between Indonesia and other parties of CISG will have such a difference in regulation, so that in facing the difference of legal choice, there are 3 modes could be done, among others:[11]

a. All parties agreed not to apply their national law. Otherwise, they can apply international trade law to regulate the relations of their trade law.
b. If there is no regulation of international trade, or if it’s not agreed by one of the parties, then the national law of a party can be applied. In determining which

[11] Huala Adolf. *Hukum Perdagangan Internasional (Prinsip-prinsip dan Konsepsi Dasar)*. 2004. Bandung, p. 31.

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national law will apply, then used the implementation of the principle "choice of laws" Choice of Laws[12] is a clausul of legal choice that agreed by parties in making a contract (international).

c. By unification and harmonization of international law trade substances. This mode seems quite efficient as it might keep off the conflict among legal system that applied by each parties.

3. Conclusion

a. CISG is one of the international regulations governing the terms of the contract of sale and purchase, which is devoted to arrange the contract system for parties with the background of different national laws. CISG does not explain any particular definition on international sale of goods. Part one of CISG consists of 13 articles, related with the scope of the application of this Convention. Part III includes some articles on substances of the contract. Last part of CISG talks about procedural problems in CISG. Structure of this convention consists of 5 Chapter on provision of the contract of sale of goods, namely; Chapter 1 – General Provision; Chapter II – Obligations of the Seller; Chapter III – Obligations of the Buyer; Chapter IV – Passing of Risk. Bab V – Provisions Common to the Obligations of the Seller and the Buyer.

b. Indonesia has so far not ratified CISG. It is because of:
   - the trading activity in the ASEAN (Association of South East Asian Nations) and in AFTA (ASEAN Free Trade Area), to which Indonesia is a member of the ASEAN;
   - in Article 1 (1) verse (1) (b) of CISG will discuss the clarity to determine which law will be applied if both parties come from countries that ratified the CISG, so that the CISG does apply, if not, then the CISG does not apply.
   - CISG is not a comprehensive agreement. It was not associated with the validity of the contract that discuss any issues such as illegality, fraud, misrepresentation relating to the contract.
   - CISG builds a more confusing situation in terms of good faith

   However, Indonesia has not regulated international sale and purchase, and it seems that the provisions of sale and purchase in the Article 1457-1540 Civil Code, Book III Chapter V is indeed focused to the domestic sale and purchase, instead international.

[12] Choice of law clauses is not compulsory to be exist in international contracts. But the existence of this clause will assist the parties in resolving the dispute (if a dispute does arise) in the future.

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4. Sugestion

It is unfortunate that Indonesia has not ratified the CISG, while it is important to be ratified by the Government of Indonesia for the legal certainty in the conduct of international trading activitie, because the articles of the Civil Code do not specifically regulate the transport of the goods traded between the parties. Whereas the problems in transporting goods which are very common in the international sale and purchase regulated in the CISG. The Indonesian government is expected to ratify the CISG in order to facilitate the international sale of goods.

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Reflecting the Role of Individual in Globalized World: A Study Case on Julian Assange and Wikileaks

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Abstract

One of controversial new media entities is Wikileaks. Posting a huge number of confidential documents regarding newsworthy public figures and governments, Wikileaks is claimed to generate major impacts to related countries such as Africa, the U.S, Western Europe and Indonesia. The continuing controversy around Wikileaks also reflects the role of its founder in the networked public sphere, Julian Assange. This article is aimed to comprehend the role of individual in globalized world, especially by studying the case of Julian Assange and Wikileaks. The article is divided in three parts. Firstly, it explains background as well as global controversy surrounding Wikileaks and its spokesman, Julian Assange. Secondly, it identifies the areas that Assange have directly impacted, especially in terms of participation, journalism practice and privacy. Finally, it reflects on Assange's role in the globalized media economy, particularly drawing on his background as an Australian. It is found that the website mainly focused on whistle blowing actions, using insider's evidences such as documents, cables and videos. It is also found that the website's anonymous method contribute to increase citizen's participation. At the same time, Assange through Wikileaks has brought a new form of journalism, medium for everyone's voice where the non-professionals with valuable information are endorsed with opportunity in informing the public like proficient journalists. Wikileaks has changed the way journalist approach their information source especially investigative journalism, due to its tightly embodied hactivism culture. Months or even years spent for conventional investigative journalists to verify the information can be substituted just by a simple click on the net. Wikileaks has also impacted the idea of government transparency. Because of Wikileaks' whistle-blowing's actions, now many governments are being stricter in disseminating their valuable information. Assange's roles in the media economy are also shaped by Australia's standpoint in globalized world

Keywords: *New Media, Wikileaks, Whistle-Blower*

1. Introduction

'I am the heart and soul of this organization, its founder, philosopher, spokesperson, original coder, organizer, financier and all the rest. If you have a problem with me, piss off'

(Julian Assange, 2010, as cited in Poulsen & Zetter, 2010)

In his article, The Mediatisation of Society Theory, Hjarvard (2008) deduces that media simultaneously become an integrated part of society, not to mention the existence of

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new media like the Internet. In fact, this integration of Internet into our daily life has made us live in the digital age where information is shared in real time and in global context. Castells (2007) even argues that in this digital age, people are able to expand their local communication activities to interactive global communication in chosen time. Consequently, this new communication realm has conceptualized people of the world into a networked society. In other words, the globe is now "a global village" by way of a single click (McLuhan, 1962, as cited in Berger, 2007).

One of Internet phenomenal, yet controversial, entities is Wikileaks. Since its first introduction, this website had gained international attention. By posting a huge number of confidential documents regarding diverse newsworthy public figures and governments, Wikileaks is claimed to generate major impacts to related countries such as Africa, the U.S, Western Europe and Indonesia also. Robert Gates (2010, as cited in Pilger, 2010, p. 1), the U.S Secretary of Defence, even states that the website "has blood on its hand". Similarly, the continuing controversy around Wikileaks also reflects the role of individual in the networked public sphere. The global nature of the platform as well as the freedom that the Internet gives to individual has enabled Julian Assange, the spokesperson of Wikileaks, to be called as "a small player with a significant scoop" (Benkler, 2011, p. 377). Moreover, Assange's determination to "help whistle-blowers that would expose wrongdoings of government and private enterprises" (Gunnell, 2011, p. 32) is believed has transformed the ideas of global communication process. Considering these circumstances, some questions are raised, why and how Wikileaks and Julian Assange could be considered to significantly trigger such a global controversy? To what extend Wikileaks have directly impacted the world by its "whistle-blower" actions? How is Assange's background as an Australian as well as the position of Australia in global economy entwined with his role in the globalized media economy? This article will, therefore, attempt to explore these questions.

Related to that, this article is aimed to comprehend the role of individual in globalized world, especially by studying the case of Julian Assange and Wikileaks. This article uses literature reviews as its method in collecting and analysing data related to the topic. This essay is divided in three parts. The first part of this essay explains background as well as global controversy surrounding Wikileaks and its spokesman, Julian Assange. The second part identifies the areas that Assange have directly impacted, especially in terms of participation, journalism practice and privacy. Finally, the last part of this essay reflects on Assange's role in the globalized media economy, particularly drawing on his background as an Australian as well as the position of Australia in global economy.

2. Literature Review

It is argued by many researchers that new media serve as a tool to facilitate political, social and cultural advancements. As Hinh (2011) writes on Berkeley Political Review, technology "can clearly help catalyse idealistic students, intellectuals and an angry, oppressed population into action by allowing them to organise and exchange ideas online." Satell (2011) summarises the importance of social media by stating that political movements are manifestly influenced by networks and therefore accelerated by social media. Obviously, new interconnected social media like cell phones, Twitter and Facebook play an important role in rapid-fire political events which have toppled many authoritarian leaders in Arab countries in early 2011. As asserted by Saussay (2010), these media are often seen as a new means of struggle against abuse of power, since they constitute powerful communication tools that

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activists can easily access and control in order to broadcast instantly and widely whatever they want. In Egypt, for example, demonstrations were organised by protestors through Facebook, Twitter and SMS which were used to reach out to young activists. It is through social media, "the networked population is gaining greater access to information, more opportunities to engage in public speech, and an enhanced ability to undertake collective action" (Shirky, 2011).

In addition, new media become a new tool for disseminating information about democracy and change the powers that governments have (Lea, 2011; Yung-ming, 2011). Yung-ming mentions social media as "a bottom-up way of disseminating information about democracy". He argues that when the strength of mainstream media in controlling politics is weakening and the communicative and dissemination forces of new forms of media like Facebook and YouTube are growing, politicians now have no choice but get used to the "wilder" side of democracy that these forms of media embody. For example, Chinese Premier Wen Jia Bao has gone online and conducted discussions with "netizens," and Taiwan's President Ma Ying-jeou has set up a Facebook account. Yung-ming concludes that "They have done this because they have seen that new media forms are a tipping point for politicians" and that "those in power are using such media not just to win people over, but because these are the new rules dictated by new media."

New media can also help to raise awareness of issues around the globe, thus increasing global attention and sense of responsibility. In the past, the only way to know about revolutions happening somewhere in the world was to hear reports on the radio or watch breaking news on television. Now, however, new media have allowed the mass audience to become more interactive/participative users (Livingstone, 2003). The audiences no longer just receive information from media but they also share pictures, post video clips, and give comments on the events. The 2011 Egyptian protests captured worldwide attention in part thanks to Twitter, Facebook, YouTube and other social media platforms which empowered activists and onlookers to communicate, coordinate, and document the events as they occur. Interestingly, when the Egyptian government tried to limit Internet access, there was hacking activism with many people, Egyptians and non-Egyptians, attempting to organize demonstrations in solidarity with the people in Egypt, circulate articles, videos and photos of the revolution to get the news out to the world.

Through creating dense networks that extend connections and interactions among their users in society, new media are changing "our behaviour and society" (Solis, 2011). A noticeable example for how social media have changed the way people feels, think and act is U.S. President Barack Obama's election campaign in 2008. The campaign used interactive Web 2.0 tools, including YouTube and Facebook, to organize supporters, advertise to voters, defend against attacks and communicate with constituents. The campaign's official stuff created for YouTube was watched for 14.5 million hours while 6.7 million people watched Mr. Obama's 37-minute speech on race on YouTube (Miller, 2008). Arianna Huffington, Editor in chief of The Huffington Post (cited by Miller) even concludes that "were it not for the Internet, Barack Obama would not be president."

Besides, new media's ability to quickly disseminate information at low cost makes social activities much easier. Shirky (2011) points out that digital social media "have acted as a massive positive supply shock to the cost and spread of information, to the ease and range of public speech by citizens, and to the speed and scale of group coordination." Equipped

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with features that enable users to be increasingly interactive and collaborative, social media endow the audience access to on-demand content and the ability to share and discuss it with others instantly. In the Great East Japan Earthquake in March 2011, images, videos and messages of the disaster appeared on Facebook and YouTube just minutes after the first wave of tsunami hit Sendai. Afterward, these sites continued to play a considerable role during the relief and fund-raising campaigns. Tens of thousands of people worldwide engaged in sharing sympathy, condolence and support for Japan through social network websites. In addition, people could also donate to the Red Cross by sending text messages on mobile phones, and the donation being added to phone bills.

Culturally, as stated by Goggin (2006), a bewildering and proliferating range of cultural activities revolve around new social media (cell phone, mobile technologies, and wireless networks): staying in constant contact, text messaging, fashion, identity-construction, music, mundane daily work routines, remote parenting, interacting with TV programs, watching video, surfing the Internet, meeting new people, dating, flirting, loving, bullying, mobile commerce, and locating people. In business and marketing world, recommendations posted by consumers online are one of the most trusted sources of advertising (Qualman, 2010). Yet the most noteworthy characteristic of new media is that they allow users to become content producers. The readers, listeners and viewers who once receive whatever provided by media outlets with no or few influence in the content can now engage in produsage - the collaborative and continuous building and extending of existing content in pursuit of further improvement. Now, in collaborative communities, shared content is created in a networked, participatory environment which enables all participants to be users as well as producers of information and knowledge - frequently in a hybrid role of producer (Bruns, 2008). To sum it up, the advent of new social media has always brought about the hope for a society of open communication and unlimited access to knowledge, goods, and services (Justine Cassel and Meg Cramer cited by McPherson, 2008).

However, apart from the convenience and positive changes in social life, new media have also raised concerns about their negative effects. Social web sites and mobile phones are accused of "fostering less intimate forms of contact that in effect undercut our ability to develop the ties that bind and keep us together" (Watkins, 2009). While the online media can give more information quicker, they also take away the physical space, namely face-to-face meetings which are very important physical momentum as an engine for many activities (McCarthy, 2009). Physical and mental health problems have been also found in those who "engage more with online contact" (Hargrave & Livingstone, 2006)

As stated by Luo et. al. (2006), the media's influence is mediated by "the kind of use that is made of them, by the purpose for which they are used, by the context in which they are used, and by the gender, generation, class, educational and cultural typology of the audience, their styles of life, the personality of the users and so on".

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3. Results and Discussion

3.1 The Curios Case of Wikileaks and Julian Assange

Claimed by its founder to be a non-profit organization/website, Wikileaks was firstly launched in 2006. Some call it an open government group that enables public witnessing (Nayar, 2011; Rosewall & Warren, 2010), while others see it as a representation of a new type of "sovereignty in the global political and economy sphere" (Bodó, 2011, p. 3). The website uses the term "wiki" which was followed after Wikipedia due to its anonymous contributors and "populist news medium for an online world" (Fenster, 2011, p. 8). Due to that, some people argue that Wikileaks itself is not merely an organization. Raffi Khatchadourian (2011, as cited in Gunnell, 2011), for example, proposes Wikileaks 's lack of tangible features such as central server as one of main considerations, while Green (2011) points out Wikileaks' attempt to "keep secret details about its internal operations and management" infringes the common rule of organization.

Nevertheless, the absence of physical grounding is not considered to be an obstacle for Wikileaks in doing its activities. Making its contents accessible through hundreds of domain names, this website's interest is mainly focused on the whistle blowing actions by "reporting unethical behaviours within an organization", using insiders evidences such as documents, cables and videos (Johnson, 2003, p. 14). For example, in mid-2010, Wikileaks has succeeded in releasing from the U.S army database more than 92,000 of Afghanistan war documents alongside with videos of military forces killing Iraq's civilians (Poulsen & Zetter, 2010). This then was considered to be one of the biggest leaks of intelligence documents in history (Moss, 2010). The website has also dominated international media headlines for publishing the guide book of operating procedures at the Guantanamo Bay military prison and report of billion-dollar corruption of public funds in Kenya (Gunnell, 2011). Similarly, the website's aim of truth revealing is not only directed to government's affairs, but also to authoritative individual entities such as private emails of Sarah Palin, the U.S vice presidential candidate. In simple explanation, what Wikileaks does is revealing important information and news to the public.

Due to the fact that most of the files that Wikileaks has globally distributed are highly confidential, the website is seen as "a threat to the powerful" (Bender, 2011, p. 84). As the result, the website gains enormous negative feedbacks. For example, the corporate world is responding by demonstrating that some companies withdraw their service to Wikileaks. Amazon, PayPal, Visa and MasterCard are no longer available to assist Wikileaks in dealing with its financial affair whilst Apple removes Wikileaks from its application store (Daly, 2011). Several banks are launching law suits against the website, claiming that Wikileaks is "spilled the corporate secrets" (Uysal, 2011, p. 10) (reference). Similarly, the cyberspace is also counteracting by implementing some technical interventions. To begin with, Wikileaks site came under numerous distributed-denial-of-service (DDoS) attacks, just few hours after its first publication of cable gate series. A hacker who took the named "Jester" claimed the responsibility in doing these attacks because he believed that Wikileaks has "endangered the life of our troops" (Mussil, 2010). Following that, EveryDNS, the domain name system management service provider where Wikileaks' hosting servers are attached to, has dropped Wikileaks from its service for asserting that the DDoS will "threaten the service provider access and infrastructure" (Benkler, 2011, p. 338). In addition, Wikileaks is now banned in

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several countries and can only be accessed via proxy names (Lynch, 2010). Hence, Wikileaks' notoriety has presented its downbeats.

Interestingly, despite all of the litigious concerns regarding Wikileaks, this site received several awards. In 2008, Wikileaks accepted The Economist's New Media Award (Chossudovsky, 2010) and Amnesty International award in the year after (Papandrea, 2011). In addition, Julian Assange, Wikileaks spokesperson, has been given Sydney Peace Foundation's gold medal for his "exceptional courage in pursuit of human rights" (The Guardian, 2011). Admittedly, the discussion about Wikileaks will never be completed without addressing Julian Assange. He is Wikileaks creator as well as its operator. Assange himself is an internet activist, originated from Australia where he had spent his earlier life as a predominant hacker and was actively involved in the so-called cyberpunk communities (Gunnell, 2011). Domscheit-Berg, Assange's former staff in Wikileaks, even says that Assange is a "really brilliant person and he has a lot of very, very special talents" (2010, as cited in Poulsen & Zetter, 2010). Since his young age, Assange has developed keen interest in breaking into several government institutions and corporate servers across the country. RMIT, University of Melbourne, NorTel telecommunication office in Melbourne are amongst his impressive records of hacking activities. During his college years, Assange attended at least two different majors such as physic and mathematic with a remarkable "in excess of 170" IQ level (Manne, 2011, p. 25). He even presented the University of Melbourne in some student competitions and was elected as vice president of the students' Mathematic and Statistics Society at the same university (Dreyfus, 1997). According to Cohen (2010), it was during this time that "the seeds for Wikileaks were sown" (p. 32). In short, Assange is noted as one of outstanding individuals in cyber world.

Just like his Wikileaks, Assange is now also facing set of legal threats. In Sweden, where Wikileaks' primary server is presumably placed due to this country "anonymity protection laws" for internet users (Horgan, 2010, p. 17), Assange is being confronted by two women for raping indictments. Due to these charges, Assange is currently under home arrest in London where his temporary residence is located, waiting for his extradition to Sweden (Hough, Edwards, & Gammell, 2010). The U.S grand juries, not to mention, have been waiting for Assange's attendance in order to allege him with "crimes outlined in the 1917 *Espionage Act*" (Manne, 2011). Likewise, in his own homeland, Australia, Assange could face prosecution after "publishing sensitive information about government officials amongst the 251,000 unredacted cables"(Ball, 2011). To sum it up, Assange's personal affair has also entwined the Wikileaks phenomenon.

3.2 The Impact of Julian Assange's Truth-Telling Raid

As many scholars have asserted before, the presence of Internet has significant implications to society life. According to Castells (2007, as cited in Uysal, 2011, p. 5) we are in new communication realm where "social actors and individual citizens around the world use the new capacity of communication networking to advance their projects to defend their interest, and to assert their values". Lessig (2010, as cited in Booth, 2010 , p. 134) further emphasises the importance of Internet by weighing on the online culture as it will "spill over into our offline culture", simply saying that we cannot ignore what happened online, because it influences our offline existence. Related to that, Julian Assange with his Wikileaks is a perfect example of how individual action with goal of "re-fashion the world" (Manne, 2011, p. 27) may pave new way for attitudes and practices in society. Citizen's participation,

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journalism practice and government transparency are amongst the changes that are being induced by Wikileaks.

To begin with, the website's anonymous method that allows anyone with "less-technical literacy" (Daly, 2011, p. 13) to get involved, may contribute to increase citizen's participation. Prior to Assange's Wikileaks, citizens with essential information of national security or individual newsworthy affair had to go through a traditional media outlet to reveal it to public. Not to mention, they had to be ready with consequences of law allegations and, most of the time, violent death for disclosing the inconvenient truth (Bender, 2011). Nowadays, Wikileaks has made it possible for individuals to exchange information anonymously. For example, Assange and his team have set up a virtual drop box where Wikileaks' members and the public could deposits their documents anonymously (Papandrea, 2011). Moreover, the website also protects its sources by guaranteeing that it will "automatically discarding all identifying information - even time zone and type of email program" (Wikileaks, 2011, as cited in Park, 2009, p. 18) and reassuring that the site "offers the strongest form of anonymity and is good for bulk truth-telling" (p. 19). In other words, through Wikileaks, citizens are being provided with a medium that allows them to engage more without fear of being offended. Following that, the controversial cases that surround Wikileaks may also become one of the factors that enhance citizen's involvement in supporting this website. Burns (2011) in his article *Towards Distributed Citizen Participation* claims that greater curiosity among society has been provoked by "significant difference in appraising Wikileaks and Assange's action's" (p.12) which in turns make the website more attractive for ordinary citizen. As a consequence, they are triggered to be more engaged in Wikileaks by "discovering, reading through, or otherwise processing the hitherto hidden information" in the website (p. 13). Hence, Assange and Wikileaks' multifaceted issues have also played a significant role in raising the citizen's participation.

According to Gunnell (2011, p. 21) Wikileaks had become "a byword for debate about the very nature of journalism and the role of journalist". This notion leads to the idea that journalism is one of the practices that have been inevitably impacted by Wikileaks. One of the noticeable issues is that Assange through Wikileaks has brought a new form of journalism. Seib (Seib, 2008), for instance, claims that "do-it-yourself journalism" (p. 56) through online gallery has emerged a new form of "participatory journalism" (p. 57). Owing to that, Wikileaks appears to become a medium for everyone's voice where the non-professionals with valuable information are endorsed with opportunity in informing the public. Likewise, the fact that Assange has been cooperating with mainstream media such as New York Times, The Guardian, Der Spiegel, Le Monde and El Pais in order to assure that the information he collected would be globally spread, has allowed what Castells (2007, p. 5) called as a "networked communication" process. In other word, Assange's strategy in combining citizen journalists with professional journalists has succeeded in creating a new type of journalism practice.

Furthermore, Assange is also influencing the way journalist approach their information source especially investigative journalism. Commonly, investigative journalists in mainstream media may find it quite tricky to examine over secret documents which they may receive from anonymous sources. It might take months or even years for conventional investigative journalists to verify the information. Moreover, not every journalist is equipped with technical expertise such as modified PGP and Tor encryption ability like Assange does (Lynch, 2010).

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Wikileaks, in turns, provides a "scientific approach" in authenticating the data (Fenster, 2011, p. 19). Even though there is no valid evidence whether Wikileaks has hacked or that it encouraged hacking or leaks, many scholars believe that Wikileaks is tightly embodied by hactivism culture, particularly drawing from Assange's background in the cyberpunks community (Fenster, 2011; Gunnell, 2011; Papandrea, 2011; Park, 2009). As stated in its official page, the website boasts "authentication process which combines forensic analysis of leaked documents with the public assessment allowed by a wiki interface" (Lynch, 2010, p. 312) in a sense that this technique is considered to be more reliable than authentication method of traditional investigative journalism. Furthermore, Wikileaks also suggests that journalists, not only investigative reporters, to use its database, highlighting that it may become a platform that "enable jump-off point for media" (Wikileaks, 2010).

It is generally known that not all government affairs such as diplomacy are published due to unwanted publicity which consecutively could interrupt the subjects themselves. Nicholson (2008, as cited in Rado, 2011, p. 45) even states that "the diplomatic negotiations should be kept secret before reaching a conclusion". However, it is also necessary for government to entail transparency due to prevent national broad and international audience of having the impression that their leaders cannot accomplished their task properly (Rado, 2011). As argued by Bodó (2011) that Wikileaks is an emerged radical form of transparency where "sharing secrets and in the same time preserving anonymity seems to be easier than even" (p. 2), it is then understandable if Assange's truth-telling raid through Wikileaks has also impacted the idea of government transparency. The U.S government, for example, has seemed to undergo prominent adjustment because of Wikileaks' disclosures. In other words, the U.S government has started to question the idea of increased transparency will increase public knowledge and better government (Papandrea, 2011). Assange's goal (2008, as cited in Sterner, 2011, p. 1) of creating "a world where companies and government must keep the public or their employees, or both, happy with their plans and behaviour", apparently has urged the U.S government to reconsider its transparency measures. As consequence of Wikileaks' "remarkable insight into the working of American diplomacy" (Rado, 2011), the U.S government is being stricter in disseminating its valuable information. Most of the U.S government agencies now begin to implement numerous "security measures to prevent future leaks" (Fenster, 2011, p. 44), such as putting more firewalls and reviewing their confidential database protection.

3.3 Julian Assange and Australia: A Bigger Picture in Globalized Media Economy

As briefly described earlier, Julian Assange never stays too long in a place. He travels a lot and visits the U.S, Britain and Australia only for a short trip, without having a permanent address in these countries (Moss, 2010). This illustration supports the notion of Galligan et all (2001) about global citizenship. However, given to the fact that Assange was born and spent most of his life in Australia, it can be implied that Australia has reasonable contributions in the role of Assange's playing in global media, especially in terms of Assange's cultural and national upbringing as well as Australian positioning in global world. Assange himself ever mentioned in one of his interview that he was "quintessentially Australian" in nature (Dreyfus, 1997 , p. 25)

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To start with, Assange and Wikileaks appear to be influenced by several Australian stereotypes. Firstly, Assange's controversial ideas of revealing the truth through unconventional channel of Wikileaks might reflect what Australians come across as maverick nature. This stereotype is used to acknowledged people who are rebellious, those who do not abide the rules (Alex, 2010). The reality that Assange has recruited "open-source engineers such as hackers and political activists who sought to expose corrupt and oppressive regimes throughout the world" has highlighted Assange's national identity type (Fenster, 2011, p. 6). Next, it is commonly known that most of Australians like to think of themselves as sympathetic towards disadvantaged people or 'underdogs' (Skwirk., 2011). Due to this, Assange and Wikileaks are ideal images of this stereotype as Papandrea (2011) purposes that Assange and Wikileaks have present "the strange, at least temporary triumph of a small, thoroughly independent, underdog medium of disclosure over enormously powerful state actor" (p. 16). Assange's aim to assist the disadvantaged people by the prevailing system may also symbolize this personality (Bender, 2011).

In addition, Australian's cynicism tradition, in particular towards large institutions, is also contributing in Assange's point of view toward autocratic elites (Dreyfus, 1997). This tradition, for example, seems to have been indicated by Assange since his college years. As illustrated by Maine (2011), Assange once simply described his senior physician students who proudly showed off their logo of the Defence Science and Technology Organization as "snivelling fearful conformists of woefully inferior character" (p.26). The same thing also happened when Assange was responding to Duncan Frissel, a predominant cyberpunk, who claimed that the U.S holds superior economy power than any other countries in the world. Assange said that "this was ridiculous statement designed to be deceptive" (Manne, 2011, p. 24). In short, Assange's personal identities are mainly suited the Australian national stereotypes.

Following that, Australian positioning in globalised world also reveals Assange's role in the globalized media economy. Being located far away from super power countries such as the U.S and Britain has also led Australia with certain withdrawal and isolation from the rest of the world. Former Australian prime minister, Paul Keating even points out that Australia is at the arse of the world, reflecting a "shorthand way of saying that Australia is way out of the northern hemisphere markets and is a long way from everywhere" (Miliken, 1994). As a consequence to this distant isolation, some people believe it is necessary for Australia to "box above its weight" (Galligan, et al., 2001, p. 145; West-Pavlov, 2005 , p. 134) at the world stage. Voted as the winner of *Time Magazine*'s "Person of the Year" (Manne, 2011), Julian Assange undoubtedly is one of the leading players that make the world turn its spotlight to Australia. With his revolutionary idea of creating a critical information media that free of duty as the loudspeaker of government and corporations across the globe and "act as a mirror of all social world" (Neveu, 2004 , p. 343), Assange has showed that Australia is no longer a decent "middle power" in the international arena (Ciro, Mascitelli, & Muthaly, 2009, p. 156).

On the other side, Australia's enduring links with Europe and the U.S and its adjacent location to Asia had also presented incongruity in Assange's strategy in encouraging transparency to globalized world. As stated by Allon (2005, p. 70) Australia has "an existence of both nebulous and precarious", suggesting that this condition has made Australia drifts between "two sets of bearings" with incapability to decide which direction to choose (p.71). As a result, Australia is often criticized for being "Janus-faced" with situation of being interventionist in the governments of sovereign states yet isolationist at home (Galligan, et al.,

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2001, p. 149). In this point, Assange is also showing a similar pattern. Assange aims to "promote justice through mechanism of transparency" to the public is based on his belief that citizens have the right to know what is going on in the government (Gunnell, 2011, p. 32). However, this condition is being challenged by Assange's own refusal in answering any question about how his organization works such as Wikileaks data verification mechanism (Assange, 2010). Cohen (2010, p. 33) even asserts this situation as an "irony that the mission of such a secretive organization is to enforce openness on others". Hence, Assange's roles in the media economy are also shaped by Australia's standpoint in globalized world.

4. Conclusion

In summary, Julian Assange and Wikileaks have played significant roles in the world. Assange's mission of promoting transparency in the government through Wikileaks has generated remarkable impact to citizen's attitudes as well as induced new practices across the globe. Assange's deep root in Australian national and cultural values appears to have major contribution in this truth-telling action. Similarly, Australia's peculiar position has also influenced Assange's role in the globalized world.

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The Development Strategy of Potential Marine Tourism in Lampung Selatan for Facing Global Torism Competition

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Abstract

This research was aimed to analyze the potential for marine tourism development strategy to face global competition in South Lampung. The Methods of data collection were using in-depth interviews, observation, and documentation. The results showed that the local governemnt had not had a specific strategy to develop marine tourism as a leading tourist area to face global competition. Some of the strategies recommended by the researchers were : planning the highlight of potential tourism destination; creating policies to provide opportunities and services for the stakeholders; the government shall cooperate with the community of marine tourism as a conscious group travel (Pokdarwis) and preparing qualified human resources as well as promoting maritime destination on an ongoing basis.

Keywords: *Local Government Strategy; The Marine Tourism; Global Competition*

1. Introduction

Maritime destination is a geographical area that can be in one or more administrative regions with some special interests such as maritime, public facilities, tourism facilities, accessibility and community are interrelated and complementary realization of tourism. Therefore a maritime destination can be in one or more administrative regions as well as involving the facilities and the accessibility of tourism, the management of these destinations are classified into some important needs. Therefore the management of maritime destination includes the utilization of available resources through stages which is integrated to achieve the goal of developing the maritime destination, namely planning, organizing, implementing, and controlling/evaluation, both for local, regional, national and even international.

Indonesia as a country that is rich in potential resources and marine tourism, in order to achieve the objectives of national tourism among others, uses positioning tourism destination to improve the competitiveness of products from marine tourism, among others

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related to water tourism activities as well as other tourism support activities. All activities related to increasing the competitiveness of the Water tourism aimed at the creation of sustainable tourism (sustainability destination). In the framework of tourism development and management of maritime destination, as stated in Regulation Number. 10 of 2009 about tourism and Government Regulation Number 38 Year 2009 concerning tourism and Government Regulation Number 38 of 2007 on the Division of Government Affairs between the Government, Provincial Government and District Government/cities.

Lampung Selatan as one of reegencies in Lampung has the potential areas to be developed such as for traveling along the coastline is very beautiful and deserves to become a tourist destination. The islands is located in the south of Lampung and includes Krakatoa, Sebesi, Sebuku, Legundi, Siuncal, and Rimau Cage islands. When viewed in terms of area and its natural state, Lampung Selatan has a bright future to further development. One of the areas in Lampung Selatan which has the potential of tourism is Rajabasa. Rajabasa is unique, because there is a culture, nature, islands, and mountains. Tourism in Rajabasa includes Canti Turkish, Banding Resort Beach, Kahai Beach, Kunjir Turkish, Way Muli Coastal, Suak Turkish, Sebesi Island, Krakatau, Ciperes Waterfall, Sarmun Waterfall, Rajabasa Mountain, and Habib Ali grave.

However, the tourist beach in Rajabasa, Lampung Selatan, is still not well-managed, plenty of beach activities are still cultivated individually. To that end, the construction and development of tourism in the District of Rajabasa, Lampung Selatan generally need to be addressed by involving the community needs to get support from the government, agencies, communities, and investors so that the potential of the region can be optimally utilized.

2. Research Methods

This research activity used qualitative research methods with descriptive type. The focus of research was on the strategy performed by Lampung Selatan government district in developing potential marine tourism to be competitive in global tourism. The Data and information were collected by using secondary data drawn from a variety of published material (literature) related to the tourism district, either the theory of literature about Lampung Selatan, statistics, the results of previous studies, the official documents from other institutions, the research of other institutions, and others policies related to tourism, especially nautical tourism. In addition, the collected data also included primary data obtained through: in-depth interviews; and observation. Data analysis was performed using qualitative data analysis, conducted through the steps of data reduction, data presentation, which ended with the verification and conclusion, (Miles & Huberman, 2007: 78).

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3. Results and Discussion

Almost all areas along the coastline of Lampung Selatan was potential to be developed into a maritime destination and became a tourist village. Here was the data of tourist visits to coastal tourist destination in Lampung Selatan :

Table 1. The Data about Tourist Arrivals For Maritime Tourism Lampung Selatan

No	Tourism Destination	2011	2012	2013	2014	2015
1	BAGUS BEACH	10.500	15.000	4.000	5.600	7.280
2	GUCI BATU KAPAL BEACH	7.700	11.000	6.750	9.450	10.985
3	EMBE BEACH	25.900	37.000	5.500	7.700	10.010
4	SAPENAN BEACH	1.540	2,200	2.000	2.800	3.640
5	TANJUNG BEO BEACH	3.500	5.000	3.000	4.200	5.460
6	WAY URANG BEACH	1.050	1.500	375	-	4.875
7	TELUK NIPAH BEACH	2.100	3.000	-	1.820	2.366
8	LAGUNA HELAU BEACH/ ALAU-ALAU	2.100	3.000	1.300	1.820	2.366
9	KULINER PPI BOM BEACH	4.767	6.810	5.000	7.250	9.425
10	BANDING RESORT BEACH	2.450	3.500	4.000	5.600	7.280
11	CANTI INDAH BEACH	6.970	7.000	3.000	4.200	5.460
12	KAHAI BEACH	3.500	5.000	7.000	9.800	12.740
13	KUNJIR BEACH	1.190	1.700	2.250	3.150	4.095
14	WARTAWAN BEACH	11.200	16.000	2.750	3.850	5.005
15	MERPATI BEACH	1.050	1.500	1.175	1.880	2.444
16	BELEKBUK BEACH	1.050	1.500	1.500	2.400	3.120
17	SUAK BEACH	3.150	4.500	3.500	4.900	6.370
18	TANJUNG SELAKI/ TARAHAN BEACH	4.900	7.000	6.000	8.100	10.530
19	PULAU PASIR BEACH	1.890	2.700	5.500	TUTUP	TUTUP
20	PASIR PUTIH BEACH	2.450	3.500	5.000	8.000	-
21	TELUK MENGKUDU BEACH	-	-	-	-	-
22	TANJUNG TUA BEACH	1.050	-	1.500	2.550	3.315
23	LEGUNDI BEACH	-	-	-	-	-
24	INDAH KRAKATOA BEACH	1.295	-	1.850	2.960	3.484
	TOTAL	**101.302**	**138.410**	**72.950**	**98.030**	**120.250**

Source: Department of Tourism and Culture Lampung Selatan, 2016

From the Table 1 above, it shows that tourist arrivals from year to year in 2011 to 2012 has increased, two years decreased and increased in 2015 but was still lower than

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2012. Meanwhile, there was also the data about hotel visitors in Lampung Selatan which could be seen from the second table below :

Table 2. The Data About Hotel Visitors in Lampung Selatan

No	HOTEL NAME	2011	2012	2013	2014	2015
1	Hotel 56	8.106	1.158	1.448	2.069	2.689
2	Hotel Beringin	525	750	1.125	3.006	3.907
3	Hotel Kalianda	927	1.325	1.100	10.395	13.513
4	Hotel Sudimampir	500	-	-	-	-
5	Hotel Way Urang	700	1.000	855	10.584	13.712
6	Hotel Amarta Agung	280	400	635	1.312	1.705
7	Hotel Mutiara	350	500	877	1.980	2.574
8	Hotel Bandara	350	-	500	-	650
9	Hotel Mini	560	800	750	2.577	3.350
10	Hotel Pasir Putih	2.044	-	-	2.921	3.797
11	Wisma Ragom	-	-	750	4.065	5.284
12	Hotel Riung gunung	493	-	-	705	916
13	Hotel Minikhas	6.087	-	-	8.696	1.129
14	Villa Muncha	-	-	-	4.296	5.548
15	Hotel Branti Indah	577	825	950	265	344
16	Hotel Danau Kembar	455	650	400	TUTUP	7.702
17	Hotel Mini 3	595	850	733	5.544	7.207
18	Hotel Modjopahet	630	900	950	982	1.276
19	Villa Mas	560	800	750	292	379
20	Hotel Aryani	525	750	850	1.419	1.844
21	Hotel Gajah Mada	350	-	500	9.187	11.943
22	Hotel Krakatau	245	-	350	1.814	2.350
23	Hotel Bintang Selatan	420	600	-	-	-
	TOTAL	**25.279**	**11.308**	**13.523**	**72.109**	**91.819**

Source: Department of Tourism and Culture Lampung Selatan, 2016

From table 2 above, it showed that the number of hotels recorded in this area was 23 units, among them called the inn or motel. There were not many star hotels in the area, there was one big hotel, named Hotel Grand Elty in Krakatoa Resort and Travel. All the hotels showed the increasing number of visitors. But the problem was that not all visitors came to Lampung Selatan stayed in hotel for a tour but because they had business or family affairs or other things.

Business-related travel that has been globalized, at this time according to the current tourism has increased and became the world's largest industry. Business trips in 2015 already reached 1 billion trips throughout the world. Thus, within a period of 1 year was more than 1 billion people traveled from one place to another. This was a phenomenon caused a tremendous impact on the movement and mobility of people. Currently, many countries in the world are getting interested to develop the tourism as the tourism industry

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considered as a sustainable industry. (Source: interview with Deputy Human Resources Ministry of Tourism and Creative Economy, 2016)
The exploration of nature and the economy relies on natural resources, the longer it will certainly run out, the tourism and culture exploration develops sustainability.

One of the key how many nations in the world wants to develop tourism for example, Malaysia, Singapore, Thailand are famous for its tourism. Indonesia is also one of the country beginning to see that tourism is one of the foundation economy because the oil has begun to decrease. Nowadays, Indonesia has become an oil importer, coal is not environmentally friendly, and finally Indonesia also want to use the wealth of natural and cultural to become one of supporting economy. The government already has such an awareness, and thus must be considered to seek the way to make tourism in Indonesia more advanced and developed.
For those reasons, we need to have the right strategy in developing the potential tourism possessed by each region in the country. Lampung regency has the potential tourism such as beautiful beaches attract many tourists to visit the area. As an illustration that has not seen the efforts of local governments and the private managing nautical tourism in this area visible from the tourist both local and foreign tourists who had not visited many beaches in the region. During the year 2016 from January to April, the tourist arrivals declined. In May rose slightly but was still below January. In June there was no data to coincide with Ramadan the months of July was a big day of Eid Mubarok. There were many tourists visit especially to the beach area.

Table 3. The Number of Local and Foreign Tourist Arrivals To Marine Tourism in Lampung Selatan 2016

NO	TOURIST DESTINATION	JAN	FEB	MAR	APR	MEI	JUN	Idul Fitri 1436 H (20-27)	Idul Fitri 1437 H (06-10)
1	BAGUS ISLAND	200	210	568	709	786		700	
2	GUCCI BATU KAPAL	750	902						
3	EMBE ISLAND	5.604	1.852	2.000	1.500	1.500		7.299	
4	SAPENAN ISLAND	215	147	701	802	903		1.329	
5	TANJUNG BEO ISLAND	150	155	55	55	85			
6	WAY URANG ISLAND	70	100	85	115	125			
7	PPI BOM	3.000	3.000	3.021	3.035	3.045			
8	BANDING RESORT	575	925	300	350	500		3.100	
9	CANTI INDAH	535	465					2.302	
10	KUNJIR ISLAND	715	785					4.436	
11	WARTAWAN ISLAND	485	315					625	905
12	WAY BELERANG	673	577	900	1.000	1.000		2.147	1.288
13	BELERANG SIMPUR	325	220						
14	MERPATI ISLAND	430	270						
15	BLEBUK ISLAND	120	380	25	20	40			

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16	SUAK ISLAND	160	80	90	115	415			
17	TANJUNG SELAKI	3.400	400	158	163	157			1.050
18	CONDONG ISLAND	1.500	330	629	527	687		2.700	
19	PASIR PUTIH ISLAND	250	250	150	170	215		20.000	3.505
20	MENGKUDU ISLAND			104	150	192			
21	TANJUNG TUHA ISLAND	135	80	1.805	1.603	2.300			
22	TELUK NIPAH ISLAND	225	100	200	180	400		255	
23	INDAH ISLAND KRAKATOA	791	995						
24	WATER BOOM JATI AGUNG								
25	PEMANDIAN AIR PANAS NATAR								
26	KRAKATAU								850
	TOTAL	**20.308**	**12.538**	**10.791**	**10.494**	**12.350**		**44.893**	**7.598**

Source: Department of Tourism and Culture Lampung Selatan, 2016

Based on a variety of field data obtained then there were several strategies that could be undertaken by local government to develop tourism, especially nautical tourism. First, the local government made plans to develop marine tourism areas so it could be know which region required the infrastructure. This strategy was taken to avoid conflicts of interests between some sectors. In the Strategic Plan of Tourism and Culture of Lampung Selatan for the period of 2016-2021, it had not written a program or activity on the development of marine tourism areas, it was very unfortunate given the nautical tourism in this area altough it was very potential to be developed.

The central government itself through the Ministry of Tourism has a vision of "Indonesia within 10 years as a leading maritime tourist destinations in the Asia Pacific region". Mission marine tourism was elaborated by Hermantoro (2009: 3) as the following: 1) providing the best services for Indonesian tourists, (2) creating a conducive climate to the investors industry of marine tourism, 3) creating cohesiveness development of suistainable marine tourism that, 4) developing marine tourism product with a partnership among nautical tourism actors. The Strategy elaboration is: 1) an integrated development of nautical tourism, 2) structuring system information, promotion and marketing, 3) the development of tourism enterprises, 4) structuring system services and licensing, 5) structuring system harbor, 6) the conservation of the environment and 7) lopment community-based deveenterprises.

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M. Faried Moertolo, Director of Promotion of the Ministry of Culture and Tourism (Kompas, June 6, 2011) said that local governments must move quickly, especially in the effort to improve the quality of human resources in tourism. Accommodation and transport must be considered in the field of tourism. Accommodation and transport should be considered so that the tourists feel comfortable.

Second, to be able to manage the potential of existing marine tourism, The Local Government should issue policies that provide opportunities and services to the tourism players to be able to enter into nautical tourism in order to start their business. The policy is to facilitate the processing of business licenses and permits to manage marine tourism area. Policies related to this strategy are spatial planning policies by following the applicable regulations and environmental protection.
In the management of marine tourism, the government should change the approach of the bureaucratic system into a system approach entrepreneurship.

The government has to be responsive and always worked hard in looking at opportunities and take advantage of opportunities as possible for the prosperity of the people. Government as a policy holder must set up a regulation/policy to support the development of marine tourism. The policy, among others, is to create a special economic zone region is being floated marine tourism, for example visa-free policy on foreign tourists who will visit
the tourist destinations.

The development of tourism is not only the task of the government. However, tourism businesses are also expected to play an active role in developing the destination and implement appropriate marketing strategies, efficient, and effective, especially for the object of tourist attraction (ODTW) potential to be marketed. With this strategy, the less developed regions will be enchanting tourism destination area. This can be done if the government makes a policy to provide a comfortable space for the business tourism sector for example with strict rules about the layout and ease all the permissions associated with marine tourism. In addition, by lack of legal certainty for businesses that nautical tourism is quiet and comfortable in conducting business activities.

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Third, the government and the people of nautical tourism prepare human resources that will manage it. Developing a human resources can be done through training - training the management of marine tourism. Through this strategy the public are expected to participate in the development of marine tourism. The local government should be able to create quality human resources in the field of nautical tourism tough, good skills, ability in innovation, adaptability in the face of changes in the external environment, work culture and education, as well as the level of understanding of the strategic issues and concepts to be implemented. In the future, human resources excellence in innovation will be crucial part with the importance of natural resources and capital. It is associated with the development of information technology. Community area is usually still have issues with either the cultural, linguistic, and other obstacles when experiencing something new, including meeting with foreign tourists.

According to Syed Abdul Karim, by understanding the various potentials and the cultural barriers that exist in local communities, the development potential tourism of the less developed areas will not be maximum. (Journal of Tourism of Indonesia, Vol 6 Year 2011: 57). Development and management of tourism in Lampung Selatan had been implemented with community participation or by using a model of community-based tourism development (Community Based Tourism) by establishing a Tourism Awareness Group or Pokdarwis based in Lampung Selatan The Decree No. B/ 612.a / III.16/ HK/2013 on Stipulation Travel Awareness Group (Pokdarwis) and the Communication Forum Travel Awareness Group (Forkom Pokdarwis) in Lampung Selatan. However, based on data in the field, many Pokdarwis which were not active in the development of tourism, some Pokdarwis even just only the names. Pokdarwis which were active doing activities in the village located in Muli and Way Canti near Rajabasa.

Fourth, the government continously prommotes nautical tourism areas in Lampung Selatan through various means and media. It is not widely practiced by local governments and businesses of nautical tourism. Large class investors such as Bakrie Tbk as a manager of Krakatoa Resort is a lot to do this. But other business has not done it. As an example is Thainland. It is a country that is doing a good marketing strategy. Thailand tourist objects on the international television and mass media such as the internet, magazines and exhibitions - exhibition of tourism at the international level. In fact, they spent

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approximately US $ 1 billion to promote tourism in several international television networks. This also is as done by Hong Kong and Thailand to facilitate its tourism development plans with tourist market.
The fourth strategy is expected to develop the potential of marine tourism in the Lampung Selatan. However, these strategies would be meaningless if the government, investor/private, community banking, and others that does not coordinate in developing potential marine tourism for the prosperity of the people in Lampung Selatan. In order for this strategy can be effectively executed to develop tourism in this area, proposed by the Tribe (1997: 114) that there is a four-step effective strategy for tourism, namely: a) giving the priority to customers, 2) becoming a leader in quality, c) developing radical innovation, and d) strengthening its strategic position.

Marine tourism requires public service in the form of: a) HR lifeguard reliably, b) SAR ready, c) safety equipment, d) regulations/matters of safety, security of international standard, and e) a number of other technical matters. The government as a supporter and facilitator remains at the forefront of facilitating the development of infrastructure, education, and marketing of marine tourism.

4. Conclusions And Suggestions

The results showed that the government of Lampung Selatan had not had a specific strategy to develop marine tourism as a leading tourist area for facing global competition. Some of the strategies recommended by the researchers to do in this area are: planning the highlight of potential tourism destination; creating policies and providing opportunities and services for the stakeholders; The government should cooperate with the community of marine tourism as a conscious group travel (Pokdarwis) preparing qualified human resources; as well as promoting maritime destination on an ongoing basis.

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Politics Campaigns ; Challenge And Ideality

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Abstract

Campaigns is a part of general election process that purpose conspicuous the voters. The inclination in campaigns only give attention at election moment, and omit the voters existence at the end of election. There are two different campaigns faces, political campaigns and election campaigns that indicate something must be repair. Black campaigns as a campaigns form that not reduction responsibility to voters society. So, it is necesarry role from media to give the appropriate and right information about campaigns, as a form of politics education for public.

Keyword : *Campaigns, Political Party, Black Campaigns, Campaigns Strategy, Media*

1. Introduction

This writing try to explain several things about campaigns. Democracy Party or general election give big space and opportunity for any individual that want to take a part. Total of participation political party in general election having an affect on election way. The important variable in election, notably before plebicite is a political party campaign period to sell nominated candidate or sell the party's name that carried.

Campaigns moment become important because at that campaigns time political party can convince endorser to still vote the party and candidate that carried. Moreover, campaigns also use to attractive others endoser from another party to turned round and support another party. In essentials campaign purpose to attractive the attention, to sell party's program and candidate that carried, promise something new for voters interest and create sympathy, emphaty even together awareness about certain of party. Role campaign will be have a correlation with the result of party vote in election, either excecutive or legislative.

Campaigns material still tasted not efective or not educative, black campaign method still use oftentimes. The material of campaigns just a little repeat the old material without a new innovation, infact inclination of campaigns material consist of promise that difficult to prove the right things. This kind of campaign besides not educative and not give a good politics education, also potentially to increase apathy of voters society because put down campaigns as nothing other than a public falsehood.

Campaigns implementation with society party at open door and show many distinguished artist also dangdut singer, also gave the effect like to run the happiness entirely apperance. All this time campaigns only though to sell commodity to buyers without should have a knowledge of a quality and benefit from the commodity that will be bought.

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The material in this writing try to give an abstract of campaigns implementation that effective to create a healthy political education and participate to develop voters politics awarness to make positive activity in politics. Absolutely, the abstract that showed can't answer all of the question of campaign and all of the problem inside that. This writing try to shoot campaigns from the face, campaigns ideal form, black campaigns and media role.

2. Two Faces *'Campaigns'*

Campaigns is a part from democracy party implementation that involve elements from political party, as a purpose to attractive citizens sympathy that participate in general election or having politics suffrage. Two important elements are political party and citizens, so political party as a seller and citizens as a buyers. Political process in campaign will be make a deal when there is an anxiety between the sellers and the buyers or promise on commodity that will be sold by the seller.

In this context that purpose is political campaigns is a part of interaction process that intensive character from political party to public in particular circumstance and usually happen come close to election. Defined political campaigns as a period that given by commitee general election to all the candidate, either political party or personal candidate to explain about work programs and influence public opinion all at once to mobilization the society to convince them give their vote to the candidate in perforate moment[1]. Campaigns in this context look as mas gathering activities, with all of the methods that allowed by excecutor commitee of general election.

Campaigns in our mind only defined as a campaigns in short definition, is come close to general election implementation. In the wide definition, political campaigns more wide than election campaigns. Political campaigns is a long-term process that demand the consistency and contiunity from political party[2]. Political campaigns suggested do everyday or daily campaigns[3]. Writer's opinion is campaign political that do every day or daily campaigns have purpose to approach constituent ownership feeling with the party itself. It's also a from of party attention to keep in touch with the constituent.

Election campaigns definition in this context that implemented so limited before the general election, it's tendency consist of weaknesses. First: political interaction between political party and public as if it is happen in certain period. In writers opinion, this case just make crippling for party because public do not only see party performance at that time. Party performance previously also assessed by public, sometimes determine all of the assessment approach general election. Second; campaigns is a process dialogic political communication between political party with society. As a purpose to create the same comprehension and perception between party and society. If campaigns just limited the election feared do not make the same political between them.

[1] Lilleker, D.g & Negrine, R. *Mapping A Market Orientation* In Davies, P,J & Newman,B.I. (Eds) *Winnng The Election With Political Marketing*, New York; Haworth Press. , 2006,pages. 33-56

[2] Blumenthal, S. *The Permanent Campaign*, New York: Simon and Schuster, 1982, pages. 12- 25

[3] Norris P, *A Virtuous Circle* : *Political Communications in post industrial Societies*, New York: Cambridge University Press, 2000.

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Third: public defined by political party only as and limited to collected vote before election, if only take the stump. Public as a limited object from political party that need their vote, define public is important if political party need their vote. When the campaigns period end and appear the winner, public is not important anymore. Fourth: campaigns is political education process, campaigns not only election make into education to public not comprehensive. Society just given the things that partial, opportunistic and incidental. The impact that happen is emergence of apathy or golput society[4].

The weaknesses of campaigns that limited implementation before the election, can be minimized with political party awarness existence to change camapaign style that approach election.

These writers attach a comparison table between elections campaigns and political campaigns[5] :

	Election Campaign	***Political Campaigns***
Period & Time limit	Periodic and particular	Long-term and continually
Purpose	Lead voters to the votting booth	*Political Image*
Strategy	Mobilization and hunt voters	Develop and establish political reputation
Political communication	One direction and emphasize promise and political expectation if win the election	Interaction and find the comprehensive and solution that faced by society
Relationship between voters and candidate	Pragmatic (transactional character)	Relational relationship
Political product	- Political promise and expectation - Candidate figure and work programs	- Reveal the problems and the solve - ideology and value system that based party purpose
Work programs character	*Market Oriented* and fluctuate from one election to others election	Consistent with the political value system
Collective memory retention	Tendency to be easy to lost	Not easy to lost in collective memory
Campaigns character	Clear, measured, and physical activity can be felt immediately	Latent, critical and attractive society sympathy

2.1 Design The Ideal Campaign

Political environment have an important role in campaigns, economic climate, social and political in general a state is a part of political environment. These climates are relevant

[4] Firmansyah, *Marketing Politik, Antara pemahaman dan Realitas*, Yayasan Obor, Jakarta Indonesia , 2007, pages. 270-271.
[5] *Ibid*. pages. 273

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and also influenced by world political environment in universal[6]. Political climate can be explained as government policy inside and outside the state that inappropriately affect the assessment of the public against government. Unstable Economic climate with the example indicator; increasing of price, inflation, causeing social climate such as poverty and joblessness. These things can be used as material for political parties to campaign. The opposition party will marginalize the government with the condition. Government on the other hand, of course will last or where possible to minimize the impact of such matters.

In practice, the political environment can not stand alone, it was influenced by factors or political tendencies at the macro level, which is then reffered to as macro-political factors. The important variable include in macro-political factors are[7] ; first; the nature, structurea and influence of political parties. Party system, consisting of single-party system, two party or multi party had a role in the party factor. Second; population demographics, measured from the demographic data are sourced from government data, in this case the BPS and Ministry of Home Affairs, may also be derived from the data/information of the population census and electoral statistics (gorup of voters). Third; the role of media in all its forms, which serves as a mouthpiece for the government and political parties to communicate with the public/society.

View of systems theory, political organizations (political parties) is a system in an environment or in suprasystem. The campaign includes five basic subsystems [8]:

Campaign Subsystem	***Function & Role***	***Scope***
Structural	Arrange people ways to work together	Include political campaign organization chart, job breakdown, authority, job ceiling in campaign
Social Psychology	Responsible with Social relationship in campaign	Include formation, personality, temperament, behavior & motivation each campaign staff
Purpose and Mean & Values	Applied to campaign participant and voters group members	Include with ambition and staff members values & volunteer in harmony with manager, voters & campaigns purpose values
Technical	Prepare knowledge, technical, outfit, facility for campaigns staff	Include proffesional knowledge and especially that need in various political campaign level
Managerial	Personat in planning central, organizing,controlling, campaign activity	Campaigns strategy, purpose decision, priority determine, choice making. Manager role input collecting, planning, organizing, & determine campaign controlling methods.

[6] Steinberg, Arnold, *Political Compaign Management* . Translation : M. Sidarto, *Kampanye politik dalam praktek*, Publisher PT Intermasa 1981, pages. 27- 29.
[7] *Ibid*. resume.pages 54 - 66.
[8] *Ibid*. pages. 131-133

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Desaigning a good campaigs, needed understanding between political party that bring to hell that already set in and high-level rationality from voters society. Ought to political party must oriented to political campaign than election campaign. On top of Tabel mapping is one of the thing must be accurated to see points can be a patology/constraint in campaign implementation.

A good and right acquisition information in campaign will be get by voters from; personal information, issues, political party and previous election experience[9]. Demography characterization of voters district, include; age, education, and gender, partianship in certain party also ideology that attentived also give contribution at the campaign moment directly[10].

2.2 Black Campaign

Political Communication Literature explain there are five campaign models[11] that used. First : Compensation campaign model, include dispatch processing and message accepting that include elements, campaign resources, access, message, campaign receiver, affect, and feedback. First assumption campaign is communication activity that planned. Second; Ostergard campaign model, campaign must be supported by scientific research, until started with problem identification first, then planned, implemented and evaluated. Third ; Functional Stages Development Model, explain campaign activity phase, include, legitimation, participation, and distribution. Fourth ; The Communicative Function Model, give all mind to campaign phase analyze. The phases include: surfacing, primary (focus with public attention to candidate), and election phase. Fifth ; Nowak & Warneryd campaign model, campaign process started from the purposes that want to reach out and ended with desirable affect.

In practice level found some campaign models[12] that used by political actor or politicians in election implementation. Monologic campaign is the first: this campaign happen in one way communication, campaign worker convey message to public. Found on general meeting, procession and advertisement on electronical and printing media. The message conveyed in the form of rhetoric and a lot more jargon politics and are entertaining the public. Second, campaign dialogue, where there is interaction between campaigners and the audience. The message is rational, the public should respond to the message. Persuasive messages and far from confrontational. The response may appear in the responses, objections, or opposition. Usually done from home home, by means of telecommunications, such as correspondence, telephone and internet.

The next campaign model is debate campaign, public debate between political party firstly introduced in Indonesia at 1999 election that announced on television and radio. Agenda that become controversy is vision, mision and program championed by the respective political parties. The advantage of this model, voters know the candidates and the

[9] Lau & Redlawsk, *How Voters Decide*, Cambridge University Press, 2006. pages 101-102
[10] *Ibid*. hlm. 119
[11] Antar Venur, *Manajemen Kampanye*, Publisher ;Simbiosa Media, Bandung, 2004. pages. 12-24
[12] Riswanda Imawan dkk, *Modul Seri Parpol,Pemilu & Parlemen*, Gugus C Bab 3 Manajemen Pemilu, Jurusan Ilmu Pemerintahan & Pascasarjana PLOD UGM. 2006, pages. 60 - 62

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program figures it works more closely and thoroughly. The debate also could affect the voters at the level of knowledge (cognition), continues at the level of attitude (affective) and ends on the behavior (konasi).

Black campaign (black campaign), is a model which throws the issue of the campaign, gossip and the like without the support of the facts or evidence (Bara Hasibuan). The campaign aims to bring down the black specific candidates. Finally, the campaign is negative (negative campaign), the model further highlight the lack of a campaign of political opponents. Campaign (the material) have presented evidence and has been[13]. Advantages of negative campaign includes two things: the public had the opportunity to know more clearly the prospective candidates, including more complete on the downside. Second, through open debate, the public will be able to distinguish between a true negative data and the data are false (libel).

Implementation in the general election campaign requires careful planning, strategic planning is manifested in the campaign. Campaign strategy is part of political strategy; are defined as strategies used to achieve / realize the ideals of political[14]. Without a specific political strategy, a campaign will be futile and inappropriate in a particular target. In choosing a strategy, should be able to set the right choice. Basically the strategy is divided into strategic offensive (attacking) and defensive strategies (survive).
Both are still divided, as in the following[15] :

Offensive Strategy	Defensive Strategy
Strategy to expand the market (competitive strategy)	Strategy to maintain the market (customer strategy , multiplicator)
Strategy to penetrate the market (customer strategy)	Strategy to close/devolve market (market environment strategy)

Market in the above table can be converted in the opinion of the author as a citizen / community, or the voters who exercise their right to vote in elections. For political parties in previous elections gained a significant voice and be a winner in the election, campaign strategies that can be used defensively. Instead, the parties are landless or small gain more votes, there is no other option to use a more offensive campaign strategy.

Offensive strategy in election campaigns[16] aims to establish a group of new voters in addition to voters who have been there. Offering a new form or even better for the voters who had voted for the competitors is absolutely necessary to win votes. Required introductory campaign, and take advantage of changes in value or structural change occurring in society, thus determining a campaign theme that sold an important aspect.

Offensive strategy of the second (market penetration) is not related to withdrawal of voters or citizens opponent that has not been active in the election. Provision of new offerings or better is not mandatory, but is more oriented to explore the potential of existing

[13] Koirudin, *Kilas Balik Pemerintahan Presiden 2004*, Yogyakarta. 2004, pages. 189
[14] Schroder, Peter, *Politische Strategien*, translator : Denise Joyce M. *Strategi Politik*, Friedrich-Naumann-Stiftung- Indonesia, 2004, pages. 7
[15] *Ibid*. pages. 104
[16] *Ibid*. pages. 105-106

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in a more optimal. Digging deeper votes (specific target groups) who formerly had been successfully obtained.

Goal is to increase the gain achieved for example a better sound than the previous election. Examples, such as a specific target group (voters), pemlu previously obtained 15% votes, following elections expected to reach 25%. Activities to do such a better marketing program, an increase in the intensity of the alignment between the program and the individual and increase the pressure (relation, bond) with specific target groups.

The second strategy is both offensive and defensive must be based on ethics and morals in a campaign based on political ethics. This means that the implementation of the strategy is to uphold the values of a campaign that once again has a political goal of improving public education, other than votes. Accordingly then, the campaign in ways not laudable (campaign black) are not included in the ideal political strategy, both offensive and defensive.

Black campaign is a model which throws the issue of the campaign, gossip and the like without supported facts or evidence, which aims to impose a particular candidate. In practical politics to compete for votes, the practice of political campaigns is not a secret anymore. Throwing the issue, along with news that smacks of gossip intended to destroy the good name of sloping specific candidates often do. The character assassination that the community (public) assume that the candidate in question does not deserve / deserves to be elected to occupy political positions (executive, legislative).

Used in ways that vary, for example, issues about the authenticity of the certificates is a condition of registration, the issue of an affair with another woman besides his wife legally, the issue of involvement in the business / businesses that are prohibited, and many others. Black campaign attacking the flanks of morality, integrity, ethics and values (value) of local communities. Former president Abdurrahman Wahid, and President Susilo Bambang Yudhoyono did not escape the attacks of certain black campaign.

Culture of Indonesia in response to a black campaign often come to believe even in spread rumors / news. This is due to the limited knowledge of the candidate concerned or his sympathy for the candidate of another party. On the other hand, our society is still a deep embrace paternalistic ideology. This means that if the spread issue is prominent and respected figure within a community, the people will believe it without checking the truth first.

This condition is supported by the conditions of immorality and mystification / mitologisasi[17] Indonesian people are motivated by a paternalistic culture of feudalism and thick. Immorality is the tendency to loss of moral principles in society are replaced by a distortion / moral game (immorality) are characterized by: the disappearance of a sense of shame, loss of sense of responsibility, and the social irony. While mystification / mitologisasi the domination of public space by the various myths and mystical, sometimes illogical and misleading.

2.3 The Role Of Media Campaign

[17] Yasraf A.. Piliang, *Minimalisme Ruang Publik* dalam buku Republik Tanpa Ruang Publik, RE Press, Yogyakarta , 2006,pages 1-3.

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The use of technology, media involvement in this era of information disclosure in the campaign currently has a significant role. Expand the role of media is the message of the campaign materials, candidate profiles and a wider picture of the party to the public. President of the United Abrahamn Lincoln won the election by making use of print media in the form of rampant circulation of newspapers in those days. Wide spread of newspapers and newspaper loading profile itself by a continuous basis, has increased the popularity of self and public confidence in Lincoln.

Prior to any television, radio utilization has also been used in the campaign. It is based on research that the American people listen to the radio for 21 hours during a week when it works, and even more when when hanging out with[18]. The displayed information is more complete and attractive radio than read the candidate profiles in the paper.

The era of President Nixon and Kennedy also make use of television in their campaign programs. Political stance, facial expression, self-image of the profile can easily be captured to give television viewers a picture of a candidate's cognitive in television media. The behavior of candidates, which terintrepretasi through a smile, shaking hands, holding a child, visiting orphanages / homes, planting trees for example, is somewhat of a picture that can be viewed on a television that can respond to the attitude of the voters.

Election campaign of Democratic presidential candidate U.S. between Obama and Clinton are also thick in the nuances of the use of technology. Barack Obama listed as a potential candidate of the most widely used internet media in the campaign. Obama's campaign seemed to have realized that the internet is becoming part of the lifestyle of American society today. The result, Obama won the election of Democratic presidential candidate to defeat Hillary Clinton. In Indonesia for example, President SBY uses music media to attract public sympathy. The song "Pelangi Dimatamu' that often dinyayikan during the 2004 campaign, and making pop albums in preparation for the creation of his 2009 election campaign proved to maintain the popularity itself.

Influence of media on the campaign process seen in the following theories[19] :

a. Perceptual Theory
   Suggested by Marshall McLuhan, that the language that people use to determine the nature of the human mind, the actual structure of reality that is presented to an individual is strongly influenced by the languages available for real-world mengonseptualkan perceived by that person. McLuhan added that any communication media (including mass media) has a grammar, the rules of a close working relationship with the combined senses (sight, touch, sound, smell, taste / kecapan). Each grammatical media biased to the interests of certain senses, so it can be said of media as extensions of human senses, so that the result / impact is very powerful for people who use them, for example, the political result of the campaign.
b. Functional Theory
   Raised by Innis, on the consequences of media communications for social and political organization. Why do people pay attention to the media? possible answer is people want to acquire knowledge (information) or assistance (opinion), both of these things reduce the uncertainty and disorder situation in the recipient (the person the media attention).

[18] Dan Nimmo, *Komunikasi Politik*, Rosda Karya Bandung, 1993, pages. 197-198.
[19] *Ibid*. resume pages. 169 – 177.

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c. Game Theory
   Formulated by psychologist William Stephenson, that we communicate is just for the pleasure we derive from the act itself. This theory is derived from the idea of communicating pleasure, excitement derived from the people who talk without expecting any reward, entertainment watching television without a purpose or satisfaction in reading. Stephenson looked at politics from a public point of view it is nothing more than a game, which creates the image of the excitement, fun so people will enjoy it.
d. Parasocial Theory
   Suggests that mass communication through mass media serve to meet the human need for social interaction. Terms can be achieved if the mass media provide opportunities for parasocial relations, namely those involving intimacy into a relationship without the occurrence of a direct relationship. This is used by political communicators to build bridges to connect parasocial political leaders and followers (constituents).
e. Efficiency and Satisfaction Theory
   Approaches to and satisfaction starts from the assumption that members of media audiences are active participants and selective in the overall communication process. The mass media is a way that people use to achieve satisfying their needs, through actual social interaction, rather than through sexual parasocial. This approach is useful for assessing the political effect of mass communication.

There is no doubt that the media is also affected by industrial factors (media industry), so the factor of media owners and also the factors that brought the issue is different. Differences and fight issues that occur in the media in determining the opinion that was created to be consumed by the public. So that each media brings a different ideology. This fine distinction and a place to obtain as much information for voters, so that voters can determine your best options.

Hill & Sen[20] stated in its development today, the media like a newspaper, radio, television as a form of communications revolution at its time of each. The media also can take the form of books, national cinema, the music industry and even the Internet. They named the internet as virtul politics. The media described the culture of a particular community inhabiting an area, so the media can influence the politics of community.

Media work to create political persuasion[21], transaction that is creative to the communicant (receiver) that make up the response to the emblems or symbols provided by the persuader (donor / transmitter). Media contribute to shaping the image of a certain political image of the candidates, distribution of political talks to lead public opinion which will increase the popularity of candidates.

3. Conclusion

Constructing an ideal campaign is not easy to realize, awareness of political parties is limited to the implementation of a temporary campaign just needs to be addressed. The best

[20] Krishna Sen & David T. Hill, *Media, Culture, and Politics in Indonesia*, Oxford University Press, 2000. hlm. 1-17.
[21] *Ibid*. pages, 146

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campaign is a campaign that applies continuous / ongoing regardless of the election season or not. Proximity between the parties and the mass of supporters can be built up through a political campaign that has a relational nature of the relationship. On the other hand, political campaigns will bind more strongly to the party's constituency party because of the relational ties that are not easily lost in their collective memory. These conditions favor the party, the party will not lose the fanatical masses, as well as the opportunity to gain new supporters mass outside the existing party.

Good political environment influence the implementation of a political campaign, the macro factors in the political environment is a political party that surrounds the nature, structure and influence of political parties. Political parties as part of a political organization can be approached through the theories of the organization in carrying out political campaigns. A political party is a system in an environment or located in politically suprasystem. The campaign includes a specific sub-systems that need to be understandable to the success of a campaign.

Black campaign can be reduced by the application of the chosen strategy of the campaign, if you want to be offensive or defensive. Both possess the same consequences and moral ethics that is based on good politics. The role of parties and mass parties in providing honest information to the public, to reduce the mandatory nature of black kampenye than tighten the rules that already apply to the campaign.

Finally, the media played a major role in the campaign. Media functions in addition to providing information also can lead public opinion to assess, consider and choose a particular candidate offered by the parties in the campaign. Thus the cognitive nature of public record and will eventually take a political decision based on the thinking process.

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Patron-Clients in Lampung Governor Election 2014

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Abstract

Local Election, theoretically a procedural democracy held at the regional level. In the practice since 2005, has been a lot of ambiguity and deviation from the original purpose to implement a clean and fair election. The diversion happens in the form of money politics, political dynasties and the pattern of patron-client or clientelism. This research tried to probe more about the pattern of clientelism in the elections, especially in Lampung governor election on 9 April 2014. The research location is on two areas, Bandar Lampung city and West Tulang Bawang regency. This research started from September 2014 to January 2015. This research used a qualitative research type. To observe most of the intrinsic social life, with in-depth interviews to figures and selected informants. The approach used in this research is Critical Social Science (CSS) approach, which observe social science as a process of critical inquiry phenomenon. The results showed that in Lampung Governor Election 2014, there was clientelism strong relationships between pairs of candidates and voters, the candidate pairs and brokers, broker and voters.

Keywords : *Local Election, Patronase, Clientelism, Lampung Governor Election*

1. Introduction

The elections that held in Indonesia since 2005, made the impact of its own in the democratization process, even positive and negative. Direct regional head elections has provided a separate room for the logic of the exchange of interests. Elected regional heads trying to use its position as a major source owner. Political leaders have many opportunities to use public institutions as domain powers, and distribution public resources that are under its control as a means of exchange for certain purposes may someday (Agustino, 2014: 174).

One of the negative effects, according to Aspinall and Sukmajati (2015) who did research on the 2014 legislative elections, the legislative elections be an exchange of interests and the circulation of money and goods as a lubricant to get votes. Legislative elections in 2014 and regarded as the elections are loaded with money politics. The roles of third parties in the general election, which is referred to as a political broker, the more powerful and influential as a bridge between candidates and voters (Aspinall & Sukmajati, 2015: 2-10).

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Lampung governor election parallel with the legislative elections in April 2014, interested to make an object for a research, because the time is parallel with legislative election, so it is possible if there is a political phenomenon at the same time happens there. The election of Governor of Lampung Province is a battle field of interest, whether political, economic and social and cultural in Lampung.

Researchers have guess there is a phenomenon of local political patron-client in Lampung, Lampung governor election in 2014. This condition is interesting from political sociology point of view. Is there a pattern of patron-client relationships in Lampung local politics, particularly in Lampung governor election? Is there a trade-off economic benefits gained voters in the election of the Governor of Lampung? How is the relationship between voters and the pair of candidates as well as political brokers in Lampung Governor Election 2014?

2. Object and Method

Patron-client relationship can be seen in the literature of the 1970s, as a characteristic of pre-industrial society. One of the early define it is Scott (1972: 92) defines conceptually patron-client relationship as:

> 'The special case of the relationship between two people involving friendship in which an individual's socio-economic status is higher (patron) to use its influence and resources to provide protection or benefits, or both, for people of low status (client) responded by offering support and assistance, including personal services or protection. '

This definition describes the asymmetrical relationship between patron and client. As explained by Lande (in Schmidt, 1977: xiii) a patron-client relationship that consists of only two people, thus a micro-entity level. The personal ties must be based on mutual trust (Eisenstadt and Roniger, 1984). Tilly (2004) found this relationship refers to the basic unit of social organization such as network trusting.

Patron Clients in the opinion of Scott (1972: 92) has the following criteria: First; Inequality in social status, which illustrates the differences in power, wealth and position. Client is included in an unequal exchange relationship, he was not able to respond fully Award patron, debt obligations tied and are subject to a patron. Second; Ongoing face-to-face or direct meetings. The nature of this relationship is instumental with both parties taking into account the profit and loss elements of taste remains influential because of their close relationship. third; Bond is flexible and widespread. Ie widespread seen not only in employment, but also in neighboring relationship, closeness or friendship from generation to generation. Types of exchanges not only money or goods, but also can be a power assistance and support force even protection.

Patron-client relationship has some conditions in order to form, according to Legg (1983: 29), which makes the relationship was established, namely: First; Patron mastered many sources to unlimited. Second; Their relationship, that between patron and client is a personal relationship.

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Third; The decision to hold the exchange based on mutual understanding and mutual beneficial (symbiotic mutualism).

The opinions stated by the Huntington (1984: 154) also reinforces the above definition that the patron-client relationship tied individually and based on the exchange of reciprocal benefits but not balanced. Patron higher status provides protection, economic assistance and reflection on the status of his client, and intervene on their behalf to get in touch with government officials. Clients responded with loyalty and respect, also with labor, giving little gifts at certain times, and provide political support.

Clientelism in the last decade redefined encouraged by the fact that clientelism persist in developed countries by ignoring the system of government (authoritarianism or democracy). Piattoni (2001) describes and observe how democracy actually strengthens client through bargaining between the link (broker) and customers. Clientelism is not destroyed by the democracy and the platform program, but was forced to evolve into a network of exchanges with the pyramid complex that exchanges between clients, brokers, and patron (Kitschelt and Wilkinson 2007: 8).

Hopkin (2001) argues else, he gives the definition of clientelism newer, than what has been defined by Scott. Hopkin opinion that clientelism involves many parties who distribute the country's resources to groups or individuals in an exchange and sometimes uneven and less personal. The pattern of this relationship is more materialistic than the old definition of clientelism (Hopkin, 2001: 3).

Kitschelt and Wilkinson (2007: 4) defines it a little differently. They found clientelism has developed into exchange relationships are more symmetrical[1] (not asymmetric), rational (not normative) and mediated by liaison (brokers) are not face to face (face to face). Kitschelt and Wilkinson gives a new definition of clientelism as a direct exchange or transaction of the citizens in return for immediate payment or reward in the form of access to jobs, goods and services (Kitschelt & Wilkinson, 2007: 2).

This new meaning or definition provides three changes in the perspective of patron-client relationship (Volintiru 2010). First; there is a relationship of mutual need (symbiotic mutualism) between patron and client, they are the main suppliers of goods and services to the connector (broker) to make transactions. This condition describes the full-scale social hierarchy. Second; This definition accounts for emancipation for the client, because there is no longer an asymmetrical relationship or domination, but rather a commercial transaction between one and the other and each offers what is desired. The fact is not always the same with this second definition. It turned out to patrons and brokers have political or economic monopoly (Medina and Stokes, 2007), or at least a part of the economic or political oligopoly. This fact indicates that there is an asymmetrical relationship in practice, therefore, the dependency of clients remained significantly higher than the patrons. Third, this new definition accounts for the need of intermediation in modern patronage networks, clientelism elections require greater mobilization

[1] A symmetrical relationship between patron and client, the client has been able to negotiate what they want to patrons, can be either directly or through an intermediary or broker.

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structures that can no longer be served by the patron-client relationships in the definition proposed by Scott (1972).

2.1 Type of Research

This research uses qualitative research type. Qualitative research to see most of the intrinsic social life. According to Lawrence Neuman (2006: 157), qualitative research is:

> "Qualitative researchers use a language of case and contexts, employ bricolage, examine social processes and case in their social context, and look at interpretations or the creation of meaning in spesific settings. They look at social life from multiple points of view and explain how people construct identities. Only rarely do they use variable or test hypotheses, or convert social life into numbers."

Most research using grounded theory (basic theory). This makes the research has a flexible data and more attractive. According See Harper and Schwandt in Lawrence Neuman (2006: 157), qualitative research remain open to change, qualitative research is willing to change the direction or focus of the research project and may leave the original question them amid an ongoing research project of their research. The case studies (case-research research) by Neuman (2006: 40) can be done by individuals, groups, organizations, interest groups, events, or units based on geography.

2.2 Approaching

The approach used in this research is Critical Social Science (CSS) approach. Approaches Critical Social Science (CSS). This approach is intended to Karl Marx (1818-1883) and Sigmund Freud (1856-1939), and is described by Theodor Adorno (1903-1969), Eric Fromm (1900-1980), and Herbert Marcuse (1898-1979). In general, Critical Social Science (CSS) see social science as a process of critical inquiry beyond the illusion to reveal the structure of the real world with the material to help people change the situation and build a better world for themselves (Lawrence Neuman, 2006: 95).

2.3 Data Source and Information

Based on the problems and focus on the research on the source of the data in this research is derived from the primary data and secondary data, namely:

1. Primary Data
   Primary data is sourced directly in the field of research in the form of interviews or voters and political brokers. This data is in the form of interviews and documentation obtained by researchers when the research (down the field).
2. Secondary Data
   Secondary data in this research comes from the materials library support and or information obtained through a third party that is considered to be related to the problems examined, such as books, rules and documents as well as laws relating to this research. Data were also

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obtained from newspapers both in print and online on the implementation of Lampung governor election, 2014.

2.4 Data Collection Technique

To collect data in this research, researchers used three data collection techniques as follows:
1. Observation
2. In-depth interview.
3. Studies Library.

3. Result

3.1 Election And Local Election

Elections including the local elections as part of the election, is a means and an important instrument in democracy[2], democracy is manifested in the electoral process to elect the leaders who are considered worthy to hold the mandate power. Huntington (in Azhari, 2004: 180) defines democracy refers to the opinion of Joseph A. Scumpeter which defines a procedural democracy with elections as the essence of democracy, Huntington added that the elections are free, fair, competitive own terms of freedom of speech, assembly, freedom of the press and freedom of criticism of the authorities in the absence of intimidation and retaliation.

Democracy, according to of Henry B. Mayo (2005: 12) is a political system which illustrates that public policy is determined on the basis of a majority of the representatives who monitored effectively by the people in periodic elections based on the principle of political equality and held in an atmosphere guarantee of political freedom. Affan Gaffar (2004: 7-9), iinterpret democracy into two different forms namely normative and empirical, normative interpreted as democracy yangs ideally be carried on by the state, more empirical view of democracy as a form already exists in practical politics, more empirical accepted by the public because it is considered more in line with existing norms. Democracy can be divided into three types, according to Jeff Haynes (2000: 25-30), that formal democracy, surface democracy and substantive democracy, where elections into early stage or foundation to realize democracy.

Simultaneous elections or local elections simultaneously according to Geys (2006: 652) or concurrent election is defined as a mechanism that establishes the electoral system several elections at the same time or together; case of the European Union, for example, the use of the electoral system that the parliamentary elections simultaneously, national, regional and local a big influence on voter behavior and outcomes of an election, the electoral system simultaneously increase the level of voter turnout at the ballot box. Concurrent elections have negative things, especially about the knowledge of voters against candidates who would they choose, as proposed by Andersen (in Tjenreng, 2016: 36-37) that limits an individual's ability to process large amounts of information makes voters not being able to find or understand each information

[2] Etymologically, democracy consists of two Greek words, demos means people or population, cratos or cratein which means power or sovereignty, so that democracy is defined as a state power or sovereignty of the highest in the hands of the people.

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necessary to determine a good choice on any kind of election, voters will likely result make a priority in determining their political choice.

Simultaneous elections model, according to LIPI can be divided into five parts. First, the elections simultaneously once every five years for all public positions at the national level to the district / city, this election include the election of the legislature (DPR, DPD, Provincial DPRD and Regency / City), the presidential election and local elections, this model is often called the election seven boxes or bulk elections. Second, simultaneous elections only to the entire legislative positions (central and local) and then followed by the simultaneous elections for executive positions (central and local). Third, elections simultaneously with the by-election by level of government, distinguished time for national elections and local elections / local. Fourth, simultaneous national elections, followed by the simultaneous elections in the respective province or cycle time by agreement of local elections in every province. Fifth, the simultaneous elections to elect members of DPR, DPD and DPRD as well as the president and vice president and then followed after a certain time interval coincide with elections to the provincial executive. The fifth variant model of simultaneous elections LIPI results of the research, the choice of simultaneous elections to be held closer to the fifth variant of the model, with expanded coverage of simultaneous local elections that the elections simultaneously in six stages include a number of provinces and districts / cities (Tjenreng, 2016: 38-39).

3.2 Patronage (Clientelism)

Patronage or Clientelism is a concept of power that is born of a relationship is not balanced between the patron on the one hand and the client on the other. This imbalance is basically closely linked to unequal ownership of resources in the community. Therefore, in a phenomenon like this interrelation have been bound by the interests and manipulated by the respective destinations even though both are in a position that is not balanced (Agustino, 2014: 173).

Patronage or clientelism as a distribution of profits among politicians to distribute something individually to voters, campaign workers or activists, in order to gain political support from them (Shefter 1994: 283 in Aspinall, 2015: 4).

It can be interpreted patronage is a gift of cash, goods, services and other economic advantages (such as a job or project contracts) are distributed by politicians, including benefits intended by the individual (eg, an envelope containing cash) and to groups / communities. For example the new football field for the youth in a village (Aspinall & Sukmajati, 2015: 4). Patronage also be in cash or goods were distributed to voters from private funds (eg the purchase of sound) or from public funds, for example pork barrel projects funded by the government. Patronage refers to material or other benefits distributed by politicians to voters or supporters, otherwise clientelism refers to the character of the relationship between politicians and voters or supporters (Aspinall & Sukmajati, 2015: 4).

A form of patronage for their unequal relationship but need each other. On the one hand the patron appears as an individual who has the advantage both from the aspect of wealth, status and influence, while on the other hand, the client is present as a member of society who do not have such resources. The relationship in this context can be defined as a relationship based on

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'exchange of interests'. The basic assumption of this conceptual framework laid way of thinking which says that the relationship will happen if both parties can gain benefits from their relationships intertwine. The mechanism, patron groups provide economic assistance and protection to the group of clients or subordinates, and in return for the gift, then the client group give dedication and loyalty to the patron (Agustino, 2014: 174).

Although the relationship of patronage based on an exchange rate of interest, but the exchange is still not balanced. This is due to the direct control of the resources of primary (or first order resources) contained within the scope of the community or the state. These sources can include office, employment, licensing and others. The current phenomenon manifested a second tier patrons who do not have the resources of a major or strategic, but have access to (second order resources) are referred to as broker. The broker who mediates between the main patron and client thrives because it is considered as an extension of the individuals who have first-order resources. The team's success has turned into a political broker because it has a second order resources (Agustino, 2014: 174).

In practice, patronage is an act of play favor in a person's interaction with various parties, inside and outside the organization. There is a similarity between patronage and nepotism, in the sense that the criteria used in giving effect to others is not a rational and objective criteria, but the criteria are subjective in nature. The subjective criteria can be based on primordial considerations, such as ethnicity or regionalism, it can also be other considerations such because it comes from one's alma mater, or even because of common interests and hobbies outside the office (Siagian, 1994: 58).

3.3 Patron Clients (Clientelism) In Lampung Governor Election 2014

On April 9, Ridho Ficardo become the new governor of Lampung with capital as head of the Democratic Party of Lampung Province and is active as a scoutmaster making it the number one in the earth jurai Ruwa. Based on the research SMRC, Ridho started his political career with the percentage of the popularity of only 6%, and rising with strong financial support. In addition he is the son of one of the directors of the Company Sugar Group (Sugar Group Companies, SGC), a producer of sugar Gulaku found everywhere else.

The results of studies and research and Purba Barenscout Ward (2014) need to be considered in examining the pattern of patron-client in Lampung Pilgub 2014. Financial support from Sugar Group allows Ridho performs any activity. Many bags of sugar are decorated with pictures Ridho, he also adorned with a music concert, the division's sacrificial goat sapid, shadow puppets with gift motors and many other prizes. Based on the results of the research are also the distribution of money by a certain amount. In the end, winning 44 percent of the vote, well ahead of its competitors. Achieving this has a cost, according to estimates observers interviewed, up to 500 billion rupiah (43 million USD).

This money is strengthening the political influence SGC already enough of it. Sugar Group has long contributed to the politicians. Since 2011 the company has funded election campaigns regent, leading to the election candidates 'their own' in Tulang Bawang and Tulang Bawang Barat.

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It is no coincidence that in these districts, there are large plantations owned by Sugar Group. The company could benefit quite a lot by placing their own people in positions of power. The main reason for the wasteful sugar Lampung highway is the expiration of 30-year land lease that SCG (HGU) to several plantations. Given that a large bribe renewal such as land lease usually involves, SGC might cover part of the cost of the campaign now because Ridho will be the one to authorize the extension.

SGC is also engaged in a number of land conflicts with other companies - there is a prolonged legal battle with the Salim group of top soil and a plant - and also with the villagers. In 2012 the villagers in Tulang Bawang large protest against the SGC, because the company is reaching their land and cut off access to their villages. With the local governor and the regents are now allies, SGC will not be bothered anymore by these hassles. There is a possibility that the SGC will use its politicians are 'friendly' to obtain a license in order to get more land to expand plantations. The nature of land ownership that has been tense in Lampung Ridho do show that the election may also trigger a new wave of land conflicts.

Bureaucrats and politicians have been extorting money from the company by threatening to take (and make) SGC irregularities in land use and production. SGC is a dominant company's presence in a remote area of the economy. It also works within a legal framework is weak and contradictory regarding land use. So SGC is susceptible to being used 'as ATM' by enterprising individuals at all levels of government. Ridho is now expected to act more decisively in dealing with such practices. In fact, that was never disputed by informants who are sympathetic to the SGC - that the SGC provides Ridho ability to 'clean' and 'professionalising' the state institutions.

While employers need to establish contacts with influential bureaucrats at the time of the New Era, now they buy influence by supporting the election campaign of politicians - or they themselves become politicians. Because the soaring of cost of running an election campaign, politicians can not support the company's expense. A successful political career requires either moderate or find a wealthy businessman.

Businesses realize that political contacts are very important to obtain a license and avoid extortion everywhere, they face a strong incentive to involve themselves in a secret agreement or not-so-secret political candidates. These considerations drove Sugar Group to support politicians. This company does not really want the bureaucracy more professional when issuing new licenses. Bureaucracy implement policies and laws are universal and fair will not allow Sugar Group to recoup the money spent for the election campaign. To cover these costs, Sugar Group expects its politicians to interfere in bureaucratic procedures, are bending the rules and regulations that benefit them. In this way the agreement weakens state institutions as well as the relevance of rules and policies.

In order to honor their commitment to the supporters and funders of the campaign, the elected leader of continuous damage and avoid bureaucratic procedures. The resulting weakening of state institutions to further strengthen employers' dependence on politicians, because they have little guarantee that the rules and policies will be implemented in a predictable fashion if they do not have political contacts. In that sense, business strategies Sugar Group only beat ourselves. During the economic elite (such as directors SGC) used his contacts to avoid

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regulation, political interference they will not lead to the professionalism of the state institutions and eradicate the practice of rent-seeking.

Overlap between politics and business is also to strengthen themselves in other ways. Voters see wealth accumulated by the political coalition-big business by licensing and contracts to one another. They realized that the promises of politicians about changes in regulations and policies are often empty, because voters see how our elected leaders do not follow the rules when pressed by their corporate friends. In this context it is not surprising that many voters trade their votes for money (or sugar), because it felt that such sweeteners might be the only benefits that they can realistically expect from politicians.

Observations during elections campaign for Governor of Lampung on 9 April 2014 showed that the vote-buying has become very common. Voters become more pragmatic in their dealings with politicians. The irony is that this disillusionment with politics and the expectations generated from money and gifts to facilitate continued dominance of the economic elite, because of the soaring cost of the campaign to make politicians dependent on wealthy donors.

There is little room for voters to punish politicians who are involved in illicit deals with companies,. Voters generally do not know which company to fund their candidates. Politicians are required to report their campaign funds and fees. However, because there is no mechanism to check the truth of them, these reports have become administrative exercise futile. Furthermore, although the involvement of Sugar Group in Lampung gubernatorial election rather blatant, local journalists rarely dare mention the name of this company explicitly for fear of retaliation and the withdrawal of advertising. As a result, voters do not really know what their business interests may support with his voice. The farmers were protesting Sugar Group in Tulang Bawang in 2012 may have chosen Ridho, simply because the role of the company rarely enter the public debate. *(http://www.insideindonesia.org/pemilu-lampung-yang-berlapis-gula)*

In addition to strong financial dukungun derived from SGC sources, Ridho victory also caused by a third-party network or brokers who work with the maximum. The work of the broker in tunjang it is with honor that completely luxurious. There is a recognition of political brokers that prior to joining menajdi broker himself has only used motorcycle to get around the village, after the elections he can replace it with a new car. On the other hand, the broker network obtained by kinship networks or those who already danggap as relatives or close friends. Political brokers Ridho obtained in that way, with a mature strategy and information is usually obtained through word of mouth and confidential.

The current political Broker Pilgub Lampung has its own stages and levels, can one even up to three stages. Source of money comes from first hand, could distributed directly to voters or to get through later-stage, second hand, new third up to voters.

4. Conclusion

This research focused on patron-client relationships and dynamics in local politics in Lampung. Constraints in this research is the sensitivity of the investigation as it relates to the ruler. Thus

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this research examines more theories of patron-client and secondary literature studies of other research

Necessarily, need to conduct further research involving larger respondents in order to see the quantitative frame public perceptions of the local pattern of clientelism in politics, especially in gubernatorial and Lampung. A challenge the writer to do so in future studies.

Temporary conclusion from the writer that the relation Patron Client in Lampung Governor Election in 2014 and is very strong in the pair Ridho and Bachtiar, by moving the company's money to buy voters (Vote buying) with programs that fantastic campaign. Ie puppet wrapped door price with very attractive prizes, gifts of motorcycles and other luxury goods. Findings distribution of sugar in some places although not proven in Gakkumdu. Various reports by the Supervisory Committee gathered by district and regency / city is always raw in Gakkumdu due to the loss of evidence.

The advantage gained by the voters in the context of Lampung Governor Election is the availability of fresh funds, availability of popular entertainment, shadow puppets, dangdut. Ridho success of a 'nobody', or born yesterday, is a testament to the success of the team performance sksesnya also the expertise of the broker to look for potential voters who are able to falter with the lure of money and goods.

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A Managerial Competency Modeling: Threshold and Differentiating Competencies at Various Management Levels

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Abstract

This study aims to design a managerial competency modeling, consisting of threshold competencies and differentiating competencies. Generally, an identification of managerial competencies is conducted without distinguishing between the data surveyed from managers with superior, average, and low performance. Several methods for identifying competencies also assume that competencies are merely identified from high-performing managers, giving rise to serious consequences when those models are applied. This managerial competency modeling refers to the results of research carried out by Boyatzis (1982) and the classic competency study design of Spencer & Spencer (1993). This study resulted in a managerial competency model which comprised of both threshold and differentiating competencies that applicable to all different management levels, considering that the focus and orientation of all those management levels are different. Therefore, the results of this study expectedly contribute to the application of The Competency-Based Human Resource Management (CBHRM), especially in the application of behavior-based competency theories.

Keywords: *managerial competency, competency model, threshold competencies, differentiating competencies.*

1. Introduction

The issues of managerial competency as a subject of scientific research became the center of debate for the development of management. Literature analysis proves the fact that the main dimensions of managerial competency overviewed further are still under scientific discussion. These include an understanding of managerial competency, approaches to it, as well as its nature and development. The most popular approaches in western practice are functional analytical and personal characteristics (Bakanauskiene & Bartnikaite, 2006, p. 69).

These can be seen in some previous studies on models and classification of managerial competencies (Burgoyne & Stuart, 1976; Slocum, 2010; Krajcovicova et al., 2012), the identification of managerial competency in various organizations (Rajadhyaksha, 2005; Capellen & Janssens, 2008; Krajcovicova & Cambal, 2012; Suh et al., 2012; Martina et al., 2012; Trivellas & Drimoussis, 2013; Szczepanska-Woszczyna & Dacko-Pikiewicz, 2014), as well as a comparative study on managerial competency in various countries (Ras, 2011; Saxena & Bendale, 2013; Chong, 2013). Based on previous

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studies reveal those personal characteristics approaches become the most popular approach in the practice of managerial competencies.

However, the approaches used in identifying competencies in their study include all managers in data collecting and often without distinguishing between the data surveyed from managers with superior, average, and low performance. The problem for these approaches that the average and low performer may not fully understand what it takes to do the job with outstanding performance/superior (Marelli et al., 2005, p. 543).

Several methods in identifying competencies compare the information are provided by those low and high-performing managers, and assume that competencies are merely identified from high-performing managers, not the managers who average and low performers. An identification result from the high performing managers is a competency that should be contained in the competency model. Nevertheless, only identify the competencies that differentiate between high, average and low performance are a flaw approach and have serious consequences when those models are applied. It is important to include all competency required to get high performance, not only the competencies that differentiate between those high and low performers (Marelli et al., 2005, p. 543). In addition, the existing competency model is often universal, while the competencies required for operational, tactical or strategic levels are different. Therefore, it is important to divide the managerial competency in the various levels and qualities (Krajcovicova & Cambal, 2012, p. 76).

Based on the results of the study, it is required a managerial competency modeling which is not only general, but also differentiating between superior and average-performing managers at various management levels. Therefore, managerial competency modeling in this study are consisting of threshold and differentiating competency. Threshold competencies are the essential characteristics that everyone in a job needs to be minimally effective but that do not distinguish superior from average performers. While, differentiating competencies are the factors distinguish superior from average performers (Spencer & Spencer, 1993, p. 15). The low-performing managers are not included in this study. It is politically difficult to obtain criteria sample of low performing managers. The organization does not expect low performing managers or will dismiss them (Spencer & Spencer, 1993, p. 96).

This managerial competency modeling refers to the results of research carried out by Boyatzis (1982) and the classic competency study design of Spencer & Spencer (1993). This model is selected because competency is identified with the contextual process. It can predict superior job performance and retention with significant economic value to organizations, without race, age, gender and demographic bias (Spencer & Spencer, 1993, p. 8). Moreover, this method is not only identifies the necessary managerial competencies, but also classify them at different management levels, considering that the focus and orientation of all those management levels are different.

2. Literature Review

The development of the competency concept cannot be separated from the theory of human resource management that is consistent with the evolution of thought and management practice, mainly influenced by the environment in search of knowledge about

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the best way to obtain and use labor (Itika, 2011, p. 1). It can be traced back to the time of the European economic boom in the 1990s and emergence of scientific management. The economic boom created an environment that is necessary to think more seriously about the role of managing people effectively in the emergence of labor market. The challenges revolve around resources including people which led to the evolution and four stages development in the labor management. That stage was mainly identified by looking at the change in the name of the executor in charge of managing the workforce and the different roles that appear from time to time (Itika, 2011, p. 6).

Human resources management was originally known as the welfare officers in the 1900s, and then changed its name into the personnel administrator in 1920 and mid-1930. Furthermore, there is a difference between administrator and management which previously handled the routine activities then deal with strategic issues, personnel management appeared here as a professional discipline during 1940 to 1960. Then in 1970 to 1980 occurred a redefinition of the concept of personnel into human resource, although the debate about the difference between the two concepts is still ongoing. In 1990 personnel management concept evolved into human resource management. Then starting in 2000, exploration of the concept of human resource management focuses on the suitability and strategic integration that is more widely known by the name of strategic human resource management (Itika, 2011, p. 12).

The development of competency concept in human resource management theory can be traced to the period of limitation of personnel management as a discipline and profession of the people management during the late 1960s until 1970. Until in 1980, the competency concept adapted and developed professionally in human resource management (Itika, 2011, p. 164). The concept of competence or competency is often termed as two different things, ‘competence’ generally refers to functional areas and ‘competency’ to behavioral areas but usage is inconsistent (Delamare & Winterton, 2005, p. 27). Some authors consistently use ‘competency’ when referring to occupational competence (Boam and Sparrow, 1992; Mitrani et al., 1992; Smith, 1993) or treat the two as synonymous (Brown, 1993, 1994). Therefore, there is such confusion and debate concerning the concept of ‘competence’ that it is impossible to identify or impute a coherent theory or to arrive at a definition capable of accommodating and reconciling all the different ways that term is used (Delamare & Winterton, 2005, p. 29).

In this study, competency can be defined as an underlying characteristic that is correlated with the effectiveness of performance, can be measured and evaluated through an acceptable standard, and can be improved with training and development to support the achievement of the strategic objectives of the organization. Underlying characteristic means the competency is a fairly deep and enduring part of a person’s personality and can predict behavior in a wide variety of situations and job tasks (Spencer & Spencer, 1993, p. 9). Competency is also identified with the expertise, which is recognized in the study of leadership behavior. But Filipowicz (2004) argued that for a long time, competency considered to be in a secondary position in relation to personality traits (Cited in Szczepanska-Woszczyna & Dacko-Pikiewicz, 2014, p. 268).

Although the initial concept of competency is not clear, the emergence of competency scientifically studied in the literature written by White (1959) which identifies

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human nature as competency (Dubois & Rothwell, 2004, p. 17). Furthermore, McClelland (1973) crystallized the concept of competency measurement based on critical incidents testing associated with performance. The approach taken by McClelland is different from intelligence tests that are widely accepted at the time to predict the performance (Dubois & Rothwell, 2004, p. 17). He pointed out that testing of behavioral traits and characteristics more effective than intelligence to determine the successful performance. The traits and characteristics can be a differentiator between superior and average performing managers (Itika, 2011, p. 165). Boyatzis (1982, p. 13) then developed an organizational performance model by using aspects of the managerial competencies, job demands and organizational environment/contexts, including the economy, politics, industry, strategic position and competition.

According to its development, Martina et al. (2012, p. 131) divided competencies into three main development phases. The first phase consists of individual competencies. The second phase is based on the possibility of managing competencies in organization by means of competency models. Mirabile (1997) suggested that the competency model is output from the analysis that distinguishes workers with high, average, and low performance (Cited in Kormanik et al., 2009, p. 489). The competency model consists of core competency, managerial or role competency, and specific competency. Core competencies in the competency model is a competency profile that reflects a set of critical competencies that are required in the company to build organizational capabilities and culture required to achieve strategic goals (Orr et al., 2010, p. 5). This competency is derived from the vision and mission of the company and must be shared by all members of the organization. Managerial competencies are also referred as the role competencies, because they are relevant only to the workers who are in managerial positions. They are categorized with competency relating to activities, people, resources, and information (Palan, 2007, p. 52). Meanwhile, specific competencies are competencies required to meet performance standards in certain fields (Krajcovicova et al., 2012, p. 1120). Finally, the third phase is the identification of core competencies in organization. Those phases showed two perspectives in the competency concept; competency can be defined as the individual competency and organizational competency.

Organizational competency is becoming the topic that dominates the strategic management literature in 1990. It emphasizes on core competency as organization key sources that can be exploited to produce a competitive advantage (Delamare & Winterton, 2005, p. 27). Core competencies are the collective learning in the organization, especially how to coordinate diverse production skills and integrate multiple streams of technologies, it is also about the organization of work and the delivery of value. Therefore, core competency is communication, involvement and a deep commitment to working across organizational boundaries. It involves many levels of people and all functions (Prahalad & Hamel, 1990, p. 81). Evolved from the theory of Resource Based View (RBV) where a sustainable competitive advantage derived from the internal resources of the company, which is a resource that can add value, unique or rare, difficult for competitors to replicate and irreplaceable (Teece et al., 1997, p. 514).

Meanwhile, an individual's competency is part of the human resource management literature that focuses on developing general competencies required in each job or specific job or a role that can be transferred to an individual in the organization (Delamare &

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Winterton, 2005, p. 28). The individual competency reveals what a person is capable of doing; it reveals why he or she may act in certain ways (Boyatzis, 1982, p. 16). Therefore, a competency in human resource management is often directed as behavioral competencies, illustrating how people behave when they finish their work (Szczepanska-Woszczyna & Dacko-Pikiewicz, 2014, p. 268).

Nevertheless, individual and organization competency cannot be separated; Prithchard (1997) suggested that competency is a way to integrate the human resources strategy with business strategy, thus adding value to the organization's performance (Cited in Dubois & Rothwell, 2004, p. 35). In addition, Johnson & Huff (1998) proposed that competency at the organization level cannot be understood without first appreciating competency at the individual level (Cited in Miller, 2002, p. 21). Organizations learn only through individual who learn. Individual learning does not guarantee organizational learning, but without it, no organizational learning occurs (Senge, 1990). But the organizational competencies can affect the management of competency model within the organization. Once top management (with the help of divisional and SBU managers) has identified overarching competencies, it must ask businesses to identify the projects and people closely connected with them. Corporate officers will direct an audit of the location, number, and quality of the people who embody competency (Prahalad & Hamel, 1990, p. 89). It shows the relationship between organizational and individual competencies as well as organizational competencies and the management of competency model to generate a competitive advantage and achieve the strategic objectives of organization.

Associated with individual competency, managerial competency is a specific type of individual competencies (Martina et al., 2012, p. 131). When these competencies possessed by successful managers became a discussion, the term of managerial competency was frequently used, and managerial competency structures were widely discussed in the literature (Antonacopoulou & Fitzgerald, 1996; Clardy, 2008; Alkahtani, *et al.*, 2011; Szczepanska-Woszczyna & Dacko-Pikiewicz, 2014). Managerial competency as a subject of scientific research became the center of debate for the development of management. A consensus on aspects that determine the managerial competency has never been reached. Similarly, there is no consensus on how the development of managerial competencies of the best and most appropriate (Bakanauskiene & Bartnikaite, 2006, p. 68-69).

The absence of such a consensus because the concept of competency and managerial competency are not static or universal, such as directly related to managerial roles which are contextual. The process of identifying managerial work includes the basic requirements and managerial characteristics that influenced by various factors such as the environment, jobs, people, and situational (Mintzberg, 1973, p. 103). This led to the absence of a consensus on the best way and most appropriate in developing managerial competency.

A managerial competency can be generally defined as a part of an individual's competency that enable individuals can perform effectively or superior in their role within the organization. These competency characteristics include: 1) Motives, the things a person consistently thinks about or wants that cause action; 2) Traits, physical characteristics and consistent responses to situations or information; 3) Self-Concept, a person's attitudes, values, or self image; 4) Knowledge, information a person has in specific content areas; 5)

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Skill, the ability to perform a certain physical or mental task (Spencer & Spencer, 1993, p. 9). Meanwhile, effective performance of a job is the attainment of specific results required by the job through specific actions while maintaining or being consistent with policies, procedures, and conditions of organizational environment (Boyatzis, 1982, p. 12).

Boyatzis (1982, p. 23) then differentiate managerial competency into the threshold and differentiating competencies. Threshold competency is a person's generic knowledge, motive, trait, self image, social role, or skill which is essential to performing a job, but is not causally related to superior job performance. While, differentiating competencies are characteristics that differentiate superior performance from average and poor performance. Generally, the threshold competencies are considered as a common trait that tends to be applied to the managerial work. While differentiating competencies are more specific in the organization.

3. Method

A managerial competency modeling in this study using the classic competency study design methods of Spencer & Spencer (1993). There are six steps using this method:

1. Define performance effectiveness criteria

   Define the ideal criteria can be seen in the form of measurable results (hard), such as company profile, job descriptions, Key Performance Indicators (KPI), and performance evaluation results. If the hard criteria are not available, the nomination or rating from superiors, peers, subordinates, customers, and clients can be used. If there is an error in setting the criteria, similarly there will be errors in the model used in identifying competencies.

2. Identify a criterion sample

   The criterion of job effectiveness or rating developed in the first step is used for identifying clearly the superstar group and comparing with an average performer group. The best way to identify the best performance (superstar) is use several criteria and only select those that have a high rating on all criteria. Ideally, each sample of study at various management levels totaling at least 20 subjects, consisting of 12 superior performers, and 8 average performers. This number makes it possible to test the hypothesis using simple statistics to know the average difference in competency between superior and average performers (Spencer & Spencer, 1993, p. 97).

   The samples in this study are divided into two groups of samples. The first sample group is a group that is identified to build the managerial competency model, while the second sample group is a group that is used to validate the managerial competency model identified from the first sample group, so that resulting in a model that is robust and valid.

   Therefore, the sample used in this study amounted to at least 120 samples. They are divided into two groups of samples that consist of 60 samples of manager. Each sample group is divided into three levels of managements; include in it the superior and average performing managers, i.e. 20 first line managers, 20 middle managers and 20 top managers.

3. Collect data

   Data collection can be done with various techniques. There are several factors that can be used in selecting methods of data collection, such as validity,

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reliability, how the competency model will be applied (application), efficiency, practicality, and the acceptance of samples to participate and cooperate with the methods used (acceptance) (Marelli et al., 2005, p. 544). Consider these factors, this study use the survey method in data collection. This method facilitates the collection of data quickly and economically than using any other method (Behavioral Event Interviews (BEI), expert panel, Expert System Data Base, 360^0 ratings, observation) in a classic competency study design. A number of jobs can be analyzed efficiently at a different time to identify trends in competency requirements. In addition, the survey method can use many managers to provide input and build consensus to get the findings in the study.

The survey used in this study is a cross-sectional survey, the survey by collecting the data one by one at a time (Creswell, 2013, p. 217). The survey is conducted using questionnaires. The respondents rank the items assessment of competencies and behavioral indicators according to the degree of interest in the effectiveness of performance as well as the frequency of these competencies necessary and feasible in the managerial competency model.

4. Analyze data and develop a competency model

A competency model in this study is developed using two stages. The first stage, the data from all sources is analyzed to identify managerial competency. This process is called the general hypothesis, thematic analysis or concept formation. This can be done in two ways, first, encodes motives, thoughts or behavior in accordance with the definition in the competency dictionary; Second, records that are not in the standard dictionary. A competency dictionary used in this study is the general competency dictionary of Spencer & Spencer (1993, p. 202-211). Identify new themes competency is the most difficult and creative step in the analysis process.

The second stage, measure the importance level of competency and frequency use of competency. Data analysis techniques used are aggregate mean, standard deviation, and t-test. The aggregate mean and standard deviation are used to determine the threshold competency based on the importance and frequency use of competency. While the t-test is used to determine the differentiate competency between the superior and average performing managers in the first line, middle and top management levels. The t test is used to test the difference between the two samples (Irawan, 2006, p. 168). The t test is a powerful test, which means that this test may work well even if there are violations of the assumptions, provided that the violations are not massive and multiples (Kerlinger, 2004, p. 462-465).

5. Validate the competency model

The validation can be done in three ways: first, researchers can collect the data of Behavioral Even Interviews (BEI) on the second sample group. BEI stories of the second sample group assessed to see whether the managerial competency model from the first study can predict the average and superior performance in the second sample group. This approach is called concurrent cross validation; second, the tests can be developed to measure the competencies that described by the competency model on the second sample group. If the competency model and tests or the form of rating are valid, superstar on the second sample should get higher scores in the tests. This approach is called concurrent construct validity; third, the most powerful way to validate the competency model is to choose (using tests or data from BEI) or train people to use the competency and see their performance is actually better in

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the future. This approach is called predictive validity. Based on way of validating the competency model, the validity test used in this study is concurrent construct validity, because a competency model is tested by performing a test on a second sample.

6. Prepare applications of the competency model
   A managerial competency model can be applied in accordance with the development needs of managers and competency evaluation materials for current managers. It can be used in variety of ways, such as to design selection interviews, tests, and assessment centers for selection, career path, performance management, succession planning, training and development, compensation, and management information systems.

In addition, there are something to consider using the competency model: the model (frameworks) is not too complex, not to many titles in the competency model (seven or eight of competency titles is sufficient); the language used must be clear and not jargon; competency should be selected and defined in a way that ensures that competency can be assessed by manager; competency must be updated regularly (Armstrong, 2006, p. 170).

4. Expected Result

This study is expected to result a managerial competency model which comprised of both threshold and differentiating competencies that applicable to all different management levels, considering that the focus and orientation of all those management levels are different. Therefore, the results of this study expectedly contribute to the application of The Competency-Based Human Resource Management (CBHRM), especially in the application of behavior-based competency theories.

5. Conclusion

Based on the review, in designing managerial competency modeling, the technical and conceptual of knowledge, function and business managed is the threshold required for reasonable performance in managing an organization. It is important to include all competency required to get high performance, not only the competencies that differentiate between those high and low performers. In addition, it is necessary to distinguish between the data surveyed from managers with superior, average, and low performance, because the average and low performer may not fully understand what it takes to do the job with outstanding performance/superior. It is also important to divide the managerial competency in the various levels and qualities, because the competencies required for operational, tactical and strategic levels are different.

Although the managerial competency model looks the same, this should not be an argument that the model can be used for all purposes and can manage everything. Because essentially managerial competency is not fixed and should relate to the organization's need. The competency model also needs to be examined on an ongoing basis and revised based on current conditions and contextual variables that are anticipated to address the needs in the future.

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Analysis of Gender in Access, Participation and Control of Forest Resources, and Watershed of Kecamatan Kebun Tebu in Kabupaten Lampung Barat

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Abstract

Management of forest resources and watershed needs participation from society who aware of justice and gender equality. On *Strengthening Community Based Forest and Watershed Management* (SCBFWM) program that hold on Mei-June 2012 in the preparation framework of Gender Mainstreaming Strategy (GMS) in Lampung Barat still found the disparity between men and women in access, participation, control and benefit. Based on those, it need to investigated how Analysis of Gender in Access, Participation and Control of Forest Resources, and Watershed of Kecamatan Kebun Tebuof Lampung Barat.

The research uses descriptive qualitative method. Analysis uses some of approches, such as access, control, and participation. The result of research are; first, access of woman that fused in KWT can get an access from government assistance of Lampung Barat and can participate both in the implementation of development programs initiated by the government. Women's community can get the access of strengthening capacity on knowledges, skills, however in advocacy of management of forest resources's and watershed's skill is minimum. Second, government of from village, sub-district, and district doesn't do the KWT involvement in planning of program, yet. The recomendation that need to be reached is the stakeholder need to arrange the standard of minimum services or Standard Operating Procedure (SOP) of women's participation in musrenbang. It need about 30% quota for women in each planning of development, start it from from village, sub-district, until district level.

Keywords: *Gender, Access, Participation, Control, Forest Resources, Watershed*

1. Introduction

Government regulation No 37 Years 2012 about Management of Watershed Area assert that management of watershed give a chance for all society to be a participant.

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Implicitly, it gives the same opportunity to women to be participant on management of watershed fully.

On *Strengthening Community Based Forest and Watershed Management* (SCBFWM) program that hold on Mei-June 2012 in the preparation framework of Gender Mainstreaming Strategy (GMS)[1] in Lampung Barat still found the disparity between men and women in access, participation, control and benefit. Based on those, it need to investigated how Analysis of Gender in Access, Participation and Control of Forest Resources, and Watershed of Kebun Tebu Sub-District of Lampung Barat.

1. Research Problem

"How analysis of gender in access, participation and control of forest resources, and watershed of Kecamatan Kebun Tebu in Lampung Barat?"

2. Research Purposes

The research aims to know the gender's analyzed in access, participation, and control of forest resources, and watershed of Kecamatan Kebun Tebu In Lampung Barat.

2. Literature Review

2.1 Gender on Forest Resources Development Planning

Increasing women awareness in management of resources is a part of build the democracy. Political democracy presupposes a genuine partnershipbetween men and women in management of all public affairs. The declare of Universal Declaration on Democracy is :

> "*The achievement of democracy presupposes a genuine partnership between men and women in the conduct of the affairs of society in which they work in equality and complementarity, drawing mutual enrichment from their differences"*.[2]

Democracy won't achieve if women can't be a participant on management of public affairs process. Political rights of women is an important part of human rights which should be guaranteed protection and its implementation by all society in the world.On world's parliamentary session about "Partnership Between Men and women in Politics"in India on 1997 is :

> "…..women's political rights must be considered in the overall context of human rights and cannot be dissociated therefrom. Men and women politicians, governments and parliaments must pursue their efforts towards the recognition of these rights and the implementation of the international instruments which relate to them. What is basically at stake is democracy itself".[3]

That normative statement isn't mean that the society looks that political rights of women as a part that can't devided from human rights. The research's result of world

[1]Saptarini, Nani. 2012. Final Report of the Study of Gender Mainstreaming in Project SCBFWM.
[2]Inter-Parliamentary Union. 2000. *Politics: Women's Insight*. Series "Reports and Documents" number 36. Hal, 5.
[3]Op. Cit. Hal. 19.

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parliamantary's organization 1999 on practice of political in 65 states member of United Nations that the discrimination of politic to women happened in almost all over world.[4]

2.2 Analysis of Gender on Longwe Perspective

The research use the analysis of Longwe perspective that analyzed the data. The analysis of Longwe perspective (Sara Hlupekile Longwe) or Women's Empowerment Criteria atau Women's Development Criteria is a perspective that developed as empowerment of women's method that have five (5) criteria of analysis, there are: welfare, access, critical awareness, participation, and control. [5] The fifth of empowerment dimensions are analytical categories that dynamic, relate to each other in a synergistic, mutually reinforcing and complementary, as well as having a hierarchical relationship. But in this study, only see the dimension of access, control and participation.

a. Access Dimension

An unequality of gender seen from the differences between men and women access to resources. Low access to resource involve the low productivity. The main factor of access gap to resources is the systemic discrimination that should be solved through the awareness.

b. Participation Dimension

An active participation of women means that an equitable of women's participation in making decision process that participation in the planning process of determining policy, administration, implementation, and evaluation.

c. Control Dimension

An unequality of gender seen from unequal power relations between men and women. It could happen in household level, community, and the broader level. The equality on power means that there is a power which equal between men and women, one of them isn't dominate or in dominant position in others.

3. Research Method

The research uses descriptive qualitative method that describe a social phenomenon. It aims to describe the character of something that on going at the same time in study. Moreover, it gives a complete informations that useful for developing of sciences.

4. Result and Discussion

4.1 Data and Analysis of Interview and Documentation Result

Search results documentation data and interviews with officials from various key stakeholders working unit and member of women community on Gender Mainstreaming program in Kecamatan Kebun Tebu of Lampung Barat shows that :

a. Participation Dimension

Researcher get some informations about the activities of various forestry group (HKM) and KWT in Kecamatan Kebun Tebu[6] in the agenda that relate to management of resources and enviromental, watershed, and others activities. Tribudisyukur village,

[4]Op.Cit. hal. 20.

[5]Handayani, Trisakti and Sugiarti. 2002. *Gender Concepts and Engineering Research*. Malang:UMM Press.hal 180.

[6]Discussions and interviews conducted with HKM Abung Jaya and HKm Binawana and KWT Tribudisyukur Kebun Tebu Sub-District; HKM Wana Lestari and HKM Sumber Makmurand also KWT of Kenanga Sub-District, Gedung Surian Sub-District, April 17, 2013 in Kebun Tebu and Gedung Surian Sub-District

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Kecamatan Kebun Tebu, through the work gathering, KWT and the members do the activity more than men. The women involved in the planting of forest seeds, weed plants in HKM's location, take part in harvesting the forest of plants non-timber, processing of forest products from the non-timber forest plants (NTFPs), marketing non timber forest products, animal feed and take care of livestock manure and process it into fertilizer organic, manage the land around the house with a medicinal plant families (toga), manages the cooperative activities for the welfare of members KWT, activities dealing with outsiders the village in matters regarding the KWT.

The thing haven't reached is the participation on development planning (musrenbang). During the time, discussion (musrenbang) process from village level until district level haven't a special target to involve the women. The research result[7] about the dynamic of the role actor on women community activity in watershed area Way Besai found that women community have a limit role on saving and loans activity that aimed to women community.

On decision making process about planning, head of village and district have a dominant role. Women community can't decide their own want altough the fund for saving and loans for women too low, its far from the expected level (its only 5% from 30% the expectation). The researcher found that women isn't involved on election of board members so that women are not represented in institutions that will have a major influence in the management of the program.

There isn't a program, activity and special target for planing of responsive gender in Development Planning Agency at Sub-National Level (Bappeda)of Lampung Barat. The stakeholders realize that lack of active participation of women in discussion (musrenbang) resulted that the perspectives , interests and priorities of women in development didn't delivered. Bappeda LAKIP document indicates that there are no special activities for KWT involving women in the process of planning and monitoring and evaluation of development. It is ironic by the fact that according to their observations, KWT very strong institutional, and do not doubt the ability of women's groups to perform various public functions and economic functions of the group.

b. Access Dimension

KWT of Kecamatan Kebun Tebu has been able to produce a various product that can increase the family income and compete in the market at the same time both the quality and packaging. Bappeda already pushing KWT with planning the construction to accommodate the interests of KWT namely providing production facilities, in particular for drying and packing instant coffee products. This is important because, according to the official, packaged coffee product already competitive KWT results and can be sold in shops and supermarkets.

HKm area in the District of Kebun Tebu reached 3227.9 ha, KWT members in general as well as a participant HKm wife. Women's activities with regard to forestry and watershed resource management. KWT and its members understand the principles and mechanisms of management of forest resources, at least in Tribudisyukur and Gedung Surian. They are informed and involved in group activities HKm. They realize that without diversification of economic activities, the community may not be able to live solely from relying on non-timber forest products (which generally coffee plants). This realization

[7]Oktora, Ardian. 2013. *Dynamics Role of Actors in the Event Planning Process Savings and Loans for Women's Groups in District Sumberjaya*, Lampung University: Master of Science thesis on PPS Government

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became the basis of the strong desire to succeed KWT and its members together through group activities.

c. Control Dimension

The result of discussion an interview found that the running control on 2 indicators which implementated, there are prevention of illegal logging and tree planting mandatory for HKm; and one of both item, majority of women are involved on tree planting. Control is not running on a mechanism to resolve various issues in watershed management, namely the problem still dominant involvement of men compared to women in watershed management programs and forest resources.

5. Conclusion

Various data indicate their integration PUG perspective in forest resource management and watershed on the dimensions of access, participation and control. First, the dimensions of access to a community of women who are members of KWT can access government assistance of Lampung Barat and participate both in the implementation of development programs initiated by the government. Community women can get the access to the strengthening of the capacity of the knowledge, skills, advocacy skills, but lack in forest resource management and watershed. Second, the government of village, districts and counties do not yet synergistically KWT involvement in planning the program. Recommendations that needs to be realized is the stakeholders need to develop minimum service standards or standard operating procedure (SOP) women's participation in discussion (musrenbang). There needs to be a 30% quota of women in every level of development planning, from village, sub-district, until district level.

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IBM for the Coastal Women's Group in Kecamatan Panjang Kota Bandar Lampung with Problem of Waste Recycle Product Marketing and Minimum Awareness Toward Coastal Environment

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Abstract

Kota Bandar Lampung with a total area reaches 197.22 square km, and population of 1.251.642 inhabitants, if calculated per day the amount of waste reaches to 800 tons. Garbage that can not be accommodated in landfills (TPA) Bakung empties into the Lampung Gulf coast region of Bandar Lampung. Coastal waste management such as Green Village Programme in Panjang Selatan, Panjang Utara, and Srengsem. The activities held are the management of organic waste into compost and non-organic waste products into a variety of skills.

Community issues is the awareness and participation of coastal communities about waste management institutionally in Green Village program is still low, the difficulties in marketing of the compost bins refined products and handicrafts, understanding and concerning beyond coastal communities to environmental issues is still low. IbM activity is targeting several things: 1) The activity is intended for residents of women in the Village of Panjang Selatan and Panjang Utara, 2) The coaching carried out some cognitive aspects regarding gender equality, rights and roles, women empowering in the management of coastal environment, institutional strengthening and networking, as well as the optimization of litter processed products. 3) Coaching and mentoring aspects of technology support website.

The results of the activities of the counseling is to increase awareness of gender and women's roles of garbage management group in Kecamatan Panjang Selatan and Panjang Utara. In addition, the realization of institutional strengthening groups so that provide assurances to the Village Green activists to continue performing environmental protection issues despite being hampered, and open the horizons for the group to build networks in order to more easily achieve the goal. The indication is the increasing number of women who are active, and more diverse activities. Secondly, establish and managing beneficial website for the introductory of activity and environmental issues in coastal community and place for promoting those refined products. Thirdly, campaigns create awareness about the coastal environment outside the coastal community environmental

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awareness, and advocacy to coordinate with the local government may be able to build networks with various parties in order to continue the work.

Keyword: *Coastal Woman, Marketing Product, Waste Recycle, People Awareness*

1. Introduction

1.1 Situation Analysis

Kota Bandar Lampung with a total area reaches 197.22 square km, and population of 1.251.642 inhabitants, if calculated per day the amount of waste reaches to 800 tons. This kind of waste, such as from the office and shopping center as much as 63 percent, 16.67 percent of settlements, and the traditional market of 20.3 percent. Garbage that can not be accommodated in landfills (TPA) Bakung empties into the coast of Lampung Gulf, Bandarlampung (*Mitra Bentala-Walhi Dukung Bank Sampah Pesisir Bandarlampung* http://otentik lampung.com/mitra-bentala-walhi-dukung-bank-sampah-pesisir bandarlampung /Oktober 27, 2014, accessed on April 12nd, 2015).

Meanwhile, Kota Bandar Lampung also has two major rivers namely Way Kuripan and Way Kuala, and 23 small rivers. All of these rivers is a DAS (the Watershed) which is in Kota Bandar Lampung and mostly boils in the Gulf Coast Bandar Lampung.

The coastal area is where the accumulation of all kinds of waste is carried by the flow of water, both liquid and solid waste. Rubbish is often discovered splattered on along the beach and more near to the settlement, notably residential back to the beach. These kind of settlements are categorized as slum area that the sanitary facilities and environmental hygiene is very poor (*Pesisir Kota Bandar Lampung, Siapa Peduli?*, http://green.kompasiana.com/penghijauan /2013/ 09/06/ pesisir-kota-bandar-lampung-siapa-peduli--590242.html September 6th, 2013).

Bandar Lampung is one of six districts/cities in Indonesia that have been selected become the object of coastal planning areas by the central government (*Kawasan Pesisir: Bandar Lampung Jadi Objek Perencanaan***,** http://www. lampungpost.com/cetak/berita.php?id= 20071219021 12520, December 9th, 2007). Government of Bandar Lampung was rolling the Village Green program that is destined for the coastal areas. The goal was originally for slum residential in coastal areas converted into residential areas are arranged neatly, beautiful and lush.

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There are three areas that get into Green Village program. Those areas are Panjang, Kota Karang, and Bumi Waras. One of the Green Village in Kecamatan Panjang is named Artha Griin, chaired by Rini Murtini. According to Rini Murtini in an interview at her residence on April 15th, 2015, Green Village program in her district has been running in the Village of Panjang Selatan, Panjang Utara, and Srengsem. The activities held are the management of organic waste into compost and non-organic waste products into a variety of skills such as bags, plastic flowers, vases and clothing fashion made from plastic waste materials.

1.2 Problem of Partnership

2. Awareness and coastal community participation toward the waste managing institutionally is still low. Knowledge about organic waste management and non-organic unevenly distributed among group members;
3. Partnership network limitations problem become one of the obstacles in development of waste management. This causes the marketing range of products is limited, and resulted productive work become stagnates. Waste management is only temporary, or just to meet the special events that took place in Kota Bandar Lampung, such as exhibition development. These conditions, when the area of waste management may can not be a source of alternative economy, the sustainability of the existence of groups that already exist can be deteriorated.
4. People do not have the awareness that by purchasing and using products coastal areas is participate to solve environmental problems.
5. The waste management partnership face various problems, that currently become concern only for the local community. It has not became same concern to the public to keep this coastal environment.

2. Target And Outcome

2.1 Activity Target

This IbM activity is targeting several things :

1. Activities earmarked for waste management group in the village of Panjang Selatan and Panjang Utara, with a focus on women members. The focus is more efficient because the structure of the coastal women are dominant in the domestic sphere, and has been active in community activities.

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2. Women members of the garbage management group in Panjang Selatan and Panjang Utara will receive coaching in the cognitive aspects regarding a) gender equality, rights and roles, b) the empowerment of women in the management of the coastal environment, c) the strengthening of institutions and networks, d) optimization of garbage refined coastal products.
3. The waste management group will receive coaching and mentoring aspects of technology support website. The strategy is to manufacture the website team, creation, and development for the sustainable use of the website.

2.2 Activity Outcome

Outcome from those targets such as :

1. The active involvement of women who gathered in the coastal waste management group in both of Kelurahan Panjang Selatan and Panjang Utara, in the protection of coastal environmental areas and utilization of coastal zones, have an impact on environmental protection and improvement of people's economic welfare.
2. Women members of the garbage management group in Panjang Selatan and Panjang Utara have awareness and understanding of a) gender equality, rights and roles, b) the empowerment of women in the management of the coastal environment, c) the strengthening of institutions and networks, d) are motivated to improve the quantity and quality coastal garbage refined products.
3. The existence of the website about programs and activities of waste management groups, first, enables the group to promote garbage refined products to the wider community. The expected impact is to support the marketing strategy, so that the garbage refined products commercially valuable to welfare of coastal communities. Secondly, to show people more about the program of environmental protection in coastal areas.

3. Execution Method

3.1 Approaching Method

1. First methode is from cognitive and psychology aspect is service team provides the knowledge and awareness to the cadres from two partnership groups.

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2. The second method of mentoring and empowerment is that the team directly assisting cadres in activity and involving the participation of cadres.
3. The third method of advocacy, the team devotees connect aspirations of the people/cadres from the coastal area to relevant government and other public networks.

3.2 Work Stages

Realization of problem solving in waste management activities coastal areas of Bandar Lampung by women's groups in the Panjang Utara and Panjang Selatan, are:

1. The first step, providing extension with the aim to raise awareness about: a) gender equality, with its rights and roles, b) woman empowering in the management of the coastal environment, c) institutional strengthening and networking.
2. The second step, making the website as a means of introduction and socialization of garbage refined products structuring and protection of coastal areas to the public.
3. The third step, held a bazaar which took place outside the coastal environment, so that the public know about the garbage coastal refined products.
4. The fourth step, recommend to the government and network of other community groups in order to facilitate the introduction of products to the markets of coastal areas.

3.3 Partnership Participation in the Program Implementation

Partners of this activity are waste management group in the village of Kelurahan Panjang Selatan and Panjang Utara. Both of these partners plays a role in three ways, are planning, implementation and evaluation. In planning, partners provide data related to the activities and participated in formulating the model of structuring solutions and waste management in coastal areas. On implementation, the partners facilitating implementation of activities. Each group members who will be coordinating the activities of waste management participants. Likewise the evaluation stage, partners are entitled to assessing the success of this activity.

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4. Result Achieved

4.1 Achievement of Counselling Activity

The first phase of this activity is the counseling that has been given to the residents of Panjang Selatan and Panjang Utara. Furthermore, the design of waste management group website in Kecamatan Panjang. The team will describe the achievement of the following activities:

Implementation of outreach activities that conducted on Saturday, June 25th, 2016 at the Secretariat of the Green Village which is located in Panjang Selatan Jalan Selat Malaka No. 3 Lingkungan 1 RT 03 Panjang Selatan. Person in charge of this stage is Dra. Yuni Ratnasari, M.Si.

Table 5. Counselling Materials

Substance Activity	Conveyor of material / companions
1. Gender equality, right, and its role	Dra. Yuni Ratnasari, M.Si.
2. Empowerment and Strengthening Women's groups in the management of the coastal environment	Dwi Wahyu Handayani, M.Si.

This event was attended by 50 participants from Panjang Selatan and Panjang Utara District who are mostly female members from Green Village. It was also attended by approximately 10% males. It was because of environmental management is also a shared responsibility and mutual support.

4.2 Understanding the Issue of Coastal Areas and Product Marketing

This website activities coordinated by Teuku Fahmi, M.Si. Website was made under the auspices of Fisip Website in University of Lampung. Name of the website is http://kampunghijau.fisip.unila.ac.id. Sustainability of this website will be pursued through the empowerment of Village Green internal cadre and students through guided group program, that in the future will be built three departments such as Department of Government, International Relations Department and the Department of Sociology.

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5. Sustainability Program

In this chapter, some things will be planned by team are :

5.1 Sustainability observation on counseling impact:

1. Improve the effectiveness of Bank Sampah (Garbage Bank), such as evolving numbers of customers, and add some units of Bank Sampah (Garbage Bank) in Panjang. Then, the team will observe the changing progress.
2. Garbage Bank, compost and refined skills of plastic waste. The team continued to observe skills development of production.
3. The involvement of women in the activities of waste management is increasing along the increasing number of women who are actively composting and making some garbage skills. The team continues to observe the activity.

5.2 Understanding the problems of coastal areas, introduction and marketing of garbage refined products.

1. Website has been activated and strived to be updated.
2. Orientation website to the leader of the faculty and the Department of Government, International Relations Department, and the Department of Sociology that coastal areas mentoring program, especially for website and other coastal environmental issues could be continued.
3. Institutional and network business development

   Recommendations to the government to integrate with non-governmental organizations and the market in order to facilitate the marketing of coastal areas products.

6 Conclusions And Recommendations

6.1 Conclusions

1. Counseling activities about gender equality and woman roles of garbage managing in coastal area that has been given to the people in Panjang Selatan and Panjang Utara provide highly effective awareness raising women's role in waste management activities. Indications of this increasing awareness is on raising of women's participation in various activities of the Green Village.
2. Counseling activities with institutional strengthening material of waste management group, to give confidence to Green Village activists to continue carry out

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environmental protection activities despite being hampered by various issues, and bring more information for the group to build networks in order to more achieve the goal easily.

3. Activities building and management of websites, including the campaign to the community off the coast received positive response. This is in accordance with the needs of the Green Village inside publishing activity, the introduction of environmental problems of coastal areas, and promotion of garbage refined products.
4. Advocacy to coordinate with the local government, and build networks with various parties.

6.2 Recommendations

1. Sustainability extension activities, empowerment, mentoring needs to be done in accordance with the needs of institutional strengthening Green Village in the coastal region.
2. Sustainability website activity is making this become a part of guided group in Fisip, Lampung University.
3. Assistance in the case of building network with various parties need to be pursued, in order to build a prosperous society.

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Photographs Activity

1. Choacing on Saturday, June 25, 2016, in Secretariat of Kampung Hijau Panjang Selatan, Jalan Selat Malaka No 3 Lingkungan 1 RT 03 Panjang Selatan

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Yuni Ratnasari, are giving extension materials Dwi Wahyu Handayani was explaining the material

Activities of participants in extension

2. Training handmade from plastic waste, Sunday 7 and 11 September 2016 at the Secretariat of Kampung Hijau Panjang Selatan , Jalan Selat Malaka No 3 Lingkungan 1 RT 03 Panjang Selatan

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Voting Behaviour in 2014 Legislative Election in Lampung Timur Regency (Case Study in Desa Gunung Mulyo Sekampung Udik District and Desa Rajabasa Batanghari Sukadana District)

Himawan Indrajat dan Darmawan Purba

Dosen Jurusan Ilmu Pemerintahan FISIP Universitas Lampung

Abstract

At this time, democracy has been a best choice for admintering the life of nation by most country around the world. In Indonesia, the implementing of democracy has been through the long term of political life. In democratic country, voters participation has become important part of representative democracy. Voters participation are supporting the accomplishing practical of representative. In fact, there are some issues concerning to the voters turn of in every general election. Unfortunately, the issue has not revealed and most of them become weakness. Most issues concerned with the participant in election are the voters turn out in ballot box, a lot of invalid votes, indication of money politc, political literacy, and the lack of volunteriness contribution of citizen politic. The issue must be disscused for knowing the main cause and find the solution. In expectation, participation can be placed in proper level with high level politiacal literacy. Therefore, the reseach program has become the needs of political management.

Based on 2014 election result, shows that the success of election determined participation which reach into 75%. Nevertheless, the level of participation in every region is different from the national results. For example, lampung timur shows that participation is only 69% in every district. The highest participation is in Batanghari district and Pekalongan district which is the average result is above national participation. The lowest participation is in Gunung Pelindung, Braja Selebah, Labuhan Maringgai, Mataram Baru, Pasir Sakti and Melinting district. The result of the subdistrict are 62%-65%. From the result we can do comparision study between the highest and the lowest participation region, that is Desa Gunung Mulyo in Sekampung Udik district and Desa Rajabasa Batanghari in Sukadana district. In this research we use quantitative methode, and the colecting data technique by doing survey to the people and interview with Komisi Pemilihan Umum, Panitia Pengawas Pemilu, Political Party, and Legislative Candidate.

Keywords : *Legislative Election, Voting Behaviour, Democracy, Voter Participation, and Political Literacy*

1. Introduction

Democracy today has become considered the best option to manage the life of the nation by most countries in the world. In Indonesia the implementation of democracy has gone through a long political life dynamics. In democracies, voter turnout be an essential element of representative democracy. Voter participation is supporting the implementation of the practice of representative democracy. But in practice there are a number of issues

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regarding the participation of voters in each of the election. Unfortunately, the matter is not a lot of uncovered and partially into a dark side that keeps leaves the question.

Some of the issues related to participation in the elections is the level of turnout to the polls, invalid votes, money politics, literacy level in politics, and a lot of the scarcity of volunteerism citizens in political participation. The problem needs to be operated in such a way to know the root of the problem and find a way out. hope, participation in the elections could be at the level of ideals aspired to the high level of political literacy. Therefore, the research program to be an activity that is unavoidable in the management of elections.

The political participation of the people would not be separated from the state or a political system that was to proceed. The political system of the Indonesian nation till today have been many times to change, starting from new order to the reforms order. It is recognized that reform is often interpreted as a more democratic era. Presence and Absence of Voters at polling stations (Voter turn-out). Voter urnout since the 1999 election until the 2014 elections move fluctuately.

Some of the issues related to participation in the elections is the level of turnout to the polls, invalid votes, money politics, literacy level in politics, and a lot of the scarcity of volunteerism citizens in political participation. The problem needs to be operated in such a way to know the root of the problem and find a way out. hope, participation in the elections could be at the level of ideals aspired to the high level of political literacy. Therefore, the research program to be an activity that is unavoidable in the management of elections.

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Tabel 1.1 Electoral Participation Rate 1955-2014

ElectionYear	Voter Participation	Absent
1955	91,40%	8,60%
1971	96,60%	3,40%
1977	96,50%	3,50%
1982	96,50%	3,50%
1987	96,40%	3,60%
1992	95,10%	4,90%
1997	93,60%	6,40%
1999	92,60%	7,40%
2004	84,10%	15,90%
2009	70,90%	29,10%
2014	75,10%	24,90%

Source: Adapted from Various Sources

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In general, the main purpose of elections directly is the formation of a local and national political structures of a democratic and governance system which is capable of running effectively. Election quality can basically be viewed from two sides, namely in terms of process and outcome. Elections can be said to be democratic and the quality of the process when it took place in a democratic election secure, orderly and smoothly in accordance with the principles of direct, public, free, confidential, honest and fair. Meanwhile, if in view of the outcome, the election must be able to produce its representatives and leaders of the country who are able to prosper the people, in addition can also raise the dignity of the nation in the eyes of the international community. (Rozali Abdullah, 2009).

Based on data from the 2014 election results, show that there is the success of the election of the strengthening of community participation. However, voter turnout in areas different from the results nationally. For example, in East Lampung which shows the level of people's participation is only 69%. As presented in Table 1.2, show the highest participation rate community of East Lampung in the elections are in District Batanghari and Pekalongan that participation levels above the average level nationwide participation.

While the lowest level of participation occurred in the District of Gunung Pelindung, Braja Selebah, Labuhan Maringgai Mataram Baru and Pasir Sakti and meeting. In these districts, the level of participation was critical for 62% - 65% can be seen in Table 1.2. The data, when compared with the level of voter participation nationwide reveals any discrepancies lame. Amid incessant socialization developed by the Commission, but still there are areas with a lowest participation rate of elections.

Table 1.2 Participation Rate Selector In the 2014 election

	District	Village/ Kelurahan	TPS Number	Total Voters in List	Total Voter Turnout	Percent (%)
1	Gunung Pelindung	5	39	16.815	10.472	62%
2	Braja Selebah	7	37	18.467	11.676	63%
3	Labuhan Maringgai	11	105	52.152	32.964	63%
4	Mataram Baru	7	44	22.471	14.145	63%
5	Pasir Sakti	8	64	29.314	18.540	63%
6	Melinting	6	40	20.321	13.088	64%
7	Sukadana	20	128	55.583	36.381	65%
8	Waway Karya	11	59	28.168	19.087	68%
9	Way Jepara	16	97	40.351	27.503	68%
10	Bandar Sribhawono	7	71	35.832	24.847	69%
11	Marga Tiga	13	74	35.399	24.298	69%
12	Sekampung	17	104	50.604	35.008	69%
13	Jabung	15	77	38.267	26.844	70%
14	Marga Sekampung	8	40	21.156	14.753	70%
15	Sekampung Udik	15	122	54.515	38.100	70%

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16	Way Bungur	8	41	18.245	12.837	70%
17	Labuhan Ratu	11	71	33.194	23.774	72%
18	Metro Kibang	7	40	16.979	12.284	72%
19	Bumi Agung	7	36	14.506	10.569	73%
20	Raman Utara	11	68	29.967	21.984	73%
21	Purbolinggo	12	70	32.569	24.103	74%
22	Batanghari Nuban	13	76	32.702	24.526	75%
23	Batanghari	17	84	42.682	32.632	76%
24	Pekalongan	12	85	36.719	27.794	76%

Sumber : KPU Lampung Timur 2014

phenomenon Voter turn-out in elections in 2014 can be seen in more detail on the level of participation at the village level. From the total of 264 villages in kabupaten Lampung timur mapping a way to sort the highest participation rate and the lowest at village level as described in the following table.

Table 1.3 Villages With High Participation In East Lampung

District	Village	Number Of Voters in DPT	Number Of Voter in DPT Who Vote	Percentage
Sekampung Udik	Gunung Mulyo	600	577	96%
Batanghari	Telogo Rejo	1.533	1.297	85%
Marga Sekampung	Bukit Raya	797	679	85%

Sumber : KPU Lampung Timur 2014

shows that the highest participation rate can reach 96% in the Gunung Mulyo Village District of Sekampung Udik seen in table 1.3, while rate lowest participation Rural Marga Sari subdistrict Labuhan Maringgai and Village Rajabasa Batang District of Sukadana with the level of participation is only 50% table 1.4.

Tabel. 1.4 Villages With Lowest Participation in East Lampung

District	Village	Number Of Voters in DPT	Number Of Voter in DPT Who Vote	Perscentage
Jabung	Negara Saka	1.115	582	52%
Labuhan Maringgai	Marga Sari	6.378	3.172	50%
Sukadana	Rajabasa Batanghari	1.285	639	50%

Sumber : KPU Lampung Timur 2014

From the data table 1.3 and table 1.4 show that the differences in the levels participation in society. Various allegations emerged, ranging from the character of its

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people, knowledge society, or because of limited access to elections, and the presence of other factors that influence it. Comparison of these data, are then used to determine the location of study / research in a more narrow and focused in looking at the phenomenon of voter behavior and level of participation.

2. Objectives and Benefits Research

This study aims to determine how the behavior of voters in the 2014 elections in East Lampung district, including: (1) Considerations people's choice, (2) the track record, the program or promise of election participants into consideration the voters, and (3) the level of voter rationality.

This research is expected to provide benefits, such as academic benefits by generating a number of information related to the dynamics of the behavior of voters, as well as add to their repertoire of knowledge about aspects related to voting behavior. While the practical results of this study can provide input in a frame-improvement of election administration, particularly in the increase of voter participation and the quality of elections in the future.

3. Methods

The method used in this research is mixed method. Quantitative methods seek generalizations on the issues examined. The theoretical framework on quantitative methode intended to verifiable so that the end of result of the research is an acceptance or rejection of a theory/framework and the constructing the new framework. a new thought of an issue. While qualitative methods are meant to find meaning or depth on an issue. In which the theoretical framework serves as a knife of analysis to help researchers to assemble and give meaning of the facts found in the study. Practically quantitative response confirmed through qualitative descriptions and further study of the findings research.

The source of this research is primary and secondary data. Primary data is obtained through surveys and interviews. Secondary data in this research includedocuments the results of elections in East Lampung district and several articles andnews in the media. The source of data on quantitative methods are random, while in the qualitative is purposive.

This research is a case study of rural-urban with high and low participation to see how the behavior of voters during elections in 2014 ago. Selection of the villages / kelurahan was done purposively by considering the characteristics of the two villages to represent a region with high participation and low participation. Nevertheless, the findings in these two villages are not to be generalized, but The finding can be a reflection in other villages. Both villages was where research conducted, namely (1) Gunung Mulyo village District of Sekampung Udik, as representations of the village with the participation of Appeal, (2), while for the representation of the village with low participation, is Rajabasa Batanghari village District of Sukadana.

The source of research data is derived from questionnaire respondents in both the village and the results of elite interviews with the Election Commission, the Supervisory Committee, and political parties or candidates. In determining the number of samples to be taken from the population in a research activity is highly dependent on the state of the population itself, the more homogeneous population of the state ofnumber of the fewer samples, and vice versa. The determination of the number of samples developed by Roscoe in Sugiyono (2010: 131) are: (1) The feasible sample size is in the study were between 30 to

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500, (2) If the sample divided into it categories (for example: men and women, civil servants -employe and others), the amount ofmembers samplein each category at least 30.

Referring to these provisions, the number of respondents in the Village of Mount Mulyo sub-district and village Sekampung Udik Rajabasa Batang District of Sukadana each 100 people. The selected respondents were obtained by random sampling based upon the voters list (DPT) in the village. As for the data informants selected by using purposive sampling or sample aims, namely elements of the Election Commission,the Supervisory Committee, and the political parties / candidates of three informants who were interviewed, namely: (1) Samsul Arifin (Chairman of the Election Commission in 2014), (2) Abdurrohman Sholeh (member Panwaskab Lampung east), (3) ArifahTrisianti, SE (Chairman of Golkar DPD II Bapilu east Lampung).

4. Collecting and Processing of Data

The data was collected by surveying and interviewing respondents and followed by in depth interviews with informants. After the data collected it will be classified or collected to construct an argument, and also done sorting the data according to their relevance. Analysis Data Interpretation by Using mixed method, quantitative data analysis is doing byusing simple statistics. Furthermore qualitative analysis by interpreting in accordance with the pattern, model, or even the theory used.

4.1 Overview of Respondents and informants

profile picturerespondents in this study is based on age, educational background, occupation and income. While in some other control variables such as: type Gender, Ethnicity, and Religion amount is relatively homogeneous. Below are thr descriptions of profile of village-based respondents with high and low participation by age group.

Table 2.1 Profile of Respondents by Age

Age Group	High	Low	Percentage
17-25	13,0	15,0	14,0
26-35	23,0	31,0	27,0
36-45	22,0	26,0	24,0
46-55	23,0	15,0	19,0
>55	19,0	13,0	16,0
Total	100,0	100,0	100,0

Based on the layout of the table 4.1, it can be seen by the age of respondents fairly equal. However, the age groups are categorized dominant mature is quite dominant percentage in comparison with the variable younger age and older. Where as much as 23.0% respondents from the age group between 26-35 years and 46-55 years age group is the group that fall into the category most age groups. While in the village with low participation is dominated by people with 26-35 years age group with a percentage of 31.0%.

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Table 2.2 Respondents by Education Level

Education Level	High	Low	Percentage
S1	2,0	2,0	2,0
Diploma	3,0	0,0	1,5
SMA	16,0	3,0	9,5
SMP	28,0	38,0	33,0
SD	51,0	57,0	54,0
Total	100,0	100,0	100,0

The data in table 4.2 show the gap educational background is quite striking in the community. Where people with high participation rate have educational background Elementary School (SD) was 51.0% and 57.0% in villages with low participation. As for high school graduates was 16.0% (high participation village) versus 3.0% for the village with low participation and followed the lowest number S1 educational background as much (2.0%).

Table 2.3 Respondents by Income Level Income

Family Income	High	Low	Total
<= 1.000.000	84,0	63,0	73,5
1.000.001-2.000.000	5,0	33,0	19,0
2.000.000-5.000.000	11,0	4,0	7,5
Total	100,0	100,0	100,0

Based on table 4.3, can be described that in the majority of the average of family income below Rp.1.000.000, -00 which represent is the percentage respondents of was 84.0% for the village with the participation high and as much as 63.0% with low participation. Then by sorting on citizens who has income around Rp. 2,000,000 to top it isonly a few of people.

Table 2.4 Respondents by Occupation

Occupation	High	Low	Total
PNS	1,0	2,0	1,5
Wiraswasta	9,0	11,0	10
Wirausaha	1,0	1,0	1
Buruh Tani	65,0	76,0	70,5
IRT	5,0	4,0	4,5
Belum/ tidak bekerja	19,0	6,0	12,5
Total	100,0	100,0	100,0

Viewing data in table 4.4 , it is known that the majority of rural communities with high participation rates worked as farmer, in 65.0% and in village with low participation achieve as much as 76.0%. As for respondents who worked as an entrepreneur is 1.0% in villages with high or low participation.

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Looking at the data profile of respondents showed no differences between respondents in villages with high participation and respondents in the village with the lowest participation. Only in the aspect of income levels and types of occupation that the shows village with low participation is more dominant than the the low participation village.In addition to research data sourced from the respondents in the two villages, a with total of 100 people each, or total of 200 people.

4.2 Participation in The Legislative Elections

This section will review the participation of respondents to th eGeneral Election in last2014. Both in the legislative elections, This research shows the change in the participation of the community, especially for parts of villages in the category of low participation related to the scope and political momentum. Various reasons of voters into a finding that illustratesthe voter to describe the reasons of voters to participate in moment general election.

Table 2.5 participation in legislative elections in 2014

Participation	High	Low	Total
No	4,0	17,0	10,5
Yes	95,0	52,5	73,8
Do Not Know, Not Answer	1,0	30,5	15,8
Total	100,0	100,0	100,0

Based on table, above the participation of the community in villages with high participation in the 2014 legislative elections (House of Representatives, Provincial DPRD and Regency / City) reached as much as 95.0%. While in the village with low participation, community involvement reached 52.5% in the last legislative elections in 2014.

Table 2.6 Reasons Not to Vote

Reasons Not To Vote	High	Low	Total
Do Not Know The Candidates	0,0	17,0	8,5
Others	66,7	0,0	33,4
Do Not Know, Not Answer	33,3	83,0	58,2
Total	100,0	100,0	100,0

From the number of respondents who did not join the election in table 4.6 suggests a reason not to vote because they do not know to choose candidates as much 17.0% in low participation villages. In the village with the high participation which choose had other reasons as much as 66.7%. While 83.0% of rural communities with low participation rates did not disclose the reason for not joining the election.

Table 2.7 Reasons to Vote

Reason To Vote	High	Low	Total
Obligation Duty	74,0	27,7	50,9

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Citizen Duty	8,3	24,4	16,4
want to have a better representative	16,7	15,2	16,0
want a change in Government ntahan	0,0	1,1	0,6
Others	0,0	1,1	0,6
Do Not Know, Not Answer	1,0	30,5	15,8
Total	100,0	100,0	100,0

in table 4.7 show that 74.0% of rural communities with high participation reveal the reason for participating in the elections are in because of the obligation as citizen. While 30.5% of voters from villages with low participation do not reveal the reasons for the participation in the election. In addition, voters in the village with low the participation have awareness that take a part in the elections is the right of citizens is 24.4% and 15% of them would like to have a better representative of the people.

Based on the results of related studies of voter participation in the legislative elections in 2014 show that the dominant participation is 95% and minimum participation is 52.5%. Furthermore, there are several other findings, namely: (1) People do not vote give a reason that they do not know the candidates, this shows there are still many voters who do not know the candidates will be selected (2) the majority of voter are voting majority reasoned that take part in the elections is obligations and the rights of citizens, the minority reasoned that they want to have a better representative (3) generally decline in voter participation during legislative election due to lack of candidates competing, saturation voters and distrust of the people to the candidate.

The introduction of the prospective voter is the biggest obstacle in the elections, particularly the legislative elections. One of the biggest factors is the low of voters turnout is caused that they do not know the candidates. These conditions explain that many candidates are not known or limited of selected candidates. This is due to the limited socialization conducted by the Election Commission as well as socialization conducted by candidates and political parties. This is according to the results of interviews with informants :

> "Socialization of the election conducted by the formation of a volunteer democracy helps to socialize the elections, including the technical for choosing the time of the election, in addition to the socialization of DCS (temporary legislative list) and DCT (fix legislative list), but related information on the identity and profile of candidates are less emphasized. Socialization to the community is still limited, as the organizer of the Election Commission more focused to disseminate to the political parties in the coordination of the nomination process. On the other hand political parties think that they have asses on a briefing candidates and the next candidates to socialized to the public (Interview Results: Samsul Arifin and ArifahTrisianti, SE).

The result between the survey results and interviews explain that low participation voters on Rajabasa Batanghari village District of Sukadana is caused by the limited introduction to prospective voters as a result of lack of socialization to the identity and track record candidates including those conducted by the political parties and candidates. During the election campaign is more identified with banner that contains images only, whereas the mission vision or political promise in innovation is rarely raised. The limited of this is also the weak side of the pure proportional system which is pruposed by Saragih (1997) that the

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system of proportional candidates compete in large numbers, and their relationship with the voters tend to be through political parties and candidates lack even unknown by voters.

4.3 Support Aspect in Choosing

Considerations of village people to be actively involved in elections is due to awareness of the Rights and Duties as citizens. Moral conscience to empathize in order to have minimum representatives of the people better than before. The choice to participate in the elections will produce a new consideration. That consideration to elect new people with the simple assumption the simplestis is better than ever. This section will analyze the various variables that become a source of support for voters, both on the village with the high and low participation rates. This section includes (1) Sourceinformation election(2) time of making a choice (3) the influence of others in choosing, and (4) the level of recognition of the candidates.

Table 2.8 Election Resources Information

Election Resources Information	High	Low	Total
Sosialization by Political Party	6,0	11,2	8,6
Sosialization by Civil Society Organisation	2,0	1,0	1,5
Socialization by Election Commision	18,0	31,6	24,7
Socialization by Local Goverment	3,0	0,0	1,5
CSO Figures	60,0	20,4	40,4
Fammily	6,0	18,4	12,1
Own Information	5,0	4,1	4,5
TT/TJ	0,0	13,3	6,6
Total	100,0	100,0	100,0

It shows the civil society organisation figures become the largest selection (60.0%) in there sources selection of electoral of rural communities with high participation rates. While as many as 31.6% of the people in the village with a low participation rate select socialization KPU and Bawaslu as voters considerations related the resources Election. The data show the performance of the Commission in facilitating the voters to get information about the election was widely has not been achieved, given that mostinformation election obtained from community leaders, families and relatives as well as the socialization of political parties even the number around 8.6%.

Table 2.9 Time Deciding Options

Time Deciding Options	High	Low	Total
> 3 Month	38,4	4,0	21,1
1Month	29,3	70,0	49,7
1 Week	12,1	20,0	16,1
1 Day	12,1	0,0	6,0
TT/TJ	8,1	6,0	7,0
Total	100,0	100,0	100,0

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It shows 70.0% of villages with low participation assumes one month is the ideal time to decide on options. While in the village with high participation 38.4% thought that less than 3 months is the time to decide on electoral choice. The data show that, voters in the village with high participation had an option since long ago. While villages with low participation, they are more careful in its choice, so they deciding close to polling day.

Tabel 2.10 Effect of other people in the Election 2014

Effect of other people in the Election 2014	High	Low	Total
Own Choise	92,9	81,6	87,3
affected	4,0	5,1	4,1
TT/TJ	3,0	13,3	8,1
Total	100,0	100,0	100,0

The table above is a picture of the percentage of the influence to others in election selection in legislative election total of 81.6% of voters from villages with low participation argued that option that determines them self. While in the village withrate a high participationis assumed as much as 92.9%. This data shows that the community is relatively independent in its choice, it is understandable considering the public option in village associated with the practice of kinship. Therefore, the choice is not too complicated with a complex consideration.

Table 2.11 Introductory Level In Candidates and their Program

Introductory Level	High	Low	Total
All Candidates	2,0	1,1	1,5
Most Candiadates	16,0	7,4	11,9
A Few Candidates	5,0	35,1	19,6
Some Candidates	30,0	33,0	31,4
TT/TJ	47,0	23,4	35,6
Total	100,0	100,0	100,0

Referring to the table, the dominant participation of rural communities with high participation (as much as 47.0%) did not disclose the level of recognition or knowledge of the candidates and their programs. While 35.1% of villages with low participation reveals thate they know a little bit about the candidates and their programs. In the village with the low participation the ability to know the candidates better than in villages with high participation. Nevertheless, the majority of voters to own limitations in recognizing all the candidates.

4.4 Behavior and Rationality Voter

Conceptually voter behavior can be mapped into four categories, namely: (1) approach thesociological(2) Psychological approach (3) A rational approach and (4) Marketing

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approach. In this section, voter behavior is mapped based on a number of aspects the reason and consideration for voters in determining the choice at the time of the 2014 elections

Tabel 2.12 Key considerationss in Choosing candidates

Key considerations	High	Low	Total
Similarity Background	14,1	8,0	11,1
Quality Of Personal Candidate	72,7	60,0	66,3
consideration of personal profit	3,0	13,0	8,0
Other (party performance/Imagery)	2,0	1,0	1,5
TT/TJ	8,1	18,0	13,1
Total	100,0	100,0	100,0

Referring to the table, illustrated that the personal qualities of candidates to become a major factor for consideration in selecting candidates for the villagers withrate a low participation(60.0%). While in the village with high the participation revea; similarities background as a primary consideration in selecting candidates (14.1%).

Tabel 2.13 Reasons In Choosing Candidates

Reason In Chosing Candidates	High	Low	Total
Stresses ability parties	10,1	21,0	15,6
Assessing the suitability ideology	19,2	41,0	30,2
Not weigh ideological positions	57,6	15,0	36,2
Not weigh ideological positions	0,0	5,0	2,5
TT/TJ	13,1	18,0	15,6
Total	100,0	100,0	100,0

It shows various main reason in choosing a candidate. A total of 57.6% of the village with high participation has priority to reason closeness values. While 41.0% of thevillages with low participation makes the suitability of ideology as the main reason in choosing candidates.

In addition to the reasons and the primary consideration in the choice, other things that influence voters behavior is tolerance to the practice of money politics. As the principle of elections often campaigned namely direct, public, free, confidential, honest and fair is often distorted by the widespread the practice of money politics. Based on the results of the research showed the inconsistency voters in assessing the practice of money politic.

Table 2.14 Money Politic Tolerance

Money Politic Tolerance	High	Low	Total
unacceptable	79,8	40,0	59,8

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Acceptance	10,1	16,0	13,1
TT/TJ	10,1	44,0	27,1
Total	100,0	100,0	100,0

It shows 79.8% of the voter from village with high participation states can not tolerate the money politics.. While the majority of the village with the low participation (44.0%) did not express its opinion on political tolerance of money, even though 40.0% of rural communities with low participation expressed sa,e opinion with the answers to the majority from rural communities with high participation. Data in Table 4:17 shows the majority of voters did not receive money politics in elections, especially in villages with low participation, while voters in villages with low participation tend to be firmly against the practice of money politic.

4.5 Mapping Voter Behavior and Grouping of Voters

Related to the quality of candidates in the election as a consideration in determining the choice is one aspect of voting behavior. The interview with one of the Board of the political parties and the Election Commission and the Supervisory Committee explained that:

"Political parties are already trying to maximize the selection of candidates from among cadres, one of the difficulties of political parties is to fulfill the quota of female candidates often sometimes less selective, on the other hand political parties also recruit candidates non cadres. Election Commission as the organizers have given the appeal that political parties do the functions of political parties optimally, however human resources in every political party is different quality, so not all of the parties perform its functions, especially to conduct of political socialization to the community**".**

Based on the interview shows that most voters on qualities personal candidate can be considered as a form of hope. Given the description of the earlier discussion that revealed most of the candidates are not well known by the voters. Unpreparedness of political parties become an obstacle forming voting behavior. This caused of non-functioning of political parties as well as stated Budiardjo (2003: 163-164) one of the main functions of political parties is as a means of political recruitment. In this function of political parties should seek out and encourage talendted people to actively participate in political activities as a member of a political party (political recruitment). The phenomenon of unpreparedness of the political parties reflected to the not selective fulfillment of the 30% quota of women candidates, political parties recruit candidates non cadres and human resourcespolitical parties are still limited in understanding the function and role.

In relation to the voters behavior based on the elaboration of several approaches Nursal (2004: 54-73) by adding one approach to another, there are four approaches of voters behavior, namely: (1) the sociological approach, (2) psychological approach, (3) a rational approach, and (4) marketing approach.

Table 2.13 Considerations Top In Choosing Candidates approach and Behaviour voters

Considerations Choosing	Voter approach	High	Low	Total
similarity background	Sociological approach	14,1	8,0	11,1
Quality of personal candidate	Psicological approach	72,7	60,0	66,3

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Considerations Personal Benefit	Rational approach	3,0	13,0	8
Other(party performance/ Political Imagery)	Marketing Approach	2,0	1,0	1,5
TT/TJ	-	8,1	18,0	13,1

It show that in villages with high participation had dominant of voters in the behavioral to psychological approach (72.7%) and a small portion at sociological approach. While voter behavior in the village with low participation (60.0%) on psychological approach, some variants on rational choice approach.

By grouping voters, both in villages with high participation and low participation indicates voters who consider the closeness of values, conformity ideology and give priority to the ability of political parties. In interviews with informants commissioners Election commission show that:

"Nowadays people are increasingly literate and criteria for the prospective candidates, voters are due to emotional attachment. Track Record of candidates is also a consideration voters. For example there are candidates that are selected again proving that track record, performance and experience become consideration in selecting candidates."

Polarization of the voters are based on surveys and interviews show that voters in the village with high participation is more considering the proximity of certain values while voters in villages with low participation has more ideology and the ability of political parties. This is suitable with the concept put by Firmanzah (2007) in the grouping of voters classify voters in four groups:(1) Rational Voters (2) Critical Voters (3) Traditional Voters and (4) Skeptical Voters.

Tabel 2.14 Reasons In Choosing Candidates and Votters Grouping

Reason In Chosing	Voters Grouping	High	Low
Stresses party ability	Rational Voters	10,1	21,0
Assessing the suitability of the ideology	Critical Voters	19,2	41,0
Prioritizing value closeness	Traditional Voters	57,6	15,0
Not weigh ideological positions	Sceptical Voters	0,0	5,0
TT/TJ	-	13,1	18,0

Based on the data in the table 2.14 based on the reason for choosing candidates are adapted to the voters category showed that voters in villages with high participation tend to be traditional voters (57.6%) and the critical voter registration (19.2%). Meanwhile, in the village with low voter participation grouping tend to be critical voters (41.1%) and rational voters (21.0%). Elaboration of surveys, interviews and concept grouping of voters can be grouped bye voters in villages with high participation as traditional – critical voters, while voters in the village with low participation critical – rational voters.

Mapping voter behavior and grouping voters show the positive identification that the voters behavior are more dominant in the psychological approach in which voters make their choice based on the process of political socialization to recognize the growing of political indication with hopes that his political choices will bring better change. In addition, the grouping of voters has part in, a critical voters, that is voters who consider the suitability of

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ideology with the competence of the candidate along with his political ideas. However, voter behavior in this study seems "artificial", caused by the ongoing of anti-democratic proces during elections. Money politics still has a part in the dynamics of the 2014 elections ago. The term "serangan fajar" is often heard before the election, in this section voter behavior distorted by money politics. on the ethical side, voters wild become liar votters to continue to receive gifts of money, but do not choose candidates who give money. This situation will bententang with the principle of direct elections, general, free, confidential, honest and fair.

5. Conclusions and Recommendations

Conclusion Based on the description of the results and discusion of voter behavior, including consideration and reason in determining the choice and the comparison between the villages with high participation and villages with low participation there are a number of conclusions, the following:

1. Personal qualities of candidates, became the candidate's track record and political promise become the consideration voters determining political choice, however, political parties have not been able to prepare the candidates selectively. Political parties considered is not optimal yet in socializing the election. In addition, organizers of the elections have not been able to provide information on the identity and track record each of candidate.
2. In the village with the high participation of high voter behavior is more identical to psychological- sociological approach. While voter behavior in the village with low participation is psychological approach - rational. Rationality of voters in determining the selection is still far from expectations, the tendency of voters is more synonymous with emotional voter category.
3. Grouping categories of voters showed that voters in villages with high participation of voters is more traditional – critical voters, while in villages with low voter participation, the the grouping of voters tend to be critical electorate - rational. Voters in the village with low participation can be said a little rational than voters in villages with high participation.
4. Political tolerance led to a variant of voter behavior becomes increased, that is pseudo psychological voters Anti-democratic practices in elections occur simultaneously. Dawn raids (Serangan Fajar) often heard before the election, in this section votters behavior distorted by money politics. On the ethical side, voters will become liar votters to continue receiving gifts of money, but do not choose candidates who give money.

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The Cooperation Development of One Stop Integrity Zone Services Between Metro and Lampung Tengah

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Abstract

The implementation of regional autonomy has not yielded the expected results. Regional autonomy it gave birth to selfishness among regions. The essence of regional autonomy should create inter-regional cooperation to realize the excellent public services and integrity. The practice of public services is still full of corruption, collusion and nepotism, including a one stop services integrated.

The purpose of this study is to identify potential cooperation and produce the Model Inter-regional Cooperation in Development Zone Public Service Integrity in Metro City and Central Lampung Through Institutional Strengthening One Stop Services (OSS) in the framework of Investment Promotion.

The method used in this research is descriptive qualitative approach. Data learned through observation, field visits and interviews with competent resource persons with the substance of the research, documentation and focus group discussions. The location of this research at tthe Metro City and Central Lampung District as an autonomous region in the province of Lampung.

The results of research and discussion integrity zone OSS development cooperation between the Government and the Government of Metro City Central Lampung regency can be concluded as follows: First, the cooperation between the Government of Metro City and the Government of Central Lampung regency in the construction zone OSS integrity to do. This conclusion is based on the existence of some of the opportunities is the driving factor establishment of cooperation, namely in common mission area, a common vision and mission of the Office / Board of Investment and the OSS, similarity of problems in service reforms OSS, similarity of historical ties and emotional regionalism, and issues border geographical location, as well as the role of the province is normatively facilitate cooperation between regions in one province and also the existence of the Ombudsman institution Representative Lampung Province. Second, the model of development cooperation between the OSS integrity zone of Metro City with Central Lampung District covers several aspects, namely: a). This partnership involves two core regions, namely the Metro City Central Lampung regency; b). as the main actors of development cooperation integrity zone OSS Investment Office and the City Metro and Investment Board and OSS Central Lampung Regency of Lampung Province Government and supported and the Ombudsman Lampung; c). the scope of development cooperation between the integrity of the zone of Metro City with Central Lampung regency OSS include strengthening organizations, improving the quality of human resource providers OSS, and structuring of OSS administration to be more advanced and modern; d). operational activities in

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development cooperation zone between the City Metro OSS integrity with Central Lampung regency can be shaped field studies, meetings and workshops, and voluntary monitoring of the implementation of public service reform, particularly OSS; and e). model of development cooperation between the OSS integrity zone of Metro City with Central Lampung regency is based on principles such as solidarity, participatory, transparent, accountable, effectiveness, efficiency, responsiveness, and responsibility.

Keywords: *regional cooperation; the integrity of the zone; One Stop Services.*

1. Introduction

Regional autonomy that has been updated by Act No. 23 of 2014 on Regional Government, one important part in it is stated that in order to improve the welfare of the community, the area can be entered into a collaboration with other regions that are based on considerations of efficiency and effectiveness of public services, synergy and mutual profitable.

Public services must be organized by applying the principles of good and clean governence. Realizing public service free of corruption, collusion and nepotism faced with the complexity of issues and challenges, both internal and external comes from. To that end, the local government should establish cooperation with various parties, such as cooperation with the local government to local government and local government and communities to build a public service that is free of corruption.

The theme of this research is the development of a model of bureaucratic reform era of regional autonomy: the policy of regional cooperation through the establishment of anti-corruption and integrity zone strengthening local institutional capacity in order to realize good governance. This theme is interesting and important to study because the essence of regional autonomy in order to create excellent service has not materialized significantly. Meanwhile, the potential and opportunities for inter-regional cooperationcreating a public service along with the surrounding area is wide open.

Opportunities and potential for cooperation among local governments in the province of Lampung to do throughout the territory. One of these public service quality improvement of cooperation between the City and the Metro Central Lampung regency. Both areas have been carrying out a public service, including One Stop Services (OSS), which faced a number of problems, so that its implementation is far from optimal.

As a college town that has a long-established, public services in Metro not reflect the principles of good governance. This fact is reinforced by the release of the Corruption Eradication Commission (KPK) on June 10, 2013, the results of the survey of the National Integrity Index (IIN) puts Metro in the lowest order of 60 cities in Indonesia. Survey integrity of the public sector by the Commission carried out at Metro City government agencies, including the unit ID card production services, Business License, and IMB. (Source: KPK RI, 2013).

Poor quality of public services in the Metro can be seen in terms of human resources (HR) where there are some disadvantages, such as not a professional, do not have the competence and empathy and disregard ethics in service. While the institutional side, the organization has not been designed and prepared specially in the context of providing excellent service to the public in accordance spirit of bureaucratic reform. Whereas human factors and systems are two things that can not be separated.

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Launching of Integrity zone to the mainland Non Corruption on June 4, 2012 in Metro City as a statement and a shared commitment to combat all forms of corruption, as well as in order to reform the bureaucracy and improving the quality of public services are strengthened through the signing of an integrity pact by all officers and personnel. Concrete steps have been done from the arrangement of bureaucracy, improvement and simplification of the system of services, provision of better services as well as training of personnel.

Metro City Government's commitment in improving the integrity of the apparatus, especially the public service sector gained the recognition of the Corruption Eradication Commission. The seriousness of Metro City to unravel the problem on quality public services have been successfully placed as 4 areas with increased scores integrity sifnifikan (> 2 point). Public service integrity index in Metro placing it above the city of Bandar Lampung and other districts/cities.

Meanwhile, the results of research or survey conducted by the Commission in 2009, published in 2010 puts Lampung Tengah District as one of the districts with the lowest score of the integrity of the public service. Learn 15 (Fifteen) district/city with the lowest integrity scores are: City of South Jakarta, Kab. Brass, City of Bandar Lampung, Samarinda, Kab. Maros, Kab. Deli Serdang, Kota Manado, Kab.Gowa, Makassar, Kab. Garut, Bekasi, Kab. Central Lampung, North Jakarta, Kab. Kutai Kertanegara, and Kab. Sumenep. (Source: KPK RI, 2010).

The purpose of this study is to identify potential cooporation and produce the Model Policy Cooperation Inter-regional (city government Metro and Central Lampung District, the location of this research) through the establishment of zones of Integrity to the realm of Non-corruption and strengthening local institutional capacity in order to award public service sound good governance.

2. Literature Review

Inter-regional cooperation is an action, activity or effort undertaken jointly by two or more autonomous regions, committed in order to achieve a common goal to organize and manage the interests of society. (Source: LAN 2004 and Frank and Smith, 2000).

The study results Prasojo (2004) that in the context of public service sound good governance; the concept of good governance (good governance) has long been the dream of many Indonesian people. Although the understanding of every person of good governance, vary, but at least most of us imagine that with good governance we can have a better quality of governance.

Ethics state administration is a form of control on the bureaucracy in implementing what the basic tasks, functions and authority. When the state administration wants the attitude, actions and behaviors said to be good, then in performing basic tasks, functions and authority must rely on state administrative ethics. Ethics state administration in addition to use as a guide, reference, reference the state administration can also be used as a standard attitudes, behaviors, and policies can be good or bad. (Source: Keban, 1994).

Integrity zone (ZI) is the title given to the government agency leaders and staff are committed to realizing WBK / WBBM bureaucratic reforms, especially in terms of prevention of corruption and the improvement of Quality of public services. (Source: Permenpan RB No. 52 of 2014).

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3. Research Methods

This type of research is descriptive qualitative approach, sought to portray events or phenomena corresponding facts occurring in the study site, where each of the data generated in the form of words written or spoken of people and behaviors that can be observed (Bogdan and Taylor in Moleong , 2005). Through descriptive qualitative approach, the researchers intend to conduct an objective representation of the symptoms present in the research problem that is a model of cooperation policy of the new autonomous regional government through strengthening institutional capacity and human resources (HR) in order to award public service-minded good governance.

4. Results And Discussion

4.1 Potential-potential cooperation between the PTSP Integrity Zone Metro City with Central Lampung

After describing the potential of development cooperation zone public service integrity, especially PTSP, between City Metro with Central Lampung District, it can be stated that these potentials can be classified into two aspects, namely internal and external aspects. The potentials of the internal aspects of the area is similar mission, vision and mission of the Office / Board of Investment and the OSS, similarity of problems in OSS service reform, in common historical ties and regional emotions, and the geographical location of the border issue. While the potentials in the category of external aspect is the role of the province is normatively facilitate cooperation between regions in one province. Then the existence of institutions that was formed specifically to promote the improvement of public services such as the Ombudsman Representative Lampung Province. Potentials need to be accumulated into a source of inspiration and energy to be a unifier of cooperation in the construction zone OSS service integrity in Metro City and Central Lampung regency.

The potential of cooperation between the City Metro with Central Lampung regency Issuer has complied and is in line with studies theorists of the reasons for the establishment of a regional cooperation. Inter-regional cooperation generally occur for several reasons, including the interdependence of economic activity, the difference in the ownership of resources, the need for specialization with the intent to increase the added value of an area, as well as due to geographical conditions and different characteristics. (Source: Widodo, 2005).

The findings of the research potential of the integrity zone OSS development cooperation between the City Metro with Central Lampung regency supports theoretical view that the importance of cooperation in the provision of certain services or in the management of certain aspects of the development is driven by objective reasons as follows: a). Excavation and resource utilization potential of mutually beneficial; b). Preparation of environmental carrying capacity for the creation of inter-regional cooperation and sustainable development processes; c). Cooporation facilitation of dispute resolution between regions in order to avoid conflicts of interest due to differences in the perception of the nuances of ego sectoral and short-term interests; d). The creation of harmony, conformity, harmony with the principles of integral and the better understanding of the balanced growth of the regional economy; e). Formulation of policies in order to create unity, mindset and actions across the area based on the principle of mutual understanding oriented to provision of solutions for the benefit of the wider community. (Source: Widodo, 2005).

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The results also corroborate reports research results, PKP2A I (2004) in the LAN 2004, which states that consideration of the need to strengthen inter-regional cooperation as well as cooperation between the public sector and the public private sector, most can not be seen from three dimensions as follows: a). For political reasons, namely to create a democratic government (egalitarian governance) and to promote good governance and good society; b). administrative reasons, namely the limited resources of the government (government resources), both in terms of budget, human resources, assets, and management capabilities; c). economic reasons, namely to reduce disparities (disparity) or inequality (inequity), spur growth (growth) and productivity, improve the quality and continuity (quality and continuity), and reduce the risk (risk minimization).

Potential integrity OSS development cooperation zone between the Metro City Lampung regency in line with the middle of one of the strategic importance of regional cooperation issues, namely the issue of the Public Service Improvement. Cooperation between regions is expected to be one of the innovative methods in improving the quality and scope of public services. Effectiveness and efficiency in the provision of infrastructure facilities and public services such as education, health, clean water, and so on are also becoming an important issue, particularly for lagging regions. Increased public pelayana also includes the construction of infrastrukutur. This infrastructure could include road networks, power plants, and so forth.

4.2 Model of Regional Cooperation in Development Zone between Integrity PTSP Metro City with Central Lampung

After describing some of the potential cooperation between the Government and the Government of Metro City Central Lampung regency in the construction zone of the integrity of public services, particularly the OSS, then based on the results of data analysis interview (2016) and the documentation can be structured model of cooperation between the two regions.

First, This cooperation can be referred to as inter-regional cooperation in the province. Inter-regional cooperation is awakened by geographical factors, emotional and historical ties, and the similarity of views on public service reform.

Second, As the main actors of development cooperation zone integrity is Metro City Government, particularly the Office of Investment and OSS, and Central Lampung regency government, particularly the Investment Board and OSS.

Third, The scope of development cooperation between the integrity of the zone of Metro City with Central Lampung regency OSS include strengthening organizations, improving the quality of human resource providers OSS, and administrative arrangements OSS that more advanced and modern.

Fourth, The operational activities of development cooperation zone between the City Metro OSS integrity with Central Lampung regency can be shaped field studies, meetings and workshops, and voluntary monitoring of the implementation of public service reform, particularly OSS.

Fifth, A model of integrity OSS development cooperation zone between the Metro City Central Lampung regency is based on principles such as solidarity, participatory, transparent, accountable, effectiveness, efficiency, responsiveness, and responsibility.

The draft model of development cooperation between the PTSP integrity zone of Metro City with Central Lampung regency consistent with some theoretical views. Model development cooperation integrity zone is in line with the study UEMRI (2002), in particular no form or type of inter-regional cooperation which is based on a project or a

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particular problem with the activities and programs of development of skills and human resources better, namely: training program followed and organized by cities and organizations; seminars, lectures, conferences and other organized together.

Model development cooperation integrity zone of Metro City with Central Lampung regency support the model setting Cooperation Rosen (1993) in the LAN (2004), in particular the Joint Services, where the arrangement of cooperation in providing public services, such as the center one-stop service that is shared, where each party sent staff members to work in the service center.

Results of research integrity zone model of development cooperation with the Metro City Central Lampung regency appropriate and reinforce the oretical studies and empirical experience LAN PKP2A III (2002), which is a technical assistance cooperation model. This model is the development cooperation between the regions, in which one or several areas of cooperation with mutual assistance to each other in things that are micro or technical nature operational implementation of their local authorities. Some forms of cooperation of technical assistance among others are: first, the provision of technical assistance, assign an employee or several employees who have specific competencies to other areas that require specially qualified workers to help them carry out the tasks specified governance eg expert help accountants to assist in preparing balance the budget. Secondly, apprenticeship, assign one or several employees to carry out an internship program in other local goverment in improving its ability to carry out the task. Third, regional representatives, assigns employees who have specific expertise to assist other local governments in planning for local development which substantially intersect with the interests of the region. Fourth, exchange employees, conducting an employee exchange program is intended to enable the exchange of experiences and knowledge between regions in implementing local development.

In order to successfully implement such cooperation takes the general principles as contained in the principle of "good governance" (see Edralin, 1997 in the LAN 2004). Several principles of good governance principles among which there can be used as a guide in conducting cooperation among local governments, namely: 1). Transparency. 2). Accountability. 3). Participative. 4). Efficiency. 5). Effectiveness. 6). Consensus. 7). Mutual benefit and advance.

5. Conclusion

First, Cooperation between the Government and the Government of Metro City Central Lampung regency in the construction zone OSS integrity to do. It is based on the few opportunities or incentives, ie a similar mission area, a common vision and mission of the Office / Board of Investment and the OSS, similarity of problems in service reforms OSS, similarity of historical ties and emotions regional and border issues geographical location, as well as the role of provinces normatively facilitate cooperation between regions in one province and also the existence of the Ombudsman institution Representative Lampung Province.

Second, model of development cooperation between the OSS integrity zone of Metro City with Central Lampung District covers several aspects, namely: a). This partnership involves two core regions, namely the Metro City Central Lampung regency; b). as the main actors of development cooperation integrity zone PTSP Investment Office and the City Metro and Investment Board and OSS Central Lampung Regency of Lampung Province Government and supported and the Ombudsman Lampung; c). the scope of development cooperation between the integrity of the zone of Metro City with Central Lampung regency OSS include strengthening organizations, improving the quality of human resource

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providers OSS, and administrative arrangements OSS that more advanced and modern; d). operational activities in development cooperation zone between the City Metro OSS integrity with Central Lampung regency can be shaped field studies, meetings and workshops, and voluntary monitoring of the implementation of public service reform, particularly OSS; and e). model of development cooperation between the OSS integrity zone of Metro City with Central Lampung regency is based on principles such as solidarity, participatory, transparent, accountable, effectiveness, efficiency, responsiveness, and responsibility.

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Policy Implementation on Civil Servant Recruitment Based on Cmputer Assissted Test in Lampung (The Study on The Recruitment of CPNSD Metroi 2014)

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Abstract

Good Corporate Governance with public participation in leading and evaluating the result of human resources selection reflects the good characteristic of government and as the important phase of human resources bureaucratic reformation together with the grand design and road map of reformation declared by Ministry of Administrative and Bureaucratic Reform. Based on Regulation Number 5 in 2014 about Civil Apparatus, the objective recruitment process, transparent, and accountable is a the beginning of forming the qualified and professional bureaucrat.

This research was aimed for (1) analyzing the implementation of recruitment for civil servant in Metro in 2014 based on computer assisted test (2) formulating good governance policy analysis based on the phenomenon or filed research and giving the recommendations for forming good governance policy in Metro related to the bureaucrat recruitment process. The method used in this research was qualitative approach with descriptive type. The data obtained by FGD with relevant informan. The location was in Metro.

The result of this research showed that : (1) the recruitment process was done by the regulation and using the procedures (2) the candidates who met the requirements had the rights to follow the selection process done by Badan Kepegawaian Daerah Metro. Meanwhile the supporting factors for this research showed that : (1) there were some infrastructures such as computers, local networking, LCD, TV, the rooms for monitoring, server, waiting and test, (2) the candidates were discipline to follow the selection process, (3) the computer assisted test system was easier and more transparent than the old system. The obstacles found in this research were : (1) the access of networking was difficult for the candidates who lived far away, (2) the website of BKD sometimes was inactive, (3) the computer system was in trouble during the test and (4) the remote area from the test location.

The recommendations given for this research were : (1) The government should give the information access for remote location, (2) the government should build good internet infrastructures, (3) the government should pick the strategic location

Keywords : *Policy Implementation; Computer Assisted Test; Good Governance; Bureaucratic Reform*

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1. Introduction

Good Governance includes the involvement of public participation as well as evaluating the results of the selection of personnel resources reflects the characteristics of good governance and an important phase of bureaucratic reform the field of civil service in line with the stipulation of grand design and a road map for reform of the bureaucracy by the Ministry of Administrative Reform and Reformation Bureaucracy. Accordance with the mandate of Law Number 5 of 2014 concerning the State Civil Apparatus, the recruitment process is objective, transparent and accountable is an early manifestation of the civilian state apparatus and qualified professionals.

Studies conducted claimed that the practice of case brokers in recruitment, bribery (corruption, collusion, nepotism, abuse of authority) and a series of other modes were always the case. The data obtained by the Ministry of Administrative Reform and Bureaucratic Reform suspect fraudulent recruitment civilian state apparatus in 40 regions in Indonesia. Some indications of fraud, among other participants failed the test but did not take the exam, engineering test scores, or the committee does not report test results to the Civil Service Agency (BKN). As a rule, the test results are usually in collaboration with the Higher Education reported to the State Personnel Board.

The key to all of the above problems is that in the long term, recruiting candidates for Civil Servants and information-technology/CAT (Computer Assisted Test), seems to be immediately realized quickly to ensure capable recruitment in producing quality resource bureaucratic apparatus who have the competence and better integrity. Thus the expected closing loopholes that allow fraud, abuse of authority, corruption, collusion and nepotism and politicization in the recruitment of Civil Servants. For the short term, all elements of society ranging from academia, NGOs, mass media, political parties, the Regional Representatives Council, and other civil society groups to jointly oversee this recruitment process. In other words, the increase in public participation to continue to monitor and supervise the implementation of the reform of the bureaucracy is not only the field of civil service but in all areas and practices of manipulation and other collusion can be minimized or even eliminated.

1.1. Purpose Research

The specific objectives to be achieved in this study are:

1. Evaluating the various problems for the implementation of the selection process of personnel resources in Metro City 2013/2014
2. Formulating a policy framework for good governance based on the findings of the problems in the practice of governance in Metro City as well as providing advice on the preparation of good governance in Metro City, especially with regard to the evaluation results of the implementation process of selection of personnel resources public in 2013/2014
3. Producing a model of good governance through the development of public participation to participate and evaluating the selection of personnel resources-based Computer Assisted Test (CAT) in Metro City 2013/2014

1.2. The Specific Benefits of This Research Are:

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1. Improving the system of internal and external oversight of the bureaucracy in order to reform the bureaucracy.
2. Producing a draft legal public policy models to support bureaucratic reform the field of civil service through the involvement of public participation in evaluating the selection of personnel resources-based Computer Assisted Test (CAT).
3. Publication of the results of this study in the scientific national or international journal.

2. Research Methods

2.1 Type and Research Approach

This type of research is descriptive qualitative approach, to describe the event or phenomenon accordance with the facts that occurred in the study site, where each of the data generated in the form of words written or spoken of people and behaviors that can be observed (Bogdan and Taylor Moleong, 2005). Through descriptive qualitative approach, the researchers intend to conduct an objective representation of the symptoms present in the matter of research is the development of public participation to participate and evaluate the selection of personnel resources-based Computer Assisted Test (CAT).

2.2. Research Location

The location of this research was at the Metro, BKD Kota Metro and the the ombudsman representatives of Metro.

2.3. Research Focus

The focus of this research were:

1. Jurisdiction over some of the rules per Law on State Civil Invitation, namely the Law on the Fundamentals of Civil Service No. 8 of 1974 juncto OF No. 5 of 2014 concerning the State Civil Apparatus particularly the study of comparative implementation of the selection of resources LJK-based apparatus using Computer Assisted Test (CAT).
2. Indentificating the implementation process of recruitment resource based public computer apparatus asissted test (CAT) in 2013/2014 in Metro.
3. Evaluating the implementation of public personnel recruitment resource-based computer assisted test (CAT) at the study site, the city's Metro for the period 2013/2014.
4. Develop of public participation model in the evaluation of resource selection policy based computer assisted test apparatus in order to realize good governance (involving public participation to oversee the start of the selection process up to evaluate the results of its implementation).

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2.4 Types and Sources of Data

The primary data obtained through key informant competent to study this study were:

1. Key Informants were selected purposively based on the competence of the aspects of thought and that can be identified by the duties and functions (TOR) on the agencies, the Local Government Agencies, including Metro, The Head and staff in BKD Kota Metro.
2. Officials in the Regional Employment Board of Metro City and community participants were selected on the acceptance of public officials/CPNSD 2013/2014 were selected purposively.
3. The stakeholders that are concerned about the importance of public participation to evaluate the resource selection policy apparatus in Metro.

2.5 Data Collection Technique

Data collected through interviews with key informants, documentation and field observation studies/field visits to research locations.

2.6 Data Analysis Technique

The analysis of data using statistical techniques, further analysis was conducted qualitatively. Miles and Huberman in Sugiyono (2006) suggests that activity in the data analysis performed interactively and runs continuously until complete so that the data is already saturated. In qualitative research, the stages of data analysis include data reduction, data presentation and verrivication/conclution.

2.7 Data Validation

To determine the validity of the data in qualitative research must meet several requirements in the examination of data using four (4) criteria (Moleong, 2005), namely: the degree of confidence credibility, transferability, dependability confirmability. To check the credibility (Moleong, 2005), the researchers conducted a triangulation, and the negative case analysis techniques to the road collecting examples and cases that do not fit the pattern and trend information that has been collected and used as a comparison (Moleong, 2005)

3. Results And Discussion

The process of recruitment of candidates for Civil Servants (CPNS) has some of the phenomena that we can be formulated as follows:

1. Implementation of the recruitment of candidates for Civil Servants were particularly vulnerable to acts of corruption/irregularities.

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2. Local and national politicians often entrusted their relatives, friends, or a particular party to be assisted in the recruiting process, often used as a sizable illegal funding sources through bribery.

3. The practice of bribery difficult to follow because of the bribing and receiving bribes were equally benefited.

4. The team believed there should be at least four aspects of change in the recruitment/reform the recruitment process, including: Aspects of the formation; the recruitment process should be based on the proposals of each unit of the organization into the proposed mandatory formation based on the results, namely job analysis, workload analysis, redistribution of the Civil Service and Civil Servants projected needed each year.

In 2013 this exam questions were prepared by a team of experts consortium of 10 Universities, there was a validity test questions, questions submitted electronically, and the distribution of matter under police surveillance and a consortium of NGOs, among others. Indonesia Corruption Watch (ICW) of the implementation of selection. From this moment the execution time of the selection was done simultaneously, there was a procurement committee of the National Civil Servant Candidates and no procurement committee candidates for Civil Servants agency, a written test and a test of competence. In the past, the selection was not determined simultaneously, the committee exists only in their respective agencies and there was only a written test. Processing of exam results was crucial phase because it had always been an arena for engineering, manipulation and transactions between the procurement committee person, officials and the public to push through the recruitment of participants Regional Civil Servants Candidate undue pass. On that basis, the Ministry of Administrative Reform and Bureaucratic Reform policy making exam results processed by a consortium of Universities, was open, the value could be known to the participants, passing by passing grade, the results if submitted to the Minister of PAN and RB and the determination of graduation by PPK based on the processed consortium Universities.

Supervision or security carried out by various agencies such as the internal watch agency, the State Finance and Development, Agency for Development and Application of Technology, the State Intelligence Agency, the Corruption Eradication Commission, the Indonesian National Police, and Ministry of Administrative Reform and Bureaucratic Reform Consortium Governmental Organization community.

Based on the research team at the top, the Team also acknowledged that the current reform of the bureaucracy in the middle of a transition period so that the pace of reforms constantly confronted by the "great wall" bureaucracy of the old regime that was identical with acute culture of collusion, corruption and nepotism. Similarly, the reform measures recruitment of candidates for Civil Servants face extraordinary challenges of a corrupt bureaucracy. For the long term, the recruitment of candidates for Civil Servants-based information technology (IT), seemed to be immediately realized quickly to ensure the recruitment of candidates for Civil Servants of IT-based input was expected to produce quality human resources bureaucracy who had the competence and integrity better. Ministry of Administrative Reform and Bureaucratic Reform, currently had computer

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facilities assited test (CAT) in 12 regional offices and in 2013 it would also be built in 33 provinces as well as in 2014 to all districts/cities already had computer assited test. Candidates with recruitment of IT-based Civil Servants were expected closing loopholes that allow fraud, abuse of authority, corruption, collusion and nepotism and politicization in the acceptance of candidates for Civil Servants. For the short term, all elements of society ranging from academia, NGOs, mass media, political parties, the Regional Representatives Council, and other civil society groups to jointly oversee the process of recruiting candidates for Civil Servants in 2013 with this new pattern.

Escorting start of the registration process, the distribution of exam, test execution, test result processing and supervision so that hope to start the bureaucratic reform from upstream could be realized. This was an important momentum and strategic long-term reform of the bureaucracy, especially in Lampung. Recruitment Candidates for Civil Servants in Lampung Province who ran an objective, transparent and fair was expected to give birth to the seeds of the net public service apparatus, integrity, competent and had the spirit of service to the community.

4. Conclusions And Recommendations

The conclusion of this study were:

1. The implementation of procurement regional policies of Civil Servants Candidate-based Computer Assisted Test (CAT) 2014 in Metro was implemented in some steps (i) recruitment had been done guided by government regulations and guidelines to implement them in order to fill certain positions (ii) the eligible participants of CPNSD organized by BKD Metro City. The stages of selection ran well because the selection was transparent, objective, accountable and free from collusion, corruption and nepotism.
2. The supporting and inhibiting factors in the Procurement Process of Candidate Regional Civil Servants (CPNSD) with System-based Computer Assisted Test (CAT) 2014 in Metro include:
   (a) Supporting Factors : facilities and infrastructure to support the implementation of selection, among others: the server, the client computer, local network (local networking) using a wired LAN Unit, not using wifi, generators and UPS, Liquid Crystal Display (LCD) TVs for monitoring the results of the test and to play video, LCD projector for presentation and briefing test system with CAT, printers, lockers or storage of goods belonging to the participants and the waiting room, and most importantly the test room, server room and administrator, space monitoring, the lounge and space registration of participants. The inhabiting factors, such as (a) the network access that were difficult to reach by the participants of CPNSD residing in rural areas (do not have good internet access), (b) CPNSD test required participants to go to the center of the city in order to obtain good internet access, (c) the website sometimes was inactive and difficult to access, (d) computerization system that had been interference, before the conduct of the test, (d) the location was difficult and far from the center of the city.

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The suggestions/recommendations necessary in connection with the results of this study were:

1. The local government should provide easy access to information that could be accessed by people in difficult areas to access the internet.
2. The local governmen must build a good internet facilities in areas that do not have a good internet connection like building a satellite internet so that people could more easily follow the process of recruitment.
3. For procurement CPNSD coming period, the local government should choose a more strategic location and proximity to the center of the city so they did not get any troubles to the test location.

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Reform of The Bureaucracy and Local Wisdom: Study on Principles of Lampung Cultural Values

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Abstract

This qualitative study the bureaucratic reform-reviewed models that can be built by adopting local values in Lampung Province. This value is derived from the principle Piil Pesenggiri of principles. Its consist several principles, Including Bejuluk Adek (Principles of Success), Nemui Nyimah (Choice Principles), Nengah Nyappur (Principle of Equality), Sakai Sambaian (Principles of Cooperation). Principle Nemui Nyimah correlated about science as an important thing to be possessed by every bureaucrat. Then, the principle of the which include significant; Nengah Nyappur willing to listen to other people's opinion becomes the next priority, followed by the principle of Sakai Sambaian. Principle Nemui Nyimah in the context of public service can be defined as the nature of social concern, the principle Sakai Sambaian the which in essence is to show a sense of participation in and solidarity in the community to activities or obligations that must be done, Nengah Nyappur that is willing to listen and react swiftly and responsiveness.

Adoption model of local values in the local government bureaucracy reform identified to do is approach a peaceful street (conciliative approach). The approach was chosen because It provides direction change for the better effectiveness, as well as their patterns of formal legal peacefully adopted to minimize conflicts that can frustrate change in culture and customs bureaucracy. In order to provide a greater degree of success then all the stages of cultural change to be applied.

Keywords: *Reforms, Local Values, Local Wisdom.*

1. Introduction

Government bureaucracy grows and develops with the values that are reflected into their behavior. The values that underlie the behavior of the bureaucracy like citizenships, social justice, equity, ethics, responsibility, patriotism, openness and others actually is the essence of public administration, in addition to managerial values like efficiency and economy (Frederickson, 1997: 4), In addition to values that are universal in the public administration system, in particular the government bureaucracy, there are values that are specific national or local nuances of certain countries.

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From the perspective of administrative culture, of course, adopt local values nation wide is needed to facilitate the implementation of the comprehensive reform policy bureaucracy is to make it work more effectively. The benefits of these adjustments universal values invitation of local values nationally have no doubt, this is evidenced by the many principles of organization and public management are adopted from developed countries turned out to be inappropriate and ineffective to be applied in countries Indonesia evolved like this. The failure of the bureaucracy, it is linked to the dimension of culture is the basis and mindset of bureaucrats both generally and specifically in the respective national local countries.

It can be observed among the bureaucracy in Indonesia. In general culture of bureaucracy in developing countries including Indonesia has characteristics in keeping with the concept of "Bureaucracy Sala" are depicted with heterogeneity, formalism and overlapping (Riggs, 1964). The reality is you can not deny in Indonesia. Culture paternalism still be spread in the bureaucracy of our current environment both in central and regional governments. It is inseparable from the past experience of Indonesia under the colonial rule of the day. To streamline the wheels of colonial rule, the Netherlands lifted to recruit employees coming from the upper social strata, and most come from the gentility of the palace (the gentry or nobility). Therefore, the Indonesian bureaucracy both in Java and in almost all local governments in Indonesia, strongly colored by the traditional culture palace in the system of values and a bureaucratic culture today. This cultural aspect of the real challenges for the vision of bureaucratic reform in Indonesia, at the same time that determines the effectiveness of the new regulations in the various aspects of the bureaucracy that has been issued by the Government of Indonesia.

Bureaucratic culture that develops in a particular area can not be separated from the culture and the surrounding social environment. Socio-cultural aspects of either the bureaucracy and red tape surrounding the participating role in influencing the bureaucratic reform process, without the support of social and cultural reform process would be difficult. The failure of the implementation of systems adopted western developed countries are caused by unsynchronized or less attention to the socio-cultural aspects (Kartiwa, 2005). Social environment has a system of norms, value systems, belief systems, customs, even a view of life that has been understood by the members of the community as something that is good and true. System of norms and values is recognized as a guide or reference in the act and behave for their peoples. Therefore, the cultural and bureaucratic culture are two things that always characterizes the lives of its members, just a different application.

The bureaucratic culture also sometimes be colored by local wisdom in an area. Local knowledge is a source of knowledge held by a dynamic, evolving and forwarded by certain populations that are integrated with their understanding of the natural and cultural surroundings. Local knowledge is the basis for decision policymakers at the local level in the field of health, agriculture, education, natural resource management and rural community activities (Caroline Nyamai-Kisia, 2010). Therefore the solution reform bureaucratic culture has the potential to come from local wisdom contained in an area. Local values are charged principle of life for a long time span is expected to be a sticker element changes in behavior that an important part of bureaucratic reform in Indonesia.

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2. Method

This qualitative research collecting data in three ways, namely literature which includes reference materials indigenous to the area of research, interviews with informants, focus group discussions and field documentation. It also made the collection secondary data and information releivan for use in this study, including the identification of a model of bureaucratic reform in accordance with existing conditions, as well as through an analysis of some models of best practices that have been formulated, developed or applied to other areas in Indonesia. The analysis used in this study is to model the interactive analysis Miles and Huberman (1992) with the working procedure data reduction, data presentation, verification of data and drawing conclusions.

3. Result And Discussion

3.1 Local Values For Bureaucracy Cultural Reform

The research showed Piil Pesenggiri as defining the concept of self-esteem, shame, and high-minded. In ordinary people, Piil is always interpreted as the dignity of the specific situations or circumstances in a social relationship between people in a particular neighborhood or community (Irianto and Margareta, 2011).

Nemui Nyimah principle, categorized into five (5) indicators; namely manners in the services, indicators of good conduct in the service, indicators of knowledge in providing services which means that officers understand their duties or determine the duties of the job they do, the indicator skill in serving the officers, officers in serving the accountability indicators. Nemui Nyimah can be summarized as suave and open (Hidayat, 2014).

Nengah Nyappur principle, can be categorized into five indicators, namely the first; indicators sociable and friendly in serving, both indicators of tolerance or tolerance in serving the reason is due to the conditions of time, usually associated with hospitality employees. A third indicator of Nengah Nyappur principle is to uphold the principle of the airport (obey the rules, as duties, would not be bribed, etc.). The fourth indicator of Nengah Nyappur principle is the ability of good communication officer in the airport. The fifth indicator is the ability of officers to compete in providing the best service to the community. The reason is there is no sense of competence or competition to provide the best ministry, for example, rapid, timely and not talk when serving.

Sakai Sambayan principle can be arranged into four indicator value; first; convenience of service, both the attitude of responsiveness, the third is communicative and coordinative which meant the ability to cooperate with other employees in the airport service users. The fourth indicator is an attitude that can be trusted to serve the public.

Furthermore, they named “Adok”, in the context of public services can be categorized into three indicators; The first is to work hard in serving the community, both as an individual with a proven record of bureaucrats or as part of a work unit, and the third had a pride in carrying out duties as a community service.

Piil Pesenggiri principle is one of the principles contained in the culture Piil Pesenggiri which is a philosophy of life Lampung. Piil Pesenggiri principle inherent in a person can be seen from how a person has a sense of self-esteem, have customary title as an achievement,

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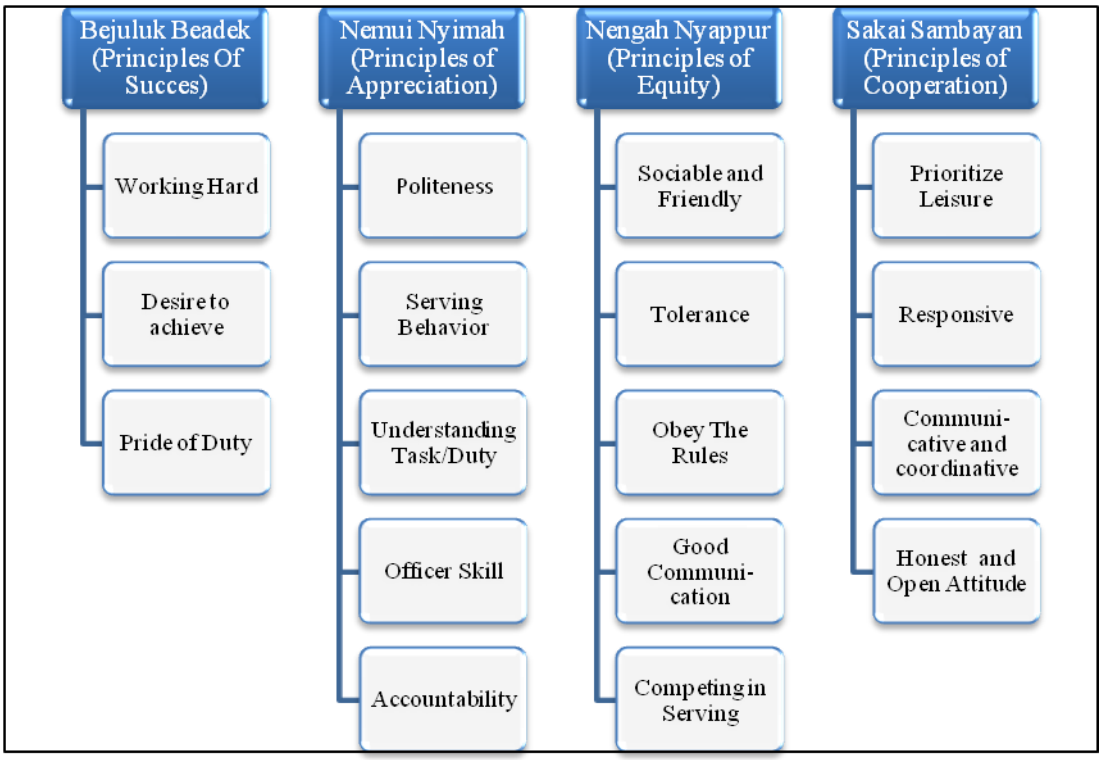
politeness, glad to get along with others, and is willing to cooperate with others.

Based on research data, it is known if the principle Piil Pesenggiri including self-esteem, shyness and magnanimous, rated as a very important thing and be the first priority. Next is the principle that such Nemui Nyimah about science is an important thing to be possessed by every bureaucrat, resource study assessed it as being important as well. Then, the principle Nengah Nyappur that include meaningful willing to listen to other people's opinion becomes the next priority, followed by the principle of Sakai Sambaian as well as a variety of other responses that are able to describe the principles Piil Pesenggiri namely Piil Pesenggiri (Principle of Honor), Bejuluk Adek (Principles of Success), Nemui Nyimah (Choice principle), Nengah Nyappur (principle of Equality), Sakai Sambaian (Principles of Cooperation). Principle Nemui Nyimah in the context of public service as the nature of social concern, the principle Sakai Sambayan which in essence is to show a sense of participation in and solidarity in the community to activities or obligations that must be done, Nengah Nyappur that is willing to listen and react swiftly and responsiveness.

Members of the public Lampung armed with a sense of family and accompanied with an attitude like to hang out and make friends with anyone who does not distinguish between religion and levels, attitudes like hanging out and friendly and principles sakai sambayan which in essence is to show a sense of participation in and solidarity in society to something activities or obligations that must be done.

In brief, the description can be simplified into the table as follows:

Figure 1. Identification of values Bureaucracy Adopted From Cultural Values Lampung



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3.2 Bureaucratic Culture Change Strategy Based on Local Values

Aspect to note is the strategy to introduce and adopt the local value is a strategy implementation. This should be taken into account appropriately and clearly. This case demonstrated the urgency of research Sofyan (2006) which states that cultural influences Piil Pesenggiri look more are detrimental to the effectiveness of the organization. His research on the Regional Employment Board North Lampung District concluded that the effect is on Piil Pesenggiri in reality a more prominent negative effect in the organization BKD. Piil Pesenggiri influence on the effectiveness of tested here through three factors in variables between the search factors and resource utilization, individual behavior, and organizational structure. From the study it was recommended efforts that can be done is by repositioning Piil Pesenggiri the ideal concept and disseminate the ideals of the Piil Pesenggiri, and certainly strengthen social control and formal controls on bureaucratic institutions consistently.

Therefore, in encouraging reform bureaucratic culture, changing the organizational culture that became the basis for the establishment of the design of structural change is not an easy matter, required particular form of approach and strategy of the stages in order to change the organization did not cause a large negative impact. In the context of the adoption of the piil pesenggiri Lampung culture can refer to the conception of Paul Bate (1994) on approach to cultural change:

a. Aggressive approach; Cultural change by using power approach, non-collaborative, create conflict, forced nature, its win-lose, unilateral and use decree. According to Schein called structural approach because uproot the existing culture.

In this approach the adoption of the local value of tangible piil pesenggiri done with the support of local leaders, traditional leaders and informal leaders of the community. It takes a series of actions to eliminate cultural or frontally old habits, even with the use of a set of regulations that restrictive or punitive. Because of this, this approach will be effective if it is done through the organization structure of government and social structures that accompanied the mechanism of punishment and reward.

b. Road of peace approach (conciliative approach); The cultural change is done collaboratively, solved together, win-win, integrative and introduce a new culture first before replacing the old culture.

In this approach the adoption of local values is done in a coordinated manner and compromised shared by all parties involved in the cultural change or habits within the bureaucracy. Compromise may occur in the priority choices to be the first value in the adoption and which should not be changed. The introduction of a new culture that is the result of the adoption of the values of the local culture seems to be more acceptable, it's just that there will be a compromise and a shared meaning about the practice of application of these values.

c. Corrosive approach; cultural change that has to do with the informal approach, evolutionary, not premeditated, politically, coalitions and rely on networking, the old culture little by little destroyed and replaced with a new culture.

In this approach the adoption of local value for bureaucratic reform carried out outside the structure and formal sets of rules. Efforts changes are made gradually, without a strategy that gradually and more likely to rely on the willingness to eventually change the culture and old habits into renewable and moving towards the better. However, it took longer to achieve those changes.

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d. Indoctrinative approach; Normative approach using re-training and education programs to the understanding of a new culture.

In this approach the change was made formally in a pattern that gradually and has a clear strategy to achieve. Changes in culture and habits done by conducting various activities that can provide insight into the changes and the attitude of the organizers of the bureaucracy. Education and training are carried out repeatedly to all the State Civil Administrative either still new as well as old. It is possible there is any conflict or ineffectiveness change if you choose this approach, but without a clear strategy and consistent. However, with their cultural values Lampung is the basis of the change of meaning in the initial stages will be more easily accepted.

Furthermore, based on the above approach, Paul Bate (1994) said that there are five (5) stages of cultural change, namely:

1. Deformative (Phase idea of change) that cultural change has not really happened, merely confirms the idea that cultural change is necessary. At this stage usually occurs shock therapy and exposure to dramatize the need for cultural change.

This phase will begin with the adoption of the identification of cultural values in real terms Lampung that can be implemented into the design of regional policies, both in the form of regulation of regional head and lowered into the description of implementation of ethics and guidelines. Ideas that have been identified in the process of adoption of the local cultural values will be set forth in writing, legally and have the power to be obeyed. Next will be found some who were surprised and seemed resistant to the idea, but a formal approach is made in the design of the protocol will make the parties comply with them.

2. Reconsiliative (Phase support the idea of change), ie The support of various parties against the idea of cultural change. At this stage of the negotiations on the cultural actors from both the initiator or the drivers of change nor the parties do not agree to change the culture.

This phase will begin with the dialogue between the parties that are resistant to the values of the change by the parties that support it. Negotiations occur in the scope of the priority value is applied and the technical aspects of the implementation of new values, so that it will eventually reach an agreement and weakens the opposition of those who are resistant or do not agree with the change.

3. Acculturative (Phase communication and commitment) wherein there is an intensive communication to the agreement diperloleh in the previous stage to create commitment. At this stage it is necessary to the process of socialization and education to help the penetration of cultural change.

This stage is characterized by increasingly intense attention from all stakeholders and the exchange of deeper understanding of the values of the new and the accompanying technical aspects. Parties that are resistant and those that support the implementation of the values of these changes creates an outline of a deal that will be carried out jointly. In addition it is characterized also by the effort or activity socialization and training given to civilian state apparatus with the aim of the establishment of the cultural values of more formal that has a high level of compliance.

4. Enactive (Phase implementation of changes), namely the implementation of the outcome of thought, discussion and debate about a new culture. Implementation There are two (2) forms of personal enactment (each individual act which allows the culture to be part of

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their life) and the collective enactment (the cultural actors together to solve the cultural problems that still hang).

This stage is characterized by already drafting the regulations and guidelines or codes of ethics, and he had started the implementation of socialization and training. The next part is the understanding and meaning of the new culture into the personal values of each country as well as civilian personnel melting these new values into the spirit of the local work as a great team. In the end, the whole apparatus of the state civil and area working devices, which built the changes will generate new values, as well as implications to cultural changes and new habits within the bureaucracy.

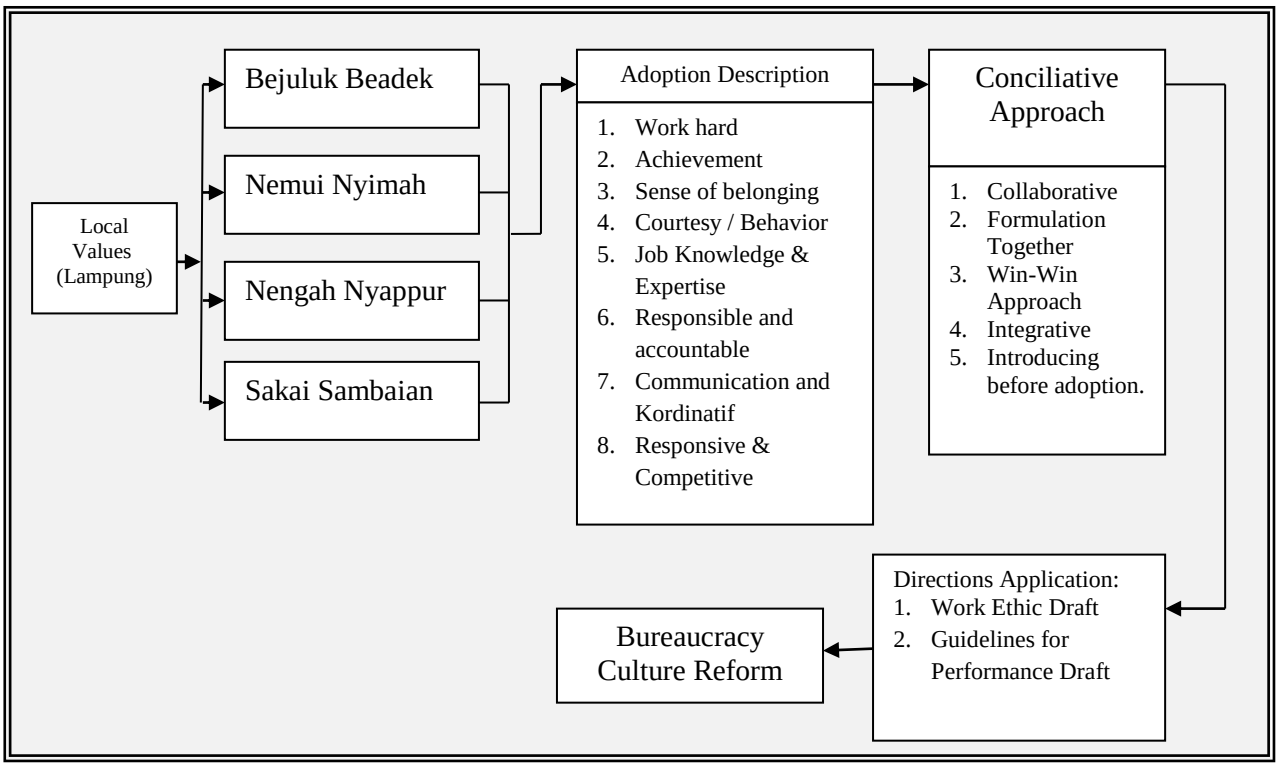
5. Formative (Phase formation of the structure and form of culture) that is currently shaping and designing the structure so that the culture of the culture that was once invisible becomes visible to all members of the organization.

This stage is characterized by its overall had almost the entire civilian state apparatus to change the value, it also leads to a bureaucratic culture that lead to a total change. At a later stage resulting change in culture and habits is increasingly embedded and reflected into the activities and performance of the government bureaucracy.

In the model adopted local values in the reform of local government bureaucracy peaceful path selection approach (conciliative approach). The approach was chosen because it provides direction change for the better effectiveness, as well as their patterns of formal legal peacefully adopted to minimize conflicts that can frustrate change in culture and customs bureaucracy. In order to provide a greater degree of success then all stages of Bates cultural change can be applied.

When understood as a set of values which aims to reform the cultural bureaucracy, it can be arranged an adoption model of local values are added to the bureaucratic reform as follows:

Figure 2. Adoption Model of Local Values in the Context of Bureaucracy Reforms in Prov. Lampung



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The model identifies the key principles that could be operationalized into organizational performance and employee. Of identification, and then created a mechanism of adoption and application approach to the way of peace in order to minimize potential conflicts and facilitate the absorption principle that value. Concrete form of the creation of the design principles and the value of the adoption mechanism is directed into the form of a draft work ethic and draft guidance performance. The design work ethic basically regulates aspects of personal and social relationships between employees in an organization. Adoption work ethics requires consistency and exemplary in order to achieve optimal success. While the draft guidelines for the performance can be integrated into the mechanism of rewards and punishments imposed on the employee and the organization, so that the achievement of success will be more restrained. However, the application performance guidelines require consistency and control are clear, so that power can be maintained adoption of the principle of the desired value.

4. Conclusion

There are several conclusions that resulted from the previous discussion, namely:

1. Reforms models can be constructed by adopting the principle Piil Pesenggiri which include self-esteem, shyness and magnanimous, considered as a thing that can be decomposed into several derivatives principles. The first is the principle that such Nyimah Nemui about science is an important thing to be possessed by every bureaucrat, resource study assessed it as being important as well. Then, the principle Nengah Nyappur that include meaningful willing to listen to other people's opinion becomes the next priority, followed by the principle of Sakai Sambaian as well as a variety of other responses that are able to describe the principles Piil Pesenggiri namely Piil Pesenggiri (Principle of Honor), Bejuluk Adek (Principles of Success), Nemui Nyimah (Choice principle), Nengah Nyappur (principle of Equality), Sakai Sambaian (Principles of Cooperation). Principle Nemui Nyimah in the context of public service as the nature of social concern, the principle Sakai Sambayan which in essence is to show a sense of participation in and solidarity in the community to activities or obligations that must be done, Nengah Nyappur that is willing to listen and react sigab and responsiveness.

2. Adoption Model of local values in the reform of local government bureaucracy peaceful path selection approach (conciliative approach). The approach was chosen because it provides direction change for the better effectiveness, as well as their patterns of formal legal peacefully adopted to minimize conflicts that can frustrate change in culture and customs bureaucracy. In order to provide a greater degree of success then all stages of Bates cultural change can be applied.

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Governance And Education Acceleration Framework In Lampung Province

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Abstract

This qualitative study produced some conclusions as follows; (1). The most dominant factor affecting the condition of educational resources in the regency of Pesisir Barat, among others due to the legacy of the educational policy of the district that the parent does not successfully create equity of educational infrastructure. Moreover, the carrying capacity of the condition of infrastructure in the Pesisir Baratregion who have not progressed yet also give maximum effect for the accelerated creation of education in the region. (2). Potential institutional and inter-institutional relations in the Regency of Pesisir Barat real located at the Department of Education, Office or other government agencies on the Pesisir Barat Regency, the private sector / foundations or public institutions as well as educational institutions that exist outside of the Pesisir Barat. Overall these institutions having an involvement of each format, but will still entwined in a framework that is directed by Pesisir Barat Regency. In this format is expected to create acceleration of education policy. (3). A strategy that can be selected and applied in the application of this model is through the stages: Capacity Building, Compilation Role, Joint marketing and Strangthening Network.

Keyword: *Education Policy, Regional Expansion, Governance*

1. Introduction

Education in Indonesia is still in a condition that lags behind neighboring countries. Political and Economic Risk Consultant, in a survey about the quality of education, concluding that Indonesia was the end of the 12 countries in Asia. Survey World Competitiveness Year Book 2007 on the competitiveness of education shows that Indonesia is ranked 53 of 55 countries surveyed. The implications of the quality of education can be seen from the Indonesian Human Development Index. The United Nations Development Programme in the HDI in 2007 showed that Indonesia ranks 107 of 177 countries surveyed. In the ASEAN region, Indonesia ranks seventh out of nine ASEAN countries, under Vietnam (Syamsuri 2010 in Lisnawati, 2011).

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Besides the issue of management and education policy, allocation and distribution of the education budget, they cause the final conditions. This is reasonable because of the lack of budget allocation and distribution resulted in a lack of education support. Indonesian education budget system is also very complicated, and there are no mechanisms in order to get a complete picture about school funding or comparing the difference between the costs of education (Clark, 1998: 25 in Arifi, 2008: 124). The increase in the education budget from 2005-2009 quite astonishing, an increase in the ratio is very significant. But in total, the salaries of teachers take a very large percentage of the total education budget (Rahmawati, 2016: 14). The implication is that the condition of educational support facilities, such as infrastructure and teaching instruments, predicted not changed much.

Moreover, the implications of a condition that also occurs is the professionalism of teachers in Indonesia are not improved. Data Research and Education Ministry in Muaddab (2011) showed that Indonesian teachers eligible to teach at the elementary level only 28.94%. 54.12% junior high school teacher, private, 60.99%, 65.29% state high school teachers, private sector 64.73%, 55.91% state vocational school teachers, private sector 58.26%. The teacher condition is influenced by inadequate teacher education. Of the 2.7 million teachers in Indonesia is only one-third or 35% are educated S1. The data showed that most of the teachers do not have the eligibility to teach (Subrayanti, 2013: 3).

These conditions occur in the distribution uneven, meaning that there are demographic and geographic factors that occur in certain territorial scope. Good condition in areas with better progress, will be inversely proportional to the area that has not been developed. Most of the conditions that would occur in areas not yet developed. It is even possible in a region has an unequal distribution of institutional capacity. Because the distribution of institutional capacity is also an obstacle to the process of implementation of education policy.

However, through a relational approach and institutional development, the problematic condition also has a positive potential. If the conditions of institutional capacity that had already made progress in this aspect of resource management (facilities and human resources) directed to have braids and specific interactions with the institutional level that has not been good progress. Creation of a symbiotic relationship on this aspect in the form of activities that lead to the creation of conditions for the balance of capacity, so that the problem of inequality of institutional conditions can find a better solution.

Considering the conditions of each region that have evolved differently and see the geographical scope of each regency / city government as the background conditions that create diversity education. Conditions such diverse backgrounds is the implication of the scarcity of resources and the support was not optimal resource management in education. In that context, the institution is a key element that contributes to other elements so that the optimum conditions.

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Although government has taken initiatives to provide education through the development of some incentive programs and stimulative, but it needs to be understood that the program more meaningful allocation and distribution of material resources to units education providers. In fact, education also covers aspects of interaction within institutions, between institutions and between institutions education provider education providers with other institutions that intersect with them. In interaksionalis approach, interactions that occur between the institution can provide in a sustainable effect will have implications for the activities organized by each institution. Interactions are contradictory and do not support each other will create a critical condition and not conducive to the development of the institution. Interactions are well established and mutual support, will create the conditions of activity of the institution be more conducive to the growth of favorable development. Therefore an assessment of the potential development of governance education in the new autonomous region should be examined.

2. Method

This research was conducted with a qualitative approach through data collection techniques with interviews, observation and FGD. The study was conducted to analyze the three things, namely; (1). Potential aspects in education that can contribute to the development organization of education governance model, and (2). Governance model that can support the acceleration of the implementation of the new autonomous regions pda education. Data analysis was conducted by interactive method that can ultimately be produced which correlates and useful information for the development of the governance model of education in the new autonomous region, (3). Strategies that can be implemented by the Local Government to implement the governance model of the Education Implementation.

3. Results And Discussion

3.1. Factors that affect resource providing education in the Regency of Pesisir Barat.

3.1.1. Factor Support Physical Resources Devolution Kab. Pesisir Barat

Public services reflect the extent to which the local government is able to improve the quality of life and general condition of the region itself. The decentralization policy should have a major impact in improving public services. The proximity of local government to the people after the expansion of regions (in terms of regional administrative and planning services) are expected to make local government more wisely in planning for the development of public services.

Ideally, the development of local service facilities should be adapted to the number of people each year. The more the number of people in an area so naturally the number of service delivery will be improved to meet the needs of society. Adequate educational facilities will support the improvement of society so that education and kesehatanpun be an important indicator for HDI value of an area.

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When examined in further, the condition of school infrastructure in the Regency of Pesisir Barat has not reached the national standard. Based on the Indonesian National Standard SNI 03-6981-2004 ie, a single facility Elementary School (SD) must be provided for a minimum population of 1600 inhabitants, while for junior and senior high number of 4800 inhabitants. When calculated carefully, almost all of the districts on the Pesisir Baratalready meet these ratios. Carrying only two districts that do not meet the ratio, ie Bengkunat Belimbing and District Ngambur. Such data can be dilhat from the following table:

Table 1. Number of Primary Schools Ratio to Total Population in the Pesisir Barat Regency of Lampung Province

No	District	Elementery School		Total Population (2012)	Ideal Ratio (1/1600)	Status
		Public	Privat			
1	Lemong	16	1	14365	9	Fulfilled
2	Pesisir Utara	12	0	8202	5	Fulfilled
3	Pulau Pisang	2	0	1343	1	Fulfilled
4	Karya Penggawa	11	1	14292	9	Fulfilled
5	Way Krui	5	0	8328	5	Fulfilled
6	Pesisir Tengah	11	2	18358	11	Fulfilled
7	Krui Selatan	8	0	8531	5	Fulfilled
8	Pesisir Selatan	17	0	21762	14	Fulfilled
9	Ngambur	10	0	17953	11	Not Fulfilled
10	Bengkunat	6	0	7620	5	Fulfilled
11	Bengkunat Belimbing	12	1	24000	15	Not Fulfilled
Total		110	5			

Source: Data from the Pesisir Barat District Education Office, processed by researchers (2015).

Conditions were almost similar ratio also occurs in secondary education first and secondary. Advance ratio data can be seen from the following table:

Table 2. Number of junior and senior high ratio Against Population in the Pesisir Barat Regency of Lampung Province

No	District	Junior High		Senior High		Vocational High		Total Population (2012)	Ideal Ratio (1/4800)	Status
		Public	Privat	Public	Privat	Public	Privat			
1	Lemong	6	0	1	0	0	0	14365	3	T
2	Pesisir	2	0	1	0	0	0	8202	2	T

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	Utara									
3	Pulau Pisang	1	0	0	0	0	0	1343	0	T
4	Karya Penggawa	1	0	1	0	0	0	14292	3	B
5	Way Krui	1	0	0	0	0	0	8328	2	B
6	Pesisir Tengah	3	0	1	2	1	1	18358	4	B
7	Krui Selatan	0	1	0	1	0	0	8531	2	B
8	Pesisir Selatan	4	1	1	0	0	0	21762	5	B
9	Ngambur	3	2	1	0	1	0	17953	4	B
10	Bengkunat	3	1	1	0	0	0	7620	2	T
11	Bengkunat Belimbing	5	0	2	0	0	0	24000	5	T
Jumlah		29	5	9	3	2	1			

Source: Data from the Pesisir Barat District Education Office., processed by researchers (2015).

From the table it can be observed if the ratio of the number of schools with a population in secondary education and over most regions have not reached the ideal ratio. Noted District of Karya Penggawa, Way Krui, Pesisir Tengah, Krui Selatan, Pesisir Selatan and Ngambur not meet the ideal ratio. Only the District Lemong, Pesisir Utara, Pulau Pisang, Bengkunat and Bengkunat Belimbing who meet the ideal ratio.

After looking at these ratios, it can be argued if the availability of the existing schools in the Regency of Pesisir Barat as not been balanced by the number of existing population, population growth is not comparable to the increase in the provision of various schools to his level. Therefore, it is necessary to increase the number of schools to support equalization provision of services, as well as increased prosperity.

In addition to the review of the suitability of the amount of the existing infrastructure with the applicable standards, the quality of service in the education sector can also be said to be better if the number of student-teacher ratio is smaller in its development. But the need for further review whether the decrease in the ratio is based on increasing the number of teachers or even decline in the number of students enrolled in school.

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In observations conducted by researchers can be observed if the facility secondary level education services not yet available in almost every region, especially rural areas. In addition, qualified teaching staff is still concentrated in the areas of both economies. And with the expansion of local government areas expected to organize and set up educational facilities from primary to advanced levels as well as teachers. The approach span of control between local governments and communities to education facilities will improve the quality of local human resources of the division.

The existence of new autonomous regions could actually create jobs for educators. Availability of qualified educators is key to success pendiidikan sector in the expansion area. The lower the ratio of the number of teachers with a number of students will be more effective teaching and learning process in schools in new region. It should be noted also that not all faculty members willing to carry out tasks in the area of the division for a reason to stay away from school. Typically, faculty living parent living in the area of the division.

In observational research, it was also the condition of school infrastructure renovation untouched. This example occurred in one of the school buildings in Pekon (village) Way Haru, Bengkunat Belimbing, Pesisir Barat Regency, Lampung Province. Almost all school buildings are in a dilapidated condition. Some parts of the building wall made of Panpan looked belubang here and there. Roof, started decaying with age. Even feared, collapsed. In fact, the school building is a place of execution of the process of learning from elementary, junior high and high Filial (remote classroom). The number of students in this school of about 1,000 people who came dri four pekon namely, Pemerihan, Wayharu, Badardalam and Pekon Siringgading. Margono. In an interview conducted by researchers, Chief SD 1 Way Haru, Mr. Margono said that the damage to the school building that happened a long time since the area was still part of the West Lampung district (2009).

Condition of physical resources in the form of school infrastructure is largely a delegation from the principal district defective should be followed in order not to affect the students' interest in participating in education. Moreover, each year the BOS funds received the greater regency of Pesisir Barat, so that the allocation to the school building facility can undoubtedly be sustained.

3.1.2. Capability Support Facilities at the Pesisir Barat Regency

Carrying capacity of the facilities to support non real education can also give effect optimal education provision contained in an area. In this aspect can be exemplified in the form of a power source facility or access to telecommunications. As a new autonomous region, the Pesisir Barat regency confronted with infrastructure conditions are still minimal. This is for instance affect the implementation of several educational programs on a national scale, for example, is a computer-based implementation of the National Examination (UN CBT). Although the start of this year the government began using a system of Computer Based Test

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(CBT) in the implementation of the National Examination (UN) 2014/2015 academic year of junior high and high school equivalent equals can not be done in the Pesisir Barat Regency(KPB).

The immature state of the educational unit there and not qualify to participate in the implementation of the UN CBT, one of which must have a computer device 40 units each junior high or high school equivalent and other equipment also become the main reason.

In the implementation of FGD followed Disdikbud Secretary, Arif Usman, S.Pd., M.Pd. suggests if Disdikbud Regency of Pesisir Barat in implementing the UN in the 2014/2015 school year, each school is still the same as in previous years that uses a system of Computer Answer Sheet (LJK).

> "Based on the information we received, in Lampung Province, an area that falls within the criteria can carry out UN CBT are namely Lampung Barat (underlayer), Central Lampung (Lamteng), Lampung Timur (Lamtim), North Lampung (Lampura), Pringsewu, Bandar Lampung and Metro. Meanwhile, the Pesisir Barat does not enter these criteria, ".

It is probable, next, to support the implementation of the UN CBT next year, Disdikbud Regency of Pesisir Barat will make various preparations so that the future can implement the UN system as well as other districts. However, it is also in accordance with developments in the educational units in the Pesisir Barat it self, which is expected Disdikbud also have equipment such as a computer device that meets the standards and other equipment. This is expressed by Kadisdikbud H. Marzuki, S.Ag., S.Pd., M.Pd as follows:

> "Using CBT system is indeed only requires the synchronization of data, then the data tested and exam remain stored in the computer. Implementation of the UN with the CBT will also boost the effectiveness of the budget because it does not have to do the procurement of printing exam such as the UN says, but it is also the implementation of the UN with the CBT will drive the transformation of more modern in the assessment. However, the Pesisir Barat Regencyhas not been able to implement such a system, "

Case in national exam CBT is a manifestation of the effect of supporting infrastructure has not arranged properly will have a negative impact on the implementation of the future of education. Therefore, the development of education also needs to be accelerated with the construction of physical facilities that support the potential future of education in the district are faced with significant obstacles.

3.2 Potentials institutional providers of education in the Pesisir Barat Regency

3.2.1 Vision Education From the Pesisir Barat Regency Government

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As a new autonomous region which must keep pace, the Pesisir Barat Regency Education offices taking shape. Education is one of the main programs of concern for the new government moved 1.5 years of age. From the research, it is known from Drs. Gunawan, M.Si as head of the Pesisir Barat Regency Education Office that the development of education today does not merely pursue the field of physical, but also the field of non-physical concerns. Physical fields, structures and infrastructure is sufficient education of secondary education up to the level of basic education.

2014 budget year ago, according to the Pesisir Barat Regency, Government also gave attention to the non-physical fields such support programs Early Childhood Education (ECD) and the success of the national program of compulsory education to 12 years. Mr. Head of Education expressed as follows:

> "To support the program, the central government implemented a series of programs such as the Education Assistance Program Implementation Fund (BDPP), Guidance Program Curriculum and Program Selection 2013 Outstanding Teacher ".

He added that the education system has been running 2014 flagship programs can not be implemented properly without the support of society and elements of other communities, stakeholders and parents. Expressed by him as follows:

> "All must be hand in hand and support each other, so that its maximum output by scoring students who are reliable and can compete internationally in the world, "

The vision that is the direction in education often can not be implemented because it is not truly public officials in executing that vision. It is consequently no discontinuity in programs and activities organized for the implementation of that vision. On the Pesisir Barat Regency Education Office, consistency of vision can be seen from the variety program being implemented by all related elements, where the service is to become a leading sectornya facilitate the program.

3.3 Potential institutional relations in order to accelerate the provision of education in the regency of Pesisir Barat.

Observing the existing conditions, factors that influence educational resources and institutional potential in the regency of Pesisir Barat, we can identify potential institutional relationships that can be taken to accelerate the provision of education in the district. Potential institutional relations can be described as follows:

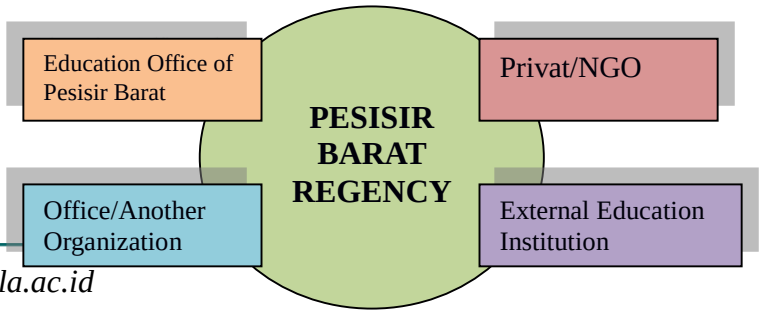

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Figure 1. Patterns of Institutional Relations Based Partnership (Adoption concept of NPM processed Writer, 2015)

The pattern of relationships that can be applied is the pattern established strategic partnership position with several important components related to education in the regency of Pesisir Barat. This component is the department of education, Office or other sectoral agencies, the private sector, foundations or public institutions and also the involvement of educational institutions that exist outside the district, especially at the level of Lampung province. This is in line with the views Fowler (1992) which establish the role of public institutions and non-governmental parties in a public program.

In the institutional relations of the education authorities can put together a program that will provide space for components other institutions to play a role in the implementation of education, for example, programs that embrace private enterprise, foundations or public institutions to contribute to a reduction of its resources in the teaching process in the form of material resources, as well as its human resources. The presence of the space that they can gradually improve the quality of teaching in schools.

Involvement of other agencies or institutions on the Pesisir Barat Regency directed towards strengthening the capacity of education in the context of official identity / intansi the other. Eg tourism agencies put through a strengthening program in Bahasa Indonesia and English to schools in the Pesisir Barat region. The program will aim to give the communication capacity to the students so that they can interact both to tourists who come.

Components educational institutions outside of the Pesisir Barat Regency can also be given space to engage in the development of quality education in the region. Examples of engagement IBI Darma Jaya encourage other educational institutions need to be given the opportunity to implement their programs and activities in the area of the Pesisir Barat. Even if it is possible to do through a program designed by the Department of Education, where the program is encouraging the entire educational establishments in Lampung Province to participate in developing the quality of education, as a reward to them, then the district government to accommodate their needs on the Pesisir Barat.

The pattern of relationships designed essentially mutual benefit, where all the components will get positive returns and educational institutions dai districts of the Pesisir Barat will also get a good influence, so it can then gradually improve the quality of education.

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3.4 Governance model in order to accelerate the provision of education in the Pesisir Barat Regency.

The model offered to be applied to governance for education at the Pesisir Barat Regency is a variation model of New Public Management that can be done on condition supported by bureaucrats, politicians and the public. The devices of the New Public Management (Aziz et al, 2007) are some of the following:

a. Contract management

The management contract is the administration through agreements on the goals to be achieved. This agreement covers the start of the objectives to be achieved up to oversee the process of achieving that goal.

The cornerstone of the management contract is a contract or agreement between the politicians (DPRD) with the parties or the government will provide services as executor. This contract involves an agreement binding goal of a predetermined time period, which contain elements, namely the establishment of a product or performance must be based on the quantity and quality as well as the budget needed. The giver order to explain the desired product, but does not specify how the work is done. That is, how the implementers working on the product desired by the order giver is their own affair with the authority to determine their own way to produce requested.

Other elements that support the functioning of the management contract is the implementation of a reporting system that provides all the information on implementation of the performance to the provider order to document the progress of performance such that in the discussion supported by the data for the purpose of evaluation of performance.

b. Orientation at Work Results (Output)

Administration can be controlled efficiently only if the starting point in a results-oriented implementation (output) job. But to this day there are still many countries that control public administration is done via the input means through a central resource allotment. The draft budget set how much money may be issued by the administration and how they should use that money, but no part of the explanation or description in the budget which states clearly the performance or what products will be produced with the money and what really the government expected from the budget.

c. *Controlling*

controlling is defined as an integrated concept for controlling the administration efficiently and economically in order to achieve the goals set by politics. To function properly, the supervision must provide the required information at the right time with the aim of controlling

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the process. Controlling as management support depends on, first, the calculation of costs and work product, where the application of labor cost calculation is a heavy burden on the public administration because it needed overhaul of the way of thinking because this instrument was a requirement to achieve efficiency. Calculation of administrative costs provide data on how much production was to be done in the field of public administration and what can be left to the private sector to do, to reduce costs.

Second, Their reporting. Flexibility that come with decentralization and delegation of authority must be connected by the reporting obligations by the parties were given the freedom and authority to giver orders about what they have done with the funds entrusted to them and whether they have achieved the objectives and quality standards previously set.

*Third*is budgeting. Budgeting in the context of new public management departs from the reverse flow method, in which the political or parliamentary establish terms of reference for the administration (the government) to determine its budget. Benchmark budget set top-down manner is compared with the budget department generated bottom-up to a negotiated budget will be set.

d. Orientation on Society / Customers

The principle of new public management stressed that "everything that is not beneficial to the people is a waste." This sentence implies that the administration is not an end, has a duty, to provide services to people who are eligible. In some countries never developed the so-called "citizen charta" (charter of citizens) that summarizes what rights are owned by residents as a resident taxpayer to the state. This means that residents are not seen as a servant, but as a customer because of taxes it pays, has the right to service in a certain amount and quantity.

Thus, the state is seen as a modern service company that sometimes compete with the private sector, but on the other hand, in certain areas hogging services, by providing services with maximum quality in line with the benchmarking and other public administration. Task administration (government) is to create transparency and achievement of service, empowering personnel in serving the community, as well as creating a service-oriented conditions.

e. Personnel

Personnel is a key factor for the success of a process of modernization. Modernization of public administration will work only if the potential of human resources fully utilized and correct any deficiencies. In the process of modernization is important to involve employees by defining clear objectives and show any advantage they have with the clear objectives, improve the competence and quality of employees, where the process to become an employee in public office should be based on qualifications and reliability.

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f. Mechanical Information

Management principles that have been outlined above as well as various forms of control requires an information system that is perfect. Merger information and rapid communication, data compression for the control and the possibility of accessing the data set in order to meet the wishes of customers, need network data processing tools so that work can be done quickly, accurately and reliably.

g. Quality management

Quality management here is that the 'administration' to do everything in order to organize production processes, standards and resources with the employees. The goal is to respond to the needs of customers (in this case is public).

3.5 Operationalization Strategy Acceleration Model of Education In New Region.

The success of partnership activities for community empowerment can be approximated with:

a. Synchronization between the policies, programs and budgets between the Government, Civil Community, Private and Community / Public Institutions;
b. "Shared Space" to participate, learn together (collective learning), the promotion/socialization, and act together (joint action);
c. Conformity of the program to the needs of the target;
d. The accuracy of the targets or beneficiaries of the partnership program;

The strategy can be lowered into the following phases:

1. Build capacity to reach outside resources, agencies involved require sufficient capacity both in terms of knowledge and skills. Organizational capacity built through a process of continuous assessment or by the Department of Education on the location of target areas already meet the criteria are eligible for partnership. Increased capacity in the form of training and direct assistance in practice given by the facilitator and the parties involved.

2. Strengthening the role and function of components of private sector and community partnership facilitator. One concrete manifestation of the role of the Department of Education in coordination acceleration of education is to facilitate partnerships between people with different parties. The role of the Department of Education that could be done in partnership are: (1) develop common policies - at the local government related to the partnership; (2) develop a database and information systems to the needs of the partnership; (3) Mobilizing external resources to fund community programs and the accompanying increase in the capacity of schools / learning units; (4) developing a partnership system that is transparent, participatory and accountable, and (5) developing a monitoring and evaluation system increase the capacity of schools / learning units and communities in partnership.

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3. In carrying out its role to facilitate partnerships, need to increase capacity for both school / learning units and communities. Increased capacity through various training and mentoring. Therefore, the Department of Education needs to raise a good cooperation with various parties. At a broad level to garner the cooperation with the program - another program, perrguruan, NGOs and other institutions that have relevance.

4. Facilitate social marketing to garner support for the implementation accelerated education programs at district, then all actors involved must introduce the program to outsiders. Because the program that produced a product of social ideas, then marketing is done is social marketing. Social marketing success is not only measured tergalangnya resources but will also be a support-support policies and the use of methodologies that have been introduced by the program more broadly. Facilitation marketing is done at all levels, be it in villages, cities and nationally. Facilitating partnerships at the village accompanied by local communities, at the district level conducted by civil society organizations / private sector by assisting the Department of Education.

5. Build Network
One of the key in fostering the partnership is to have a network with the parties concerned with the issues that will be partnership program. Acceleration program providing education to encourage all stakeholders to actively engage in multi-stakeholder forums related to education. Facilitation is also done so that the party could become part of several network relating to the issue of whether the network program of social programs, the economy and the environment.

4. Conclusion

Based on the analysis that has been done, it can produce some conclusions as follows:

1. The most dominant factor affecting the condition of educational resources in the regency of Pesisir Barat, among others due to the legacy of the educational policy of the district that the parent does not successfully create equity of educational infrastructure. Moreover, the carrying capacity of the condition of infrastructure in the Pesisir Barat region who have not progressed yet also give maximum effect for the accelerated creation of education in the region. An example is the condition of electrical and telecommunications infrastructure.

2. Potential institutional and inter-institutional relations in the Regency of Pesisir Barat real located at the Department of Education, Office or other government agencies on the Pesisir Barat District, the private sector / foundations or public institutions as well as educational institutions that exist outside of the Pesisir Barat. Overall these institutions having an involvement of each format, but will still entwined in a framework that is directed by Regency Pesisir Barat. In this format is expected to create acceleration of education policy.

3. A strategy that can be selected and applied in the application of this model is through the stages:

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a. Capacity Building,
b. Compilation Role,
c. Joint marketing and,
d. Strangthening Network.

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The Motivation Level and The Effect on Agri-Extention Worker's Performance in South Ogan Komering Ulu (OKU) District South Sumatera Province.

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Abstract

The existence of professional agri-extension worker is the main issue to move it effectively and efficiently. Professionalism related with agri-extension worker's performance, which it has closely linked with their motivation. Therefore, the objectives of this study is to measure the level of agri-extension worker's motivation and it effects to their performance. The research used a survey method with quantitative and qualitative approach. It conducted in South Ogan Komering Ulu (OKU) District, South Sumatra Province, with census method to sampling. The respondents of the study were 65 of agri-extension workers. The scoring method used the measurement indicators from the Regulation of Minister of Agriculture Number: 91 / Permentan / OT.140 / 9/2013. Partial Least Square (PLS) approach was used to determine the effect of motivation on agri-extension worker's performance. Overall performance of agri-extension wokers in South OKU District is in well category with the leading contributor is the high level of motivation (esp. the attitude of the agri-extension profession, working spirit and the need for achievement).

Keywords*: motivation, performance, extension, agriculture, extension organization.*

1. Introduction

Agri-extension worker (AEW) with high professionalism is needed for the extension's activity. High Professionalism demands a high level of performance as well. However, the high performance of the agricultural extension is still difficult to expect. This is caused by the AEW's individual quality and quantity is mostly in low category (Marliati *et.al*., 2008; Utami *et al*, 2008; and Hidayat, 2009). To improve the independence's level and empower farmers, AEW have to be in good performance. The low performance of AEW would be disserve the farmers as primary users of agricultural extension services. From Minister of Agriculture's Rules (No. 91 / Permentan / OT.140 / 9/2013) AEW's Performance can be assessed by three main indicators namely; extension preparation, implementation and evaluation of extension. All the indicators are considered able to give an overview of the performance of AEW and provide input regarding the points of their weakness.

According to the Regulation of the Minister of Agriculture No. 61 / Permentan / OT.140 / 11/2008 performance extension must be improved through the revitalization of agricultural extension. Revitalization of agricultural extension is being pursued in the improvement of extension activities for education and training. Some studies state that the extension of performance is closely related to the motivation they have (Firmansyah, 2015; Koys, 2001).

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In the agricultural sector, South OKU Regency, South Sumatra Province is a region with relatively high agricultural productivity. Based on data obtained from BPS OKU District South (2014) note that 44.75% (245.823 Ha) of the total area of South OKU district is agricultural land. The number of land area is also supported by a number of work force in the agricultural sector as many as 160 956 people or 95.36% of the total workforce in South OKU District. Inversely related to the number of AEW in South OKU District is less than 100 AEW (South OKU BP4K, 2015). It is certainly aggravating their workload and will impact their performance. However, productivity is high enough then the performance extension can be considered in good category. Then, is the main factors that drive the performance of extension is in both categories?

From various studies we can see that the performance of AEW in Indonesia is still low. What about the performance of extension workers in the district of South OKU, whether it is actually been good? What factors that affect the performance of the extension? According to the purpose of this study was to (1) measure the performance of agricultural extension in the district of South OKU, (2) analyze the level of AEW's motivation and (3) analyze the effect of motivation on the performance extension.

2. Research Methods

This research is a descriptive study to explain the basic conditions of an event and explain the rules of the relationship between events by describing the characteristics of the event (Silalahi, 2012). The research method used survey method with quantitative and qualitative approaches. This research is located in South OKU Regency, South Sumatra Province. Implementing Agency of Agriculture Fisheries and Forestry Extension (BP4K) in the district of South OKU productive enough so worth studying. The population in this study were all located in the UPT extension BP3K which became the working area of BP4K South OKU District. The sampling method in this study using census method that includes a whole number of members of the population (Sugiyono, 2011). The number of samples in this study is a combination of the number of civil servants and non civil servants AEW (65 AEW).

Primary data collection is done by conducting a structured interview guided by questionnaire containing predetermined assessment instruments. AEW's performance measurement is done by scoring method. Performance measurement indicators and motivation that are used are indicators listed in the Regulation of the Minister of Agriculture Number: 91 / Permentan / OT.140 / 9/2013 called Job Performance Value (JPV), using the formula:

$$\text{JPV} = \frac{\text{Total IEV}}{80} \text{ x } 100$$

IEV : Independent evaluation value (the result of multiplying the scores with the number of parameters)

Different test used Man Whitney's method with alpha (α) 0:05. Recently reviewed evaluation indicators and reporting extension, is the evaluation parameters and the type of evaluation. Each indicator has its own sub-indicators which will then be given a score from 1-5. Here are the categories of JPV in Table 2.

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Table 1 Job Performance Value (JPV)

No	Value	Work performance
1	≥ 91	Very well
2	76-90	Well
3	61-75	Enough
4	51-60	Less
5	≤ 50	Bad

3. Results and Discussion

3.1 Characteristics of Respondents

Respondent characteristics include gender, age, education and length of service which is the identifier of respondents (Table 2). Most of the respondents are male (75.38%). The comparison extension number of men and women is 7: 2, it conclude that the number of women AEW is very less. From that number, extension field was still dominated by men, whereas the presence of female AEW in the field is very important (Viantimala and Sumaryo, 2012). This is due to the contribution of women in the implementation of the extension educator. This is in accordance with the opinion of van den Ban and Hawkins (1999: 295) who states that women have an important role in extension organization. Their role is on communication skills and a different approach to farmers and female farmers. Women's existence itself is very important, this is due to the role of women in every phase of farming from seeding to harvesting. In peasant households, women also have a role that aren't less important because of their position that doing domestic roles in the household such as cooking to educate children. Given the role in extension activities, the presence of women in extension is to help agricultural extension thoroughly.

In terms of age, all respondents were in the productive age. BKKBN (2013) state that productive age range are between 15-64 years (Table 2). They are mostly in range of 28-35 years, productive middle age allows respondents to be able to be actively involved in outreach. AEW productive age will be fitter and have no physical impediments associated with age. This is in line with the results from Bahua *et al*. (2010) which states that the AEW's age will greatly affect their performance. Most of civil servants's age are from 50-57 who are in the middle age category (middle-aged), which at this age most AEW was approaching retirement. At the senior counselors who are approaching retirement age, it is feared, that their performance will decreased because of the changing focus of the extension workers to prepare for retirement. According to research Puspitasari (2011) which states that workers at the end of the adult age (40-60) have experienced the satisfaction of the job. This should be a concern of government, as in the District of South OKU civil servant AEW's regeneration is very slow.

Based on Table 2 seen that the level education of respondents in general is quite low, in terms of the number of AEW with a high school education level / equivalent, which reached 49.23% of the total AEW. Civil servants have largely been studied D4 and S1 compared non civil servants AEW that more than 50% had high school / equivalent. This is due at the time of recruitment of civil servants agricultural extension, one of the conditions is to have completed a minimum education (D3 in agriculture). Unlike the non civil servants AEW, the main

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recruitment requirement is graduating from agricultural high school, and now the equivalent of high school graduates can also register (Announcement of the Ministry of Agriculture No. 32 of 2008). Ningrum *et al.* (2013) states that the importance of education is as the foundation in forming, prepare, build and develop human resources, therefore an increase in the level of AEW's education are expected to continue to be implemented.

Tabel 2 Respondent's characteristic

Variable	Civil Servant		Non Civil Servant		TOTAL		Differential Test
	n	(%)	n	(%)	N	(%)	
Gender							
Male	15	78.95	34	73.91	49	75.38	
Female	4	21.05	12	26.08	16	24.61	
Total	19	100.00	46	100.00	65	100.00	
Age (Year)							
28-35	1	5.26	23	50.00	24	36.92	
36-42	3	15.79	14	30.43	17	26.15	0.00
43-49	1	5.26	8	17.39	9	13.84	
50-57	14	73.68	1	2.17	15	23.07	
Total	19	100.00	46	100.00	65	100.00	
Education							
High School	7	36.48	25	54.34	32	49.23	
D1	2	10.52	0	0.00	2	3.07	0.10
D3	1	5.26	5	10.86	6	9.23	
S1/D4	9	47.36	16	34.78	25	38.46	
Total	19	100.00	46	100.00	65	100.00	
Working Period (years)							
4-11	4	21.05	46	100.00	50	76.92	
12-19	2	10.52	0	0.00	2	3.07	0.00
20-26	4	21.05	0	0.00	4	6.15	
27-34	9	47.36	0	0.00	9	13.84	
Total	19	100.00	46	100.00	65	100.00	
Training (last 3 years)							
0-1	15	78.95	27	41.54	42	64.61	
2-3	2	10.52	11	16.92	13	20.00	0.88
4-5	1	5.26	7	10.77	8	12.31	
6-7	1	5.26	1	2.17	2	3.07	
Total	19	100.00	46	100.00	65	100.00	
Farmer (person)							
125-1187	10	52.63	44	95.65	54	83.07	
1188-2250	2	10.52	2	4.35	4	6.15	0.01
2251-3312	2	10.52	0	0.00	2	3.07	
3313-4375	5	26.31	0	0.00	5	7.69	
Total	19	100.00	46	100.00	65	100.00	

The results showed that the majority of AEW in the district of South OKU have worked for 11.3 years. In accordance with Table 2, the length of the working majority is 4-11 years (76.92%). Working period of 4-11 years is dominated by non civil servants AEW with tenure

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of at least 5 years. Non civil servants trainers have just started working as a counselor. There are 3 non civil servants work force namely; Force I, was recruited in 2007; Force II, was recruited in 2008; and Force III, was recruited in 2009. In contrast to civil servants dominated by senior counselors who mostly have served for 27-34 years. The working period of the fairly recently recognized that extension has many benefits to the agents in their work. Bahua *et al.* (2010) state that length of service is closely linked with the ability to appreciate the state of the extension, the extension means the ability to adapt to the client, the longer the better.

Ideally, the number of farmer groups that can be fostered by AEW is 6-8 groups, equivalent to 150-200 farmers (Ministry of Agriculture, 2004). However, conditions on the field is much different, AEW in the district of South OKU generally foster 125-1187 farmers. In the civil servants AEW could reach farmers 3313-4375. This is caused by the responsibility of the majority of civil servants, who also serves as coordinator of the extension. The number of assisted farmers is too much and it's far from ideal and certainly will reduce the AEW performance.

3.2 Agricultural Extension Performance

Based on the definition of performance, it can be concluded that the performance has several main components. Those components include; work, work performance, the initial commitment or standards, targets or goals, and any period of time. Performance is inseparable extension of four successful agricultural development to be achieved by the Government of Indonesia. The fourth successful agricultural development that is written in the Minister of Agriculture Number: 91 / Permentan /OT.140/9/2013 are as follows: 1) the achievement of self-sufficiency and sustainable self-sufficiency; 2) increasing diversification; 3) increase value added, competitiveness and exports; and 4) improving the welfare of farmers. It takes human resources, including qualified extension, has the reliability, capable managerial, have an entrepreneurial spirit and market-oriented to achieve it. This is so that farmers are able to build a farm that has high competitiveness from upstream to downstream. The expected performance is the implementation of tasks of assistance and consultation on major actors and entrepreneurs in developing farming operation. As shown in Table 2, most of the work performance of agricultural extension in the district of South OKU currently in good category, which is equal to 93.85% with NPK range of 61-90. This is caused by the ability of AEW in preparing, implementing, and evaluating outreach activities.

Table 3 AEW's Performance in the district of South OKU 2015

Work Performance	Civil Servant		Non Civil Servant		TOTAL		Differential Test
	n	%	n	%	N	%	
1. Very Well	0	0.00	1	2.17	1	1.54	
2. Good	9	47.46	24	52.17	33	50.77	
3. Enough	9	47.46	19	41.30	28	43.08	0.554
4. Less	1	5.26	2	4.35	3	4.61	
5. Bad	0	0.00	0	0.00	0	0.00	
Total	19	100.00	46	100.00	65	100.00	

There are 16 parameters in the assessment of performance indicators extension, the maximum score for each parameter is 5. Preparation extension accounted for 20% of the total score, the implementation of education accounted for 62.5% of the total score and the evaluation of the

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education accounted for 12.5% of the total score. Assessment of each indicator is described as follows;

Preparation of Agricultural Extension

The average score of the four parameters on the preparation of the extension is 4,37, the score is the highest among the three indicators of performance evaluation (Table 4). Preparation of outreach activities have been carried carefully by each extension. In the preparation stage, the extension of knowledge is needed. Knowledge comes from the general extension of education pursued. Van den Ban and Hawkins (1999: 55) states that education serves as the foundation for extension providers to integrate the science to then manage them according to the needs of farmers. Preparation includes counseling are planning outreach activities must be managed in such a way as to fit the needs of farmers. Unknown extension education vary from high school to undergraduate (S1) with the main base of agriculture. Farm-based education is very helpful to AEW, because they can understand the elements of agriculture and how to deal with the conditions in the field well.

Table 4 Score parameter counseling preparation

No	Parameter	Civil Servant		Non Civil Servant	
		Score	%	Score	%
1	Make a data potential of the area and agro-ecosystems	4.63	7.76	4.37	7.25
2	Guiding RDKK's preparation	4.42	7.41	4.43	7.35
3	Village and District's Extension Program Preparation	3.95	6.62	4.09	6.79
4	Make the RKTPP	4.53	7.59	4.54	7.53
Total		17.53	29.37	17.43	28.92

In accordance with Suhanda *et al.* (2008), which included in the preparation of planning counseling occupy high scores in AEW's performance assessment. In this study, the largest score is the parameter of the region and agro-ecosystems general potential's data. This is due to almost the entire AEW which has been implementing it that contains a map of the working area, a map of potential areas of work, monograph region and village plan extension activities (RKPD). In addition, based on AEW's residence generally reside in the farmer's location or near the location of the target so that the AEW knows the region well (Table 5). This facilitates AEW in making general potential's data.

Table 5 AEW's residence distance to farmer's location

Distance (Km)	Civil Servant		Non Civil Servant		TOTAL		Differential test
	n	(%)	n	(%)	N	(%)	
0.00-10.00	16	84.21	35	76.08	51	78.46	0.078
10.01-20.00	2	10.53	6	13.04	8	12.31	
20.01-30.00	1	5.26	4	8.69	5	7.69	
30.01-40.00	0	0.00	1	2.17	1	1.54	

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Total	19	100.00	46	100.00	65	100.00

AEW realized that to conduct extension activities with current needs a good preparation. Preparation of good extension and matured will reflect the needs of clients in the field, and will be very useful when implementing the extension (Herawati and Pulungan, 2006). Preparation counseling should be integrated with the development of research activities, education, training and extension and agribusiness activities in a single unit (Hidayat, 2009). It is still not carried out by AEW in the district of South OKU. In addition, according to the research results from Kurniawan and Jahi (2005) extension agent should also continue to develop extension's programs, its function is to make existing programs responsive to the needs of farmers.

Implementation of agricultural extension

Implementation of education is closely related to education activities organized by AEW. Table 6 shows that the average score on this indicator was 3.63. Though this value is high, but still relatively low when compared with the previous indicator. This is because there are several parameters whose values are low. Some parameters have low values of which it is the frequency of the farmer courses as an extension methods and the establishment of Farmer-Owned Enterprises (FOE).

Tabel 6 Extension implementing parameter's score

No	Parameter	Civil Servant		Non Civil Servant	
		Score	%	Score	%
1	To disseminate material	3.79	6.35	4.28	7.10
2	Implement extension method in the form of visits	4.74	7.94	4.41	7.32
3	Implementing extension methods in demonstrations	4.05	6.78	3.52	5.84
4	Implement the extension method in the form of a meeting	4.16	6.97	4.43	7.35
5	Implement extension method in the form of farmer courses	1.95	3.27	1.74	2.89
6	To increase the capacity of farmers	4.00	6.70	4.32	7.17
7	To grow and develop the institutional of farmers in terms of quantity	4.53	7.59	4.48	7.43
8	To grow and develop the institutional of farmers in terms of quality	3.53	5.91	3.54	5.87
9	To grow and develop economic institutions of farmers	1.68	2.81	1.69	2.80
10	To improve the productivity of farmers	3.95	6.62	3.87	6.42
Total		36.37	60.94	36.30	60.24

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In the implementation of agricultural extension indicator, the parameter with the highest value is to implement an extension method in the form of visits. AEW themself stated that the visit they were doing to the farmers is built on more than 60 times a year. In general, the extension to the location of the target in two weeks. If the total, approximately a mandatory visit extension is 24 times. However, AEW often hold unscheduled meetings and also visits due to the demand of farmers.

Based on Table 7, it can be said that the existence of AEW has been received by the farmer clients. This is caused by the ability of farmers to adapt to the extension, extension ease in adapting also result from the agents whose origin is generally also reside in the farmer location. Van den Ban and Hawkins (1999: 317) states that human behavior has nothing to do with their experience in the past, as well as farmers. The response of farmers to extension also associated with previous experience. If the extension is able to assist farmers in improving knowledge, motivating farmers, expanding their view, as well as assisting farmers in facilitating assistance resources, then the farmers will continue to seek extension and related to him. It should be used as an opportunity to continue to deliver new innovations and also to guide assisted farmers with more intensive.

Table 7 The response of farmer clients to the presence of AEW in the field

Farmer's response	Civil Servant		Non Civil Servant		TOTAL		Diferential Test
	n	(%)	n	(%)	N	(%)	
7.00-7.75 (Less)	0	0.00	4	8.69	4	6.15	0.051
7.76-8.50 (Enough)	3	15.79	11	23.91	14	21.54	
8.51-9.25 (Good)	11	57.89	27	58.69	38	58.46	
9.26-10.00(Well)	5	26.31	7	15.22	12	18.46	
Total	19	100.00	46	100.00	65	100.00	

In Table 7, the score parameter farmer courses procurement score in average is 1.8. The low score is caused by not convening the course of farmers by 11 AEW. Farmer's course according to Minister of Agriculture Regulation No. 52 / Permentan / OT.140 / 12/2009 is a learning process that is destined for the main actors and their families organized systematically, regularly and within a certain period. The benefits of such a course is able to empower farmer and farmer's independence. The benefits of course farm itself less felt by farmers because of course the farmer has not been too often held in the District South OKU. Other low-value parameter is the FOE formation assisted by AEW with a limited liability company and cooperatives, either already incorporated or not. Scores of these criteria is the lowest, namely, 1.69, there are only 53 AEW that foster BUMP. It is known there are seven criteria that must be met in order for a farmer institutions can be developed into agricultural economics institutes namely: 1) the business activities of the group with a market orientation; 2) organizational structure of farmers like farmer group, Farmers Group Association and have management to conduct agribusiness; 3) have a joint business planning within a certain period; 4) have the records and accounts of business; 5) build institutional business networking with other farmers; 6) have established a partnership to support the agricultural institutions were formed; and 7) the legal aspects (legal) to support business continuity.

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Farmers in the district of South OKU have not been able to fulfill the criteria, whereas the existence of a business entity is very important because it can help farmers in forming a marketing's network of farm produce. Through the establishment of BUMP farmers can become entrepreneurs, which in turn is expected to improve the welfare of farmers and their families (Dewi, 2013). In addition to the ability of farmers is still low, it is also the case for extension less supports the establishment FOE. Extension workers must know about entrepreneurship and help and encourage farmers to establish FOE institutions.

Evaluation and Reporting Extension Activity

The existence of evaluation in education have the same position with planning. Widoyoko (2009) states that the evaluation contains analysis of the strengths and weaknesses of a particular object, so the evaluation can give insights into the unmet needs. Similarly, the preparation counseling, evaluation is used as a guide for facilitators and stakeholders in the implementation of the program. It is as proposed by Stufflebeam (2008) that evaluation can be associated with the analysis of the environmental problems associated with the program or objective conditions will be implemented. Evaluation should be one of the things that must be implemented in a series of outreach activities. The existence of the evaluation itself can be a tool to detect flaws that exist in the program, besides other functions of the evaluation is to determine the extent to which the program objectives have been achieved (Azis and Langi 2010; and Sajow *et al*, 2014).

Based on research in Table 8, the evaluation has not been a priority in the series of extension activities in the district of South OKU. It is shown from the average score is relatively low at 2.89. Evaluating and reporting extension activities carried out occasionally, the result can not reflect the implementation of extension activities. In fact, one of the requirements of the evaluation is conducted regularly and continuously. Evaluation is expected to be a major priority to support the extension of their performance so that it can be better. This is caused by the function of the evaluation, the evaluation can be done through consideration of resources and planning done to achieve the purpose of the extension program. Then, the information gathered during the evaluation stage can be used by decision makers in this case the extension to determine the source and strategies, limitations and constraints (Tayibnapis, 1989). It is concerned with the actual implementation of the program, descriptions, amenities, and the factors inhibiting the success of the program. In the end, an evaluation is performed to measure success in achieving its intended purpose. The results obtained will be useful to the agents in determining whether the program be continued, modified or terminated.

Tabel 8 Extension evaluation parameter score

No	Parameter	Civil Servant		Non Civil Servant	
		Score	%	Score	%
	To evaluate the implementation of the extension	2.74	4.59	3.32	5.51
	Report on the implementation of agricultural extension	3.05	5.11	3.19	5.29
	Total	5.79	9.70	6.52	10.82

3.3 Agri-Extension Worker's Motivation

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Motivation is an impulse which is influenced by various factors that led to their desire to do something to meet the needs or achieve a certain satisfaction. Some studies (Marliati et al., 2008; Sapar et al. 2011; Bahua et al, et al., 2010) states that the motivation have an influence on the AEW's performance. The following table presents the motivation score extension.

In general, the score is high enough. In Table 8 it can be seen that all the highest scores range have the greatest percentage. Both civil servants and extension THL each assume that achievement is important for them. Based on the results of different tests that have been done on indicators of motivation extension. It is known that there is no difference between the motivation of civil servants and civil servants AEW. AEW have relatively the same motivation, it is viewed from different test results of greater value than 0.05. Achievement provides an impetus to the agents to continuously achieve the target and exceeded the previous target. Extension agents felt, owned achievement should not be winning the race, according to AEW if they were able to increase the production of farming clients it would be an achievement. Achievement is no less important, if the extension is able to assist and guide these local farmers so that farmers can improve their living and become prosperous.

Table 9 Distribution of respondents based on AEW's motivation indicators

Inddicator	Civil Servant		Non Civil Servant		TOTAL		Differential Test [1)]
	N	(%)	n	(%)	N	(%)	
The need for achievement							
14.00-15.50 (low)	3	15.78	6	13.04	9	13.84	
15.51-17.00 (enough)	2	10.52	15	32.61	17	26.15	0.936
17.01-18.50 (well)	6	31.57	8	17.39	14	21.53	
18.51-20.00 (very well)	8	42.10	17	36.96	25	38.46	
Total	19	100.00	46	100.00	65	100.00	
The need for power							
3.00-3.75 (low)	1	5.26	3	6.52	4	6.15	
3.76-4.50 (enough)	3	15.78	4	8.69	7	10.77	0.641
4.51-5.25 (well)	5	26.31	14	30.43	19	29.23	
5.26-6.00 (very well)	10	52.63	25	54.35	25	38.46	
Total	19	100.00	46	100.00	65	100.00	
The need for relationship							
2.00-3.50 (low)	0	0.00	1	2.17	1	1.54	
3.51-5.00 (enough)	0	0.00	2	4.34	2	3.07	0.178
5.01-6.50 (well)	7	36.84	9	19.56	16	24.61	
6.51-8.00 (very well)	12	63.16	34	73.91	46	70.77	
Total	19	100.00	46	100.00	65	100.00	

The most boosting in achieving motivation can be seen in Table 9 on the parameters of motivation extension. According to Table 8, there are differences in scores between civil servants and non civil servants reward and motivation. Non civil servants AEW have a much higher score. It is caused by enormous non civil servants AEW desire in order to be appointed as civil servants. Based on the research result shows that the reason of being an educator also has a high score both on civil servants and non civil servant AEW. In Table 10 it can be seen

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that there are differences regarding the extension of the main reasons to work. Argued that the civil servants AEW working as an educator is a proud thing, this is due to their respected position in society. In contrast to the non civil servant AEW the main reason to work is because they want to devote themselves to the farming communities. This is due to their opinion that the extension work can help a lot of people as well as gaining useful knowledge for them as well as others. Associated with this, according to Motivation Theories of McClelland especially the need for achievement, according to the results of research in which these needs are met.

Tabel 10 Agri-extension worker's motivation parameter

No	Parameter	Civil Servant	Non civil servant
The need for achievement			
1	The attitude of the AEW	82.10	83.46
2	The reason their work as AEW	84.21	91.30
3	AEW's working spirit	83.16	73.04
4	Perception of work performance	84.21	83.04
5	Awards and motivation	55.79	93.04
	Average	77.89	84.78
The need for power			
1	career path opportunities	95.79	97.17
2	The perception of career path opportunities	76.84	83.47
	Average	86.31	87.83
The need for affiliation			
1	The perception of the existence of a fellow educator	88.42	77.83
2	The perception of the existence of a client	76.84	87.39
	Average	82.63	82.61
	Total average	80.82	84.97
The amount ot total average (civil servant and non civil servant)			83.76

Table 11 Distribution of respondents about the main reasons to work as an educator

No	Working reason	Civil servant		Non Civil Servant		TOTAL	
		n	(%)	n	(%)	N	(%)
1	A proudly job	9	47.37	17	36.96	26	40.00
2	Easy job	1	5.26	1	2.17	2	3.07
3	Guarantee of living	3	15.79	0	0.00	3	4.61
4	There is no other choice	1	5.26	0	0.00	1	1.54
5	To dedicate themselves	8	42.10	28	60.87	36	55.38
Total		19	100.00	46	100.00	65	100.00

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The other high value scores is the career path opportunity, career path has nothing to do with the need for power. AEW looked at the career path for which as a proof of their existence. Moreover, the higher the career level, the incentives earned also increased. Therefore, the agent felt that it was important. In general, there is no difference between the two AEW motivation, although the score of non civil servant is higher than civil servants. However, in contrast to civil servants who have a career path, non civil servant not have any. The high score on the non civil servant due to a strong expectation to be appointed as civil servants, it is making them motivated. Based on this, it can be said that for civil servants will need enough power already fulfilled, but for non civil servant unmet their need for power.

Latter on the motivation indicator is the need for relationships (affiliates). The need for a relationship turns out to be part of the motivation that has the highest percentage among the three other needs. AEW stated that the existence of other parties such as clients, fellow educator, counselor and staff supervisor in the office has a lot of influence for extension. Thus, keeping in touch with them will be a positive influence on the performance of extension. As stated by of McClelland (1987) regarding of three basic needs, namely; need for achievement, power and affiliation, all three have implications for the AEW's performance . Measuring motivation extension has nothing to do with the choices made on the three requirements above. In this connection, it is important for stakeholders to motivate AEW. Motivation can be given by an awards (reward) for AEW's work performance, career path assurance and also create a conducive working environment in order to create a good relationship between the parties relating to the extension.

3.4 The most influential motivation on AEW's performance

At the motivation variable , there are three indicators that reflect the direct effect, namely the attitude of the AEW profession, the spirit of counsel and job performance, while the other parameters considered to have no direct influence. In Table 9, we can see that most of AEW admit that they are proud of the profession as an AEW. This is supported by the views of people who think a job as a AEW is a prestigious thing. Their existence are also highly valued by the community, this is caused by the majority of the population has a profession in the field of agriculture which is close to the AEW.

Then from Table 9 can also be seen that the spirit of counsel tend to score lower than other parameters. Where is the spirit of research results tend to be uniform extension is decreased, normal and high. Supposedly, good government, and senior counselors BP4K can pay attention to it and stimulate working spirit to remain high. In the AEW recognizes higher working spirit, they say that, over time, and the longer they tend to be more enthusiastic to counsel. This is due to the bond that exists with farmers, AEW feel they have a role in improving the quality of farmer's life and was very happy when assisted farmers in quality of life. Then, the high spirit of counsel is also linked with confidence. The longer counsel then they will get to know the farmers and feel comfortable, so that AEW feel more confident and excited.

In addition to working spirit, performance itself also affect the performance of AEW. Agri-Extension Worker felt that the performance is a reflection of the hard work they did. W ork performance by AEW, not only based from competitions and by an awards although there are competitions and awards earned. However, more than that achievement by AEW is if it can help farmers change the quality their lives. The influence of achievement against performance is consistent with the research from Leilani and Jahi (2006) which states that the achievement is to increase the motivation of AEW.

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In theory of McClelland motivation (1987) of AEW's working spirit and job performance including the need for achievement. Results of the study revealed that the of AEW needs for achievement are more influence on AEW's performance rather than the need for power and relationships. Based on these things can be said that the of AEW is already at the stage of self-actualization (Maslow Motivation Theory). Thus, one of the efforts to improve AEW's performance effectively is to encourage the AEW to continue to excel from motivation to work. Improved performance through motivation can be through assurance of career path, the award for the achievements or even through good leadership. As expressed by den Ban from Hawkins (1999) that through good leadership from superiors, communication and motivation trainers will be improved.

4. Conclusion

Based on the analysis from discussion, it can be formulated that: (1) AEW's performance in the district of South OKU are in good category, (2) The level of AEW's motivation are relatively high and, (3) the motivation that affect on performance the most are the attitude of the AEW_ profession, the working spirit and the need for achievement

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A Cooperative Game Theory Application in The Blackbird Broods Food Allocation

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Abstract

We study food allocation in bird broods from the perspective of cooperative game theory. We want to explore whether or not food distribution data fit into the known solution concepts of cooperative game theory. A first issue to be handled is the fact that in the bird brood data we only see the solutions, while the starting position, the game, is not immediately clear. As such we need to reconstruct the game from the solutions given. A second issue is that there are many different solution concepts (e.g. Shapley value, nucleolus, etc) and we want to analyze which of these fits best. Most interesting is to specifically address the properties that lead to these solutions, because these would be most useful in finding a motivation for the specific solution concept found in nature.

Keywords: *Food allocation, cooperative game, shapley value, solution concept*

1. Introduction

In the real world, where there will never be any certainty nor sufficient information about the future, parents hedge their bets in building unpredictable family life. Parents often do not know in advance what resources will be available, and thus are investing in offspring in a climate of uncertainty. Setting the initial family size too large risks future food shortfalls; a family size too small may result in costs of lost opportunities if food proves plentiful. [16] Scott Forbes in his book titled A Natural History of Families [1] mentions that there are some similarities (as well as differences) of birds and human especially in parenting. Both cases have a problem of what is called unholy parenting, where parents are programmed to provide less, while children often ask for more. In the end, they are both left unsatisfied. However, study has shown that this is equilibrium in nature, that it is, indeed, just how it should be.

Families are bound together and share common genetic interest, thus are supposed to lower the barrier of cooperation and minimize the conflict, making it an ideal model for the evolution of cooperation. However, conflict will still exist and usually interest people the most. It is either a parent-offspring conflict or a conflict between the offsprings, in terms of food, shelter, space, warmth, etc. Asymmetric sibling rivalry (Forbes and Glassey 2000), where stronger, older sibs outcompete younger broodmates, is common in birds and mammals and usually

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stems from parental (usually maternal) manipulations of o spring morphology and behavior (Mock and Parker 1997; Hudson and Trillmich 2008). It is generated by parents imposing handicaps upon some of their offspring while conferring advantages to others: effectively, parents play favourites. For example, mothers may make some eggs or newborns bigger than others (Slagsvold et al. 1984; Rdel et al. 2008; Forbes and Wiebe 2010); or they may fortify some progeny with extra hormones making them more successful in begging competitions (Groothuis et al. 2005; Sockman et al. 2006). But most importantly, mothers often create age differences among contemporary progeny via birth or hatching asynchrony (Lack 1947; Magrath 1990; Trillmich and Wolf 2008). All of these parental manipulations serve to render some offspring more equal than others. [16]

In birds, hatching asynchrony (Glassey and Forbes 2002) creates brood hierarchy dividing progeny into castes of advantaged core and disadvantaged marginal offspring (Mock and Forbes 1995; Forbes et al. 1997; Forbes 2011). Most often the core brood consists of two or more nestlings in the same size and age, rough equivalent of multiple births in humans, and one or more marginal offspring hatch one or more days after core brood. Core progeny enjoy an advantage over their marginal counterparts in sibling competitions for limited parental resources such as food, and generally exhibit higher growth and survival over the period of parental care. When food is short, marginal progeny are first to perish, becoming victims of socially enforced starvation and/or sibling aggression (review in Mock and Parker 1997). This division into core and marginal structures avian family, and parents now make two choices at the outset of breeding: what size of family to have and how is this structured.

How about in human? In a movie inspired by Jodi Picoult's book titled My Sister Keeper, a girl named Anna plays role as a saviour sibling; she was born in order to dispute blood from her umbilical cord or any other bodily substance needed (such as kidney), as a part of the treatment to save her sibling Kate from death by cancer. Story points out parents' dilemma: is it morally correct to do whatever it takes to save a child's life, even if it means infringing upon the rights of another child? It succesfully shows what it means to be a good parent, good sister, and a good person in general. But how to determine good? Just like how we determine what is fair; fair for whom and fair from whose point of view often give different results.

Same thing happens in blackbirds: not all offsprings are created equal, thus, there is often a competitive asymmetry between the offsprings. Chick that is hatched last, is usually the one to die first. It could be because parents, just like the story of Kate and Anna above, created core and marginal offspring intentionally before giving birth; making children have different roles in life. This phenomenon is called parental favoritism: parents choose which children they hatch first to have bigger survival probability compared to its siblings which will be hatched a day after. In blackbirds, which have in average one to five children during hatching, it is usually the case that parents cannot nurture all the children and they know that one or some of them will die young. Then why would the parents still give birth to them if parents already know the child will not survive after some period of time? That is another phenomenon called parental optimitism; a strategy where parents set an initially optimistic family size and trim downward (brood reduction) as unfolding food conditions warrant.

Birds are long choosen to be the model system to study parental favoritism and parental optimitism. The dynamics are easiest to be observed in birds in general, as they do not hide their progeny in unaccessible wombs (as in human) or out of sight

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(underwater, as generally seen in fish) [1]. Blackbirds, specifically, compromise in many respected model system. They are easily accessible and occur in very large number. They also nest close to the ground, enabling researchers to directly check what happens. Previous research shows that in blackbirds, we can really see the difference between core and marginal offspring clearly as they do not seem to be disturbed by the camera put near their broods. Thus blackbirds are chosen to be object of this food allocation study.

As a result of living in such an unpredictable world, parents already realized that they need a guarantee so that their broods will not be too small in risk of dying when situation gets worse (i.e. food resource is scarce or weather goes bad). By focusing on the core offspring while still having marginal one as a back-up plan, they could inrease the probability of success. Imagine if during a bad season where food is very limited, parents only have one core chick and it still dies even if they take really good care and give it all the food they have. By having at least one core and one marginal o spring, if something happens to the first one (fail to hatch or perish early), parents have an 'insurance': they could raise the second one. If something happens to the second during the bad situation, as long as the first one stays healthy, they give little to no care as the second is marginal. Doing so, the marginal one already serves its role as a facilitation to the core, by being a layer where the core could huddle, preventing them from heat or cold. The probability of both chicks being failed is of course smaller. These illustrations are known as the brood reduction policy in birds.

Being a smart parent, having at least one core and one marginal in a good season where food resource are abundant is also best for them as they could get a 'bonus' by raising the marginal offspring, taking into account that even the marginal offspring gets less food than the core one, this food is already enough for the chick to stay alive. This core-marginal solution indeed gives parents most incentives of all. Therefore bird parents routinely start with more progeny than will ever survive to independence, as eggs and embryos are cheap while subsequent parental care is much more costly.

2. Objective

Presently there seems to be hardly any applications of cooperative game theory in the field of biology. We want to survey what applications of cooperative game theory in biology are presently known in the contemporary literature, and whether one of these has a connection to the problem of food allocation, because of the availability of a large dataset on blackbirds food distributions gathered by Professor Scott Forbes and his team from Winnipeg University. We will give a brief description about the problem of bird brood allocations, then provide the state of the art of applications of cooperative game theory that we previously studied in economics within the field of biology.

Evolutionary biologists have a rich tradition of borrowing analytical tools from economists to address a diverse array of problems in nature. Maximizing the number of surviving offsprings (instead of maximizing offspring numbers) are usually the object of evolutionary game theory, as these children will continue the family legacy. Larger broods are disfavored if such strategy leaves with malnourished infant with poor prospects of survival. The results are fixed pie: there is only a fixed amount to be shared

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and in order for one person to win, the other must lose, while the pie size cannot be expanded. Problem is, how to divide this pie among the current broods, cooperatively and fairly?

In birds, where often food is the whole story, unequal resource allocation is a consequence of parents playing favorites. This does not mean that it is not fair for the marginal getting less than the core one. Having, let's say, four chicks in one brood with two cores (male and female) and two marginals (male and female) during bad situation where food is limited, we could observe the fair allocation of dividing fixed amount of food to four different chicks (each with different role and characteristic). Moreover, we could also see whether in fact each chick could get what it is supposed to get in order to survive. If for instance one marginal perishes at the end, we could check whether it is because of the chick cannot get sufficient amount of food than its fair share according to specific solution concept. The available bird broods data collected during Forbes's earlier research could be used to compare food sharing in bird broods using some known cooperative game solution concepts.

3. Methods

To be able to model the problem of blackbird broods fair allocation, we will use cooperative game theory in order to derive our results. We will also describe the brood datasets that we use for the experiments, and how we will use them. Here we will start by giving an example of fair allocation in cooperative games, and continue by introducing some of the solution concepts such as the Shapley value and the Nucleolus. We then will explain some techniques we use in fitting the game from the known solutions. Finally, we will address the question of how we can convert the large sets of brood data to be interpreted within coalition concepts in a cooperative game context. Thus, in order to be able to understand the whole concept of cooperative game on which this fair allocation problem is based, we will provide some terminology and definitions ranging from the basic such as coalition, until the solution concepts like Shapley Value and nucleolus.

An *n*-person cooperative game is defined by the set of players *N={1,2,...,n}* and a function *v* which associates a non-negative real number *v(S)* to every subset *S* of the grand coalition *N*. This *v(S)* expresses the value/worth of the coalition, which is the amount that coalition *S* can achieve on its own effort without cooperating with those who are not in *S*. As an example, below we show a 3-person cooperative game (person 1, 2, and 3 as players) with its possible coalitions.

Table 1: 3-person cooperative game

S	$\emptyset$	{1}	{2}	{3}	{1,2}	{1,3}	{2,3}	{1,2,3}
$v(S)$	0	1	3	4	4	5	8	10

Given the table above, how to share the worth 10 of the grand coalition among the three of the players, 'fairly'? By examining their value alone, we can easily notice that player 2 is stronger (has higher value) than player 1 while player 3 is the strongest of all; yet it would not be that easy to assign the right allocation for each player. In order to know how to divide the value for all players in such a fair manner, we at the first place shall describe how each solution concept is built in detail. Using the definitions from [9], a solution for a cooperative game is a method for sharing the value of the grand coalition *v(N)* among the individual players. Since *v(N)* is achieved from cooperation of n players in which for each smaller coalition *S*, one might want to consider *v(S)*: the individual

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contributions of each player in establishing *v(N)*. Solving problem on finding the right share (allocation) for their joint profit or loss is the same as finding the solution that is fairly acceptable for such cooperative game.

It is obvious that each coalition *S* would prefer to get a share of at least *v(S)*. Unfortunately it might not always be possible. Here we denote an allocation of *v(N)* to player *1; ...; n* by $x = (x_1; ...; x_n)$, where player *i* receives x_i and $x_1+...+x_n = v(N)$. Allocations in which $x_i \geq v(\{i\})$ for each player *i* are defined as individually rational, while allocations with $x(S) = \sum_{i \in S} x_i \geq v(S)$ for each coalition *S* are called coalitionally rational [17]. For any cooperative game *(N; v)*, we call the set of coalitionally rational allocations as the core of a game, and denote it by *C(N; v)*.

Since there may be a lot of possible solutions for the allocations, we focus on the solution concepts which will give one-point solution. Thus, the Shapley value, Utopia value, and Nucleolus came up, as they always give a unique allocation for any cooperative game. These three concepts have some special properties which will be explained separately below.

- Solution 1: Shapley Value

  Coined by Lloyd Shapley (1953), this one-point solution concept introduced in his paper has some desirable properties called efficiency, anonimity, dummy, and addivity. A solution is effcient if it assigns to every game an allocation in such a way that the sum of every marginal contribution of each player will be equal to the value of the grand coalition. The anonimity property is when the actual solution does not depend on the names of the players involved. It would mean that if we switch the role between who will become player 1 and who will be player 2, we want our solution to give both players as much as it would give them when they do not switch position. If there is a player who does not contribute in any profit or loss of all coalitions he is involved, i.e. always contribute the same amount $v(\{i\})$ to any coalition, then he should receive that same amount $v(\{i\})$.

  This kind of player is called a dummy player. Player *i* is dummy if, for any coalition *S* not containing *i*, we have $V(S \cup \{i\}) = v(S) + V(\{i\})$. The last one is the addivity property. A solution concept has this property if for any two games *(N; v)* and *(N; w)*, the solution of *(N; v + w)* is the sum of the solutions of *(N; v)* and *(N; w)*. To understand this property, look at these two games [9] below:

  Table 2: 3-person game *(N ,v)* and *(N, w)*

S	$\emptyset$	{1}	{2}	{3}	{1,2}	{1,3}	{2,3}	{1,2,3}
$v(S)$	0	3	1	4	4	8	5	10

S	$\emptyset$	{1}	{2}	{3}	{1,2}	{1,3}	{2,3}	{1,2,3}
$w(S)$	0	1	3	4	6	5	7	10

  Shapley (1953) in his paper titled "A value for n-person games" [23] provides a simple procedure to show how to divide coalition value fairly. According to him, the above 3-person game *(N; v)* can be illustrates as the following: Firstly, assume that player 1 enters the room and receives *v({1})*, followed by player 2 (joining player 1 in the same room) which accordingly receives marginal contribution $v(\{1,2\}) - v(\{1\})$ and so on, until finally the last player n joins them altogether and receives $v(\{1,2,\dots,n\}) - v(\{1,2,\dots,n-1\})$. Doing these value calculations for every possible order in which players enter the room, then taking the average values will give us unique/one-point Shapley solution (i.e. The Shapley value).

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This Shapley value procedure gives each player *i* the average of its marginal contributions as calculated in the Shapley Value Formula (SVF) below:

$$\phi_i(N,v) = \sum_{S \subset N \setminus \{i\}} P_{n,s}\big(v(S \cup \{i\}) - v(S)\big) \quad (1)$$

$$= \sum_{S \subset N \setminus \{i\}} \frac{1}{n} \frac{1}{\binom{n-1}{s}} (v(S \cup \{i\}) - v(S)) \quad (2)$$

$$= \sum_{S \subset N \setminus \{i\}} \frac{s!(n-s-1)}{n!} (v(S \cup \{i\}) - v(S)) \quad (3)$$

Expression $s!\,(n-s-1)!$ reflects the number of different orders where first *s* players get together one by one, then player *i* joins in, and finally the remaining $(n-s-1)$ players join one by one as well.

To be clear about the procedure of calculating Shapley value, we will take the 3 person game in previous Table 2 as an example. Below is the list of six possible orders for every player's marginal contribution to the grouping of coalition.

Table 3: Shapley value of the 3-person cooperative game

Possible orders	1	2	3
1-2-3	1	3	6
1-3-2	1	5	4
2-1-3	1	3	6
2-3-1	2	3	5
3-1-2	1	5	4
3-2-1	2	4	4
column sums	8	23	29
ϕ	$\frac{8}{6}$	$\frac{23}{6}$	$\frac{29}{6}$

- Solution 2: Utopia Value

We now define Utopia value of cooperative n-person game, a one-point solution that is part of a solution concept introduced by Stef Tijs (1981) [19] called the τ value. Let *N* be the set of all players and *v(N)* be the value of grand coalition. Given nonempty coalition $S \subseteq N$ and player $i \in N$, let $b_i := v(N) - v(N \setminus i)$ be the utopia vector of player *i*, which expresses marginal contribution of player *i* to grand coalition. This utopia vector *b* gives intuitive upper limit to what player may expect to obtain from participating in the game. Player i would like to receive as much as his upper value, and cannot hope for more than this value.

Generally, every player will end up getting less than his utopia value, because for all interesting games, $v(N) \leq b_1 + \cdots + b_n$. If player *i* can get more than its utopia vector b_i, other players might consider to throw *i* from the coalition as they would be better off without *i* [21]. Therefore in a core allocation, no player can ever get a payoff exceeds this upper value. However, utopia vector b may not be efficient: summing up all marginal contributions $\sum_{i \in S} b_i$ of every player $i \in N$ may not be equal to the value of grand coalition *v(N)*. To satisfy efficiency property, value distributed to players will be divided by sum of all utopia vectors for all players in *N*. Thus we define Utopia value in our procedure as follows:

$$UV(N,v) = \left(\frac{v(N)}{\sum_{i \in N} b_i}\right)\mathbf{b} \quad (4)$$

Utopia value is Shapley value-like, as its solution also has additivity property. It also considers marginal contributions, like Shapley value. However,

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utopia value takes only marginal contribution regarding the grand coalition into account, while Shapley value also takes the marginal contribution of all coalitions into account. Therefore this solution is simpler than the Shapley value solution.

- Solution 3: Nucleolus

  David Schmeidler (1969) in his paper "The nucleolus of a characteristic function form game" [24] introduces nucleolus as an alternative solution for cooperative games. Nucleolus is the set of individually rational allocations that lexicographically minimizes excess/dissatisfaction of all coalitions. Unlike Shapley value, nucleolus is a solution of a minimization problem [11]. It is unique but exists only when these individually rational allocations exist; which in this case, if $v(N) \geq \sum_{i \in N} v(i)$. By definition, nucleolus will be in the core of the game whenever the core is non-empty.

  Instead of applying a general axiomatization of fairness to a value function defined on the set of all characteristic functions, we look at a fixed characteristic function v, and try to find an allocation $x = (x_1, \dots, x_n)$ that minimizes the worst inequity. That is, we ask each coalition *S* how dissatisfied it is with the proposed allocation *x* and we try to minimize the maximum dissatisfaction. *X* is the nucleolus if and only if for all other allocations *Z* and all coalitions *T* that are better off with *Z* (i.e. $\sum_{i \in T} z_i \geq \sum_{i \in T} x_i$), there is a coalition *T'* that is better off with *X*, and *x*-dissatisfaction of *T'* is at least as large as the one of *T*. [25]

  Nucleolus is one of the allocations that minimizes the maximal excess, i.e. if for a game *(N, v)* an allocation $x = (x_1, \dots, x_n)$ is being considered as solution, then one might wish to measure the level of each coalition's dissatisfaction within the possible solution. Difference between *v(S)* and $x(S) \coloneqq \sum_{i \in S} x_i$ is taken as a measure of the dissatisfaction for each coalition *S*, and is called the excess $e(S, x)$.

  $$e(S, x) = v(S) - x(S) \quad (5)$$

  Note that each coalition would prefer a solution with smallest excess as possible. However, in our procedure, we apply the Prenucleolus solution, which is preferred by math-oriented game theorists, instead of nucleolus which is preferred by the game theorists. In most cases, prenucleolus and nucleolus are considered the same. The difference with nucleolus is that there is no assumption of individually rational allocations when prenucleolus is considered. In nucleolus, we only consider individually rational allocations by letting contribution for player *i*, $x_i \geq v(\{i\})$. While prenucleolus only consider efficient allocations by looking at the contribution $x \in \mathbb{R}^N$ for which $\sum_{i \in N} x_i = v(N)$. Nucleolus and prenucleolus are overlapping in a class of nonnegative games where this inequality $v(T) - \sum_{i \in T} v(i) \leq v(S) - \sum_{i \in S} v(i)$ holds [12] for the two coalitions $T \subseteq S$. In our context, this also seems to hold. Therefore in this paper, we may say nucleolus and prenucleolus are the same. To avoid confusion, from now on we will call our solution concept as Prenucleolus.

3.1 The Brood Data

The brood datasets that we use have been collected by Professor Scott Forbes for about ten years during his research in wetlands near Winnipeg, Manitoba, Canada. It is defined in his book [1] that the core brood/chicks are the nestlings that are hatched

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together on the first day of the nestling period; while nestlings that are hatched one or more days later are defined as the marginal ones. The blackbird parents' choice of hatching how many eggs in the first day could be based on their experiences on previous hatching periods, or on their instinct of the weather and food condition near the nest. They will hatch each one of the marginal every one day after the core. Thus, having 2 core chicks and 3 marginals will make the hatching periods of 4 days in total (1 day for all the cores, 3 additional days for each marginal).

Raw data in Table 4 and 5 below enable us to find out how many core and marginal children that blackbirds could have in one brood, as well as how many broods available for specific number of core and marginals. We can also see how many chicks are perished during 1 week of measurement (starting from day 1 to day 8). These large datasets have been compiled into good and bad years period, which allow us to see shall there is any difference on how parents allocate food for the core and marginal ones during good and bad times. Note that notation #eggs shows how many eggs are firstly available in total before the hatching period. These eggs might be removed, broken, or perish early during a hatching failure, thus this total number can sometimes be different with number of hatchlings. Notation c in day 1, denotes the number of core eggs (eggs that are hatched in day 1) inside one brood; while notation m denotes the number of marginal eggs (eggs that are left/not yet hatched in day 1) in one brood. Notation #br shows how many broods available in total. In day 8, c and m denote number of core and marginal chicks which survive within one week, while m1, m2, m3 denote number of marginals hatched on the first, second, and third day after the core. Total in day 8 shows how many chicks are continue living after 1 week of feeding.

Below we can see that one brood can contain at maximum 4 core chicks and 3 marginals. However, eventhough the total number of chicks is seven (i.e. there are seven players in the game), we do not have data with 4 core and 3 marginals at the same time. Our largest brood consists of 5 chicks: either 2 core 3 marginals, 3 core 2 marginals, or 4 core 1 marginal.

Table 4: The good years raw data

	day 1			day 8					
#eggs	c	m	#br	c	m	m1	m2	m3	total
18	1	0	15	15	0	0	0	0	15
59	1	1	29	27	27	27	0	0	53
120	1	2	40	38	62	33	29	0	95
218	1	3	55	54	124	52	48	24	176
30	2	0	15	28	0	0	0	0	28
236	2	1	78	134	56	56	0	0	186
430	2	2	108	208	140	85	55	0	345
75	2	3	15	29	26	14	9	3	55
81	3	0	27	74	0	0	0	0	74
292	3	1	73	196	33	33	0	0	224
100	3	2	20	55	16	12	3	0	71
32	4	0	8	27	0	0	0	0	27
25	4	1	5	19	2	2	0	0	21

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Table 5: The bad years raw data

	day 1			day 8					
#eggs	c	m	#br	c	m	m1	m2	m3	total
6	1	0	6	6	0	0	0	0	6
40	1	1	20	22	17	16	1	0	35
100	1	2	33	39	48	26	22	0	63
116	1	3	29	46	56	27	22	6	68
50	2	0	24	46	0	0	0	0	46
153	2	1	51	104	35	34	0	0	121
292	2	2	73	136	61	44	17	0	168
55	2	3	11	19	13	9	3	1	29
54	3	0	18	44	0	1	0	0	44
331	3	1	83	201	25	25	0	0	198
40	3	2	8	23	1	1	0	0	22
28	4	0	7	21	0	0	0	0	21
15	4	1	3	9	1	1	0	0	10

From the story of blackbirds in Forbes's book [1], parents will feed the chicks that beg louder, which usually are the core chicks. Therefore, in calculating Shapley value, we consider to assume that feeding process will always start with the core, while marginals 'fight' over the remaining food after cores are being fed. In theory, we also cannot have only marginals without having the core, or having the third and/or second marginal without having the first one. But this happens in some of the brood data since there is a possibility that the egg is missing or being destroyed during hatching period, not to mention one that is directly die after born, leaving only marginals in the brood. Same case happens for tmarginals. But our method excludes this missing data from calculation and consider only feasible coalitions.

As a result of being born on different days while marginals are hatched on each day after the cores, we think our brood data have specific property: there exist different weights between core and marginal chicks. This is because they may value their food in different way. We predict that all core chicks will value their food in the same manner, since they are hatched on the same day (thus may be as strong as each other) and the parents consider them to be equally important to continue the family legacy. As a result, the weights' difference between the core chicks is very small/can be ignored. In other words, we assume that competition between the core chicks in one brood is not exist. However, there exist different weights between the core and the marginals, as well as between all the marginals, as the marginal m_i, *i :=1 to 3,* are born consecutively on *i* days after the core. This weight is not a body-mass index but an additional number representing how the chicks may value their food.

3.2 The Coalition Model

To build coalition model for the brood food allocation data during good and bad years, we firstly define an XY-brood game where X and Y denote the number of core and marginal children respectively. As input for this model, we use the average of survival rate data A and the importance weights data I which shows how many times a specific type of brood (i.e. core and marginal coalition) appears in the game. In two tables below, notations c and m represent the number of core chicks hatched in day 1, and number of marginals that are left (hatched consecutively the next days). Notation d8 val represents average number of all chicks which survive until 1 week of feeding (i.e. day 8). Notation m av shows the average of marginal chicks' survival rate which we use to fill the marginals' coalition value later in our method, while each notations c val, m1 val, m2 val,

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and m3 val show the survival rate of each chick, starting from the core, first marginal, until third marginals respectively.

Table 6: Average of the Survival Rate for XY-brood type during the Good years

				A				
c	m	c val	m av	m_1 val	m_2 val	m_3 val	d8 val	**I**
1	0	1.000					1.000	16
1	1	0.931	0.931	0.931			1.862	29
1	2	0.950	0.838	0.892	0.784		2.626	40
1	3	0.982	0.765	0.963	0.889	0.453	3.287	55
2	0	0.933					1.867	15
2	1	0.859	0.747	0.747			2.465	78
2	2	0.963	0.688	0.794	0.514		3.234	108
2	3	0.967	0.578	0.933	0.600	0.200	3.667	15
3	0	0.914					2.741	27
3	1	0.895	0.465	0.465			3.150	73
3	2	0.917	0.400	0.632	0.158		3.539	20
4	0	0.844					3.375	8
4	1	0.950	0.400	0.400			4.200	5

Table 7: Average of the Survival Rate for XY-brood type during the Bad years

				A				
c	m	c val	m av	m_1 val	m_2 val	m_3 val	d8 val	**I**
1	0	1.000					1.000	6
1	1	1.000	0.850	0.850			1.850	20
1	2	0.848	0.774	0.839	0.710		2.397	33
1	3	1.000	0.644	0.931	0.759	0.453	2.897	29
2	0	0.958					1.917	24
2	1	0.931	0.686	0.686			2.549	51
2	2	0.836	0.418	0.603	0.233		2.507	73
2	3	0.818	0.433	0.900	0.300	0.200	2.936	11
3	0	0.815					2.444	18
3	1	0.763	0.309	0.309			2.598	83
3	2	0.917	0.063	0.125	0.000		2.875	8
4	0	0.750					3.000	7
4	1	0.750	0.333	0.333			3.333	3

Having the coalitions ***S***, what value can we choose to be the value of the coalition *v(S)*? Since we have the average of the survival rate **A** for each offsprings in every XY-brood, taking into account its importance weight **I** (i.e. how many times the XY-brood data occur), we can take these values as the value of the coalitions. But how to put the 'right' value into the 'right' coalition? Here we propose a coalition procedure which we adapt from the Shapley value procedure in the previous subsection by seeing the problem as a coalitional procedure.

- Suppose we have an XY-brood game during either the good or the bad years, with maximum 7 players (i=1 to 7), consists of maximum 4 core (i=1 to 4) and maximum 3 marginal players (i:=5 to 7). Firstly we define all possible coalitions of (X+Y) players where there are X core players and Y marginals. For example, take the good years 21-brood data where there are 2 core and 1 marginal. It is possible to have coalitions of every single player, coalition between core players, coalitions between each core with the marginal, and coalition of all three players. In other words, for the good years 21-brood, possible coalitions are: {1}, {2}, {5}, {1,2}, {1,5}, {2,5}, and {1,2,5}.
- We then re-translate every possible coalition into the number of core and marginal players in a brood. For example, coalition {1} and {2} is when we only have 1 core player without any marginals; i.e. 10-brood. Thus for single core player

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coalitions, we will consider 10-brood game. We do same translations for other coalitions: consider 20-brood game for the coalition between core players {1,2}, 11-brood game for coalitions of each core player with marginal (i.e. {1,5} and {2,5}), and simply 21-brood game itself for coalition of all 3 players {1,2,5}. As an exception, for marginal player coalition {5} in 21-brood data, we cannot take 01-brood into account, since no marginal can be hatched before the core. Thus we do not consider this kind of brood.

- Now we continue by looking at Table 6 and 7 for the good and bad years to see the average of survival rate in the corresponding XY-brood data, which we need to consider for each coalition. As an example, to fill in coalition value *v(S)* of the single core player coalitions {1} and {2}, we take the average of survival rate for this core chick in 10-brood, which is 1.000 (see c val on the table). For the marginal player coalition {5} which is an exception, we choose to take survival rate of the marginal on its first appearence in the brood datasets, which is m1 val value on table: 0.931. Note that this m1 val is equal to m val as we only have 1 marginal in 10-brood game. For 20-brood, 11-brood, and 21-brood game, we take corresponding total average number of the chicks' survival rate d8 val, which are 1.867, 1.862, and 2.465, respectively. As a result, we then have this coalition table for 21-brood game during good years period:

Table 8: 21-brood game Coalition during Good years

S	{1}	{2}	{5}	{1,2}	{1,5}	{2,5}	{1,2,5}
$v(S)$	1.000	1.000	0.931	1.867	1.862	1.862	2.465

We remove emptyset coalition (∅) in the brood coalition table since in any case it would always take a zero value. Same procedure applies for every XY-brood game.

4. Techniques

To be able to reconstruct the game using the solution concepts given and the brood data, we need some techniques to be implemented in our procedure of finding the best fitted game by describing how can we make the game from the brood data and translate them into solutions, assuming this game is solved by the three solution concepts mentioned earlier. Jean Derks [18] made three procedures in order to find a fit for the brood data, making use of some mathematical concepts such as Balanced Contributions and Unanimity games. To determine how good this game fits the solutions, we will also use an error measurement $\mathcal{E}(v)$. The error $\mathcal{E}(v)$ is the smallest among all games derived from *v* by adding a weighted unanimity game. By repeating the game-fitting procedure, for example by starting with the zero game, we may arrive at a game with error below a given level, or when the error change is below a specified level (for example 0.0001 of the desired error level). This error $\mathcal{E}(v)$ is our focus on the experiments later, as the smallest $\mathcal{E}(v)$ would bring us closer to the best fitted game in which the value of the coalitions *v(S)* is close to our payoff vectors x^S.

If the resulting error is still high, in order to capture problem that different players evaluate payoff differently, instead of using unanimity game in the above repeated procedure where payoffs to the players are treated equally, we may consider the weighted Shapley value approach [27]. By assuming that there are (unknown) weights $w_i, i \in N$,

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such that the payoff of one unit is actually worth w_i to player i, then we should consider the set of allocations:

$$x^w = (\frac{1}{w_i} x_i^S)_{i \in S, S \in \Omega} \quad (6)$$

4.1 Implementation in Matlab

Jean Derks [18] implements procedure in Matlab using three solutions described before in good and bad years data that have been compiled by Professor Scott Forbes. With respect to the brood data A (survival rates) and I (importance weights), we are trying to fit optimal weights for the core and marginal chicks, in order to get the fitted game with minimum average of error. We denote datapack (DP) as B and G, respectively for Bad and Good years.

- Using Standard and Restricted Approach

  There are two different approaches we used in our procedure of calculatingthe payoff vectors x^S for coalition S. The first one is standard approach. Remember that we have at maximum seven players ($|N|=7$), consist of at maximum 4 core players (i=1 to 4) and at maximum 3 marginal players (i:=5 to 7). Thus, we may consider seven different places for each different positions of the players. In this standard approach, the core chicks can be placed in anywhere among the four first places while marginals are placed consecutively in the three last places (in an increasing order). As the core may become the first, second, third, or fourth player, it can be placed in any of the four first places. Thus, we need to consider same survival rates for all these four possible places of the core chicks in each XY-brood game; while the importance weights I for corresponding core chicks are divided equally among four possible places. Note that whichever chick chooses the first place will be considered as the first core, and so on. In total, we will have 54 coalitions if we consider this approach.

  The second approach is restricted approach. Here we restrict n core players, n=1 to 4, to always be in the first n-places, while remaining $4 - n$ places that are not taken by core chicks will have zero value. For example, if we have 21-brood with two core and one marginal, both core players will always fill the first and second places, while the third and fourth places remain zero. For this restricted approach, below we will see how the average of chicks' survival rates are also placed into the table together with existing coalitions. Note that we will have only 13 coalitions if we consider this approach, which is the same as the number of all existing XY-brood games.
- Without Preliminary Condition

  After calculating by hand, we know that we could not have a single solution for the weight of marginal chicks in good years datapack, thus we begin implementing procedure in Matlab in order to be able to find best fitted game with smallest error as possible. Below we show the result of our first experiment implementing only the Shapley value solution on good years data G and bad years data B with 1% average of error as a stopping criteria. Note that here we directly use the chicks' survival rate as our payoff functions, and the search stops when reaching 1% average of error or when the error $\mathcal{E}(v)$ cannot be reduced anymore.

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Notation w_i denotes players, with i:=1 to 4 as the core players, and i:=5 to 7 as the marginal players.

Table 4: The resulting weights using Shapley value solution, no restriction

DP	$\mathcal{E}(v)$	w_1	w_2	w_3	w_4	w_5	w_6	w_7
G	0.0899	0.0017	0.0017	0.0017	0.0017	0.3900	0.5654	0.0377
B	0.0722	0.0437	0.0439	0.0437	0.0437	0.4174	0.2191	0.1885

See that core weights appear to be the same as they value food from their parents in the same manner. There is only a very small difference in one of the core weight regarding bad years data which can be ignored. Furthermore, note that resulting error for both cases are still quite high, while our aim is to find the best fit with smallest average error. One way that is worth to try to see if we can improve the results is, by translating the probability into some kind of utility function. We may see the average of the chicks' survival rate data as a probability, and consider to transform this probability into some kind of utility function that is either concave or convex. We could later see how the results are affected by these different utility translations.

- With Convex and Concave Translation

  As we already mentioned above, now the probability are transformed into utilities pa, with a := {1/3; 1/2; 1; 2; 3}. If a < 1, the transformation follows a concavity increase, while if a > 1, it follows the convexity increase. We are not considering utility of p^4 or more, and $p^{1/4}$ or less as the translations seems to be not effective anymore (see Figure 2 for the illustration). By definition, a function is concave if every line segment joining two points on its graph does not lie above the graph at any point [22]. Symmetrically, a function is convex if every line segment does not lie below the graph at any point (see pictures taken from [22] below).

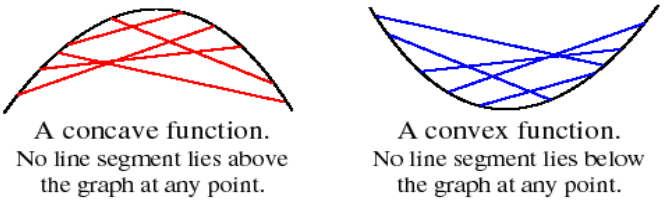

Figure 1: Illustration of Concave and Convex Functions

Economists often assume that a firm's production function is concave. The fact that it is concave means that increase in output generated by a one-unit increase in input is smaller when output is large than when it is small. So, there are "diminishing returns" to the input. We predict that utility function in our brood data is also concave since small increase on food allocation for marginals, for example, may increase chick's probability of survive a lot more, and might even save them from dying. In other words, food is valued more by marginals rather than the cores. If parents simply ignore marginal chicks which have very small chance to survive by not giving them food at all, in the end there is much higher probability that the chick will be dead. On the other hand, giving more food to the core chick who already has high survival rate, does not give different output as the core already has a great chance of surviving. Thus we think that in this bird brood food allocation problem, fitting is not linear.

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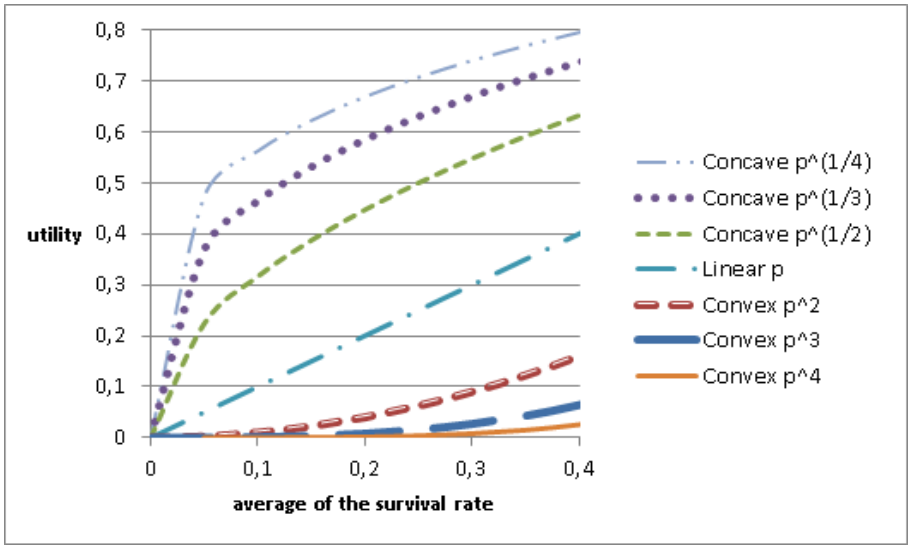

Figure 2: Convexity and Concavity Translation of Probability p

To see if our prediction is true, we will test on both translation's directions as well as the linearity translation, and note on which of these translations arrive at the best fit. In Figure 2 below, we show the illustration of how this utility transformation works. We also show the utility p^4 and $p^{1/4}$ to illustrate that at this point, the concave transformation is being too close to 0 while the convex transformation is starting to be too close to 1. Thus, we may say that it is not really effective in our case to apply 'too much' transformations by setting p^a with a < 1/3 or a > 3. Using two different modeling approaches **Appr**, five utility transformations **UT**, three different solution concepts **Sol**, and three different datapacks **DP**, in total we are doing 90 experiments: 45 experiments for the standard approach **S**, and another 45 for the restricted approach **R**. We will show the results of the experiments for the standard approach using the bad years datapack **B** and the good years datapack **G** with the three solutions described earlier, namely the Shapley Value **Sh**, the Utopia Value **Uv**, and the Prenucleolus **Pr**. Notation w_i, *i:=1 to 4*, and w_j , *j:=5 to 7* denote the weight of the core and the weight of the *i-th* marginal, consecutively. Notation $\mathcal{E}(v)$ denotes the error measurements which we calculate by the formula mentioned below to see how close the brood data we have can fit the solutions of the new game we found. Assume that the importance weights $I_{S\epsilon\Omega}$, are provided from the brood data; the smaller the error $\mathcal{E}(v)$, the closer we would like the value of the coalitions *v(S)* to our payoff vectors x^S. The following error measure fulfills this property:

$$\mathcal{E}(v) = \frac{\sum_{S\epsilon\Omega} I_S \frac{\left|\sum_{i\epsilon S} x_i^S - v(S)\right|}{\sum_{i\epsilon S} x_i^S}}{\sum_{S\epsilon\Omega} I_S} \quad (7)$$

4.2 Experimental Results

- Standard Approach, Good and Bad Years Data

  Firstly we apply the standard approach and conduct thirty experiments for

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each different cases of brood datapacks. Considering this approach, we assume only weight of the first core chick to be equal to one, and divide other weights of the chicks by weight of the first core to enable easier weights comparison in the experiment results. We may normalize one of the weights to 1 as weights refer to utility measurement, and any multiplication or division with constant factor does not influence utility differences between players. Procedure stops either when error is lower than 1% average error or when it cannot be reduced anymore (converges to some values).

Below we may see how the weights of core players w_i, *i:=1 to 4*, are distributed, and how the weights of marginal ones w_j, *j:=5 to 7*, are compared with weight of the first core which is normalized to 1. The corresponding core and marginal weights with minimum error $\mathcal{E}(v)$ as well as solutions with smallest error for every cases of utility function in each datapacks are also shown in bold.

Table 5: Experiment Results using Standard Approach on core weights

UT	DP	Sol	e_D	$\mathcal{E}(v)$	w_1	w_2	w_3	w_4
1/3	B	Sh	0.0370	0.0328	1	1	2.1350	1
		Uv	0.0277	0.0671	1	1	1	1
		Pr	**0.0256**	**0.0274**	**1**	**1.0905**	**1**	**1.67**
	G	Sh	0.0292	0.0279	1	0.8883	0.8810	0.8810
		Uv	**0.0309**	**0.0162**	**1**	**0.9945**	**0.9945**	**1.0127**
		Pr	0.0211	0.0181	1	0.9897	0.8323	0.9076
1/2	B	Sh	**0.0367**	**0.0336**	**1**	**1**	**1**	**1**
		Uv	0.0426	0.0448	1	1	1	1
		Pr	0.0317	0.0609	1	1.2839	0.7688	1.2839
	G	Sh	0.0367	0.0294	1	1	1.0122	1
		Uv	**0.0405**	**0.0214**	**1**	**0.9610**	**1.0192**	**0.9610**
		Pr	0.0282	0.0295	1	1	0.9945	0.9945
1	B	Sh	**0.0454**	**0.0429**	**1**	**1**	**1**	**1**
		Uv	0.0585	0.0637	1	1	1	1
		Pr	0.0454	0.0584	1	1.1350	1	1
	G	Sh	0.0469	0.0496	1	1	1	1
		Uv	0.0574	0.0540	1	1.0606	1	1
		Pr	**0.0376**	**0.0485**	**1**	**1**	**1.0082**	**1.2015**
2	B	Sh	**0.0565**	**0.0500**	**1**	**0.9945**	**0.9945**	**0.9945**
		Uv	0.1435	0.1720	1	0.9610	0.9610	0.9610
		Pr	0.0591	0.0642	1	1.1400	0.6893	0.8275
	G	Sh	**0.0484**	**0.1189**	**1**	**1**	**1**	**1.0406**
		Uv	0.1108	0.1330	1	1	1	1
		Pr	0.0516	0.1221	1	0.5106	0.5106	0.5106
3	B	Sh	0.0772	0.0553	1	0.9170	0.9543	0.9245
		Uv	0.2732	0.2223	1	2	1	2
		Pr	**0.0693**	**0.0549**	**1**	**1.0606**	**1**	**1.0082**
	G	Sh	**0.0595**	**0.1068**	**1**	**1**	**1**	**1**
		Uv	0.1966	0.1344	1	1	1	1
		Pr	0.0630	0.1482	1	1	1	1

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Table 6: Experiment Results using Standard Approach on marginal weights

UT	DP	Sol	e_D	$\mathcal{E}(v)$	w_1	w_5	w_6	w_7
1/3	B	Sh	0.0370	0.0328	1	1.6700	2.1350	1.5894
		Uv	0.0277	0.0671	1	2	3	3
		Pr	**0.0256**	**0.0274**	**1**	**1**	**2**	**4.6700**
	G	Sh	0.0292	0.0279	1	1.1288	1.9891	0.9945
		Uv	**0.0309**	**0.0162**	**1**	**0.9829**	**1.0894**	**1.8439**
		Pr	0.0211	0.0181	1	1.4713	1.7621	3.6039
1/2	B	Sh	**0.0367**	**0.0336**	**1**	**2.0606**	**2.1294**	**1.0606**
		Uv	0.0426	0.0448	1	2.0182	1	1
		Pr	0.0317	0.0609	1	1.5376	4.3203	2.1851
	G	Sh	0.0367	0.0294	1	1.0479	1.9220	0.9610
		Uv	**0.0405**	**0.0214**	**1**	**2.0272**	**3.3362**	**1**
		Pr	0.0282	0.0295	1	0.9945	1.9891	1.3018
1	B	Sh	**0.0454**	**0.0429**	**1**	**3**	**3.0905**	**1.0055**
		Uv	0.0585	0.0637	1	2	3.0354	1.0606
		Pr	0.0454	0.0584	1	2.0082	1.0082	2.0182
	G	Sh	0.0469	0.0496	1	1.2621	3.6882	1
		Uv	0.0574	0.0540	1	3.0082	3.0406	3.1350
		Pr	**0.0376**	**0.0485**	**1**	**2.1472**	**2.0406**	**1**
2	B	Sh	**0.0565**	**0.0500**	**1**	**3.0240**	**2.9891**	**3.9782**
		Uv	0.1435	0.1720	1	1.2533	2.0480	2.3587
		Pr	0.0591	0.0642	1	2.1936	0.9610	1.0390
	G	Sh	**0.0484**	**0.1189**	**1**	**3**	**8.0606**	**4**
		Uv	0.1108	0.1330	1	0.7708	3.3239	4.6563
		Pr	0.0516	0.1221	1	2.6782	2	1.1350
3	B	Sh	0.0772	0.0553	1	1.1350	2.1622	1.8050
		Uv	0.2732	0.2223	1	1.9579	4.7700	1.8341
		Pr	**0.0693**	**0.0549**	**1**	**2**	**1**	**3**
	G	Sh	**0.0595**	**0.1068**	**1**	**3**	**5.1350**	**1.2015**
		Uv	0.1966	0.1344	1	2	1	1
		Pr	0.0630	0.1482	1	3.1405	3.7161	1

If we compare the results between each utility translation for both datapacks, we can clearly see that concave translations (esp. $p^{1/3}$) give smallest $\mathcal{E}(v)$, thus is supporting our argument that concavity fits best.

- Restricted Approach

  We also apply restricted approach R into and conduct another thirty experiments. Below are the experiment results, showing all corresponding weights of the core and marginal chicks for each different cases of brood datapacks. Note that the cases with minimum error $\mathcal{E}(v)$ for each datapack are shown in bold. We can clearly see that the concave translation $p^{1/3}$ here also gives the minimum overall error $\mathcal{E}(v)$ for both datapacks, just like the result of our previous standard approach. However, unlike the previous approach, the overall minimum error of the bad years datapack and the good years datapack in this restricted approach are both given by Shapley value solution.

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Table 7: Experiment results using Restricted Approach on core weights

UT	DP	Sol	e_D	$\mathcal{E}(v)$	w_1	w_2	w_3	w_4
1/3	B	**Sh**	**0.0303**	**0.0156**	**1**	**1.0409**	**0.9420**	**1.8341**
		Uv	0.0328	0.0164	1	1.3089	1.6700	1.0082
		Pr	0.0222	0.0184	1	1.0905	1	1.8172
	G	**Sh**	**0.0256**	**0.0196**	**1**	**1.1134**	**0.9600**	**3.5387**
		Uv	0.0248	0.0235	1	1.3008	1.0122	2.2867
		Pr	0.0301	0.0223	1	1	2.1194	1.1212
1/2	B	Sh	0.0263	0.0245	1	1	1.2015	4
		Uv	0.0424	0.0278	1	1	2.0678	1
		Pr	0.0368	0.0271	1	1	1.8897	1.2920
	G	Sh	0.0353	0.0317	1	1.4489	2.6298	6.3283
		Uv	0.0371	0.0355	1	1.4713	1.1460	4.2077
		Pr	0.0344	0.0316	1	1	1	4.0488
1	B	Sh	0.0600	0.0387	1	3.0100	2.5211	1.0272
		Uv	0.0531	0.0430	1	1.5000	1.5675	0.5000
		Pr	0.0396	0.0367	1	1	1	3.5811
	G	Sh	0.0582	0.0445	1	0.3851	0.3851	0.5009
		Uv	0.0423	0.0467	1	1.6700	1.0055	3.0612
		Pr	0.0535	0.0443	1	1	1	1.0788
2	B	Sh	0.0486	0.0539	1	2	1	2.0905
		Uv	0.0741	0.0631	1	2	1	2.3512
		Pr	0.0792	0.0622	1	2.0000	1.0272	1.2015
	G	Sh	0.0599	0.0788	1	1.6700	2.6700	2
		Uv	0.0954	0.0872	1	1.3083	0.5222	0.5654
		Pr	0.0607	0.0639	1	1.2015	2	4.5023
3	B	Sh	0.0360	0.0971	1	1.4489	1	1.2676
		Uv	0.0886	0.0994	1	1.1015	0.5269	1.5365
		Pr	0.1406	0.1056	1	1.5726	0.5237	2.0459
	G	Sh	0.1380	0.1147	1	1	1	1.0177
		Uv	0.1143	0.1449	1	0.3620	0.3190	0.3449
		Pr	0.0746	0.1548	1	0.5379	0.4933	0.4960

Table 8: Experiment results using Restricted Approach on marginal weights

UT	DP	Sol	e_D	$\mathcal{E}(v)$	w_1	w_5	w_6	w_7
1/3	B	**Sh**	**0.0303**	**0.0156**	**1**	**1**	**2.3400**	**1.6700**
		Uv	0.0328	0.0164	1	1.2436	1.4804	1.2264
		Pr	0.0222	0.0184	1	1.1350	1.0606	2.1476
	G	**Sh**	**0.0256**	**0.0196**	**1**	**0.9170**	**0.9170**	**1**
		Uv	0.0248	0.0235	1	1.3008	1,6700	1
		Pr	0.0301	0.0223	1	1	1	2.3008
1/2	B	Sh	0.0263	0.0245	1	1.0905	2.2255	1.2255
		Uv	0.0424	0.0278	1	1	2.1350	1
		Pr	0.0368	0.0271	1	1	1.0678	1.5501
	G	Sh	0.0353	0.0317	1	1	2	1
		Uv	0.0371	0.0355	1	1	4.0834	1.2015
		Pr	0.0344	0.0316	1	1	2.2015	2.0082
1	B	Sh	0.0600	0.0387	1	1.4713	4.1891	1.8553
		Uv	0.0531	0.0430	1	0.7853	0.3851	1.9253
		Pr	0.0396	0.0367	1	2.4489	3.3467	2.1795
	G	Sh	0.0582	0.0445	1	1.0272	2	1.0272
		Uv	0.0423	0.0467	1	1	1.8456	1
		Pr	0.0535	0.0443	1	1.0082	2	1.3089
2	B	Sh	0.0486	0.0539	1	2.6868	2.4724	1.1504
		Uv	0.0741	0.0631	1	0.7635	0.5298	1.0072
		Pr	0.0792	0.0622	1	2.4489	2	3.6015
	G	Sh	0.0599	0.0788	1	2.0905	3.5448	2
		Uv	0.0954	0.0872	1	1.3157	1.0171	0.4645
		Pr	0.0607	0.0639	1	1.6015	3.0905	4.5927
3	B	Sh	0.0360	0.0971	1	3.6800	3	2.3400
		Uv	0.0886	0.0994	1	0.9859	0.7527	0.9859
		Pr	0.1406	0.1056	1	0.3190	0.7339	0.5539
	G	Sh	0.1380	0.1147	1	1.4544	3.7110	2
		Uv	0.1143	0.1449	1	1.0905	2.0164	2.3159
		Pr	0.0746	0.1548	1	0.4933	2.5311	1.1648

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4.3 Findings

We divide our findings into five types and explain in details with some reasonable arguments behind the results we found in the experiments.

- Smallest Error vs Utility Translation

  As we have known from the results of our experiments, smallest errors are reached by the concave $p^{1/3}$ translation in all cases of the brood data solutions with two different modeling approaches. Thus, we may already say that the brood survival rate data in our case is better translated with concavity of $p^{1/3}$. For a clear comparison on the minimum overall error (shown in bold) for every different cases of utility translations, see the table below.

Table 9 : Smallest Error vs Utility Translation

Appr	DP	Sol	$\mathcal{E}(v)$ $p^{1/3}$	$p^{1/2}$	p^1	p^2	p^3
S	B	Sh	0.0328	0.0336	0.0429	0.0500	0.0553
		Uv	0.0671	0.0448	0.0637	0.1720	0.2223
		Pr	**0.0274**	0.0609	0.0584	0.0642	0.0549
	G	Sh	0.0279	0.0294	0.0496	0.1189	0.1068
		Uv	**0.0162**	0.0214	0.0540	0.1330	0.1344
		Pr	0.0181	0.0295	0.0485	0.1221	0.1482
R	B	Sh	**0.0156**	0.0245	0.0387	0.0539	0.0971
		Uv	0.0164	0.0278	0.0430	0.0631	0.0994
		Pr	0.0184	0.0271	0.0367	0.0622	0.1056
	G	Sh	**0.0196**	0.0317	0.0445	0.0788	0.1147
		Uv	0.0235	0.0355	0.0467	0.0872	0.1449
		Pr	0.0223	0.0316	0.0443	0.0639	0.1548

We can see that the convex translation p^2 hit 5% overall error only once with Shapley value solution, and never with the other solution concepts. While in the convex p^3 translation, minimum overall error is always above 5% for any solution concepts. Taking a close look into the results using Shapley value in the table above, we may notice that the more concave the utility translation p^a (a = {1/3; 1/2; 1; 2; 3}) is, the smaller the error. For Utopia value and Prenucleolus solutions, sometimes the concave $p^{1/2}$ translation gives smaller error than the concave $p^{1/3}$ translation. However, concave translations in general always give smaller error than the convex ones.

Why concave translation fits best? If food allocation for the marginal chick is increased a little bit more, for example from 0.3 to 0.4 gram, the chick's probability of survive will increase a lot more, and it might even save them from dying. While if the core chick's survival rate is already high, there is almost no difference if it is being fed a little bit more; in any chance, most probably it will survive. In other words, the food is considered to be more valuable for the marginals rather than the core. This may explains why concave translation fits best than the convex one.

- Smallest Error vs Solution

  Smallest overall error for the good and bad years data using standard approach are given by Utopia value and Prenucleolus solutions, respectively. While for the restricted approach, smallest overall error are given by Shapley value solution. See the table below for the five first smallest errors of the solutions for both approaches.

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Table 10 : Smallest Error vs Solution

Appr	Rank	$\mathcal{E}(v)$	UT	DP	Sol
S	1	0.0162	$p^{1/3}$	G	Uv
	2	0.0181	$p^{1/3}$	G	Pr
	3	0.0214	$p^{1/2}$	G	Uv
	4	0.0274	$p^{1/3}$	B	Pr
	5	0.0279	$p^{1/3}$	G	Sh
R	1	0.0156	$p^{1/3}$	G	Sh
	2	0.0164	$p^{1/3}$	B	Sh
	3	0.0184	$p^{1/3}$	G	Pr
	4	0.0196	$p^{1/3}$	B	Uv
	5	0.0223	$p^{1/3}$	B	Pr

If we are using standard approach, we can see that Utopia value solution gives smallest overall error compare to the other two solution concepts; supporting our prediction that Utopia value solution will give a better fit as it has more freedom, uses less game data, and not as refine as Shapley value or Prenucleolus.

On the other hand, Shapley value gives smallest overall error in the restricted approach. As we assume that all core chicks are considered to be equal with each other; not only they are hatched on the same day thus is 'stronger' compare to the marginals, but also assumed to always being fed at first place with almost the same amount of food by parents. Perhaps, this 'special' structure of the brood datasets that are implicitly translated into restricted approach by setting an equal weight for all core and assuming *i* number of core to always fill the first *i* position in the coalition *(i=1 to 4)*, are recognized by Shapley value solution concept; thus gives a better fit.

- Smallest Error and The Weight System

  According to the solutions which has smallest minimum error $\mathcal{E}(v)$ for both good and bad years data in two respected model systems within the concave translation $p^{1/3}$, we get these corresponding weights as follows. Notice that w_1 column is left out as the weight of the first core chick is normalized to 1 for easier comparison.

Table 11 : Smallest Error and The Weight System

Appr	DP	$\mathcal{E}(v)$	w_2	w_3	w_4	w_5	w_6	w_7
S	B	0.0274	1.09	1	1.67	1.67	2.14	1.59
	G	0.0162	0.99	0.99	1.01	1.13	1.99	0.99
R	B	0.0164	1.31	1.67	1.01	1	2.34	1.67
	G	0.0156	1.04	0.94	1.83	0.92	0.92	1

We want to see whether the weights of all core chicks will be the same (i.e. close to each other), at least in standard approach where we allow anonimity between the core. By dividing all weights of the other chicks using weight of the first core chick, we see that almost all other core weights are very close to 1 in standard approach with smallest error. Interestingly, this is also the case for restricted approach. Eventhough the first four players do not take similar position in the game, we see that similar assumption seems to hold for the restricted case, especially when error is small.

However, we may see some unexpected values appearing on weight of the core and marginal broods: some weights of the core appear to be quite larger than 1, and some weights of the marginals are a little bit smaller than one. This is due to the fact that our search procedure is not 'perfect'. During the fitting of weight, sometimes we end up in a local optima and the procedure does not allow us to

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search further to find the best fit. Still, most of the time when error is below 5%, it is usually not the case.

- The Brood Data and The Weight System

  Now we compare the weight system in different brood datapacks for the two approaches and check whether the marginals have larger weights (shown in bold) in the bad years compare to the good years, at least when the average error is minimum.

Table 12 : The Brood Data and The Weight System

Appr	DP	$\mathcal{E}(v)$	w_5	w_6	w_7
S	B	0.0274	**1.67**	**2.14**	**1.59**
	G	0.0162	1.13	1.99	0.99
R	B	0.0164	**1**	**2.34**	**1.67**
	G	0.0156	0.92	0.92	1

We can easily see that in the case where $\mathcal{E}(v)$ is minimum, the marginal chicks have larger weights in the bad years rather than in good years. These results support our prediction that parental favoritism exists even worse during the bad years period.

- Time Consumption

  As an addition to the analysis, below we will show the largest time consumption for every solution concept in each brood datapack. The two largest time consumptions (in seconds), each corresponds to standard and restricted approach, are shown in bold.

Table 13: Time Consumption

Appr	DP	Sol	UT	time
S	B	Sh	3	596,6758815
		Uv	1/2	1258,745863
		Pr	1	5482,497638
	G	Sh	2	1433,950145
		Uv	1	5436,586818
		Pr	**1/3**	**6133,127812**
R	B	Sh	1/2	6294,65302
		Uv	1/3	1433,452379
		Pr	2	4525,036143
	G	Sh	1	109,2940425
		Uv	2	4140,893783
		Pr	**1/2**	**6470,758277**

We see that the largest time consumptions in both approaches happen when we consider Prenucleolus solution, especially under concave translations. As an insight on the experiments' time consumption, fitting using Prenucleolus is much slower compare to others perhaps because it does not have special properties like linearity.

5. Conclusion

As Forbes (2011) said in his paper [16], survival to leave the nest is a useful proxy to measure evolutionary fitness. It shows a range of variation, from virtually guaranteed survival of core offspring in small broods, to the near certain death of marginal ones in large broods. Knowing the importance of survival rate for blackbirds, we conclude our research as follows:

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- The modeling and calculation choices we made using Shapley value solution concept have proved that parental favoritism does exist in most cases of the brood data, especially during the bad years period.
- In general, property such as linearity in the Shapley value solution allows a fast fitting in the brood data. Restricted structure of the brood datasets also enables Shapley value solution concept to give a reasonable fit within a reasonable time.
- Prenucleolus solution results are shown in various kind of experiments, perhaps because of the fact that it is a high profile solution where there are quite a lot of balancing in the procedure, i.e. fine tuning is sophisticated.
- If we want a simple, 'quick and dirty' solution which also enable fast fitting with quite feasible solution, then Utopia value solution concept can be considered as a choice.
- Whatever model we are taking, the experiment results have some tendencies:
  1. Weights of the marginals are usually larger than the cores, since food is valued more by the marginals as a result of parental favoritism.
  2. Concavity translations fit best as our brood data is not linear. Small increase on food allocation for the marginals could increase chick's survival probability a lot more, while giving more food to the core who already has high survival rate does not give different output as core already has great survival chance.
- To summarize the results of the experiments, we can say that the more concave the utility translation, the smaller the error, the better the game fits the solutions, the more we can trust the resulting weight system.

Finally we conclude that we have been able to implement Shapley value solution concept to tackle the bird brood food allocation problem, and compare its result with other known solution concepts namely Utopia value and Prenucleolus. We also successfully translate the biological problem of blackbirds food allocation into a cooperative game approach in math and economics using various techniques known in literature.

5.1 Recommendation for Future Works

Given vast amount of brood data as well as vast amount of results from the experiments, there are still a lot to be investigated further in this research. One can really discriminate among the approaches, solutions, utility functions, and datapacks that are used. To get a better understanding, one might also change solution concept and examine effects in the current situation. To some extent, we adapted the anonimity property of Shapley value by applying weights. What will happen if we furthermore play around with dummy player property, or when we allow for restricted cooperation settings, as are seen in Utopia value. In all these cases we may arrive at more weight in the importance of game solution properties in data interpretation. Fitting procedure may also be tuned in a different way. Applied settings were tuned only briefly in Shapley value application. More sophisticated calibration might enable fitting with smaller errors, and thus with more reliable conclusions.

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Store Atmosphere Dimensions Effect on Consumer Repurchase Intention (Study in Chandra Superstore Tanjung Karang)

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Abstract

Store Atmosphere became one of the important factors for consumers when shopping for convenience. To create a comfortable atmosphere of the store it will needed some dimensions, such as cleanliness, music, scent, temperature, lighting, color and display or layout.

Problems in this research is whether the dimensions of cleanliness, music, scent, temperature, lighting, color and display or layout has an influence on the consumer repurchase intention. This research used descriptive verification research design and used purposive sampling. The method of analysis used multiple linear regression.

The results of this research shows that the contribution of variable dimensions of store atmosphere have a role in influencing variable consumer repurchase intention was 53%, the rest is influenced by other variables. T test results found that the variable dimensions of the store atmosphere, namely cleanliness, music, scent, temperature, lighting, color and display or layout affect consumer repurchase intention.

The advice given by this research Chandra Super Store Tanjung Karang should improve scent dimension. They should put an automatic parfume periodically with a scent that could make the consumers relax when shopping, at some point in the store so that the scent in Chandra Super Store is fragrant and scented and can make consumer repurchase intention increasing in Chandra Super Store.

Keywords: Store Atmosphere dimension, Consumer Repurchase Intention.

1. Introduction

1.1 Background

In the era of globalization and today's world trading activity, there is competition going on in marketing of products or services. Marketing activity has a very important role in the business world, remember orientation to the consumers. The state of the business world dynamic changes in line with changes in consumer tastes and changes in the environment and surroundings. Needs of consumers are becoming increasingly then it make a business opportunities. Business opportunities that are obtained today are not only oriented towards profit. Active marketing oriented to customer used more by business people, although this requires the business people to define the needs and desires of the consumers point of view. Bandar Lampung is one of the fast growing cities in Indonesia (Lampost.com, 10/1/2016 / 3.00). As the city continues to grow, the rate of economic growth and technological change as well as current information even more quickly,

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the market is increasing dynamically, requiring business people to constantly improvise and innovate in maintaining the customers. This has become one of the driving factors of the creation of intense competition in the business world.

Intense competition among retailers with accompanying changes in consumer behavior needs to be observed and understood by the retail business people. The higher and competitive competition among retail business people takes planning strategies to seize and keep their market share including the consumer repurchase intention. According to Utami (2006: 4) Retail is also a device of business activities that do adding value to the products and services of sales to consumer for use or consumption of individuals and families, and definition for hypermarket itself is combine some store type. This store sales more routine product that consumers buy like household things, furniture, outfit, and others. Competition of modern retail Hypermarkert types in the Bandar Lampung can be seen in table 1.

Table 1. Data of Competition Retail Modern Hypermarket type in Bandar Lampung 2015

Company name	Address	Target Market
Chandra Super Store	Hayam Wuruk street, Bandar Lampung	36.70%
Hypermart	RA Kartini street number 62, Central Plaza Bandar Lampung	35.40%
Giant	Pangeran Antasari street, Sukarame Bandar Lampung	27.90%

Source: Dinas Perindustian dan Perdagangan Kota Bandar Lampung, 2016

Based on table 1, the target market of Chandra Super Store is in the highest position among its competitors with the percentage of 36.70%, followed by the 35.40% Hypermart and Giant in 3rd position with the percentage of 27.90%, but the magnitude of percentage between Chandra and Hypermart is very thin, so how Chandra Super Store manages to keep their market share in Bandar Lampung is because now the society has been selective in choosing something, either in the form of products or services.

One of the ways to win the competition and maintain market share is to create something different. Distinction is needed because any other business must have found similar product with little price. Continued innovation that can be taken as a characteristic that makes it different from other business people is with storeatmosphere aspect. Store atmosphere can be a reason for consumers to be interested and choosethe store that they will visit and buy from. It's described by Levy and Weitz (2001: 556) "Customer purchasing behavior is also influenced by the store atmosphere" This thing makes the consumer choose a store and make a purchase. Attract consumers is one of the initial goals and then certainly aims to stimulate consumer desire to buy (Putri *et al*., 2014: 2). Store atmosphere not only influences purchasing decisions, but also influences customer satisfaction. Store atmosphere is also a combination of emotional things (Putri at. al, 2014: 2). According to Mowen and Minor (2002: 139) store atmosphere influences shopper emotional condition, which can be pushed to increase or reduce spending in shopping. The impact of the store atmosphere could create the impression that will increase buyers' purchase or just buy enough and leading to possibility not returning again to purchase at the store. Based on that reason, retail business is not only about price but involves other variables related to the value on the customer shopping experience. Scope of store atmosphere based on journal of Hussain and Mazhar (2015 : 36) is cleanliness, music, scent, temperature, lighting, color, display or layout.

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Chandra Super Store located in strategic location in Bandar Lampung city, Lampung Province, Indonesia, consisting of more shopping centers and hundreds of supporting businesses in the form of shop or market, where people's needs can be met from this complex, and Chandra Super Store store becomes one of the society's first choice for their daily needs . In Tanjung Karang, Bandar Lampung, Chandra Super Store Tanjung Karang is one of the biggest retail store and already quite well known by the public of Bandar Lampung city, so the store should be able to create store atmosphere that is comfortable and supportive for consumers while shopping so it will ultimately make consumers interested in shopping back to Chandra Super StoreTanjung Karang to make repeat purchases. Repurchase intention is re-purchasing activities carried out more than once or several times.

1.2 Problem Formulation

Based on the research background, it shows that competition between retail stores, especially hypermarket types is getting tight. It is a reference for Chandra Super Store Tanjung Karang in determining a strategy to maintain its customers, by presenting a good atmosphere and comfortable when consumers visit and consume products, they are expected to give a good impression that will have an impact on repurchase intention. Role of store atmosphere is to create convenience for consumers. Based on these descriptions, the problems are defined in this study as follows:

1. Does the cleanliness affect consumer repurchase intentioninChandraSuperStore?
2. Does the music affect consumer repurchase intention in Chandra Super Store?
3. Does the scent affect consumer repurchase intention in Chandra Super Store?
4. Does the temperature affect consumer repurchase intention inChandra SuperStore?
5. Does the lighting affect consumer repurchase intention in ChandraSuperStore?
6. Does the color affect consumer repurchase intention in Chandra Super Store?
7. Does the display or layout affect consumer repurchase intention in ChandraSuperStore?

2. LITERATURE REVIEW

2.1 Retail

Retailing includes all activities in selling goods or services directly to end users for personal and non-business purposes. Retailers or retail store are all business entities that their sales volume mainly came from sales of retail (Kotler, Keller, 2009: 140), while according to Berman and Evans (2004: 4) retailing encompasses the business activities involved in selling goods and services to consumers for their personal, family,or household use. It includes every sale to the final consumer. Retailing is the last stage in the distribution process. According to Gilbert (2003: 6), retail is "all business enterprises to direct marketing capabilities to satisfy the end consumer based organizations selling goods and services as the core of the distribution". According to Utami (2006: 4) retail is also a device of business activities that do adding value to the products and services of sales to consument for use or consumption of individuals and families. Based on the definition above, it be concluded that retail is a businesses that trade in goods directly to the final consumer and not traded back. Based on Utami, (2006: 10) various type of retail are two types:

- Store Retailing; Retail stores are characterized by the presence of a place to showcase the products permanently. Retail stores have a variety of shapes and sizes: (1) Specialty Store is concentrate on a limited category of products with a high service level.; (2) Department Store is a kind of retail that selling wide variety of products and various types of products using staff like customers service and sales promotion girl or boy.; (3) Conveniene Store; This shop has a variety and a limited product types with the size

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is relatively small and is usually defined as a mini supermarket selling only a limited line of products and turnover is quite high.; (4) Super Store is a retail store with store size almost twice as large as supermarket usual and sells a broad range of products consisting of food and non-food products that are regularly bought by consumers.; (5) Combination Stores is stores that its activities selling food and medicine.; (6) Hypermarket; This store is more spacious than the store combination. Hypermarkets combine various forms of retail stores such as: supermarkets, discount stores, and warehouse.; (7) Discount Stores; Types of retail selling most varieties of products with limited service and low prices. Discount stores sell products with a label or brand itself.; (8) Houses Exhibition Catalog; Type of store sells a wide range of high mark-ups with leading brands at discounted prices.

a. Non-Store Retailing is retail store that the products are not displayed. There are some types of non store retailing store: telemarketing, internet marketing, direct selling, direct marketing, multi level marketing. In non store retailing, sales promotion, direct marketing, and advertising are instrumental attract potential buyers. For example:Electronic Retail, Catalog, Direct sales, Television Home Shopping, Vending Machine Retaiing

2.2 Store Atmosphere

Store atmosphere is a term that is used to explain our feelings towards the shopping experience which can not be seen (Hussain and Ali, 2015: 35). Kotler describes the atmosphere as "the design of the of retail chain outlet that produces specific emotional effects on the buyer that enhances his purchasing probability" (Hussain and Ali, 2015: 35). According to Srinivasan and Srivastava, the attractive and impressive atmosphere of retail chain outlets creates an enjoyable experience among the consumers, which directly affects consumers' purchase intention and their decision making process (Hussain and Ali, 2015: 35). Store atmosphere affects the emotional of buyers who causes or influence purchase. The emotional state will create two dominant, there feelings are feelings of pleasure and arouse desire. (Sutisna and Pawitra, 2001: 201) says store atmosphere is affective and cognitive status were understood by consumer in the store, although perhaps not fully recognized at the time of shopping. Broader definition described by Peter and Olson (1999), which explains that thestore atmosphere include things that are broad as well as the availability facility such as air conditioner (AC), store layout, colour, the use of types of carpets, carpet color, material goods storage shelves, racks and forms etc. The concept store atmosphere is also closely related to store image. Sutisna and Pawitra (2001: 201) say store atmosphere is one component of the store image. Various factors that combined to form the store image is the product sold, sevice in store, customer, shop as a place to enjoy the pleasures of life, shop promotion activities , and the atmosphere of the shop. Opinion was supported by a statement Bermans and Evans (2004: 462): creation of image to a store depends on a combination of physical adjustments that leads to ability to develop artistic value of the environment store so that capable trigerring appeal for consumer. Based on the definition above according to experts, it can be concluded that the atmosphere of the shop is one of the components in a store that directly or indirectly affect consumer convenience in shopping. According to Hussain and Ali (2015: 36).the elements of the atmosphere of the shop is divided into seven parts, namely: cleanlines, music, scent, temperatur, lighting, color, display or layout. In this research found that store atmosphere variable influence on consumer's purchasing intention. According to research of Meldarianda and Oral S (2010) conclude that store atmosphere includes instore atmosphere and outstore atmsphere has an influence to consumer purchase intention in Resort Cafe Atmosphere.

2.3 Repurchase Intention

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According Soderlund and Öhman intention is attitude statements about how someone will behave in the future (Setyaningsih *et al.* , 2007 : 36). Repurchase intention is behavior that appears to the object. Repurchase intention showed the desire of customers to repurchase in the future (Marpaung, 2011). Repurchase intention is a commitment to consumers that formed after the consumer purchases a product or service. This commitment arose because consumers towards a positive impression of the brand, and consumers are satisfied with these purchases (Hicks *et al.* , 2005 : 95). Butcher in Setyaningsih *et al.* (2007 : 36) argues that consumer interest to purcahase is one measure of the success of a company, especially service companies. According Hellier *et al.* (2003 : 1771) repurchase intention is a consumer's decision to re-purchase a product or service based on what has been obtained from the same company, expenditures to acquire goods and services and there is a tendency to do on a regular basis. The accumulation of experience and knowledge of consumers towards a brand is a factor yang can influence consumers to repurchase the same brand. With the experience that consumers get from a product with a particular brand will create a positive impression of the product and the consumer to make a purchase again (Hellier *et al.* , 2003 : 1771). Ferdinand (2002 : 129) argues that there are four indicators to measure repurchase intention, namely: (1) Interests of transactional is a person's tendency to buy product; (2) Interests of explorative describing the behavior of someone who is always looking for information about the product they're interested in and look for information to support positive of the product.; (3) Interest of Prefencial is intention that describes the behavior of someone who has a primary preference on the product, this preference may change if anything happens tot he product of preference.; (4) Interest of referential is a person's tendency to referent products to the others.

2.4 Hypotesis

According to research of Meldarianda and Oral S (2010) conclude that store atmosphere includes instore atmosphere and outstore atmsphere has an influence to consumer purchase intention in Resort Cafe Atmosphere. According Banat and Wandebori, cleanliness is the appearance of the retail chain outlet that improves the atmosphere which affects the customers feeling towards the outlet. Customers create positive or negative word of mouth about retail chain outlet by looking at the cleanliness, (Hussain and Ali, 2015: 36), Gajanayake and Surangi states that cleanliness can improve store atmosphere (Hussain and Ali, 2015: 36). H1: Cleanliness influential on repurchase intention of consumers in Chandra Super Store.

According to Banat and Wandebori, music can be defined as a pleasant sound that impacts consumers' conscious and unconscious decisions (Hussain and Ali, 2015: 36).). Music played in retail outlet significantly impacts consumer purchase intention. Music styles and tempos deeply influence consumers in increasing sales of the retail outlets. According to Holbrook and Anan, Pleasant music is associated with longer consumption time (Hussain and Ali, 2015: 36). H2: Music influential on repurchase intention of consumers in Chandra Super Store.

According Banat and Wandebori, presence or absence of scent in the retail chain outlets has noticeable impact on the consumer purchase intention. Scent is a pleasant fragrance that influences customer mood and emotions which make the customers stay more time and feel excited (Hussain and Ali, 2015: 36). H3: Scent influential on repurchase intention of consumers in Chandra Super Store.

Lam stated that temperature at retail outlet is among those atmospheric variables that greatly impact the consumer purchase intention. Extreme temperature—very low or very high—creates negative feelings among customers; it leads to dissatisfaction among the customers and

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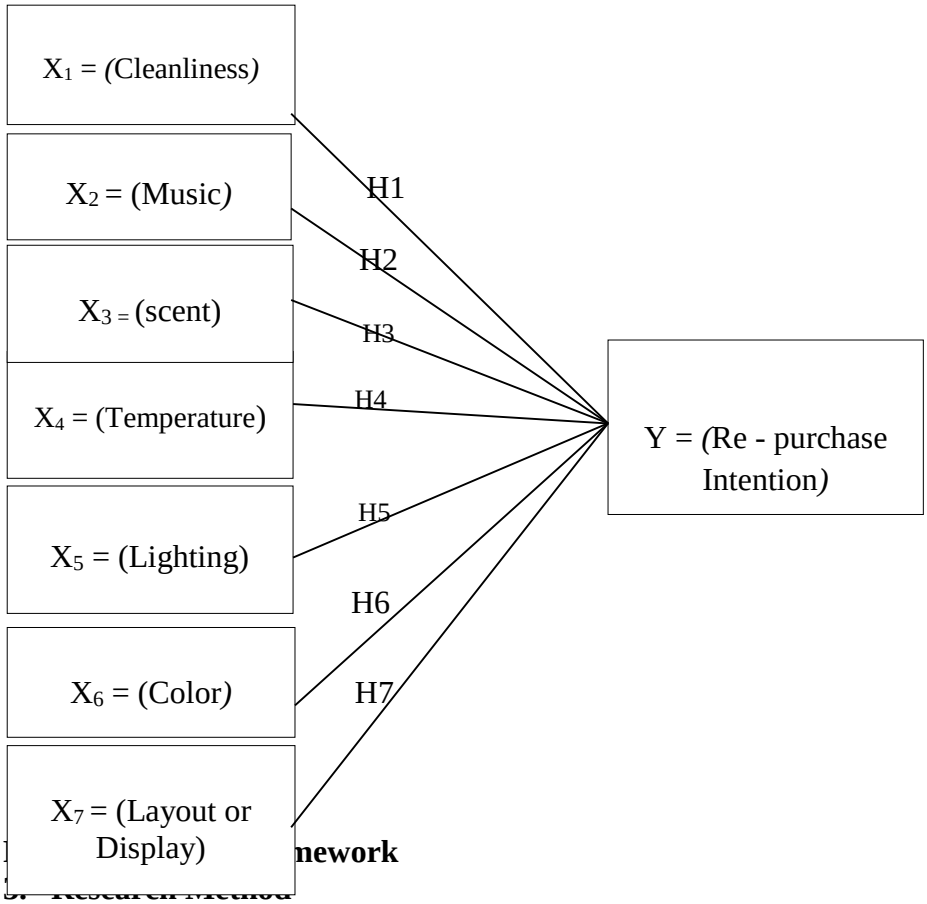
consequently, customers spend less time in outlet and produce negative word of mouth (Hussain and Ali, 2015: 36). H4: Temperature influential on repurchase intention of consumers in Chandra Super Store.

According to Mehrabian and Albert lighting is used to highlight products. It creates excitement and has a positive impact on consumer purchasing behavior (Hussain and Ali, 2015: 36). H5: Lighting influential on repurchase intention of consumers in Chandra Super Store.

Banat and Wandebori stated that color builds feelings and affects consumer behavior and attitude (Hussain and Ali, 2015: 37). According to Yuksel, Color has great impact on the consumer's perception about the merchandise (Hussain and Ali, 2015: 37).
H6: Color influential on repurchase intention of consumers in Chandra Super Store.

According Abratt, Russell, Goodey, and Stephen, products in the retail chain outlets should be displayed in such a way that attracts the consumers. Product display in the retail outlets is a stimulus to attract the consumers to make impulse buying (Hussain and Ali, 2015: 37).
H7: Display or layout influential on repurchase intention of consumers in Chandra Super Store .

Therefore, this study was to investigate effect of all the dimension of store atmosphere, such as Cleanliness, Music, Scent, Temperature, Lighting, color, Display or layout. further the conceptual framework of the research can be seen in the following diagram:



nework

3. Research Method

3.1 Reearch Desaign

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This research use verification descriptive research design with approach ex post facto and surveys. Survey is the approach used to obtain the data from a particular place is natural (not artificial), but research carried out in the data collection, for example by circulating questionnaires, tests, interviews ters structures are at, and so on. (Sugiyono, 2010: 12).

3.2 Population and Sample

The population is the entire collection of elements that show the specific characteristics that can be used to make conclusion (Sanusi, 2014: 8 7).The population in this study is consumers of Chandra Super Store Tanjung Karang.

The sample is part of the elements that selected from the population (Sanusi, 2014: 87). This sampling research using non probability sampling, this method is not based on a random mechanism in the selection of the study sample. Purposive sampling technique or judgment sampling is sampling were selected based on certain considerations in order to obtain a sampling unit that has the desired characteristics. According to Hair *et al.* (2010: 120) states that, a sample size of at least 100 to ensure proper use Maxinmum estimation Likelihood (ML) is appropriate. When the sample size is increased beyond this value, then the ML method will increase the sensitivity to detect differences in the data. When the sample size becomes large (400-500), the method becomes too sensitive and almost all the differences detected and this causes the sample size of 100 or 200 samples or a minimum level recommended sample size is 5 observations for each parameter to be estimated. In this research, there are 32 statements so the researchers took 160 respondents (32 items statement x 5 = 160).

3.3 Validity Test

The main instruments used in this research is a questionnaire distributed to respondents in the research samples should be tested the validity and the reliable through factor analysis, by using the following requirements:

a. KMO value, KMO sampling adequacy size is a value corresponding to the actual circumstances or events with significant values of 0.05 (Santoso, 2002: 101)
b. Index Measure Of Sampling Adequacy (MSA) is a minimum value of 0.05, which is declared invalid and the sample bias in further analysis (Santoso, 2002: 101).
c. Communalities value is a value indicating effective contribution of each item on the form factor (Santoso, 2002: 101).
d. Factor loading, is the value that would otherwise require a loading factor that is > 0.5 were declared irrelevant (Santoso, 2002: 101).

3.4 Reliability Test

Test of reliability according Arikunto (2006: 145) is intended "to determine the consistency of measuring instruments in use, or in other words the instruments have consistent results when used repeatedly at different times for the reliability test used technique Cronbach Alpha, where a instrument can be said to be reliable if you have or alpha reliability coefficient of 0.6 or more.

4. Result And Discussion

Table 2 Validity Test Results

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Variable	Item	KMO (Measure of Sampling Adequacy)	AntiImage	Communalities	Loading Factor	Information (>0.50 = valid)
Cleanliness (X1)	1 2 3	0.731	0.732 0.714 0.749	0.770 0.787 0.756	0.878 0,887 0.870	valid
Music (X2)	1 2 3 4 5 6	0.863	0.853 0.919 0.843 0.809 0.880 0.885	0,751 0.694 0,646 0.761 0.749 0.786	0.866 0,833 0.804 0.872 0.866 0,887	valid
Aroma (X3)	1 2 3	0.614	0.653 0.575 0.640	0.599 0.806 0.622	0.774 0.898 0.788	valid
Temperature (X4)	1 2 3	0.655	0.671 0.666 0.632	0.571 0,579 0.639	0.756 0.761 0.800	valid
Lighting (X5)	1 2 3 4 5 6	0.680	0.586 0.735 0,711 0.599 0.821 0.639	0,509 0.614 0.501 0.533 0.752 0.726	0.714 0.784 0.708 0.730 0.867 0.852	valid
Color (X6)	1 2 3	0.709	0.723 0.690 0.716	0.698 0.735 0.705	0,836 0.857 0.840	valid
Display or Layout (X7)	1 2 3 4 5	0.872	0.794 0.860 0.935 0,885 0.937	0,879 0.780 0.707 0.767 0.633	0.938 0.883 0.841 0.876 0.795	valid
Repurchase Intention (Y)	1 2 3	0. 654	0.671 0.609 0.708	0,656 0.778 0.611	0. 810 0.882 0.781	valid

Source: Data compiled, 2016

Tabel 2 shows all the items on the questionnaire statement that represents the variable item of cleanliness (X1), music (X2), scent (X3), temperature (X4), lighting(X5), color (X6), display or layout (X7), and repurchase inetention (Y), demonstrating the value of more than 0.5 so that the instrument are valid and can be processed to the next step.

Table 3. Reliability Test Results

Variable	Item	Croanbach's Alpha	Croanbach's Alpha if item deleted	Description(Cronbach's Alpha> Croanbach's Alpha if item deleted)
Cleanliness (X1)	1 2 3	0.851	0.792 0.777 0,806	reliable
Music (X2)	1 2	0.925	0.910 0.915	reliable

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Table 3. Reliability Test Results (continue)

	3 4 5 6		0.92 0.907 0.909 0,906	
Scent (X3)	1 2 3	0.744	0,710 0,517 0.681	reliable
Temperature (X4)	1 2 3	0.661	0.591 0.581 0,517	reliable
Lighting (X5)	1 2 3 4 5 6	0.865	0.855 0.842 0.857 0.851 0.823 0.826	reliable
Color (X6)	1 2 3	0.790	0.735 0.681 0.725	reliable
Display or Layout (X7)	1 2 3 4 5	0.917	0.876 0.895 0.905 0.895 0.916	reliable
Repurchase Intention (Y)	1 2 3	0.764	0,702 0.574 0.739	Reliable

Source: Data compiled, 2016

Table 3 shows the Cronbach's Alpha values more than 0.6 and the value of Cronbach's Alpha if Item Deleted does under the value of Cronbach's Alpha, it can be stated that the instrument in this study are reliable.

Regression Analysis
Table 4. Regression

Coefficients[a]

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Model		Unstandardized Coefficients		Standardized Coefficients	t	Sig.
		B	Std. Error	Beta		
1	(Constant)	3,523	1,302		2,706	,008
	x1	,132	,059	,139	2,228	,027
	x2	,072	,033	,132	2,194	,030
	x3	,121	,058	,131	2,099	,037
	x4	,297	,065	,301	4,601	,000
	x5	,120	,039	,193	3,049	,003
	x6	,147	,062	,143	2,370	,019
	x7	,122	,035	,224	3,446	,001

a. Dependent Variable: y

Source: Data compiled, 2016

The table above shows the results of multiple linear regression analysis of these tables can be formed of multiple linear regression equation. The following multiple linear regression equation was formulated:

$$\mathbf{Y = a + b_1 X_1 + b_2 X_2 + b_3 X_3 + b_4 X_4 + b_5 X_5 + b_6 X_6 + b_7 X_7 + \varepsilon}$$

Based on Table 4 multiple linear regression equation can be structured as follows:

$$\mathbf{Y = 0{,}139X1 + 0{,}132X2 + 0{,}131X3 + 0{,}301X4 + 0{,}193X5 + 0{,}143X6 + 0{,}224X7}$$

Information:

Y = Repurchase Intention
a = Constant
X_1 = Cleanliness
X_2 = Music
X_3 = Scent
X_4 = Temperature
X_5 = Lighting
X_6 = Color
X_7 = Display or Layout
b1- b7 = regression coefficient store atmosphere
ε = Standard Error

For dimensional regression coefficient of cleanliness is positive (β = 0.139) means there is a positive relationship between the dimensions of cleanliness with the consumer repurchase intention, the better cleanliness, the more consumers will make repurchases intention.

For dimensional regression coefficient of music is positive (β = 0.132) means there is a positive relationship between the dimensions of music with repurchase intention, the better the music played, the more consumers will make repurchases intention.

For dimensional regression coefficients of scent is positive (β = 0.131) means there is a positive relationship between the dimensions of scent with the consumer repurchase intention, more scented fragrance, the more consumers will make repurchases intention.

For dimensional regression coefficient of temperature is positive (β = 0.301) means there is a positive relationship between the dimensions of temperature with the consumer repurchase intention, the better the temperature, the more consumers will make repurchases intention.

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For dimensional regression coefficient of lighting is positive (β = 0.193) means there is a positive relationship between the dimensions of the lighting with the consumer repurchase intention, bettter and brighter lighting, the more consumers will make repurchases intention.

For dimensional regression coefficient of color is positive (β = 0.143) means there is a positive relationship between the dimension of color with the consumer repurchase intention, the better color in store, the more consumers will make repurchases intention.

For dimensional regression coefficient of display or layout is positive (β = 0.224) means there is a positive relationship between the dimensions display or layout with the consumer repurchase intention, the better of appearance in display or layout store, the more consumers will make repurchases intention.

Results of the discussion in this study indicate that there is influence between several dimensions ambiance of the store to the consumer repurchase intention in Chandra Super Store Tanjung Karang. The results of this study reinforced on previous research, that Hussain and Ali (2015) which states that the effect of the atmosphere of the store has an influence on interest in the purchase. The difference this study with research Hussain and Ali (2015) is the object and location of the research in the international retail chain outlets (Metro Habib & Hyperstar) of Karachi, Pakistan , and the study was conducted in Chandra Super Store Tanjung Karang, Bandar Lampung, Indonesia. The research hypothesis is supported by previous research hypothesis, namely the independent variable has an effect on the dependent variable.

Statistical Hypothesis Testing

F Test (Hypothesis Testing In Overall)
Overall hypothesis test used to determine whether there is influence between independent variables and the dependent variable using the F test (test Fisher) at the 95% confidence level or with a value of α = 5% using the degrees of freedom df (Degree of Freedom).
df = (Total Variable - 1) = 8-1 = 7
df = n - k - 1 = 160 - 7-1 = 152
obtained by the value of F table (0.05, 7; 152) = 2.27
Where : n = Number of respondents
K = number of independent variables (x)
Here are the results of testing using F:

Table 6 Result Using F Test
ANOVA [a]

Model		Sum of Squares	Df	mean Square	F	Sig.
1	Regression	338.690	7	48.384	24.491	, 000 [b]
	Residual	300.285	152	1,976		
	Total	638.975	159			

Source: Data compiled, 2016

Statement Hypothesis:
Ho: $b_1 = b_2 = b_3 = b_4 = b_5 = b_6 = b_7 = 0$ (variable X does not affect the variable Y)
Ha: $b_1 = b_2 = b_3 = b_4 = b_5 = b_6 = b_7 = 0$ (variable X effect on variable Y)
Criteria: Ho is accepted and Ha is rejected if F count ≤ F table

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Ho rejected and Ha accepted if F count ≥ F table

Since F count (24.491) has a significance value results print out turned out to be below the specified alpha of 0.05 (5%) that the overall 0,000 independent variables (store atmosphere) significantly affects repurchase intention in Chandra Super Store Tanjung Karang.

T Test (Hypothesis Testing In Partial)

Partial hypothesis test is used to determine the significant influence of each independent variable on the dependent variable partially by using the t test at 95% confidence level or with a value of α = 5% and using the degrees of freedom (df).

df = n - k - 1 = 160 - 7-1 = 152

t value tables (0,05; 152) = 1.97569

Statement Hypothesis:

Ho: Partially there was no significant effect of variable X to variable Y

Ha: Partially no significant effect of variable X to variable Y

Criteria: Ho is accepted and Ha is rejected if t ≤ t table

Ho rejected and Ha accepted if t ≥ t table

The following table test results based on the results of the t test:

Table 7 Testing Hypotheses Effect of variable X to variable Y

Variables	Counting t	Sig.	Conclusion (<0.05 = Be accepted)
Cleanliness (X1)	2,228	0,027	Be accepted
Music (X2)	2,194	0,030	Be accepted
Scent (X3)	2,099	0,037	Be accepted
Temperature (X4)	4,601	0000	Be accepted
Lighting (X5)	3,049	0003	Be accepted
Color (X6)	2,370	0,019	Be accepted
Display or Layout (X7)	3.446	0,001	Be accepted

Source: Data compiled, 2016

Table 7 shows that the value in the variable cleanliness (X1), music (X2), scent (X3), temperature (X4), lighting (X5), color (X6), display or layout (X7), has a significant level below 0.05 (5%). This means that all the variable dimensions of the store atmosphere (X) partially have a positive influence on the creation of the consumer repurchase intention in Chandra Super Store Tanjung Karang, so it can be concluded that partially accepted Ha and H_0 is rejected.

Determination Coefficient Test (R^2)

Table 8. Coefficient Determination Results

Model Summary

Model	R	R Square	Adjusted R Square	Std. Error of the Estimate
1	, 728 [a]	530	, 508	1.406

Source: Data compiled,2016.

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Rated R^2 = 0.530, it means the store atmosphere that includes cleanliness, music, scent, temperature, lighting, color, display or layout of a role in contributing variable consumer repurchase intention by 53% the rest of 47% influenced by other variables which were not studied by the researchers, for example: price, promotion, quality of services and others.

5. Conclusions And Recomendations

5.1 Conclusion

The conclusions that can be drawn from the results of research in this study are support the proposed hypothesis, it is based on:

1. The overall results of testing the hypothesis by F test obtained F count is 24.491 and it has significance value under alpha which can be determined by 0,05 (5%) is 0,000. it means that whole dependend variables have significant effects on store atmosphere towrads consumers repurchase intention .
2. The result of t test result is known that the value of t count on the store atmosphere (X) which are include cleanliness, music, scent, temperature, lighting, color, display has significance level under 0,05 (5%), it means that all dimensions variable of store atmosphere (X) partially have significance effects raising up consumers repurchase intention.
3. R^2 test result of 0,530 shows that the contribution of variable X (dimension of store atmosphere) affects the variable Y (consumers repurchase intention) at 53% and the rest is influenced by other variables, such as: price, promotion, and more.

5.2 Suggestions:

Some things that could be addressed in this study based on the results and discussion that has been presented, are:

1. Chandra Super Store Tanjung Karang should always increase the dimension of Scent in the store, because this dimension is the lowest variable affecting consumers repurchase intention, by put automatic parfume periodically with the scent that could make the consumers relax when shopping like a perfume with the scent of coffee, lavender, and citrus in the some point in the store so that the scent in Chandra Super Store are fragrant and scented as well and it can make consumers repurchase intention in Chandra Super Store increase.
2. Chandra Super Store Tanjung Karang should always increase the dimension of music which is played in the store. By playing musics that is pleasing to the ear like classical music and also play music according to the theme or the celebration that will take place in order to create a pleasant environment in the stores when consumers are shopping.
3. Chandra Super Store Tanjung Karang should always increase the dimension of cleanliness in the store, by add more employees specially and regularly with tasked to clean the store environment, especially the shelfs of vegetables, fruits because these products can not survive long and if the conditions are not fresh anymore then it can make the shelfs dirty and it must be cleaned.
4. Chandra Super Store Tanjung Karang should always increase the dimension of color in the store, by add color to the walls of the store because the color that dominates in the Chandra Super Store now is only white, such as add color to yellow or orange, so that consumers who come will attract to shopping in Chandra Super Store and interest to visit again.

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5. Chandra Super Store Tanjung Karang should always maintain dimensions of lighting, display or layout and temperature which are already in there, because these variables are also crucial in increasing consumers repurchase intention in Chandra Super Store.

6. Acknowledgement

- The difference of this study and Meldarianda and Oral (2010) lies in the independent variables are used, their research using the theory of Levy and Weitz with independent variable that instore atmosphere and outstore atmosphere as well as with research Karmela and Junaidi (2009) also differ in the variables used, their research using the theory Berman and Evans independent variable is the exterior, general interior, store layout and interior displays, and this study using the theory of the journal Hussain and Ali with independent variable that cleanliness, music, aroma, temperature, lighting, color and display or layout.
- Measurement of the variables in this study using non probability sampling technique that is weak in the conclusion it would be better if further research using other sampling techniques.
- For other researchers hoped this research may help to develop further research. Researchers suggest adding other the dependent variables beside store atmosphere to be more inclusive to find out more about what others variable effect to repurchase intention.

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The Effect of Financial Leverage, Profitability, and Commissioner Board on Financial Performance: Mediated by Corporate Social Performance

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Abstract

The aim of the study is to investigate the role of social performance as mediator of the relationship of financial leverage, profitability, and commissioner board on financial performance. In order to achieve the aim of the study, we conducted an analysis on the Indonesia state-owned companies between 2008 and 2014. According statistical analysis using regression, we find that all hypotheses are accepted. This study indicates that financial performance can be enhanced by all factors by mediating role of social performance. This study contributes on literature about the important of social performance in order to enhance financial performance in the Indonesia state-owned companies.

Keywords: *Financial leverage, profitability, commissioner board, corporate social performance, financial performance*

1. Background

There has been increasing requirement or pressure for business organizations (firms) to engage in environmental responsibility, which explains the development of new research on strategic corporate social responsibility (CSR)(Chen, Tang, Jin, Li, & Paillé, 2015). Corporate social performance (CSP) has been defined with various ways. For example, (Wartick & Cochran, 1985) stated that CSP, corporate social responsibility as well as corporate social responsiveness are interchangeable terms. In its implementation, Corporate Social Responsibility (CSR) has had a shift toward various social issues on the effect caused by CRS activities for community and its effect on corporate economic performance. The shift of CSR implementation encourages the emergence of Corporate Social Performance concept. Model of corporate social performance describes totality of company's effort in fulfilling the change of social condition.

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In its development, the more important of the sustainable development concept, the more important the awareness of company in implementing corporate social responsibility emphasizing that corporate responsibility is not only economical activity seeking for profit, but also social responsibility that includes environment. Friedman (1970), corporate social responsibility is running a business in accordance with the urge of corporate owners of shareholders, which is maximum profit. Strong corporate reputation has important strategic implication for company and is a competitive superiority source. Company with strong and positive reputation will be able to attract and keep its employees with the best talents, as well as loyal customers and business partners, that all will contribute for the growth and success financially.

The results of studies on corporate social performance and corporate financial performance still show various results (McWilliams & Siegel, 2000, 2001). It is because many factors affecting the results, among others are methodology used, measuring instrument, daya analysis used, and moderating variable used. Preston and O'Bannon (1997) studied the relationship between corporate social performance and corporate financial performance. The study used variables ROA, ROE, and ROI to measure financial performance while social performance is measured by index of community and environmental responsibility (CEREPS), ability to select and retain good people (PEOPLE), and quality of product and services (PSQ). This study proves the peresence of positive relationship between social performance and financial performance.

Waddock and Graves (1997) in their study about relationship of social performance and financial performance by using the concept of good management theory and adding variables firm size, debt structure, type of industry and profitability as controlling variables. The study shows the presence of positive relationship between social performance and financial performance. Fauzi, dkk(2007) studied about the effect of corporate social performance and financial performance in Indonesia. This study uses CSR disclosure in annual report as dependent variable, while variable profitability (ROA dan ROE) as independent variable and firm size as moderating variable. The study does not find a significant effect, but the effect changes to be positive when added by firm size as moderating variable.

Based on the previous studies done in a number of countries in different time period stated that factors that significantly affect corporate social responsibility use CSR disclosures which are: Return On Asset (ROA), firm size, people, and planet (use ratings of PROPER). Therefore, this study aims to examine how the effect of social performance on corporate financial performance.

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2. Teoritical Persepective CSP and Hypothesis Testing

According to Preston and O'Bannon (1997), social performance is a requirement from business where corporate performance and social performance tend to relate each other in a long term. Some research frameworks on CSR have been examined by many researchers (Crisostomo, Freire, & Vasconcellos, 2011; Flammer, 2015; Giannarakis, 2014; Liu, Wong, Shi, Chu, & Brock, 2014; Lu, Abeysekera, & Cortese, 2015; Simeon, 2007). Friedman (1970) stated that the implementation of CSR is based on agency problem or a conflict between interest of manager and shareholders. In this matter, Friedman (1970) then explained that manager uses CSR as the mean for interest of social, politic, and their career agenda. Jensen & Meckling (1976) in Agency theory, strengthened the argumentation from Friedman (1970) by stating that if in between two choices relating to maximize utility, there is good reason to believe that agency will not always respond the interest owned by principal. Moreover, Fama & Jensen (1983, p. 303) stated that *'Control of agency problems in the decision process is important when the decision managers who initiate and implement important decisions are not the major residual claimants and therefore do not bear a major share of the wealth effects of their decisions'*

As has been explained in the previous section, in the role of CSR in maximizing profit with various conclusions (Bučiūnienė & Kazlauskaitė, 2012; Chen & Wang, 2011; Crisóstomo, Freire, & Vasconcellos, 2011; Liu et al., 2014; Velde, Vermeir, & Corten, 2005). The study conducted by Bučiūnienė & Kazlauskaitė (2012), for example, in companies in Lithuania found that CRS can increase organizational performance and financial performance of the company. Liu, Wong, Shi, Chu, & Brock(2014) viewed how CSR performance can build customers' brand preference in companies in China. In the study, they used CSR domain in three perspectives which are environment, society, and stakeholders. Their study result sees that CSR performance does not strengthen the relationship of branding outcomes. Similar to Liu, et.al (2014), Velde et al (2005) studied how interaction between CSR and financial performance. In the study, they used Vigeo corporate social responsibility score consisting of 5 (five) dimensions of SCR: human resources, environment, and suppliers, community and society as well as corporate governance. Based on the study result, they concluded that CSR effect and financial performance are a very complex issue. Therefore, based on the suggestion from Liu, dkk (2014) and Quazi & Richardson(2012),

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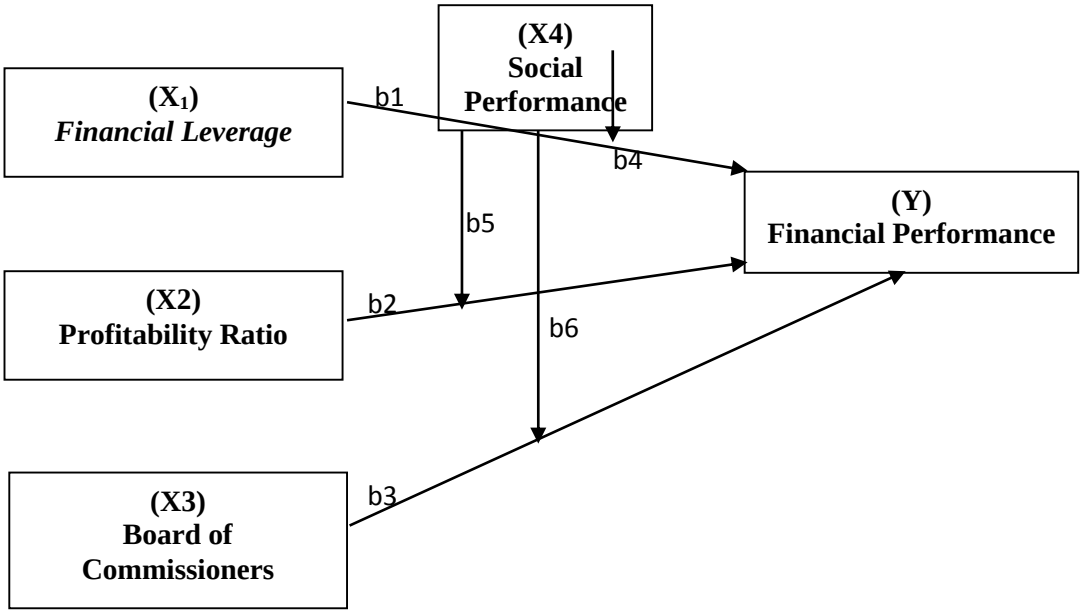
side effect of moderation can be a solution on the relationship of CRS and Performance. It is in line with the argumentation of Blombäck & Wigren(2009, p. 255) stating that *'It has been concluded that firm size should not be a feasible main criterion when trying to understand or predict CSR behavior'*. Thus, this study uses Corporate Social Performance of company as a connector between CSR variables on the relationship with corporate performance. In order to be more clearly, this study can be illustrated in research framework as the following:



2.2. Study Hypothesis

Hypothesis proposed in this study is a brief statement that is concluded from literature review, previous studies, and is a temporary description from problems needed to be re-examined. A hypothesis can be accepted if the result of empirical data analysis proves that the hypothesis is correct, vice versa. The hypothesis of this study is:

2.2.1. Relationship of Financial Leverage and Financial Performance

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A study on relationship of financial and financial performance becomes an important issue because the relationship of financial leverage and operational activity of the company as well as corporate short term financial will cause the low of corporate confirm (Whiting & Gilkison, 2000). The previous study viewed the ambiance of low corporate performance with high corporate leverage, the company tries to cut asset and dividend of the company more aggressively compared to the low level of corporate leverage. Therefore, the relationship between financial leverage and organizational performance is ceteris paribus. For example, the study done by age and organizational performance is ceteris paribus. The study done by Zeitun & Saleh (2015), for example, shows that company having leverage presentation level will have lower performance. Similar to study done by Whiting & Gilkison (2000) shows that the high level of leverage will cause the low of short term performance. Based on the above argumentation, we propose a hypothesis as the following:

H1: There is positive relationship between financial leverage and financial performance

2.2.2. The Relationship of Profitability Ratio and Financial Performance

We assume that there is positive relationship between profitability ratio and financial performance. The relationship is based on a premise that the high of profitability ratio enables company to give a great disclosure toward social information. With the presence of wide disclosure, stakeholders or external parties will have strong belief toward social activity done by the company. Along with the activity, it enables to increase financial performance. The study done by Hermawan & Maf'ulah (2014) shows that profitability ratio has positive relationship with corporate performance. Therefore, we assume that there is positive relationship between profitability ratio and financial performance. Thus, we propose a hypothesis as the following:

H2: There is positive relationship between profitability ratio and financial performance

2.2.3. Board of Commissioners and Financial Performance

A study about the relationship between board of commissioners and financial performance has various conclusions. One example is a study done by Vafeas (1999) toward 307 companies in Greece in time range of 1990-1994 studied about the number of meetings of board of

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commissioners with financial performance. The study result shows that more meetings of Board of Commissioners will decrease corporate value.

H3: There is positive relationship between Board of Commissioners and Financial Performance

H4: Social performance strengthens positive effect of financial leverage on financial performance

H5: *Social performance strengthens negative effect of profitability ratio on financial performance*

H6: Social Performance strengthens positive effect of Board of Commissioners on financial performance

3. Study Method

3.1.Population and Sampling of Study

Population used in this study is non-financial companies listed in Indonesia Stock Exchange (IDX). Data that will be used in this study are secondary data in the forms of financial report data and stock market data of manufacturing companies since 2008 until 2014. Meanwhile, the companies that are sample in this study are selected based on certain criteria (purposive sampling) are BUMN (Indonesia State-owned companies) in manufacturing sector listed since January 1, 2008 until December 31, 2014 in IDX. Data that are going to be used in this study are secondary data in the forms of financial report data and stock market data of non-financial companies listed in Indonesia Stock Exchange since 2008 to 2014. The data are obtained from:

a) Database of annual report that is published in BEI website, which is www.idx.co.id.
b) Website of Ministry of Environment of the Republic of Indonesia (www.menlh.go.id)

3.2.Operational Definition

Operational definision of each variable is explained as the following:

1. Social performance is proxied by proper that is measured by proper ratings that is the evaluation of awareness level and corporate responsibility toward environment. The proper ratings consecutively consist of 0 (black), 1 (red), 2 (blue), 3 (green), and 4 (gold).
2. Financial leverage is proxied by the ratio of total debt to total capital asset that is part of the whole fund that is spent with debt.

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3. Profitability ratio is proxied by the ratio of rate of return an total assets (ROA) that shows the ability of capital invested in the whole assets to produce profit for all investors (bondholders and shareholders).
4. Board of Commissioners is measured by the number of board of commissioners existing in the company.
5. Financial performance is proxied by earnings per share (EPS) that is measured by earnings after tax that is divided by the number of share circulated.

3.3.Data Analysis

3.3.1. Descriptive Statistics Analysis

This analysis is used to give description on variables of study (Social Performance, Leverage, Profitability Ratio, and Board of Commissioners) as seen on Table 1.

Tabel 1. Descriptive Statistics Analysis

Descriptive Statistics

	N	Minimum	Maximum	Mean	Std. Deviation
Proper (X1)	56	2	4	2.34	.581
Leverage (X2)	56	.1759	.8830	.462275	.2180461
ROA (X3)	56	-3.7794	46.5676	14.645596	11.2892917
Komisaris (X4)	56	4	7	5.64	.672
Log (Kinerja sosial) X5	56	12.1601	13.5355	12.961438	.3445373
EPS (Y)	56	-81.3124	1339.2623	296.396824	360.5658984
Valid N (listwise)	56				

Based on Table 1 above, it is seen that social performance has the average of 2.34 with deviation standard of 0.581. Meanwhile, Leverage has the average of 0.4622 with deviation standard of 0.2180, while the amount of profitability ratio has the average of 14.65 with deviation standard of 11.28, and Board of Commissioners has the minus average of 5.64 with deviation standard of 0.672.

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3.3.2. Classical Assumption Test

Classical assumption in this study is done by conducting normality test, multicollinearity, heteroscedasticity, and autocorrelation. The testing of classical assumption test in this study uses computer programe of SPSS for windows version 17.0. The calculating result of classical assumption test shows that each variable has fulfilled the classical assumption consisting of the test of normality, multicollinearity, heteroscedasticity, and autocorrelation.

3.3.3. Analysis Model

Hypothesis 1. Corporate social performance positively affects financial performance.

Equation 1 :

$$KK_{it} = \alpha_0 + \beta_1 Proper_{it} + \varepsilon_{it}$$

Hypothesis 1. Financial leverage positively affects financial performance.

Equation 1 :

$$KK_{it} = \alpha_0 + \beta_1 Financial\ Leverage_{it} + \varepsilon_{it}$$

Hypothesis 2. Profitability ratio positively affects financial performance.

Equation 2 :

$$KK_{it} = \alpha_0 + \beta_2\ Rasio\ Profitabilias_{it} + \varepsilon_{it}$$

Hypothesis 3. Board of Commissioners positively affects financial performance

Equation 3 :

$$KK_{it} = \alpha_0 + \beta_3\ Dewan\ komisaris_{it} + \varepsilon_{it}$$

Hypothesis 4. Social performance strengthens the positive effect of Financial leverage on financial performance.

$$KK_{it} = \alpha_0 + \beta_1\ Financial\ Leverage_{it} + \beta_4\ Financial\ Leverage_{it}\ *\ Kinerja\ Sosial + \varepsilon_{it}$$

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Hypothesis 5. Social performance strengthens the positive effect of Profitability Ratio on financial performance.

$$KK_{it} = \alpha_0 + \beta_2 \textit{ Rasio Profitabilias}_{it} + \beta_5 \textit{ Rasio Profitabilias}_{it} * \textit{ Kinerja Sosial } + \varepsilon_{it}$$

Hypothesis 6. Social performance strengthens the positive effect of Board of Commissioners on financial performance.

$$KK_{it} = \alpha_0 + \beta_3 \textit{ Dewan komisaris}_{it} + \beta_6 \textit{ Dewan komisaris}_{it} * \textit{ Kinerja Sosial } + \varepsilon_{it}$$

where :

KK_{it}	= Financial performance is proxied by earning per share (EPS)
α_0	= Constants for regression equation
β	= Regression coefficient
$Proper_{it}$	= proper of company i period t
$Financial\ Leverage_{it}$	= financial leverage is proxied by ratio of total debt to total capital asset of company i period t
$Klasifikasi_{it}$	= moderating variable is proxied by classification of company i period t
ε_{it}	= residual (error level) of company i period t

3.3.4. Determinant Coefficient

Determinant coefficient explains the ability of independent variable to explain dependent variable in the model. Based on the calculation by using SPSS of the relationship between Social Performance, Financial Leverage, Profitability Ratio, Board of Commissioners, and total assets toward financial performance obtained from value of $R^2 = 0.832$ or 83.20%, it means that the ability of variables Social Performance, Financial Leverage, Profitability Ratio, Board of Commissioners, and total assets to explain variable financial performance in the model is as much as 83.20 %. Meanwhile, the rest (18.80%) is affected by other factors.

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3.3.5. Hypothesis Testing

Hypothesis 1

Hypothesis 1 states that there is positive relationship between financial leverage and financial performance. The result of data analysis by using SPSS obtained has coefficient value of .704. It shows positive direction. Meanwhile, the value of T-Count of 0.817 with P-Value = 0.417 Therefore, T-Count < T Tabel (0.817 <1.675), so it can be concluded that there is positive relationship but not significant between 0.817. Therefore, hypothesis 1 is rejected.

Coefficients[a]

Model		Unstandardized Coefficients		Standardized Coefficients	t	Sig.
		B	Std. Error	Beta		
1	(Constant)	2.560	.836		3.061	.003
	Leverage (X1)	.704	.862	.125	.817	.417
	INTERAKSI1	1.145	.270	.650	4.246	.000

a. Dependent Variable: LNEPS (Y)

Hypothesis 2

Hypothesis 2 states that Profitability Ratio positively affects financial performance. The result of data analysis by using SPSS obtains coefficient value of .308. .It shows positive direction. Meanwhile, the value of t-count is 2.808 with P-Value = 0.007. Therefore, T-count <T Tabel(2.808>1.675), so it can be concluded that there is positive and significant relationship between profitability ratio and financial performance. Thus, Hypothesis 2 is accepted.

Coefficients[a]

Model		Unstandardized Coefficients		Standardized Coefficients	t	Sig.
		B	Std. Error	Beta		
1	(Constant)	3.389	.265		12.766	.000
	ROA (X2)	.308	.110	2.766	2.808	.007
	INTERAKSI2	-.234	.113	-2.033	-2.063	.044

a. Dependent Variable: LNEPS (Y)

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Hypothesis 3

Hypothesis 3 states that Board of Commissioners positively affects financial performance. The result of data analysis by using SPSS obtains coefficient value of 1.629. It shows positive direction. Meanwhile, the value of t-count is 5.976 with P-Value = 0.000, so t-count > t-tabel 5.976>1.675). Therefore, it can be concluded that there is positive and significant relationship between profitability ratio and financial performance. Thus, Hypothesis 3 is accepted.

Coefficients[a]

Model		Unstandardized Coefficients		Standardized Coefficients	t	Sig.
		B	Std. Error	Beta		
1	(Constant)	-.589	1.147		-.513	.610
	Komisaris (X3)	1.629	.273	.890	5.976	.000
	INTERAKSI3	-1.080	.233	-.689	-4.627	.000

a. Dependent Variable: LNEPS (Y)

Hipotesis 4

Hypothesis 4 states that Social Performance strengthens the negative effect of financial leverage on financial performance. The result of data analysis by using SPSS before moderating being used obtains coefficient value of 0.704. It shows positive direction. Meanwhile, the value of T-Count is 0.817 with P-Value = 0.417, so T-Count < T Tabel (0.817 <1.675). After the emergence of social performance as moderating, the result of coefficient value obtained is 1.145, value of T-count = 4.246 with = P-Value = 0.000. Therefore, it can be concluded that there is positive and significant relationship where Social Performance strengthens the positive effect of financial leverage on financial performance. Thus, Hypothesis 4 is accepted.

Hypothesis 5

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Hypothesis 5 states that Social Performance strengthens the negative effect of Profitability Ratio on financial performance. The result of data analysis by using SPSS before moderating being used obtains coefficient value of 0.704. It shows positive direction. Meanwhile, the value of T-Count is 0.817 with P-Value = 0.417, so T-Count < T Tabel (0.817 <1.675). After the emergence of social performance as moderating, the result of coefficient value obtained is 1.145, value of T-count = 4.246 with = P-Value = 0.000. Therefore, it can be concluded that there is positive and significant relationship where Social Performance strengthens the positive effect of financial leverage on financial performance. Thus, Hypothesis 4 is accepted.

Hypothesis 6

Hypothesis 6 states that Social Performance strengthens the negative effect of Board of Commissioners on financial performance. The result of data analysis by using SPSS before moderating being used obtains coefficient value of -1.080. It shows negative direction. Meanwhile, the value of T-Count is -4.627 with = P-Value .000, so T-Count is < T Tabel (-4.627 > - 1.675). After the emergence os social performance as moderating, the result of coefficient value is obtained as much as -1.080, value of T-count = -4.627 with = P-Value = 0.000. Therefore, it can be concluded that there is negative and significant where Social Performance strengthens the positive effect of Board of Commissioners on financial performance. Thus, Hypothesis 6 is accepted.

4. Conclusion and Suggestion

This study aims to examine how the role of social performance can moderate the relationship between financial leverage, profitability ratio, board of commissioners, as well as financial performance, and financial ratio as well as board of commissioners toward corporate performance. To answer the aim of this study, we take sample on State-Owned companies listed in Indonesia Stock Exchange with observation period of 2008 – 2014. Based on the observation period, there are 8 companies that are used as the sample of the study. From the data, we analyze by using regression to test hypotheses. Based on the testing result, we obtain the results that all hypotheses

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are accepted except hypothesis 1 stating that there is negative relationship between financial leverage and financial performance, The rejection of hypothesis 1 indicates that high leverage is possibly able to increase financial performance. Moreover, it is in line with hypothesis 3 stating that there is positive relationship between profitability ratio and financial performance where if it is moderated by social performance will weaken the relationship between profitability ratio and financial performance.

Similar to other studies, this study also has limitations. The first limitation of this study is that firstly, the industry that is taken as the sample of this study is state-owned companies. State-owned companies are not separated from policies from government interests. In each decision making, the leader of the organization is affected by policy of shareholders and also government. Therefore, the result obtained in this study, is not necessarily equated with industries from companies listed in Indonesia Stock Exchange owned by private party. The second limitation is state-owned industry itself, where government has more than 150 state-owned companies, but not all state-owned companies are listed in Indonesia Stock Exchange. Therefore, considering state-owned companies listed in Indonesia Stock Exchange are large state-owned companies, this study is not able to generalize it to state-owned companies that are listed in Indonesia Stock Exchange.

The result of this study indicates that, in order to increase financial performance, leverage evaluation, increase of profitability ratio, and selection of boards of commissioners can be considered in increasing financial performance by focusing on social performance available.

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Switching Value Of Feasibility Investment On Patin Aquaculture Business in Kota Gajah, Central Lampung

By

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Abstract

One of the agribusiness subjects which have great opportunity in rural development is growing fish on farming/yard land. Agribusiness in general has risk toward market changes in input and output prices. This study aims to: (1) analyze the feasibility of freshwater aquaculture pond investment on Patin Fish and (2) to analyze the sensitivity and switching value the investment in freshwater aquaculture pond investment on Patin Fish Kota Gajah, Central of Lampung District. Research location determined purposively, with the consideration that the area has the highest pond fisheries production in Central of Lampung. Ten percent of the population amount 41 household choosen as respondent. Data were analyzed by descriptive qualitative and quantitative. Data tabulated, analyzed mathematically, and analyzed using the criteria of the investments: Net Present Value (NPV), Internal Rate of Return (IRR), Net B/C ratio, and discouting Pay Back Period. Based on the analysis revealed that Patin fish business feasibles to develop in the future. Agribusiness on Patin fish pond faced a high risk toward changes in production failure and fish prices decline due to changes in market conditions.

Keywords: *investment, switcing value, feasibility, Patin fish*

1. Introduction

The economics value of freshwater aquaculture production in Lampung Province reached IDR 749 billion in 2011. Freshwater aquaculture in ponds contributed attaint to 91.43%. The pond area and the number of households in Lampung Province are most numerous in Central Lampung regency. Contributions of pond reached 6.158.69 are (45.32%), production of fish 27.373.90 tons (53.80%) the value reached USD 350.135.150,- (51.08%). The number of households involved as many as 12.046 households (35.66%) (Lampung Province Central Bureau of Statistics, 2012).

The types of fish that prospective cultivated diverse as golden fish, patin, catfish, carp and tilapia. Freshwater fisheries in the pond in Central Lampung regency spread across several districts include: Seputih Raman, Trimurejo, Punggur, Kotagajah, Kalirejo, and Sendang Agung. Freshwater fisheries in this area is supported by the availability of adequate technical irrigation flow and cultivated throughout the year with good water management. Kota Gajah subdistrict contributed 5,024 tons (17%) in 2014, wich the highest productivity per households attaint to 12,135 ton.

Management of fish cultivation absolutely essential on keeps the production yield and profit optimation (Rahardi, et al, 2001). Profitability on fisheries is determined by three main components are cost of production productivity, and fish selling price. Analysis of the short term benefits not take into consideration the prevailing bank rate and in terms of time. Business on fishery needs advantage for long period to guarantee the sustainability. Therefore the investment feasibility analysis needs to extend the visibility and businesses prospective in the future. Karimah et al (2012) suggested the directions of fishery development there were (a)

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maintaining and improving the quality of fish products as well as supervision and services, (b) to add production and transportation facilities with modern equipment, and (c) increase the amount of production. Furthermore Rahmawati and Hartono (2012) stated that the strategy of development of the fishery cultivation can be applied by usage the natural resources optimally. Then fish production must match with the market demand, with competitive price market.

Aquaculture in ponds generally faces the problems; lack knowledge and skills on aquaculture technology, lower productivity, high feed costs, and marketing of fishery products which have not been efficient yet. At this time the cost of feed is very high contribute attaint to 70% of total cost production. Alternative homemade feed start to developed, but the quality is not comparable to a feed factory, so production is not maximized. Analysis of replacement value (switching value) or find the maximum value changes in input and output prices are allowed to aquaculture business is very important to assess feasibility of business in the future. This study aims to analyze the feasibility of investment, the sensitivity and switching value in Patin aquaculture on pond in Kota Gajah subdistrict Central of Lampung regency.

2. Method

This study conducted in the Kotagajah subdistrict, Central of Lampung regency in 2016. Research location determined purposively, with the consideration that the area has the highest pond fisheries production in Central of Lampung. Ten percent of the population amount 41 household choosen as respondent by simple random sampling as Singarimbun and Efendi (1989) recommendation. Data were analyzed by descriptive qualitative and quantitative. Data tabulated, analyzed mathematically, and analyzed using the criteria of the investments: Net Present Value (NPV), Internal Rate of Return (IRR), Net B/C ratio, and discouting Pay Back Period (Firdaus, M. 2008 ; Suryana, 2001; Djamin, Z., 1993):

a. Net Present Value (NPV)

$$NPV = \sum \frac{Bt}{(1+i^t)} - (co + \sum \frac{Ct}{(1+i^t)} \quad \text{.....(1)}$$

with
NPV : Net Present Value
Bt : cash in flow at t period
Ct : cash out flow at t period
Co : investment
i : interest
t : period
$(1 + i)^{-t}$: Discount factor
Decision:
NPV > 0 : the business is feasible
NPV < 0 : the business is not feasible yet

b. Benefit Cost Ratio

$$\text{Net BCR} = \sum \frac{Bt - Ct}{(1+i^t)} \Big/ \left(co + \sum \frac{Ct - Bt}{(1+i^t)}\right) \quad \text{.....(2)}$$

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Decision: B/C ratio > 1 : the business is profitable
B/C ratio < 1: the business is not profitable yet

c. Internal Rate of Return (IRR)

$$IRR = i^{+} + \frac{(NPV^{+})}{(NPV^{-} - NPV^{+})} (i^{-} - i^{+}) \quad \text{.....(2.7)}$$

IRR : Internal rate of return
i^{+} : interest rate which get positive NPV
i^{-} : interest rate which get negativeNPV
NPV^{+} : NPV positive
NPV^{-} : NPV negative
Decision : IRR > i : the business is feasible
IRR < i : the business is not feasible yet

d. Pay- Back Periode (PBP)

$$PBP = Tp - 1 + \sum_{i=1}^{n} \left[Ii - \sum_{i=1}^{n} B\,iep\,-1 \right] / Bp \quad \text{..... (4)}$$

Keterangan:
PBP = Pay Back Periode
Tp-I = years before PBP
Ii = discounted investment
Biep-1= discounted benefit befor PBP
Bp = benefit at PBP
Decision:
PBP < economical period the business is feasible
PBP > economical period the business is not feasible yet

Mechanical sensitivity analysis trough by identifying factors changes (decline in production, a decrease in output prices and input cost increases or price) which may in the aquaculture business. Switching value analysis is a calculation to measure the "maximum change" of a change in a component inflow (reduction in output prices, the decline in production) or component changes outflow (increase in prices of inputs/increase in production costs) that can be tolerated/allowed for business to remain viable. This calculation refers to how much change occurs until the NPV equal to zero (NPV = 0). Some scenario arranged for switching sensitivity analysis and value are:
1. Increasing input prices
2. Decleaning fish production price
3. Decreasing fish production

4. Result and Discussion

The economics structure of Central Lampung regency dominated by agricultural sector (51%). One of the sectors is quaculture in pond that develops very expansive. Kota Gajah, Seputih Raman, Punggur, Kalirejo, and Sendang Agung sub district are central production of aquaculture in pond in Central Lampung. The highest aquaculture production 2012--2014 resulted at Kota Gajah. Before that time, Kali Rejo contributed 7.505 ton at 2011, but at the

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last three years, the production decreased. The ten production centre in Central Lampung can be seen Figure 1.

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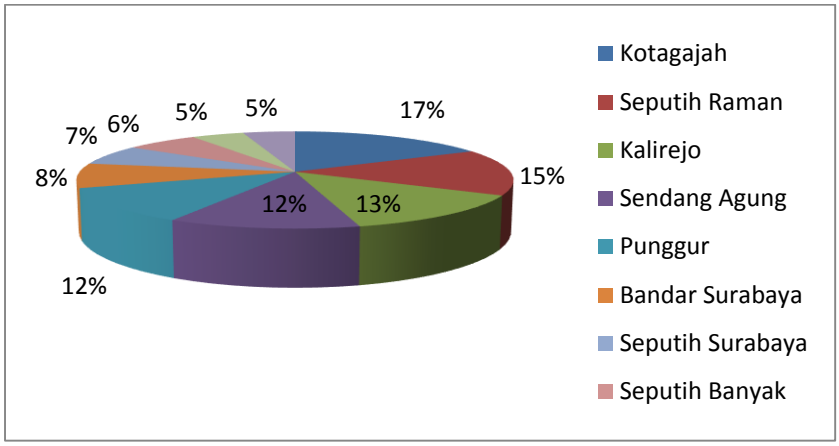

Figure 1. Production centre Lampung Tengah dengan
Sources: Bureau of Statistics, Central Lampung Regency, 2014

Kota Gajah subdistrict scattered in several villages. There are Nambahrejo, Sumber Rejo, Kota Gajah, Tanggul Rejo, dan Sri Tejo Kencono village. The responden education level mostly note at senior hight school (42%). The level of education will have an effect in aquaculture effort. Someone who has a higher education will have a level of intelligence in taking a decision, especially on business expand decision. Distribution of farmer education level of respondents can be seen in Figure 2 below.

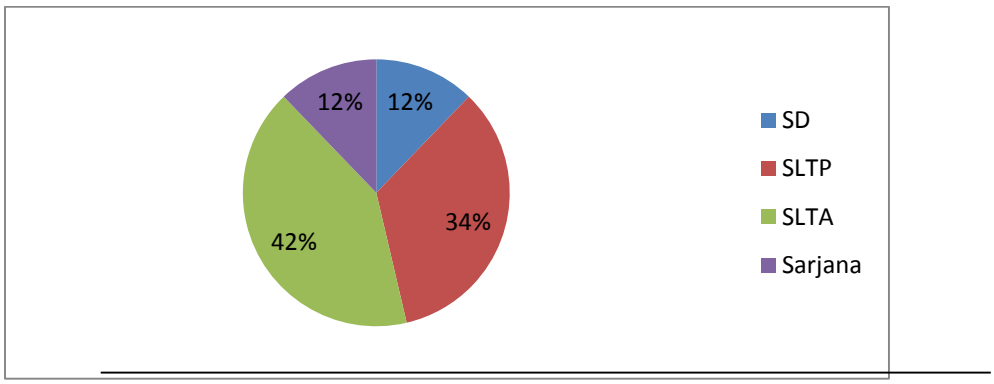

Figure 2. Education levels farmer respondents

Figure 2 showed that the farmer education respondents were mostly high school (42%), secondary (34%) and 12% respectively elementary education and Bachelor. The farmer respondents have a formal knowledge is good enough for completing high school education. Education has significance effort to increase agribusiness productivity. With their knowledge, farmers have opportunities to develop its business, because it has the ability to read and write well and good communication. The respondents were able to access the information directly in the aquaculture business, through the print and electronic media. On the other side, age of respondents can be seen in Figure 3.

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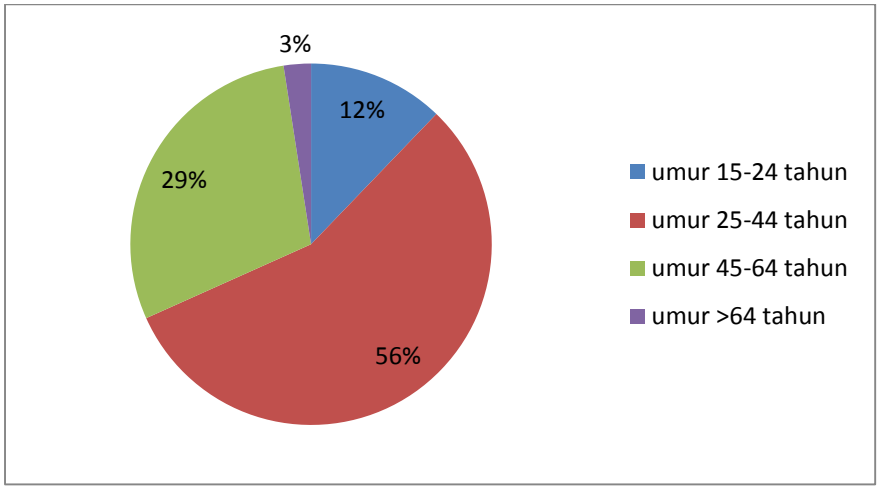

Figure 3. Age of respondent

Figure 3 shows that the age of the respondent. Most of them (56%) aged 25-44 years. Thus the farmer respondents in the research area in age range ie 14-64 years. It means that farmers still have a strong physical capability for aquaculture business (Mubyarto, 1984). The respondents have had an experience quite varied, with average experience in aquaculture for 4.1 years. The experience of respondents in aquaculture pond can be seen in Figure 4.

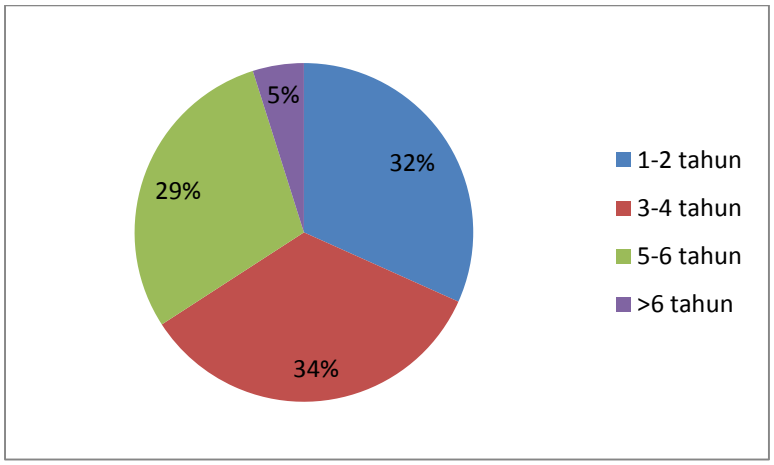

Figure 4. Aquaculture experience of respondent

Figure 4 showed that most of respondents (34%) had experience on aquaculture pond ranges 5-6 years. Aquaculture ponds develop extensively last 6 years. It is based on aquaculture production in Kota Gajah started the year 2012-2014 reached first place in contributing to the production in Central Lampung regency (17%) of the total production in Central Lampung regency. An adequate business experience important use in developing business on the long term. Business experience can be used as a source of information in making business decisions, then as the process of cultivation, production input formula expenditures, budgeting (cost and benefits), and others.

Financial Feasibility Analysis

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The main objective in agribusiness activities is gain profit continuously. Aquaculture business requires capital as investment such as land, labor, and other production factors. The limited resources require farmer must be able to allocate resources optimally. The main goal of investment is expected to provide benefits greater than the cost. A financial analysis of Patin aquaculture business specialized in the research area is based on the following assumptions:
The size of the pool which is analyzed in the financial viability of growing Patin aquaculture is a 500 m^2. Harvesting age is between 4-6 months per production cycle. During one year can produce as much as 2 periods Patin fish. The size of baby Patin stocked measuring 3-4 inches. An average weight of Patin fish harvested after cycle of 4 months in 1 kg contains 3-4 Patin fish. On 5-month production cycle the weight of fish in 1 kg containing three Patin fish, and production cycles of 6 months in 2 kg contains 3 fish. All investment had acquired in year 0, ie the year 2013. The year forward, will count as amortation. Investment component can be seen in Table 3.Inflation rate in January 2015 - August 2016 that occurred in Indonesia was 5, 30% per year (Bank Indonesia, 2016). The bank rate reference was Bank Republik Indonesia (BRI) in 2015 period amount 17,5%/year. The consideration was that BRI is the nearest bank in research location.

Table 3. Investment component (IDR)

Nu.	Component	Tahun					
		0	1	2	3	4	5
1	Building	3.304.838,71					
2	Water pump	3.446.893,49					
3	Selang hisap	380.952,38					
4	Selang buang	1.000.000,00					1.053.000
5	Cangkul	110.841,55					
6	Sabit	36.734,69			38.681,63		
7	Waring	330.588,24					348.109.41
8	Chamber	38.624,59			40.671,69		40.671.69
9	Serokan	88.268,81				92.947,05	
10	Gayung	16.791,67		17.681,62			17.681.62
11	Bak	84.418,50			88.892,68		
12	Tong	244.897,96					257.877.55
13	Angkong	286.242,60					301.413.46
14	Terpal	231.074,38					243.321.32
15	Basket	223.140,50					234.966.94
16	Net	1.167.500,00					
17	Pond building	8.891.209,48					
18	Electricity instalation	658.558,82					
	Total	20.541.576,37		1.7681,63	168.246,01	92.947,06	2.497.042,01

Table 3 showed that economic equipment age rate 5 year. Therefore the economic project duration for financial analysis was 5 tahun. Patin aquaculture expens cost production including fix cost and variable cost. Cost production can be seen in Table 4.

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Table 4. Patin aquaculture cost production (IDR)

Nu	Cost element	1	2	3	4	5
a.	**Fix Cost**					
	Electricity expens	327.694.,4	327.694.,4	327.694.,4	345.062,25	363.350,54
	Land rent	1.557.632,40	1.557.632,40	1.557.632,40	1.640.186,92	1.727.116,82
	Total	1.885.326,84	1.885.326,84	1.885.326,84	1.985.249,17	2.090.467,37
b.	**Variable Cost**					
1	Juvenile	6.099.669,89	3.400.528,99	4.074.603,72	4.290.557,72	4.517.957,27
2	Manufactory Feed					
	Starter feed	545.571,88	481.088,35	506.728,93	533.585,57	561.865,60
3	Growing feed					
	a. Growing feed 1	1.205.348,58	827.383,34	866.882,79	912.827,58	961.207,43
	b. Growing feed 2	2.740.776,23	2.227.576,38	2.435.038,27	256.4095,30	2.699.992,35
	c. Growing feed 3	3.777.442,28	2.849.076,66	2.948.534,65	3.104.806,99	3.269.361,75
4	Alternative					
	a. Salt fish	20,924,273.68	16,227,851.86	20,385,312.30	21,465,733.85	22,603,417.75
	b. Dedak halus	25,115,298.08	20,402,045.26	20,423,077.60	21,505,500.72	22,645,292.25
	c. Molasses	373,273.62	326,108.94	302,274.77	318,295.33	335,164.98
5	Prebiotik	2,104,702.57	815,494.53	1,126,179.61	1,185,867.13	1,248,718.09
6	Medicals	1,078,666.75	735,038.97	826,294.26	870,087.85	916,202.51
7	Fuel	497,572.65	434,687.54	452,610.28	476,598.62	501,858.35
	Total	64.462.596,23	48.726.880,82	54.347.537,18	57.227.956,65	60.261.038,36
c.	**Worker**					
	a. Production	6,640,181.28	5,493,376.30	6,050,231.73	6,370,894.01	6,708,551.39
	b. Feed production	2,732,926.40	2,276,179.72	2,555,123.51	2,690,545.05	2,833,143.94
	Total	9.373.108	7.769.556	8.605.355	9.061.439	9.541.695
Total a+ b + c		75.721.031	58.381.764	64.838.219	68.274.645	71.893.201

Table 4 shows the biggest costs of Patin aquaculture in pond are contributed by feed costs. Feed used in Patin aquaculture consisted feed manufacturers in the form of pellets. There are PF 1000, 781-1, 781-2, 781, Optimac, LP1, LP2, plain Cargill and Cargill 2. Production and revenue of Patin aquaculture (an area of 500 m^2) can be seen in Table 5. Cash flow and financial feasibility can be seen at Table 6.

Table 5. Production and revenue of Patin aquaculture (an area of 500 m^2)

Element	**Year**					
Revenue	0	1	2	3	4	5
Production/cycle (kg)	0	2,873.90	2,701.73	2,979.67	2,979.67	2,979.67
Production/year (kg)	0	5,747.80	5,403.47	5,959.34	5,959.34	5,959.34

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Harga (IDR/kg)	0	12,583.33	13,931.82	14,026.83	14,770.25	15,553.07
(IDR)	0	72,326,489.89	75,280,092.11	83,590,696.75	88,021,003.68	92,686,116.87

Tabel 6. *Cash flow* and financial feasibility of Patin aquaculture (500 m^2)

No.	Keterangan	Tahun					
		0	1	2	3	4	5
1	**Total Revenue (IDR)**	0.00	72,326,489.89	75,280,092.11	83,590,696.75	88,021,003.68	92,686,116.87
2.	**Total Cost (Rp)**	20,541,576.37	75,721,030.75	58,399,445.32	65,006,465.27	68,367,591.94	74,390,243.07
3.	**Profit/loss(IDR)**	-20,541,576.37	-3,394,540.86	16,880,646.79	18,584,231.48	19,653,411.74	18,295,873.81
	Discount Faktor (17,5%)	1.00	0.85	0.72	0.62	0.53	0.45
	NPV (Rp)	15,941,940.66					
	IRR	0.42					
	Net B/C	1.799459783					
	Pay Back Periode (tahun)	0.333713862					

The Patin aquaculture business based on investment criteria (NPV, IRR, and Net B/C ratio) at Table 6 shows that the business has good prospects and worth (feasible) to be developed. NPV value obtained IDR 15,941,940.66 means NPV is greater than value 0 (positive). This means that Patin aquaculture in research areas feasible to be developed in the future and being able to get a net profit opportunities now IDR 15,941,940.66. This is consistent with the results of other studies such as Luke (2012) states that in 2011 the price of Patin in Kapuas reached Rp 15.000, - / kg to the level of profits reached Rp 14,464,350, -. The production of catfish has a positive correlation with income farmers.

IRR in Patin aquaculture in the study area was obtained by 41.86% means that the IRR greater than the opportunity cost of capital is 17.5% per year. This shows that Patin aquaculture feasible endeavored to develop.

On the other side, the rated of net B/C ratio was obtained for 1,799. B/C ratio showed a greater than 1. It means that Patin aquaculture feasible to be developed. The value of Pay Back Period (PBP) obtained 0.333 years or four months. This shows that the capital investment incurred in Patin aquaculture will be back at the period of 0,333 years or four months. It also means that PBP could reach in one production cycle of business. Capital investment already received by business owner.

The value of all the investment criteria of Patin aquaculture business is prospective and deserves to be developed. The reason describe below:

1. Patin aquaculture business has life or survival rate level reaches 85.72%. Good aquaculture practices will encourage the growth of fish, reduce the fishing mortality rate and then increase the fish productivity.
2. Feed used in Patin aquaculture business is not only dependent on the manufacture feed, but also using local raw materials such as bran/bran fine. The research area is the rice production centre in Central Lampung so that the residues of bran like quite a lot. It encourages farmers to utilize the local raw materials for alternative feed for fish. In addition to fine bran, other alternative feed ingredients are anchovies and drops. Aquaculture business that using this alternative feed is prospective and viable for development. This is consistent with several studies on aquaculture did by Bidayani (2007) and Handayani, et.al.,

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(2013). The cultivation of aquaculture which use alternative feed mostly have a high enough competitiveness.

3. Aquaculture in the research area is supported by the adequate water supplies. The research area has technical irrigation with good quality of water. There were also artesian wells for irrigation.

Sensitivity Analysis and switching value

According Djamin, (1993) a sensitivity analysis aims to see what happens with the feasibility analysis if there is something wrong or changes in the fundamentals of the calculation of costs or benefits. The changes that occur in the basic calculation of production cost or benefit show possibilities, such as the rising costs caused by rising prices of raw materials and changes in production caused by the decline in output prices in the market.

Mechanical sensitivity analysis is done by identifying factors change (decline in production, a decrease in output prices, and increases the input cost or price) which may occur in the aquaculture business. Such changes will certainly affect how much influence on the company's cash flow, whether the benefits or costs. In this study, the sensitivity analysis used four parameter changes are: (1) a decrease in production caused by failures (by the risk of cultivation such as pests and diseases, death of the fish, and business management are lacking well); (2) decrease in output prices of fish caused at harvest time together so that the production of overflow that causes the balance of supply and demand for Patin fish market is unstable, (3) an increase in costs of production due to the increased price of inputs that are not followed by the output prices (fixed output prices), and (4) an increase in costs of production caused by the increase in input prices, followed by an increase in output prices, increased cost of feed manufacturers, and increased costs of alternative feed.

Switching value analysis is a calculation to measure the "maximum change" of a change in a component inflow (reduction in output prices, the decline in production) or component changes outflow (increase in prices of inputs/ increase in production costs) that can be tolerated / allowed for business to remain viable. This calculation refers to how much change occurs until the NPV equal to zero (NPV = 0). In an analysis of switching value parameter is used together with parameter changes used in sensitivity analyzes. The results of the sensitivity analysis and switching value of Patin aquaculture can be seen in Table 7.

Table 7. Senstifity and switching value of Patin aquaculture business

Investment Criteria	Start Condition	The impact of changes			
		Decreasing on production (5,3%)	Decreasing on price production (5,3%)	Increasing on cost production (5,3%) and output price fixed	Increasing on cost production and increasing output price (5,3%)
NPV	15,941,940.66	4,432,146.02	4,432,146.02	7,796,365.71	19,306,160.35
The changing		Decrease 0.721982028	Decrease 0.721982028	Decrease 0.510952532	Decrease 0.211029495
IRR	41.86%	24.53%	24.53%	29.52%	46.36%

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The changing		Decrease 41,399	Decrease 41,399	Decrease 29,479	Increase 10,750
Net B/C	1.799459783	1.195099259	1.195099259	1.347811244	1.98305166
		Decrease	Decrease	Decrease	Increase
Decision	feasible	feasible	feasible	feasible	feasible
Analisis Switching Value					
Analysis Result		0,0734	0,0734	10,3728	Cost production increase 17,862% and output price increase as inflation rate 5,3%.

Table 7 shows that the results of the sensitivity analysis of Patin aquaculture using six parameters changes of the same magnitude at 5.3% (inflation rate), indicates that Patin aquaculture is still viable to develop. Patin aquaculture are very sensitive to change parameters (decrease in the amount of production and the decline in output prices). It can be seen from the change in value NPV undergo considerable change which decreased by 72.19% lower than the initial value of NPV. Yet still NPV> 0, the IRR is still higher with the opportunity cost of capital of 17.5%, and the value of the net B/C ratio greater than 1 means that the business is still feasible to be developed.

Switching value analysis indicated that the cash flow of Patin aquaculture maximum tolerate financially if the decline in production amounted to 7.3%. Based on calculations it can be concluded that the decline in production and a decrease in the output price are sensitive. The fish production decreased will only tolerate less than 7.3%. The decreacing of production more than 7.3% then Patin aquaculture is not feasible to develop yet.

Many factors influence the Patin aquaculture production such as the high mortality rate, the presence of pests and diseases, and not appropriate feeding, both in quality and quantity. The risk of decline output prices caused by market conditions, when the number of fish is abundant, the price trend in the fish down. The selling price of Patin was reference to market prices, but there is still more dominant tendency of traders in determining the price. The number of fish traders amount is not much (± 2 traders).

For all, the result of the analysis is relevant and consistent with Sutrisno (2010). Who states that freshwater aquaculture business is very sensitive to price reductions, output, lower production, and the increase in feed cost. Based on the analysis of switching value indicates the limit of tolerance or allowed to decline in output price by 11.00%, 11.00% decline in production, and the increase in feed costs amounted to 21.31%.

Thus, Patin aquaculture business has a high enough risk in decrease the amount of production and the decline in output prices. Therefore, the farmers in the study area should pay attention to the cultivation and production management. Start from ponds preparation, juvenile stocking, feeding, water quality management, good maintenance, and harvest and post-harvest was good, so that could achieve the optimum production. To maintain the supply of fish in the

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market need coordination among the farmers in harvest schedule so as not to coincide. This is consistent with the results of Luke study in 2012 in Kapuas.

4. Conclusion

Based on the results and the discussion it can be concluded that:

1. Patin aquaculture businesses Kota Gajah using three indicators of investment: NPV, IRR, and Net B/C ratio shows that the business has good prospects and worth (feasible) to be developed. NPV value obtained IDR 15,941,940.66. IRR was obtained by 41.86% means that the IRR greater than the opportunity cost of capital is 17.5% per year. Rated of net B/C ratio was obtained for 1,799. The Pay Back Period obtained a value of 0.333 years or four months or just one production cycle.
2. Sensitivity analysis of the Patin aquaculture business (scenario: a decrease in production; the decline in output prices and also costs production increase overall with the change of the same amount at 5.3% (inflation rate)) indicates that Patin aquaculture business is still viable to develop. While switching value analysis indicate that the cash flow of Patin aquaculture business showed that for the decrease in the amount of production maximum tolerable financially is if the decline in production amounted to 7.3%. The costs production maximum increase accepted financially when increase amounted to 10.37%.

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Children Response to Co Branded Products
(Survey on Bandar Lampung McDonald`s Happy Meal Buyer)

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Abstract

Dorothy Rouly Haratua Pandjaitan, "**Children Respone to CoBranded Products** (Survey on Bandar Lampung McDonald`s Happy Meal Buyer)"

Purpose – The purpose of this study is to represent the empirical studies of co-branding strategy whose target is children. Another purpose of this studies is to analyze the potential of cobranded strategy and the implication on both brand owner.

Methodology – The method that used to gather the information for this research is loyalty-based survey on the parent of children that buying Mc Donald`s Happy Meal and will be used to represent children`s behavior towards product quality, consumer satisfactory, and loyalty on McDonald and Disney *co branded* products.

Findings – The findings confirmed that, the Co-Branding strategy of McDonald and Disney have a positive and significance influence on both brand, either from consumer satisfactory point of view or from consumer loyalty point of view. Based on theoretical view, children can evaluate two different brand simultaneously even when they using product of only one brand only.

Limitation – The main limitation of this study is the sample were taken from just one region only and only tested without considering other variable beside product quality, consumer satisfaction and cosumer loyalty. Advanced study is required for further comprehend of childred based marketing concept.

Practical Implication – From this study can be concluded that, a product marketing strategy with children as the target can be widely expanded if the brand owner willing to cooperate with another brand owner in CoBranding strategy.

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Implikasi Sosial – In this study there is finding that parents ought to have concerned in choicing *co-branded* product that will not cause harm to the children`s health, because basicly all children enjoying fastfood product only based on the taste and the souvenir they got form the package. Based on that matters the fastfood should have evaluate their strategy that they use and the product they sell so the parents can still feel safe when their children consuming fastfood product.

Keyword*: Co-Branding, Product Quality, Consumer Satisfaction, Consumer Loyalty*

1. Background

Business rivalry nowadays is takn whole diferent level so every company getting harder to develop. To be able to compete in the global market, every company were forced to be creative in brand designing to distinguish their product from rivals. According to Surachman (2008 hal 14), brand is name or symbol that made to differ one product to another product. In 2006, whole product brand that marketed with child target have 400 billion US$ global value (The Economist, cited in Charry and Demoulin, 2014). Because of that value, marketers were inspired to make children as potential market target (Goldberg et al., cited in Charry and Demoulin, 2014). This also inspired researcher to make research about children response on facing marketing strategy. One of strategy that sometime slip form researcher attention is C*o-Branding*.

According Ji (cited in Charry and Demoulin, 2014), can be said that children have a great potential to be teached into loyal consumer to many brand in the future. The key is to make strong connection between brand image and children`s needs. A product that already wellknown by society and correlate with children buying intention is fast food. The fastfood industry is a potential industry with a tempting business opportunity.

The purpose of co branding is to generating new, different product, and to attract consumer to buy the product. Kotler (2010 p 322), defines co branding as two or more already known brand, combined and offered hoping to attract new consumer and stimulate buying intention. Co branding strategy that been done by McDonald restaurant chain is cooperate with Walt Disney so they manage to produce McDonald`s Disney Happy Meal, which is one of fastfood menu that gives off souvenir in form of Disney character toy to fulfill children consumer satisfaction.

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The co branding method that being done by McDonald have purpose to drive the buying intention so the child`s parent will do the repurchase. Co-Branding can increase the sales area from only just one or two market to more vast market (Keller, 2008 p361). Co-Branding can be used too as a potential method to studying consumer behavior and how company strategy in approaching them.

Indonesian McDonald`s is one of fastfood franchise that widely known in Indonesia and their Happy Meal menu has been achieve second position in Indonesian Top Brand Index 2016 for retail category, as seen in the table below.

BRAND	TBI	TOP
KFC (Kentucky Fried Chicken)	56.1%	TOP
MC Donald's	23.6%	TOP
Hoka Hoka Bento	5.5%	
A&W	3.5%	
CFC (California Fried Chicken)	2.8%	

Based on the description above, researcher inspired to conduct further study about McDonald and Disney co branding strategy and its influence on consumer loyalty. The purpose of this research is :

1. Describing the consumer response on McDonald-Disney Happy Meal product quality.
2. Describing the consumer satisfaction on McDonald-Disney Happy Meal product.
3. Describing the product quality and consumer satisfaction on consumer loyalty of McDonald-Disney Happy Meal product.

2. Conceptual Background

A. Marketing Strategy

Marketing is one of vital aspects that conducted by company to fulfill the needs of customers and in the end to ensure profit for the company. According to Kotler and Amstrong (2012 p5), marketing is a process where the company creating value to customers and build strong relationship with them so the company will gain profit. Cravens and Piercy (2009 p13), describes that marketing strategy is a process of developing the market driven strategy, concerning on change

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in business environment and needs to offer superior customer value. Marketing connecting organization with environment and marketing perspective as business responsibility of business process as a whole. The strategy that use by the company in marketing their product usually through Strategic Brand Management. According to Cravens and Piercy (2009 p296), strategic brand management is related to the overall business, including suppliers, manufacturers, wholesalers, distributors and retailers. According to Cravens and Piercy (2009 p310), strategic brand management can be done with a variety of strategies, include :

1. Line extension
2. Vertical Brand Stretching
3. Brand extension
4. Co-Branding
5. Licensing

B. Co Branding

According to Keller (2008 p361), co branding can increase the company sales through existing target markets and gaining opportunities for new consumers and new networks. Co-branding also has a learning value about consumers and how other companies approach the consumer. According to Rangkuti (2009 p12), co-branding occurs when two or more well-known brands combined in one brand. According Rangkuti (2009 p12), the purpose of co branding is that one brands reinforce the other brands so together they can attract the interest of consumers. When co branding product is carried in one packaged form, then each brand has the opportunity to reach the new customers by associating it with other brands. According to Keller (2008 p292), consumers can evaluate the Co-Branding products power from :

1. Adequate Brand Awareness

   According to Keller (2008), adequate brand awareness is the consumer capability to recognize or to remember a brand is part of certain product group.
2. Brand is Sufficiently Strong

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Both brand that use cobranding strategy must have strong image in consumer`s perception.

3. Favorable

   The consumer must have favorable tendencies on co-branded product that they use.

4. Unique association

   According to Keller (2008), unique association is how far the consumer can evaluate the brand was unique and better than other brand.

5. Positive consumer judgment

   According to Keller (2008), positive consumer judgment focused on perception and consumer private evaluation on brand based on the brand image and quality.

6. Positive consumer feelings

   According to Keller (2008), oositive consumer feelings is consumer emotional response towards brand. The response comes in the form of warmth feeling, fun, comfort, delight, safe, close and self respect.

C. Brand Image

Brand image is a representation of the overall perception of the brand and is formed of information and past experience to the brand. The image of the brand associated with the beliefs and attitudes towards a brand preference. Consumers who have a positive image of a brand, would be more likely to make a purchase (Setiadi, cited in Wulandari 2016 page 30). Kotler (cited in Wulandari 2016 page 30), defines brand image as a set of beliefs, ideas and impressions owned a to a brand. The right attitude and actions of consumers towards a brand is very determined by the brand image as the mainrequirement of a strong brand. Durianto and Sitinjak (2004) stated that brand image is the brand association interconnected and lead to a series in consumer memory.

Consumers are accustomed to using a particular brand tend to have the consistency of the brand image. Brand image related to the association with the brand because when the impressions that come to mind brand consumers have increased due to the increasing number of consumer experience in consuming or buying the brand. Consumers often buy brand products are famous because they feel more comfortable with things that are already known, the assumption that the famous brand more reliable, always available and easily searchable, quality is not in doubt, it can meet your satisfaction and needs of consumers, so that better known brands often have more customers than the unknown brand (Aaker, cited in Wulandari 2016 page 31).

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D. Loyalitas

Kotler and Keller (2009 p288), said long-term success of a brand is not based on the number of consumers that only make one purchase, but based on the number of consumers who make repurchase action. In this case it can be concluded that a loyal customer is not measured by how much they bought, but from the intensity of the repurchases they made, including recommend others to buy. According to Elbert and Griffin (2009 p129), loyalty refers to a form of decision-making to make continued purchases constantly on the goods or services of a company that is selected by consumers.

Consumers have become loyal is usually caused by the packages offered by the company as products, services, and prices that can fulfill their needs. According to Elbert and Griffin (2009 p31), loyal customers is a person who :

1. Doing regular repurchasing.

   It means consumers who have purchased a product twice or more. They are a purchaser on the same product twice, or buy two different kinds of products in two occasions.

   2. Buy interline products and services.

   That is to buy all the goods or services offered and they needed it. They buy regularly, and the relationship with types of consumers is already strong and long lasting, which makes them not affected by competitors' products.

   3. Recommend the product to others.

   The consumer encourage their friends and relatives in order to buy goods or services, so they indirectly have been doing marketing for the company and bring consumers to the company.

   4. Shows immune to the competitor

   They are not easily affected by the competing products or other similar services.

E. Correlation between cobranded products and children

According to Charry and Demoulin (2014 p4), for companies using strategies co branding basically develop their markets by means of conquering new target market, and only a handful of studies which discusses the response of childrens in the face of the marketing and its consequences on them. According to Achenreiner and John (cited in Charry and Demoulin, 2014), knowledge of the childrens to a brand is closely associated with their increasing age. Along with their growth,

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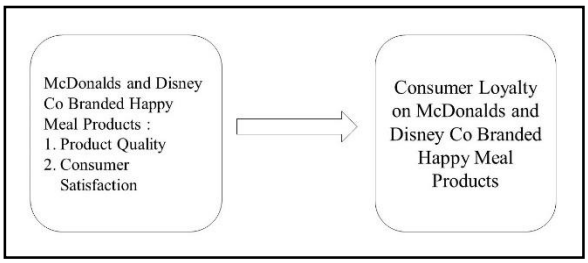
childrens gets greater opportunity interact with more type of brand (Ji, 2008 cited in Charry and Demoulin, 2014). According to McNeal (cited in Charry and Demoulin, 2014), childrens willingness to spend more time in the store such as restaurants, toy stores and malls, became a source of initial information for children to shape their behavior towards the brand. In addition, their parents and the media become another source of information that is relevant to form their behavior and eventually formed the interpretation of the brand in the community (Goldberg et al., 2003; Roberts and Pettigrew, 2013 cited in Charry and Demoulin, 2014).

Based on the theory set forth above, at the age of seven to eleven years old childrens begins to show a personal interest in the brand. At this age, children`s abstract thinking patterns begin to form and encourage them to use the concept of non – observable behaviour (eg feel great or coolness) or because the use of a type of product (Roedder and Sujan, 1990 cited Charry and Demoulin, 2014). Currently the brand also represents a symbol that can be understood by the children of the spesific age group. The brand influencing the perception of childrens and their purchasing decisions or interest (Goldberg et al., 2003 and Nairn et al., 2008 cited in Charry and Demoulin, 2014). Based on theory above, the researcher can established a theoretical framework that can be seen in the following figure.



3. Research Methods

This journal studying about the influence of product quality and consumer satisfaction on consumer loyalty of McDonald`s Happy Meal products. This research object that used as independent variables is co branded product quality (X_1) and consumer satisfaction (X_2). The research object that used as dependent variable is consumer loyalty (Y). The parent usually represent their children normally in every buying decision, so the sample in this research is the parents of the children that buying Happy Meal menu at Bandar Lampung McDonald`s restaurant. The research methods that used in this study is cross sectional method, because this research is doing less in a year. According to Malhotra`s theory (cited in Nurpriyanti and Hurriyati, 2016),

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cross sectional method is an information gathering method from the research subject that only do once in one time period in one activity.

Based on descriptive and verificative research design that execute through data gathering, the method tahat will be used in this study is explanatory survey that used to describing correlation over variables through hypothesis evaluation. The data was gathered at fastfood chain restaurant McDonald in Bandar Lampung.

The population in this research is entire Bandar Lampung McDonald`s customer that bring along their childred to dine in the restaurant. Through the simple random sampling method and slovin calculation, the sample number that must be used in this research is 100 respondent to ensure this research is more representative. The data that already gathered will be evaluate the reliability and the validity first then the hyphotesis will be evaluate using linier regression analysis. The hypothesis that developed based on this journal are :

H1 : The product quality variable is predicted have significant influence on McDonald`s Happy Meal consumer satisfaction.

H2 : The product quality variable is predicted have significant influence on McDonald`s Happy Meal consumer loyalty.

H3 : The consumer satisfaction variable is predicted have significant influence on McDonald`s Happy Meal consumer loyalty.

H4 : The product quality variable and consumer satisfaction is predicted have significant influence on McDonald`s Happy Meal consumer loyalty.

4. Result

Survey Analysis Part 1 : Respondent Characteristics

- Age

Statement	Respondent
21 - 30 years old	45
31 - 40 years old	11
41 - 50 years old	18
51 - 60 years old	26
61 - 70 years old	0

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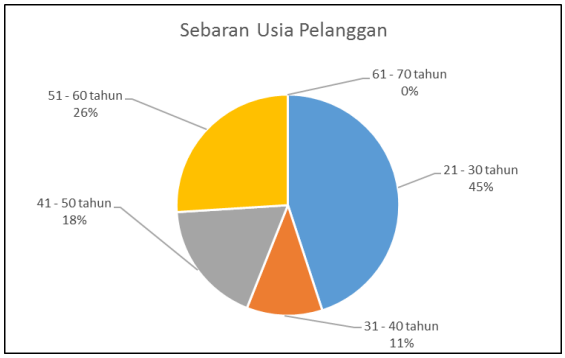
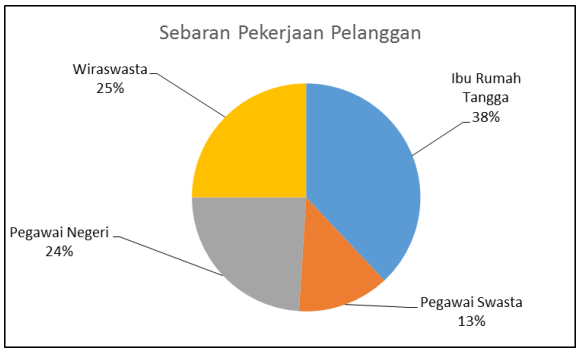


Based on the survey data, the respondent dominant age group is 21 to 30 years old.

- Job

Statement	Respondent
Housewives	38
Employee	13
Goverment Staff	24
Entrepreneur	25



Based on the survey data, the respondent dominant job is housewives.

- Income

Statement	Respondent
1.000.000 - 3.000.000	41
4.000.000 - 6.000.000	29
> 6.000.000	30
Total	100

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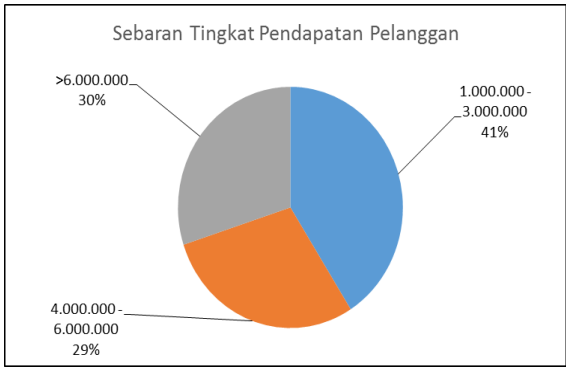
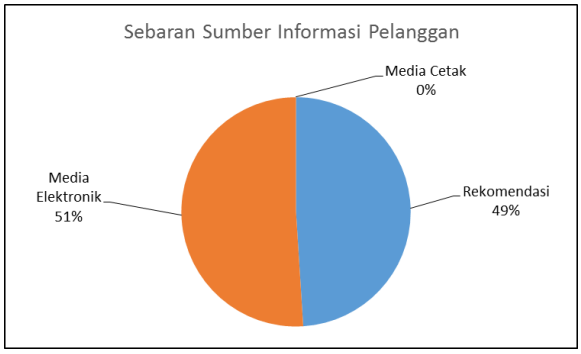


Based on the survey data, ther respondent dominant monthly income are between 1.000.000 IDR to 3.000.000 IDR.

- Source of Information

Statement	Respondent
Recommendation	49
Electronic Media	51
Press	0



Based on the survey data, the respondent dominant source of information on the co branded product is electronic media (51%), such as television ads and internet ads.

- Buying Intencity

Statement	Respondent
1x	46
2x	54
3x	0

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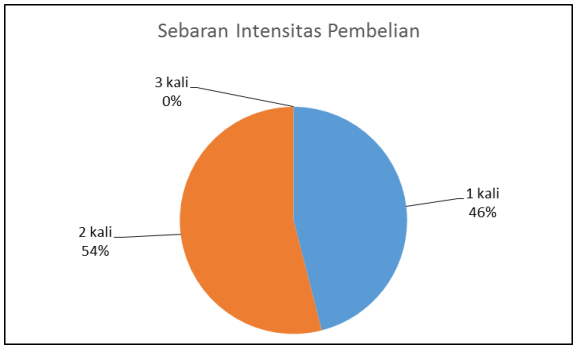
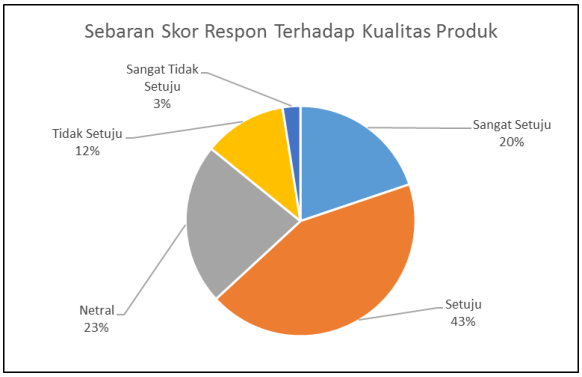


Based on survey data, respondent dominant buying intencity is twice per month (54%).

Survey Analysis Part 2: Evaluation on Product Quality Score

No	Alternative Scale	Total
1.	Highly Agreed	119
2.	Agreed	260
3.	Neutral	136
4.	Disagreed	70
5.	Highly Disagreed	15



The table and diagram above shows that most of the respondent (43%) agreed that McDonalds and Disney Co Branded products is a product with good quality so they believe to always purchase it in every time they visiting Bandar Lampung McDonald`s restaurant.

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Survey Analysis Part 3: Evaluation on Consumer Satisfaction Score

No	Alternative Scale	Total
1.	Highly Agreed	93
2.	Agreed	201
3.	Neutral	104
4.	Disagreed	82
5.	Highly Disagreed	20

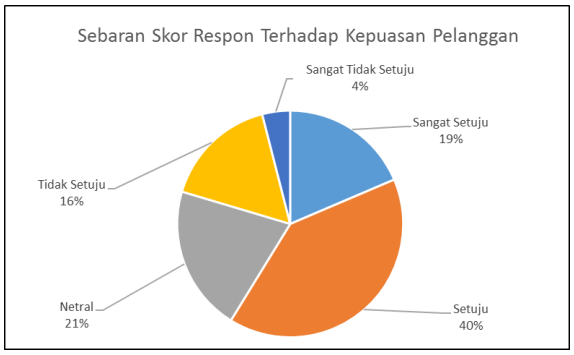

Table and diagram above shows that most of the respondent (40%) agreed that they feel satisfied on McDonalds and Disney Co-Branded Happy Meal product in every time they buy it in Bandar Lampung McDonald`s restaurant.

Survey Analysis Part 4: Consumer Loyalty Score Evaluation

No	Alternative Scale	Total
1.	Highly Agree	25
2.	Agree	114
3.	Neutral	111
4.	Disagree	32
5.	Highly Disagree	18

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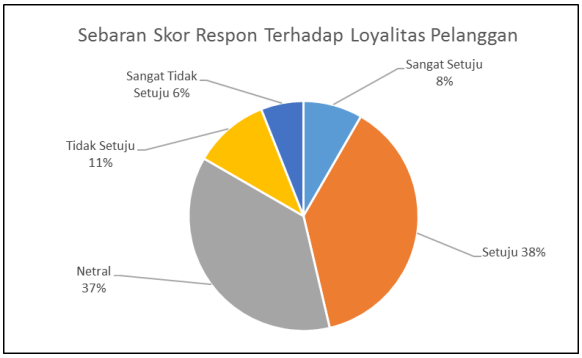

Table and diagram above shows that most of the respondent states agree (38%). This statement indicates that consumer loyalty on McDonalds and Disney Co-Branded is high because there is a lot of customer from children group age that always ordering Happy Meal menu in everytime they visiting Bandar Lampung McDonald`s restaurant.

Survey Analysis Part 5 : Validity and Reability

No	Indicator	Significance r score	R score	Result
1	Product Quality	0,1663	0,741	Valid
2	Consumer Satisfaction	0,1663	0,728	Valid
3	Consumer Loyalty	0,1663	0,908	Valid

Variable	Cronbach Alpha	Total Question
Product Quality	0,913	6
Consumer Satisfaction	0,922	5
Consumer Loyalty	0,895	3

Based on validity test that brought using SPSS 22 for window, the r score for each indicator is bigger than significance r (0.1663). According to those statement the 14 tested indicator is categorized as valid. Based on table above tabel can be seen that cronbach alpha's score for product quality is 0,913, cronbach alpha's score for consumer satisfactory is 0,922 and cronbach alpha's

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score for consumer loyalty is 0,895. From the table above, all variable cronbach alpha`s score is bigger than 0,6, so all instrument that is used in this research is reliable.

Survey Analysis Part 6: Hypotesis Evaluation

A. Correlation Between Product Quality Variable and Consumer Satisfaction Variable

ANOVA					
	df	*SS*	*MS*	*F*	*Significance F*
Regressio	1	1696,734	1696,734	347,854	5,2184E-34
Residual	98	478,0163	4,877717		
Total	99	2174,75			

	Coefficients	*Standard Error*	*t Stat*	*P-value*
Intercept	-0,530766625	0,99950193	-0,53103	0,596599
X Variable 1	0,827150438	0,044349219	18,65085	5,22E-34

$X_2 = -0,5308 + 0,8272X_1$

Based on the regression coefficient attribute, the product quality can positively influence the McDonald`s – Disney consumer satisfaction. Based on the F score (347,854) that bigger than significance F score ($5,2184 \times 10^{-34}$), shows that independent variable have a positive influence on McDonald`s – Disney consumer satisfaction variable.

B. Correlation Between Product Quality variable and consumer satisfaction variable

	df	*SS*	*MS*	*F*	*Significance F*
Regression	1	427,7227078	427,7227	147,5335	2,9352E-21
Residual	98	284,1172922	2,899156		
Total	99	711,84			

	Coefficients	*Standard Error*	*t Stat*	*P-value*
Intercept	0,83177148	0,770568257	1,079426	0,283047
X Variable 1	0,415297021	0,03419113	12,14634	2,94E-21

$Y = 0,8318 + 0,4153X_1$

Based on the regression coefficient attribute, the product quality can positively influence the McDonald`s – Disney consumer loyalty. Based on the F score (147,534) that bigger than Significance F score ($2,9352 \times 10^{-21}$), shows that independent variable have a positive influence on McDonald`s – Disney consumer loyalty variable.

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C. Correlation Between consumer satisfaction variable and consumer loyalty variable

	df	*SS*	*MS*	*F*	*Significance F*
Regression	1	350,926295	350,9263	95,28809	3,98539E-16
Residual	98	360,913705	3,682793		
Total	99	711,84			

	Coefficients	*Standard Error*	*t Stat*	*P-value*
Intercept	2,869971261	0,751245857	3,820282	0,000234
X Variable 1	0,401701345	0,04115134	9,761562	3,99E-16

$Y = 2{,}8699 + 0{,}4017X_2$

Based on the regression coefficient attribute, the consumer satisfaction can positively influence the McDonald`s – Disney consumer loyalty. Based on the F score (95,288) that bigger than Significance F score ($3{,}9854 \times 10^{-16}$), shows that independent variable have a significantly positive influence on McDonald`s – Disney consumer loyalty variable.

D. Correlation Between Product Quality, Consumer Satisfaction and Consumer Loyalty Variable

ANOVA					
	df	*SS*	*MS*	*F*	*Significance F*
Regression	2	428,7079106	214,354	73,43687	3,81E-20
Residual	97	283,1320894	2,918888		
Total	99	711,84			

	Coefficients	*Standard Error*	*t Stat*	*P-value*
Intercept	0,855867486	0,774297649	1,105347	0,271743
X Variable 1	0,377745636	0,073176167	5,16214	1,3E-06
X Variable 2	0,045398495	0,078142504	0,580971	0,562608

$Y = 0{,}8559 + 0{,}3777X_1 + 0{,}4539X_2$

Based on the regression coefficient attribute, the product quality and consumer satisfaction can positively influence the McDonald`s – Disney consumer loyalty. Based on the F score (73,4367) that bigger than Significance F score ($3{,}81 \times 10^{-20}$), shows both independent variables simultaneously have significantly positive influence on McDonald`s – Disney consumer loyalty variable.

The Survey Analysis Part 7: Evaluation on Consumer Loyalty Regression Model

To evaluate the model robustness can be used evaluation method with three basic criteria :

1) Statistical Criteria

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Based on regression coefficient prediction (Statistics Regression Tabel) the *R Square value* (R^2) is 0,6023 which indicates that consumer loyalty on McDonalds Disney co-branded product 60,23% can be represent by variables that included in the model model sebesar and 39,77% can be represent by other variables that does not included in the prediction model. The 0,594 *Adjusted R Square* score can describe the correlation between the consumer loyalty and the variables that include is positive. The 1,7085 standard error score is the value that shows the bias possibility of bias value of the whole prediction model.

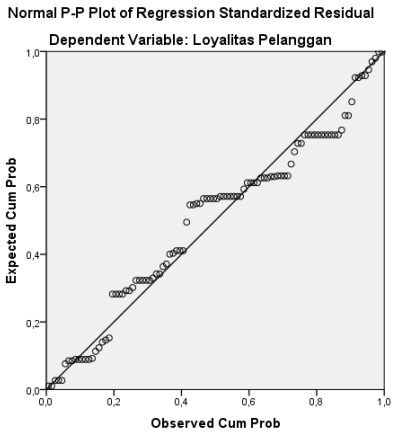
Regression Statistics	
Multiple R	0,776049734
R Square	0,60225319
Adjusted R Square	0,594052225
Standard Error	1,708475203
Observations	100

2) Econometry Criteria

Asumptions requirement that must be filled in econometry evaluation is :

- Normality

The normalitay evaluation consumer loyalty model function on McDonalds - Disney co-branded product can be seen on picture below.



Based on picture above the plot is scattered around the diagonal axis. Henceforth, the linier regression model is can be used as McDonald`s – Disney consumer loyalty prediction function based on the independent variables input.

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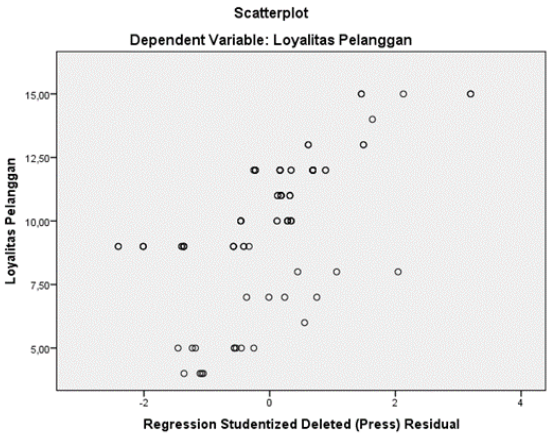
- Homoskedatisity

The scatterplot chart for consumer loyalty model function on McDonalds - Disney co-branded product can be seen on picture below.



Based on the picture above, can be seen the plot is scattered but does not form any pattern. Accord to that, the linier model does not fulfill the heteroskedastisity requirement, so the linier regression model is can be used as McDonald`s – Disney consumer loyalty prediction function based on the independent variables input.

- Multicoliniearity

The multicoliniearity evaluation can be seen through VIF score. If the score value is aroung the score 1, so the function model is multicollinearity free. The VIF score for the variables can be seen in the table below.

Variable	VIF Score
Product Quality	4,550
Consumer Satisfaction	4,550

Based on score input, very variable does not have score around 1. Henceforth, the linier regression model is can not be used as McDonald`s – Disney consumer loyalty prediction function.

- Autocorrelation

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Durbin-Watson score for McDonalds Happy Meal is 1,597. Score of 1,597 is include in between -2 to +2 score which mean it doesn`t have autocorrelation attribute. Because there isn`t any autocorrelation attribute so the linier regression model is can be used as McDonald`s – Disney consumer loyalty prediction function based on the independent variables input.

3) Economical Criteria

McDonald - Disney product quality variable have positive attribute, it shows that if McDonald and Disney enhancing their cobranded product quality, so their consumer`s loyalty will increase. The attribute mark of consumer satisfaction is positive, it shows that if the level of satisfactory the customer get, so their consumer`s loyalty will increase.

Based on all evaluation criteria above, the regression model that shown can be use is worth to represent McDonald`s – Disney consumer loyalty function.

5. Discussion

Based on descriptive analysis result, all of 100 Bandar Lampung McDonald`s Happy Meal buyer sample that studied were house wife with average age of 21 – 30 years old with average 1.000.000 IDR - Rp.3.000.000 IDR monthly income. The influence of product quality and consumer`s satisfaction on consumer`s loyalty of McDonald`s Happy Meal can be analyze through linier regresion method. From the linier regresion method, can be found that the product quality McDonald`s Happy Meal have a positive influence on Bandar Lampung McDonald`s Happy Meal consumer loyalty. This can be seen from P-value score of $1,3 \times 10^{-6}$ with significance above 99% and regression coefficient score of 0,3777. From the linier regression analysis result shown that consumer satisfaction have a significantly positive influence on consumer`s loyalty of McDonald`s Happy Meal. This can be seen from P-value score of 0,562 with significance above 45,8% and regression coefficient score of 0,4539.

linier regression analysis result shown that product quality and consumer satisfaction have a 59,4% capability of influence on consumer`s loyalty of McDonald`s Happy Meal (adjusted R^2 score). And there is 40,6% influence from another variable that is not tested in this study. The influence capability of product quality and consumer satisfaction is high, but there is still another variables that must be counted to measure the consumer`s loyalty of McDonald`s Happy Meal. It

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can be said that the McDonalds capability of maintaining product quality and McDonalds capability of maintaining consumer satisfaction contribute greatly on consumer loyalty creation towards the product and service towards the product and service McDonalds offer to customer and this lead to McDonald`s business sustainability.

6. Implication

Based on the research findings, the researcher have a recommendation on Co Branding strategy implication on consumer`s loyalty. Even if the Co-Branding strategy of McDonalds and Disney have a significancely positive influence on concumer, still the company must have concerned on the product quality. Concern for product quality is needed because the children`s buying decision is represent by the concerned parent that have a worriers over fastfood image that correlate with food safety, cholesterol and obesity issues causing the decreasing of parent`s buying intention towards fastfood products. So the Mcdonald company should make a healthier product for Happy Meal menu and right method of marketing strategy to reclaim the consumer thrust and loyalty.

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Analysis Of Social Media Ethics

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Abstract

Path is a new social media which appeared in November 2010, then began to boom in 2013, and much loved by the teenagers. Everyone can easily communicate and share with social media. But there is a unique phenomenon that can be observed here, that is freedom of speech. The problems in this study is how the understanding of ethics in the use of social media Path among college students. The purpose of this study was to determine the level of students' understanding and determine how the application of ethics in using the social media Path. This study used descriptive qualitative method, by using the theoretical foundation Theory Computer Mediated Communication (CMC). Collection of data on comprehension and implementation of ethics in research was conducted by in-depth interviews, as well as observe and noticed students who studied in using social media Path. The results of this study found that there are students who did'nt know about the rules and ethics in using social media Path. However, all of the students realize the importance of understanding and applying the ethics and rules in accessing social media Path.

Keywords*: Social Media, Internet Ethics, Path, Computer Mediated Communication Theory (CMC)*

1. Preliminary

Internet is now a primary requirement for the majority of the community to simply share information. Even the Indonesian people are now familiar to Internet, especially social media. In this study, researcher studied students of STMIK College technocrat Lampung, with consideration STMIK (School of Information Management and Computer) are closely related to IT, and phenomenon of ethical violations committed by Florence Sihombing, who is a student of UGM Graduate in Yogyakarta. This case is widely discuss in internet.

With the Internet, people can easily access anyone in social media. How to communicate *online* is what continues to encourage the emergence of a variety of features and services to adjust to the needs. As quoted Holmes (2005) that every individual has increased with the computer screen, build relationships *face-to-screen* than *face-to-face*, this indicates an increase in *online* interactions has been slowly reducing the communication face to face

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because we can communicate quickly and easily *online.* In the internet everyone is entitled to act, take the initiative, create anything without prohibiting and oppose. But in Internet is still no boundaries or ethics that need to be known. The limit order form that is often called *Nettiquette.* Who says the Internet has no rules? There is no absolute freedom in this world, even in the virtual world also can not just themselves without regard for others. While this is a world without borders, but, like the interaction in the real world, When we are in contact with other people then surely there are rules, etiquette or ethics that must be obeyed.

This study refers to the *Computer Mediated Communication Theory* (CMC). This theory is any form of communication between individuals or individuals with a group interacting through a computer in an *Internet* network , Then adjusted to an ethical theory which states that an action moral value is determined solely by the consequences of those actions. Right or wrong action is determined by the outcome or the consequences of such action. And deontological theories that emphasize the implementation of the obligations. An act would be good if based on the implementation of obligations. Students using *Path* as a medium of expressions, *Path* is a medium to fulfill the needs of its members to communicate.

Formulation of the problems is how the students understanding ethics in *Path*. The purpose of this study was to determine how the student's understanding ethics in *Path.*

2. Research Methods

This study used descriptive qualitative method. Qualitative approach is a process of research and understanding based on a methodology that investigates a phenomenon of social and human problems. In this approach, researcher created a complex picture, studying words, a detailed report of the views of respondents, and conducted a study on the natural situation (Creswell, in Sugiyono: 2011). This research focuses on the understanding and application of ethics by social media users *Path,* namely by conducting direct interviews, which will then determine how the level of student understanding of ethics in using social media, and what needs to be considered in performing communication by using the internet. In addition, researchers also look at how it is applied in the use of social media as a means of communicating with the *Path* observing posts and asking questions regarding the activities of informers in using the Internet or social media *Path.* Informants who selected in this study were students STMIK College technocrat Lampung, with consideration STMIK closely related to IT. Additionally, social media users *Path* itself is widely used among students. In STMIK

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College technocrat Lampung has two (2) departements, first departemen of Information Systems (IS) and Information Engineering Program (TI). Pre research conducted researcher to selected 10 (ten) informants to be interviewed. Out of 10 informants is a combination of technocrats STMIK student majoring in Information Systems and Informatics Engineering. Based on specific criteria or conditions set by design, the researcher took the informant as many as 10 students as informants in this study, informants were selected based on frequency using *Path*. The reasons for selecting informants is because researcher want to conduct in-depth interview to the informant who had been elected in order to get accurate information and to facilitate researcher in getting information that researcher need to be consistent with the objectives of this study. Data analysis techniques in this study was conducted with qualitative analysis, which includes:

a. Observe informants in social media *path*.
b. Data reduction, which is part of the analysis of data with a form of analysis that sharpens, classify, direct and dispose of data that do not fit with the focus of research and which is not necessary.
c. Interpretation of the data describes the phenomena that exist among students towards social media *Path* so that the author can draw conclusions about the application of ethics by students in using social media *Path.*

3. Discussion

The number of informants in this study is as much as 10 informants. The informants were selected based on the frequency of using media based on the *Path*. Based on interviews that have been done, all the informants have been using social media *Path* to communicate and interact with their friends, about 1 to 2 years. To access social media *Path,* ten informants only use *mobile phones* based on *Android.* There are various reasons from each informant in selecting the *Path* as medium to communicae with friends. One infoman disclosed the reason to using *Path,* because many of his friends already in *Path,* and he was advised to use *Path* as well as other friends. In addition to communicating with people nearby, the first informant also found social media *Path* has an interesting features and also unique. In understanding of ethics in using the internet, many students may or may not understand. From the interviews conducted, three of the 10 informants were still unaware of the ethics in the surf. Informants

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also pay less attention to the rules and privacy policies of social media *Path* itself, it is evident from the interview to the informant who stated that they did not read or tended to ignore the rules and privacy policies of social media *path* that appears at the beginning to create an account.

In the application of ethics when using social media *Path*, from the interviews the researcher found that out of ten informants, there are two informants who said he has expressed his annoyance to the person by the way of insinuating someone through social media account in his *Path.* The first and fourth informant informant. Nonetheless, both the informant also realized his mistake and said that *netiquette* is important to understand and apply. Other informants also believe that ethics in using the internet and social media is important, informants also have to implement and use social media wisely *Path*, although there are some, who did not know about internet etiquette.

Research shows the level of using *Path* by informants every day is quite high. It is revealed from the tenth informants who said that he open *Path* every time start using *the phone* or internet access. Tenth informants frequently *update* if going somewhere or doing an activity, even while in classroom. Not only that, he also often post about his activities like what book he was reading, what song is heard, or what movie he were seeing. In addition to these activities, the informant also do other things, for example the first informant, the second informant, third informant, sixth informant, seventh informant, eighth informants, and tenth informants, they often comment on the postings are *updated* by fellow social media users *path.* While the fourth informant, fifth informant and ninth informants rarely make comments, they are more frequent updates and posts only to see friends, only occasionally giving responses such as like or comment. Regarding understanding of internet etiquette, there are three tenth informant, who did not know about internet etiquette they are fourth informant, sixth informant and seventh informant. While the other informant said that he knew about internet etiquette and policies set by social media, and know the rules and ethics in using the Internet or social media. And only the third informant who knows the term *netiquette*, while other informants know that term only while doing interviews.

Theory CMC is a computer-mediated communication, where people communicate with other people by using computer media (Internet). If combined with an understanding of *Computer Mediated Communication* (CMC), the use of social media by the informant is a picture of the CMC. Informants interacting on social media via separate computers through the Internet or a network connection using social software. Social media is used as a forum for

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individuals to express themselves and interact with other individuals, which in interaction activities, there rules or manners apply.

It can be seen that the *Path* users are prefer to established a social life through the interaction in virtual world and less attention to the interaction with the real world. This is evidenced by statements from several informants who said they rarely talk to each other or greet each other. another theory of CMC called multimedia. In this case the *path* is also used to share links, images, latest music, movies or the latest book.

Ethical theory refers to two aspects of evaluation. The first is Teleleologi theory, which states that the moral value of an action is determined solely by the consequences of those actions, an action is right as long as no harm to others. The second is the theory of Deontology, which insists on the implementation of the obligations, Deontology is not glued to the punishment of the offender, the justice in this case is defined as fairness. There are several informants who said that he had expressed his annoyance over his friends. This can be considered as a natural thing when someone was upset and disappointed that he would express the resentment to make himself feel better. Based on the foregoing discussion, it is included into the theory of deontology. In term of expressing a resentment there are others who feel disadvantaged, based on the theory teleleologi then that's considered wrong and unethical. When the aggrieved person is taking action to punish or other things that are a consequence of the actions taken. Based on the analysis, in accessing and interacting on social media *Path,* no informant who make mistakes that violate the ethics based on the theory of ethics.. What is disclosed and uploaded to social media accounts *Path* by informants still wise and fair.

In this research, ethics in *Path* conducted by informants classified in social ethics. Social ethics talk about liabilities, attitudes and behavior as members of society with regard to the values of courtesy, manners and mutual respect, namely how to interact with each other concerning the relationship between humans, personally and directly, or together or groups in the form of community institutions and other formal organizations. Ethics itself is often associated with the word morality, decency, manners, and morals.

In social media there are rules and norms or ethics, Internet etiquette *(netiquette)* is very important to understand. Based on interviews that have been conducted, only informant fifth and tenth who said he knew the rules about using the Internet or social media are regulated in the Law on Information and Electronic Transactions. However, researcher saw, basically the entire informants acknowledge that in using social media we are not allowed to update about pornographic or offensive things about ethnicity, religion, race and intergroup (SARA).

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4. Conclusions

Based on data and analysis that has been done, this study can draw a few conclutions:

a. Students knowledge about ethics in social media *Path* is still lack of refinement. Out of 10 informants who were interviewed, three of them do not know about internet etiquette. 10 informants also pay less attention to the rules and privacy policies of social media *Path* itself. This is evident from the interviews that mostly informants claimed do not read or tend to ignore the rules and privacy policies of social media *path* that appears at the beginning when users created an account.
b. The students are lack of awareness in rules and ethics while using *Path* .

5. Suggestions

a. Informants in this study should understand internet etiquette, using social media wisely. for example in providing information or to post on his personal account because the informant also received courses on the ethics, the ethics of the profession.
b. Encourage students to communicate not only through social media *Path* (cyberspace), but also established a good relationship in real life.
c.

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Value Chain System of Anchovy Processing Cluster in Pulau Pasaran, Bandar Lampung

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Abstract

Cluster approach is one of fisheries sector development strategy and relatively appropriate to increase competitiveness. Cluster approach has been established as one of the development strategy of the seafood processing industry competitive and sustainable. Cluster approach is needed network of mutual support and benefit between the user industries, supporting industries, and other related industries. This study aims to analyze the value chain system in the fish processing cluster in Pulau Pasaran. The research located Pulau Pasaran in Bandar Lampung at 2013. This study was a survey research. The methods to answer the research objectives of analysis used value chain analysis approach. Based on the results of the discussion concluded that the value chain system in salted fish processing clusters at Pulau Pasaran starts from main activities include: raw material procurement, production operations salted fish processing, finished materials, marketing, and services; The support activities include: purchasing/procurement of supporting resources, technology development, human resource management, and infrastructure.

Keywords: cluster, salt fish, anchovy, value chain

1. Introduction

Fish processing cluster formation is an effort to increase production and consumption of fish in Indonesia. Cluster strategy offering economic development efforts more effective and comprehensive. Cluster approach in the development of fishery resources can be interpreted as a form of approach in the form of concentration of fishing activities in a particular location. Efforts have been undertaken to improve the efficiency and effectiveness by lowering the cost component from upstream to downstream in the production of a commodity. The centralization is in the area where is the availability of fishery from upstream to downstream subsystem and the supporting services. The concentration of these activities can reduce costs, especially transaction costs and transport between subsystems focused on fishery commodity. Efficiency and effectiveness are created, by itself would be able to improve the competitiveness of fishery products both on the domestic and international levels.

One effort to determine the performance of the SME (small medium entreprises) cluster of fish processing is through the analysis of the value chain and value-added. Value chain analysis is used to determine the integration of downstream and upstream businesses of fish processing. Analysis of the added value is used to determine the value added, output value, and the rate of business profit.

Data over the past 20 years, the production of processed fish in Indonesia which is only 23-47%, and the rest is sold as fresh fish or fish moist. Traditional processing methods such as salting,

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drying, curing and fermenting more dominant than modern processing methods such as freezing and canning. The distribution of the total of fish processing mostly by way of salting (30.5%), boiled 5.4%, 2.4% fermentation, curing 1.8%, 1.2% freezing, canning 1,2%, manufacture fish meal 0.5%, and others 1.0% preservation. It can be concluded that the percentage of fish processed traditionally always high, although so far the product has the image of the "less prestigious" and often referred to as "fish to the poor" (Astawan, 2007). This picture indicates that the traditional processing of fish still has a great prospect to be developed, to make repairs so that the product meets the requirements of quality and security for consumers.

Lampung Province has several fish processing centers, among others on Pulau Pasaran (Bandar Lampung), Labuhan Maringgai (East Lampung) and Kota Agung (Tanggamus). One of the largest centers are in Pulau Pasaran. Pulau Pasaran area amount to 12 hectares is located in the district of Teluk Betung Barat, Bandar Lampung. Most of residents of Pulau Pasaran works as salted fish processing. Processing anchovies at Pulau Pasaran has existed since 1960. The fish processing technology is still traditional, and processors are just waiting for shipment from the the fishermen. The quality of fish processed that of course has been go off due to the lapse of a long time since the arrest to be processed. Entering 2002, salted fish processing in this island began to actively for nearly all processors own boat so that transactions with charts is done so that the quality of salted fish are produced better. The phenomenon indicates an imbalance of vertical and horizontal integration, which can be seen through the value chain in fish processing.

Fisheries development will be realized properly if its components running in an integrated manner. Procurement and provision of the means of production must be able to support the needs of their production activities or vice versa. Similarly, in production, in addition to pay attention to the condition of aquatic ecosystems and resources, also need to associate with the activities of post-harvest processing, distribution and marketing. The same thing in post-harvest processing activities also need to associate with the condition of aquatic ecosystems and resources, production, and marketing. Fishery product processing industry as part of the business system and the fishing industry has a major role in improving the welfare of fishermen. The mobilization of fisheries development, such as industrial fish freezing and other fish processing industry, can give a greater role in improving the welfare of fishermen and fish farmers (Harriyadi, 2006).

Value chain is defined as a series of productive processes input from the provision of a product, production, marketing and distribution to the end consumer. This approach systematically take into account all stages of the production process. As well as analysis of the linkages and flow of information throughout the value chain. This approach also provides an analysis of the chain through cross-border regions and even between countries, takes into account the buyer's requirements and international standards, as well as allow for international benchmarking (Richter, 2005).

Fish processing cluster in the Pulau Pasaran is the largest island in Lampung. These clusters industry is not out of the various constraints. The first is the classic problem of processing facilities and infrastructure used to be very simple and traditional. The second classical constraint, are capital. The capital is the purchase of raw materials fresh fish. During this time the source of capital comes from cooperation with the skipper. Cooperation with skipper course with a variety of risks, the bargaining position of fishermen fish processors is low; the price is determined by the skipper. The third classic problem is marketing heavily dependent on skipper in Muara Kapuk Jakarta. This obstacle course, derived from the lack of processing facilities and the lack of capital for further processing operations. To penetrate the market it self needs to break the market through promotional efforts olehan product exhibition that has been wrapped properly (Cape, 2010). Based on this

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background, it is important to learn more in-depth process that forms the value chain ranging from raw material procurement to marketing to consumers at the fish processing cluster at Pulau Pasaran. By understanding the various activities of the actors in the fish processing system is expected to obtain maximum added value for the businesses involved in the process of fish processing value chain. The goal of this research was to analysis the value chain system of fish processing clusters di Pulau Pasaran Bandar Lampung.

2. Method

The study was conducted on the fish processing centers in Pulau Pasaran Bandar Lampung. The choice of location is determined deliberately, with consideration of Pulau Pasaran is the largest fish processing centers in Lampung and most (51.7%) people work as fish processors. This study was planned to last for four months from February to May 2013. The study was designed as a research survey that forms of research is descriptive quantitative research. Value chain analysis method with the following stages: 1) fish processing cluster profile, 2) entry point, 3) mapping value chain, 4) Analysis of the structure of domination, and 5) Critical succes factors use to achive the goal of the research.

3. Result and Discusion

Pulau Pasaran is unique because it is located very close to land, precisely in the district of West Teluk Betung, a distance of about 500 m from the seaside town of Bandar Lampung which can be reached by boat about 5 minutes. This island area reached 8 ha with the number of inhabitants as many as 240 households. Almost all the resident livelihood as workers/ processing anchovy from upstream to downstream has been done for generations. In addition, the Pulau Pasaran can also be developed into a tourist icon industrial processing of fishery products in Bandar Lampung. However, efforts to cluster development is still a lot to meet the challenges of this first cluster is the fisheries sector, whose success is largely determined by natural factors.

Processing cluster formation of anchovy at Pulau Pasaran conducted since 2010, which was initiated by Bank Indonesia Representative Lampung Province by the Independent Community of Dompet Dhuafa. Stages of program in anchovy processing cluster is divided into three, namely the pilot stage, strengthening, and the independence. Programs that do are divided into four, namely support groups, group capacity building, strengthening of local institutions, and monitoring (BI Representative Lampung Province in 2013).

The legal basis for the processing anchovy industry cluster at Pulau Pasaran iclude: (1) The Minister of Marine and Fisheries decree No.32 of 2010 regarding the Stipulation Region Minapolitan in 33 provinces; (2) The decision of the Minister of Cooperatives and SMEs 32 year 2002 on the definition of the cluster; (3) Decision of the Governor of Lampung No.G / 89 / II.02 / HK / 2011 on the Establishment of Working Group to Accelerate Development and Minapolitan Agropolitan in Lampung Province Years 2011-2014; (4) The Regional Regulation Bandar Lampung No.31a of 2010 on Zoning Plan for Coastal Areas and Small Islands Bandar Lampung Year 2009-2029; (5) Bandar Lampung Regional Regulation No.10 of 2011 on Spatial Plan 2011-2030 Article 60; (6) Bandar Lampung Mayor decree No.258 / 23 / HK / 2010 on Minapolitan Region Location Determination Bandar Lampung which includes Pulau Pasaran and Lempasing; (7) The Mayor decree Bandar Lampung 256/23 / HK / 2011 on the Establishment of Implementation Team Processing Cluster Development Anchovy Dried Pulau Pasaran; and (8) the Mayor of Bandar Lampung Decree 421 / III.24 / HK / 2012 on Eight Commodities City of Bandar Lampung.

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The Value Chain of Anchovy processing Cluster

A. Main Activities

1. Raw Materials

Raw materials salted anchovy is fresh anchovies. Anchovy processed comes from the Pulau Pasaran catched throughout the Gulf region of Lampung to the Sunda Strait and waters of Mount Krakatoa. Catches of anchovy acquired from Lampung Bay waters usually caught by trawlers drag the floating fish and charts. The total amount of production of anchovy were landed on Pulau Pasaran in 2011 as much as 52694.34 tons.

As other fishery products, catches of anchovy fluctuate each month. In 2011--2012 catch of anchovy fluctuate and tend to rise up to the highest peak in the first quarter of 2012 amounted to 3,724 tons. In the period 2011-2012, the production of anchovy in the west season (December to February) relatively more than the previous season. Peak production of anchovy usually during the west, in January (Figure 1).

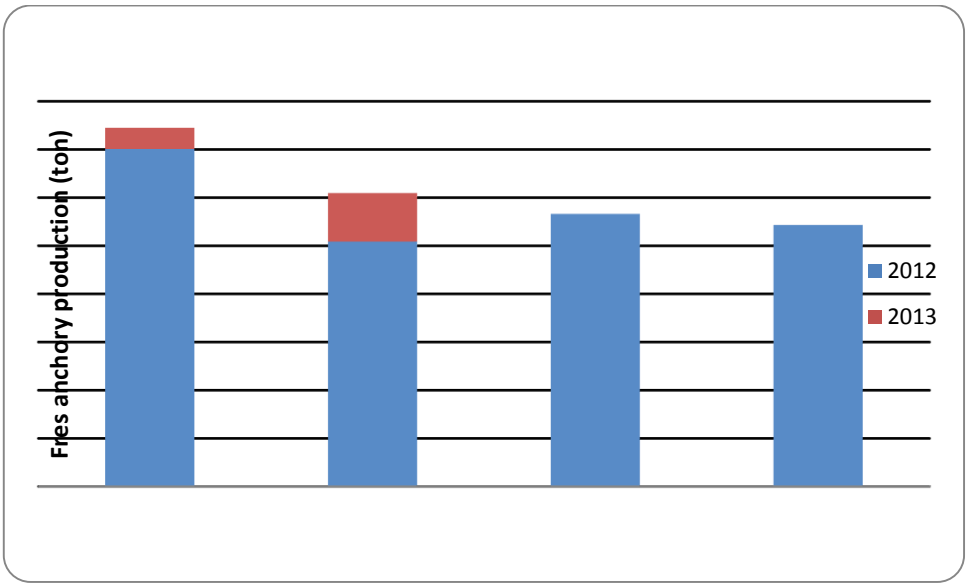

Figure 1. Fresh anchovy production in 2012 and 2013

The number of fish lots usually on the date of the dark (20-10 dated Javanese calendar), the fish bit (10-20 Javanese calendar). Fishermen also use the wind to find out instructions fish season. The wind from the west usually little fish, the wind from the east is lot of fish. Experience has shown during the fishing season of 9-10 months, 2-3 months of famine. At the time of the study (March) community has been nearly three weeks not process because there is no fish, even if there is expensive. In the past fishing season can be predicted, when this can not be due to global climate change. Based on interviews with the companion Pulau Pasaran Cluster (Bachelor of Fisheries Management), was actually relatively stable anchovy population annually. The only difference being the influence of nature and the amount of fishing that is more and more.

Catches of anchovy tend to be slightly contained in the transitional season of east-west (September-November). The catch in the fluctuation is influenced by several factors, among the weather changes every month and oceanographic factors that klarofil concentration in marine waters. The fishermen chart also states that the actual number of anchovy from year to year is relatively fixed.

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Efforts are being made in order to obtain the fish processing anchovy as the number of fish caught is to go fishing a little chart that distance away from the Pulau Pasaran, take a cruise of 3-5 hours. With this condition certainly increase spending diesel.

Fishing gear used to catch anchovy in the waters of the Bay of Lampung is a chart of buoyancy and drag trawl. In 2007 the number of floating chart is 96 units, in 2008 decreased to 74 units, and increased again in 2009, 2010 and 2011 respectively 104 units. Trawl fishing unit pull the fish tend to decrease from 38 units in 2007, 30 units in 2008 to 20 units in 2010, 2011 and 2012. Meanwhile, the number of fishing vessels in the waters of the Bay of Lampung also increased. In 2009 amounted to 3594 units, and in 2010 amounted to 3739 units (an increase of 4%). Anchovy fishing effort each month is different. Efforts to arrest in December, January, and February are very few because the state waters west of the season was not good and rainfall is very high. Therefore, fishermen floating chart and drag trawl catching fish perform operations with low frequency. Fishermen chart generally do not engage in fishing occurs when the emergence of the bright moon (moon looks full) because the fishermen trouble getting hordes of anchovy result when the moon is bright anchovy tend to spread in the surface waters.

Prices of raw materials fresh anchovy is determined by the fishing chart. The bargaining position of processors is very low due to the level of dependence on raw material processing anchovy is very high. Anchovy raw materials was purchased by the size of the basket is 20 kg. On average in a single production cycle of processing can buy up to 72 basket which is equivalent to 1.4 tons of fresh fish. Once the fish raw material is processed, one basket size of 20 kg would be approximately 10.5 kg of processed dried anchovies. The range of raw material prices anchovy during normal conditions is rice anchovy IDR 20,000/kg, anchovies nylon IDR 15,000 / kg, and anchovies dungarees IDR 10,000 /10 kg.

Transaction of raw materials fresh anchovy was in the sea (chart), the processor along with the usual crew departs at 5 pm return at 10 am in the next morning. Transactions carried out approximately 2-4 hours depending on the distance dawn chart fishermen and fish stocks. Each anchovy processor already have a subscription supplier. Fishermen chart anchovy resources reside mostly along the coast of the Gulf Betung Betung West and most Gulf South. But fishermen who catch anchovy only from Coral City and surrounding areas. Catches of anchovy made anchovies Pulau Pasaran is usually derived from fishing areas around the waters of the Bay of Lampung, among others, in the waters around the island Legundi, Tegal Island, Pulau Kubur, Gulf Watermelon, Sebesi Island, the island of Krakatoa. Anchovy catch farthest place in the waters of the Krakatoa (trip 6-8 hours). If the fish were many, traveling an average of only two hours. Most of the Bugis and Banten tribe. Some fishermen chart anchovy fishing among others Zainuddin, Aco, H. Suki, Andul, Sebi, H. Cotang, and Saluki.

2. Operations

Anchovy processes through several stages. The processing of anchovy begins with the provision of equipment and materials fish processing. The tools used are furnaces, baskets, and a loft, while the materials needed was salt, solar, sea water, and anchovy. Anchovy as raw materials have purchased and going through the treatment process to increase value-added products. In 1960-2000 late, all the fish processing procedures carried out on land, at the sea. Processing at the sea is the treatment of the raw materials of fish on board. Processing has a stove on the boat to boiling. The advantage of this processing is the fish have good quality. The second type of processing is onshore processing. Onshore processing is applied only to fish that do not have time or accidental is not boiled at sea. Usually this type of fish has a poorer quality because of the time lag between the purchases of

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fish to the processing. This type of fish can still be exploited by small-scale processors who do not have boats. The fish is sold in a basket of 20 kg and 3 kg of which have local names rombong or cekeng.

Processing methods of anchovy in Pulau Pasaran is wet salting and boiling. Salting is carried out using the technique of brining, salt is dissolved in water with a high concentration, and then the anchovy put into the salt solution. The fish will be boiled in a bath of salt solution for 3 minutes for a process of osmosis to the body of the fish. Fish that has been boiled drying is then performed directly in under sunlight. The processing drying them on a pedestal of dryingwith buffer called para-para. The drying process usually lasts for 4-5 hours depending on the intensity of sunlight there. During drying, labor workers perform sorting on any bamboo basket (reckless) fish that has been drying up in para para. Anchovy that have been dried subsequently transported to enter the second stage of sorting. Sorting is done to separate the anchovy based on his size. Fish that have a standard size sell separated by size fish scrap (the worst). Anchovy unsorted are usually sold to the local market at a low price with a range of 7-12 thousand /kg.

The next stage is the packaging of anchovies. The anchovy were sorted then put in a box the size of 24 kg. Some processors also provide packaging in the form of plastic containing 20 kg for local market needs. Cardboard packaging in the form of package delivery designated shelter area to dry fish in the market Muara Kapuk, Jakarta. Dried anchovis that has been packed subsequently collected together in one place the shipping package to be sent to end users as well as vendor intermediation. Preparations other dried fish that has been developed is a derivative product. Dried anchovies processed into snacks like crackers anchovies, anchovy Balado, kriuk anchovies, anchovy and other preparations. This refined products managed by mothers PKK built directly by Diskoperindag of Bandar Lampung, BI, and NGO Independent Community. Product marketing channels is still limited to the local market and expo SME products. Mechanical processing and packaging are still modest become an obstacle in the achievement of the national market, due to product quality assurance system is still inadequate. Fish processing flow chart presented in Figure 2.

The main obstacle on anchovy production based on interviews with respondents are availability of raw materials which are not fixed amount each time sailing. This will have an impact on labor requirements and dryers that every day can change the amount. Another obstacle is when a moonlit night and during the season the west, the number of anchovy is very limitted. The anchovy processors complain that suffered losses when they keep forcing myself to look for fish in the sea. At that moment usually lots of fish processors are idle. Each month, fish processing activities only lasts for 20-22 days.

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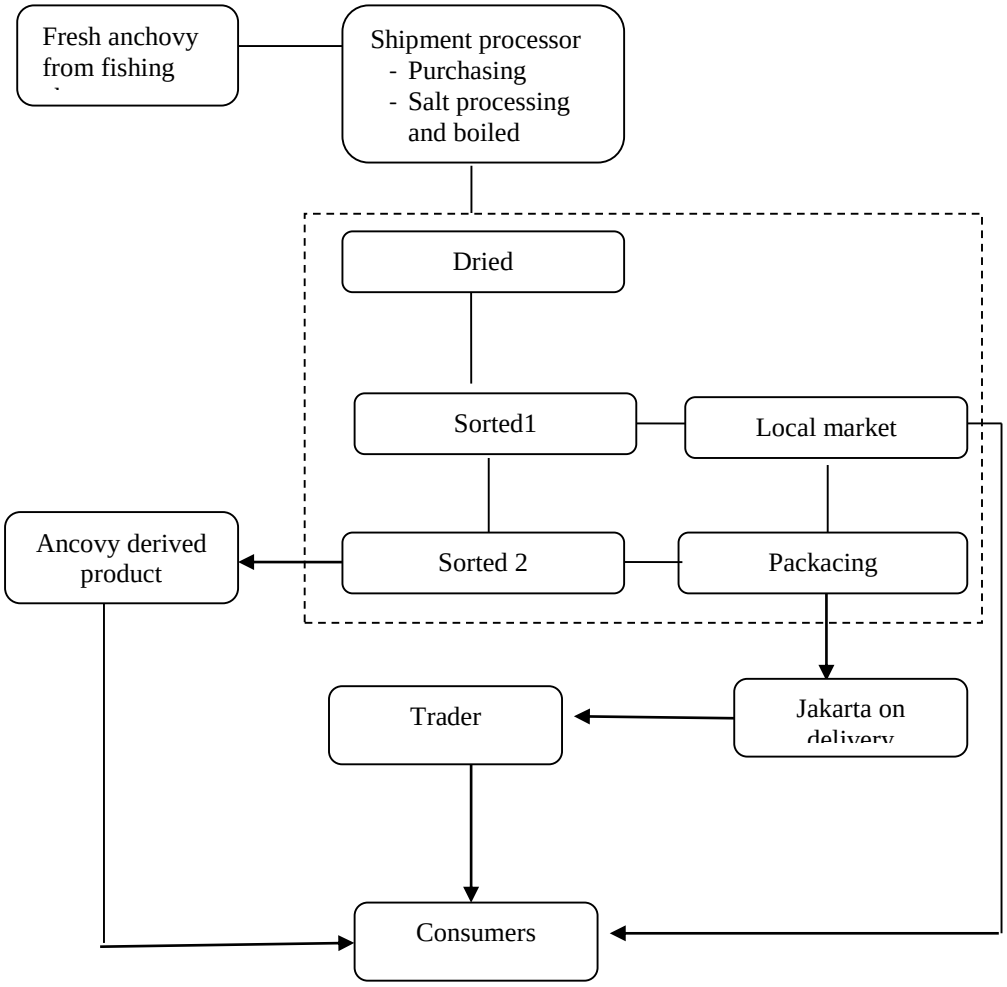

Figure 2. Production process of dried anchovy in Pulau Pasaran

3. The Main Product

The main products in Pulau Pasaran is salted anchovy/fish. Among the anchovy processing, are divided into three types: rice anchovies, anchovy dungarees/nylon anchovies, and other fish. The salted fish types rice anchovy is the most expensive because of the amount at least. The production of anchovy in Pulau Pasaran 2013 can be seen in Table 1.

Since the year 2010, processing cluster Anchovy product in Pulau Pisang has diversified by increasing the dry anchovy product into refined products as ready for consumption, namely chips anchovy. Manufacture of refined products held by Derivative Products Processing Group

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"Jasmine Bahari". In 2012, the number of resulting production is still slightly wrap around 3370 pack with a sales turnover of Rp191,95 million. Although turnover is still small, this diversification measures need to be developed in addition to increasing the added value, as well as filling free time fishing mothers as well as eye pieces for visitors of Pulau Pasaran. On the future of refined products anchovy will be one of the typical products of the city of Bandar Lampung.

Table 1. Anchovy production in Pulau Pasaran (kilograms), 2013

Month	Rice anchovy	Nylon/dungarees anchovy	Others	Total
January	5,2	1725	75,52	1805,72
February	7,5	2070	68,2	2145,7
March	15	2175	57,3	2247,3
April	19,52	2232	85,34	2336,86
May	21,25	2045	78,25	2144,5
June	23,2	2032	85	2140,2
July	22,3	2124	69,35	2215,65
August	16,25	2002	72,25	2090,5
September	14,65	1921	65,7	2001,35
October	12,3	1832	58,25	1902,55
November	10,25	1745	57	1812,25
December	6,82	1732	73,2	1812,02
Total	174,24	23635	845,36	24654,6

4. Marketing

Anchovy production consists of three types, namely rice anchovy, nylon anchovies, and nylon dungarees. The price of each type of anchovy that is marketed at both processors and different vendors. Anchovy most expensive is rice anchovy, ranging IDR45.000,00/kg, and the cheapest is dungarees anchovy (IDR22.000,00/kg). Prices will up when the supply of anchovy increasingly rare, usually during the 2nd quarter and the 3rd quarter (April to September), as shown in Figure 3.

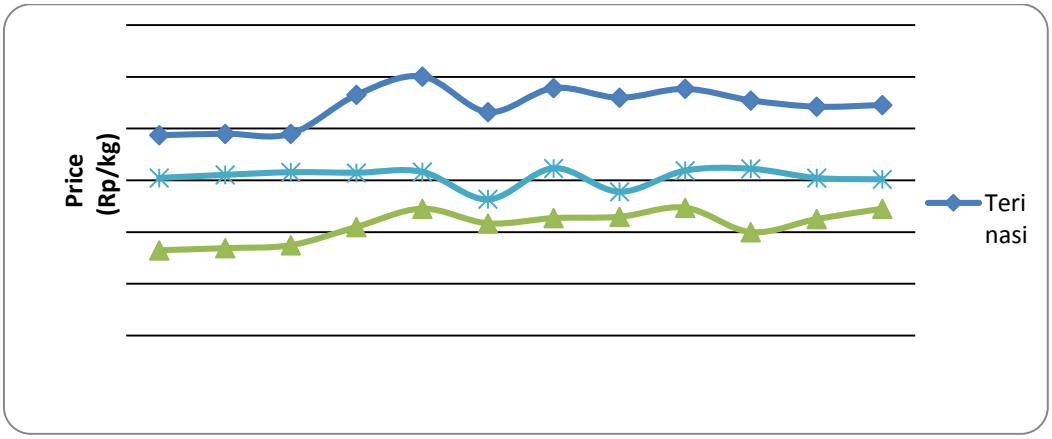

Figure 3. Price of salt fish in Pulau Pasaran, 2013

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Salted anchovies will be sold packaged using cardboard dimension of 50 cm x 50 cm x 25 cm, with a weight capacity of 20 kg. On average, every fish processor can mengasilkan anchovies 5-6 quintals per day. Marketing anchovies divided into two places, the local market (Bandar Lampung, Pringsewu, Metro, Bandar Jaya and surrounding areas) and the national market (in Muara Kapuk, West Jakarta). Based on information from the head of the group, the number of anchovies sold to Jakarta reached 80%, while the rest in the local market.

Salted fish marketing venues currently in Muara Kapuk with large traders of more than 20 people. Previous place marketing in Senen Project (1960) and North Station and Dam (1980s). Several warehouses in Muara Kapuk commonly selected as the marketing is CV Eka Jaya, UD Bowo, CV Jaya Baru (belonging to Asa), CV Lord of the Sea (belonging Abun), CV Sinar Fishermen (owned by Asim), CV TCK (belonging Acknowledge), UD Asiong.

Salted anchovies that have been packaged taken by boat to the Warehouse Agent Telok Betong with cost IDR 2000/cardboard or IDR 100/kg. Then sent using expedition army (truck) at a cost of IDR500/kg. The entire cost came by fish processors. The process of transporting anchovy at Pulau Pasaran has been handed over to the officer named Yadi.

The selling price of dried anchovies are determined by traders and wholesalers Bandar Lampung in Jakarta. The bargaining position of processors are also low when determining the selling price of dried fish. On average traders and wholesalers are the owners of capital who finance dried fish processor system with cash transactions and semi consignment. Cash transactions, carried out on the sales system in the local market as well as collectors in Jakarta. Semi consignment system is capital to pay for the product in advance with the range of 50% -70%, repayment is made after the product is sold and payments given in the next sale (Bank Indonesia Lampung Province 2010). Systems that are forming the structure of the market price of dried anchovy by traders who have authority. The maximum selling price of dried anchovies presented in Table 2.

Table 2. Average selling price of dried anchovies at the fish processors Pulau Pasaran in 2013

Anchovy	Average price (IDR/kg)	Commonly price (IDR/kg)
Rice	45.444,2	48.200
Nilon	30.578,5	30.600
Dungares	22.185,2	22.400

Marketing channels dried anchovies Market Island is divided into two kinds, namely Jakarta and local. The data show that the proportion of dried fish products are marketed to Jakarta amounted to 76.47% or 15 084 kg / production cycle, while the proportion of products sold in the local market as much as 23.53% or 4,641 kg/production cycle (Bank Indonesia Lampung Province, 2010) ,

Marketing of processed dried anchovy is divided into four types, namely:

a. Type I, which is process delivered instantly to Jakarta by attaching memorandum containing initial capital and weights are delivered through the delivery package to be collected in the warehouse.

b. Type II, which is dried anchovy processing entrust another product to processors who runs a marketing scheme which entrusts type I. Parties will earn margins from the sale of fish that are paid directly by the first party. Usually, this scheme applies to the processing that is relative.

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c. Type III, the processors sell to collectors in the Pulau Pasaran and receive direct payments. Typically these systems are used by processors who do not have enough capital and debt to the fishing chart.

d. Type IV, the processor sells the processed dried anchovy using plastic measuring 20 kg. The market share of these systems is the traditional market traders in the region yanng around Bandar Lampung, Pesawaran, Pringsewu, Metro, Kota Bumi, and Bandar Jaya.

5. Services

Basically anchovy processing only contribute to increase the value added fresh anchovy into dried anchovies and pack into a more durable product. In other words processing functions performed anchovy is to implement utility function because of the shape and timing. Packaging anchovy for market in Jakarta use quality thick cardboard weighing 20 kg /cardboard.

Supporting Activities

1. Purchase / procurement supporting resources

The support material for the processing of fresh anchovy is diesel fuel, salt, and packaging tools. Fuel oil is used for two purposes, namely running the boat and boil anchovies. At the time of kerosene is still cheap, processors use it for both. Currently kerosene is hard to find especially retail price too expensive, then the fishermen and processors will switch to fuel oil.

Diesel fuel can be obtained from retailers around the Pulau Pasaran or can be purchased at the fuel station at Lempasing. Nowadays along with the difficulties obtain diesel fuels, the processors prefer to obtain diesel fuel from merchants in the Pulau Pasaran although at higher prices that is IDR 6.000 per liter (before the fuel price increases). Diesel retail traders are: Gufron, Warli, H. Salum, and Ashari.

Fish processors spend 120 liters of diesel fuel every day in average. A total of 80 liters of fuel for motor boats and 40 liters of fuel for the stove boiled fish. Needs may change depending on the amount of solar remotely-obtained fish nearby. The average cost incurred for the purchase of diesel by Rp458.500 - Rp573.000. Others materials processing are salt and sea water. Salt used there are two kinds of common salt and iodized salt. But there is no distinction between the two types of salt, meaning salted fish produced are considered equal. The price of iodized salt was around IDR 60.000-80.000/sacks with 50 kg. The price of common salt was IDR 60.000-65.000 /bag of 50 kg.

The salt comes from Madura and along the North Coast of Java. According to respondents, the quality of Madura salt was whiter and cleaner than salt from North Coast of Java. Madura salt price is slightly more expensive than salt from North Coast of Java. Salt component is not very big influence on the overall cost of production (only 2.5-3%). Salt each day spent about 4-5 sacks of salt depending on the number of fish to be boiled. When calculated need for the entire Pulau Pasaran spending an average of 15-20 tons of salt per day.

Market sellers of salt on the island there are H. Dairoh, H. Salum, and Warli. The seller obtains salt from large warehouses belonging to Chinese businessmen in Telok Betong area Warehouse Auction South include a CV Bumi Makmur Sane and UD. Only H. Salum that bringing salt directly from Java. Salt used by the processor is a type of solar salt, the salt from the sea water

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being drained. This salt is obtained from Java through middlemen. The average cost incurred for the purchase of salt is IDR339.000.

Packaging anchovy using cardboard with the length, width and height were 50 cm x 50 cm x 25 cm with a weight of 25-30 kg/cardboard. There are two kinds cardboard package, used cardboard packaging of cigarettes and cardboard brand new salt barn branded "Tri Siger". Cardboard used for IDR 5.500/cardboard sheets while the price of the new IDR 6.500/sheet.

Cardboard used can be obtained from local retailers such as Ashari and Ny. Sharia. The new cardboard can be obtained from the Cooperative. According to fish processors used cardboard stronger and thicker than a brand new cardboard "Tri Siger". Cardboard brand "Tri Siger" needs to continue considering the brand is a positive breakthrough to lift the name of Pulau Pasaran as anchovy processing centers at the national level. For the purposes of packaging, fish processors use cardboard, duct tape, plastic size 20 kg, and *raffia* rope. Special cardboard anchovy Pulau Pasaran priced of IDR 6.500 per box. The average costs was incurre by processing equipment amount IDR 151.279.

All supporting materials processing anchovy can be found around the island. Tool packaging such as cardboard, plastic and raffia rope have been provided by Mitra Bahari cooperative. The obstacle usually happened when diesel fuel as support material existence is rare. Based on discussions with the respondents, they are expecting the oil depot of the PT Pertamian around Pulau Pasaran that diesel prices are more affordable.

2. Development of technology

Dried salted technology important to produce hight dried salted fish quality products. The main problems faced is when the drying process did in the rainy season and the possibility of attacks maggot fly during drying, especially when drying takes a long time. This can be overcome by the use of mechanical dryers. But the use of these tools is still less attractive for processing of fish salted, because they have to pay extra for electricity and the capacity is limited. Now it has developed the fish jerky products that taste more appealing to some consumers compared with anchovies.

Anchovy processing technology in Pulau Pasaran remained relatively unchanged from year to year, which is still traditional and manual. Basically processing salted fish should be based on ISO 2708.3: 2009. Processing locations, the equipment used and the raw materials to be processed must be considered clean. Thus obtained salted fish quality and high quality. Good quality of salted fish is if eligible Indonesian Industrial Standard (SII), namely (a) have a smell, taste, and normal color, as well as a good form; (B) the highest water content of 25%; (C) salinity (NaCl) between 10% ~ 20%; and (d) does not contain metal molds, also did not happen milking bacteria. With the technology still traditional, quality of quality anchovy Pulau Pasaran still does not meet the criteria of SNI.

Improved processing technology at Pulau Pasaran has begun to emerge in 2002 with changes in ship design. Ship design that meets the requirements of sanitation and hygiene will ensure the quality and safety of the catch. Prior to 2002, the boiling fresh anchovy implemented on the ground. The negative effects arising from boiling in the land is not fresh fish during boiling because the length of the return trip. To reduce the rate of spoilage of anchovy, the redesign is done in order to make the boiling vessel on board. With this effort anchovy freshness can be maintained.

3. Management of human resources

Anchovy processing in Pulau Pasaran is a labor-intensive effort that involves some kind of work, icluding the labor board, basking and sort labor, and also porters. The use of labor for processing the anchovy can be seen in Table 3 below.

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Table 3. The average labor for processing anchovy

Kind of job	(man)	wage (IDR)
Shipment labor	4	100.000-250.000/trip
Sorted and driend labor	10-35	15.000-35.000/day
Poter	2	7.500 /trip

Ussualy each ship consists of 4 persons, namely captain, commander-five (regulator rope ship), boiled fish worker, and *ABK*. Most workers used boats are still bound as a member of the family. Sorted labor in general was women who came from around the Pulau Pasaran. Working hours of driend and sorted labor were 7:30 to 12:00 am depending on a lot of fish that is processed. Poters transport anchovy that has been packed with cardboard boxes to dock at Pulau Pasaran. The poters use *gerobag*, and some are only in the pelvis. Porters wages received based on the number of anchovy transported.

4. Infrastructure

The existing of infrastructure in Pulau Pasaran is paving way around the island, electricity, water, docks, and bridges. Bandar Lampung city government will also develop WIFI internet for national marketing.

Analysis of Major Activities and Value Chain Support Activities

Analysis of the value chain anchovy at Pulau Pasaran based on in-depth interviews with Anchovy Processing Group chairman, Mr Edi Wardani (Waluya Group), Mr Toto Herwantoko (Maritime Business Group) and Mr Rosidin (Group of Mercy). The analysis is based on methods cobwebs developed by Kaplinsky and Morris (2000), McCormick and Schmitz (2001) by comparing the current condition of the value chain and value chain expected conditions. The results of the analysis can be seen in Figure 4 and 5 below.

At Figure 3 showed that the distance between expected and factual condition of the main activities faced extremely deep in operation, raw material, and marketing aspect. Obstacle in capital acces to scale up the capacity of production and unpredictable nature condition dominantly cause the anchovy processor not performed well scale and productive.

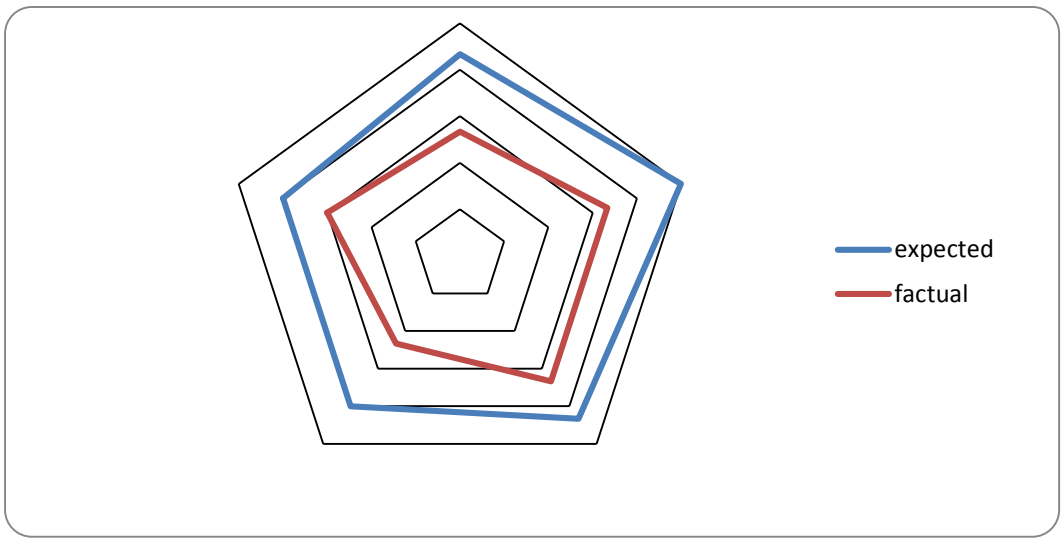

Figure 4. The main activities, between expected and factual condition

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Expected score of raw material was 4,3. Actual score of raw material was 2,7, thus the gap score 1,7. The main problem in fresh anchovy provisioning was the distance of fishing area getting far form Pulau Pasaran. Raw material is a key to continouos production, then warranty the business. Based on the respondent opinion, the main step in solving raw material problem was completeness the navigation equipment related with potential fishing area. Support the fuel distribution centre near Pulau Pasaran also important to improve fresh anchovy provision.

The second aspect that had gap score 1,7 was operation. The hiegienity was the main problem in anchovy processing. The water availability is a key to achieve operation hiegien. Water infrastructure built by local government, but not sufficient yet. Drainage system and waste management also need attention to product hiegienity. The third aspect was anchovy marketing. Anchovy marketing chain was dominated by big trader in Jakarta. Bargaining position of anchovy processor was lower than Jakarta trader. Jakarta trader dominated as price decision maker and the anchovy processor just as price taker. This condition happened because there is no quality standard of anchovy form Pulau Pasaran. Jakarta trader usually sorted and graded before sold to others market. The quality good one will call as Medan achovy.

At Figure 4 showed that the distance between expected and factual condition of the supporting activities faced extremely deep in technology, supporting facilities, and quality of human resources aspect. The processing method not developed well. The technology slow developed, still traditional and just descended from their parents.

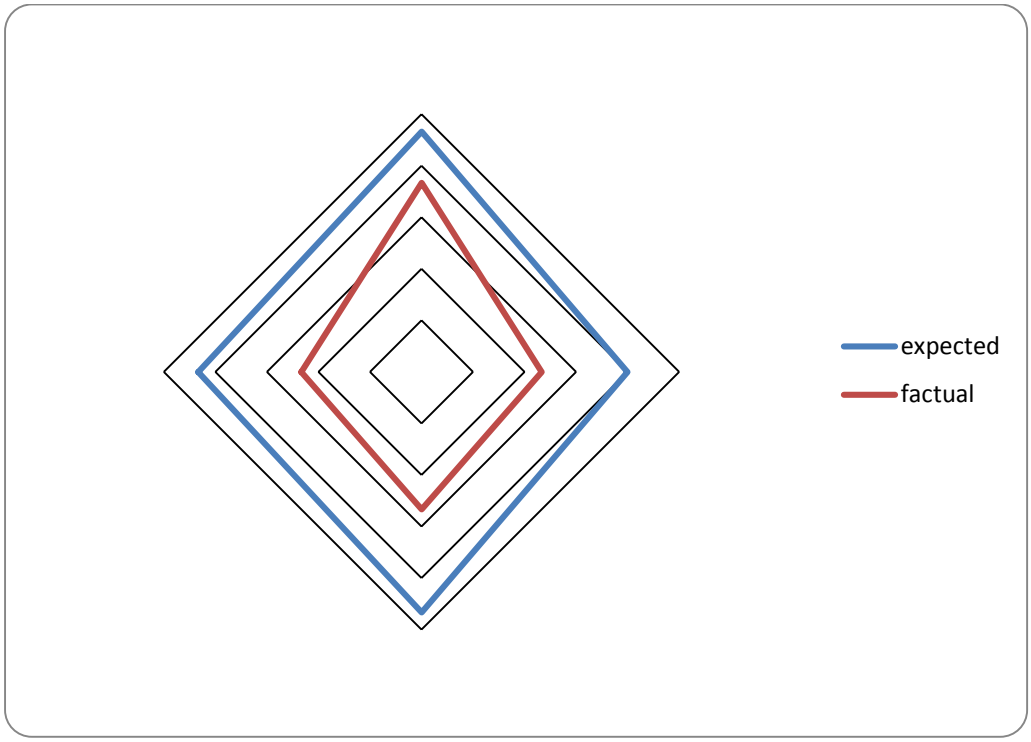

Figure 5. The supporting activities, between expected and factual condition

The gap score between expected and actual on technology and support infrastructure were 2,0. The ancgovy processing technology pembuatan not changed significantly since 1960. The change was only boiled processing on the ship to avoid the quality reduction. It is need improvement in processing technology to get anchovy proceed as qood quality product.

The condition describe both on Figure 3 and 4 mostly also faced by SME. The previous research related on SME development by Silitonga (2008) and Prayugo (2010) also revealed that Arabica coffee chain and poultry chain not efficient yet. Suryana, et.al. (2010) and Yusri (2010)

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studied the creative industries in rural not oriented yet to develop value addition refer to drive as inovation in production, distribution, and marketing. Kindangen and Bachtiar (2010) also reported that value chain of coconut in North Sulawesi.

4. Conclusion

Based on the results and the discussion in the previous chapter, it can be concluded that the value chain system at anchovy clusters processing in Pulau Pasaran starts from main activities include: raw material procurement, production operations, finished materials, marketing, and service; With support activities include: purchasing/procurement of supporting resources, technology development, human resource management, and infrastructure. Efforts to improve the business value chain networking interface need to be done through a synergistic relationship between the elements of the value chain from upstream processing anchovy to the market so that it can solve the threat by increasing mastery of the export requirements.

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Erosion Prediction with Sediment Delivery Ratio Apprroach of Sekampung Watershed (Study in Watershed of Sekampung – Argoguruh Dam)

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Abstract

Erosion is one of the problem in the Sekampung Watershed. Increased rate of erosion would increase amount of sediment that entering the river. The Sekampung Watershed Sekampung is quite important in Lampung Province, because it is used as a source of agricultural irrigation, hydropower (Hydroelectric Power Plant) and will be planned as water supply to PDAM (Regional Drinking Water Company), therefore the amount of sediment carried by the river flow needs to be researched. This reasearch aimed to estimate the erosion in Sekampung Watershed. This research used two methods to estimate the erosion there are SDR (Sediment Delivery Ratio) methode and USLE (Universal Soil Loss Equation) method, and that were calculated with the help of GIS (Geographic Information System). The amount of erosion using SDR method to 58.49 tons/ha/yr. Meanwhile estimation of erosion by USLE method were 112.86 tons/ha/yr.

***Keywords**: Erosion, SDR, Watershed of Sekampung.*

1. Introduction

Watershed is a unit area of land which is a unity with the river and sub rivers that serves collecting, storing, and flowing the water from rainfall to the lake or into the sea naturally, the border on land is a topographical separator and border in the sea is until water area that still affected by land activities (Law No. 37 of 2014). Sekampung Watershed has the second largest area in Lampung Province. This condition make Watershed Sekampung becomes the foundation of today's society. The utilization of Sekampung Watershed such as a source of agricultural irrigation, hydropower (Hydroelectric Power Plant) and will be planned as a source of raw water by PDAM (Regional Water Company) Rilau Way. The Utilization of Sekampung River (the main river in Sekampung Watershed) as a source of water supply to PDAM Way Rilau by taking the water around 2,500 liters per second. It is to serve around 42000-44000 households customers. The amount is equivalent to 220,000 inhabitants. The statement was described by Mayor of Bandar Lampung (Sihaloho, 2015).

Condition of Sekampung Watershed that is beneficial to the community nowadays is even more alarming.The water flow of Sekampung River noawadays becoming muddier, it signifies the high erosion in the upstream watershed. In line with the results of Banuwa et al. (2008) that Sekampung upstream Watershed area of 42.400 ha is now very urgent to

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deal with, because the land use in most of the upstream areas had had been changed into agricultural land.

This condition causes the decreasing of water quality of Sekampung River, whereas it will be planned as a source of raw water and other purposes, so it needs to take watershed management efforts. The result of erosion prediction in a Watershed can be used as the basis for watershed management, particularly in term of land use (Asdak, 2007).

Sediment load calculation based on total suspended solid is one way to predict the amount of erosion in a watershed with sediment load. The statement described by Asdak (2007) if the sediment load calculation can be used as a erosion prediction materialwith SDR (Sediment Delivery Ratio) method. Another common method used to estimate the amount of erosion is USLE (Universal Soil Loss Equation) method.

This research aiSY to gain erosion prediction values by using SDR method and comparing those values to the prediction of erosion using USLE method. The resulting value is then compared with the values of erosion prediction using TSL method that had been obtained through the calculation. Simulation of land improvements carried out based on Act of Forestry No. 41/1999 article 18 paragraph 2, where erosion obtained exceeds the TSL value.

2. Research Methodology

Sediment sampling is the first step of erosion prediction using SDR method. Before the sediment samples were taken, the depth of the river should be determined in advance, using a pole and meter tape. Installation of water tool sampling was conducted at three depths of the river, with the position at the base of the pole, in the central part and the surface of the water. Then plunged the pole that already attached with water taker tools into the river and then pull the lever that was connected with the water taker tool. It aimed to get water samples from three different depths. The water samples were obtained then mixed and taken about one liter.

Sediment sampling was conducted fifteen times in the wet months (April 2015) and fifteen times the dry season (in September 2015). Sampling was conducted at the Argoguruh Dam outlet.Tthe purpose of fifteen times repetitions in sampling was to obtaini a variety of data that can represent the state of the river in that month. Samples that had been obtained, then was dried using a heater (cooker) then dried again until the dry weight of the air using an oven with a temperature of 110^{o}C for 2 x 24 hours.

The sediment samples that had been dried and weighed in graSY, would be the Cs (sediment concentration) value. The value would be calculated with the value of river flow, the result of the calculation would be Qs (discharge of sediment transport) value. River flow that was used come from three discharge datas (average daily river flow in last 10 years, the average daily river flow in wet months and dry months and daily river flow at the time of sampling). Value of sediment load (SY) is obtained by entering Qs value in the SY value equation that described by Permenhut No. 61 in 2014. The SDR value is obtained using equation bouce (1975, in Alimuddin 2012).

$$SDR = 0{,}41 \times A^{(-0{,}31)} \quad (1)$$

note :

A = Watershed Area (ha)

SDR = Sediment Delivery Ratio (Bouce, 1975 in Alimuddin, 2012).

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Value sediment Yield (SY) which has been obtained is then calculated using the value of the SDR. SY and the SDR value calculation would result in erosion. The calculation of the value erosion by Regulation Ministry of Forestry Regulation no. 61 in 2014.

A = SY : SDR
(2)

note :

SY = Sediment Yield (ton/ha/yr)
A = erosion (ton/ha/th)
SDR = Sediment Delivery Ratio

Prediction of further erosion using USLE (Universal Soil Loss Equation). Estimation of erosion by USLE method is based on the equation Wischmeier and Smith (1978, in Banuwa 2013). USLE method has several factors that need to be calculated and in the first set.

A = R x K x L x S x C x P
(3)

note:

A : Erosion loss per unit Area
R : The Rainfall and runoff factor
K : The Soil Erodibility Factor
L : The Slope-length Factor
S : The Sope-steepnes Factor
C : The Cover Manajement Factor
P : The Erosion-control practice Factor (Wischmeier dan Smith, 1978 in Banuwa, 2013).

Rain erosivity factor (R) obtained by collecting rainfall data over the last 5 years at four sites scattered rain posts at the research site. Rainfall respectively calculated using Lenvain DHV equation (1989, in Asdak 2007). The results of calculation of the monthly erosivity value, then summed in a single year and the data is averaged with the last 5 years, we will get the value of the average annual R. Rain territorial division performed with the help of GIS using Thessen Polygon menu.

Soil erodibility value factor (K) can be determined by overlaying a map of soil types into Sekampung Watershed maps. K value is obtained by comparing the type of soil based on the value of K, defined by Yuwono (2011).

The length and steepness of the slope factor (LS) can be determined by overlaying maps of slope into Sekampung Watershed maps. Values obtained by entering a value LS slope and slope length between 1 to 20 meters, then calculated based on the value equation, described by Arsyad LS (2006).

Vegetation cover factor, and the use of conservation techniques (CP) .Can be determined by overlaying a map of the land use map into Sekampung Watershed. Cp

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values obtained by comparing the value of land use into forecasts CP factors on various types of land use based Abdurachman et al (1984, in Asdak 2007).

The calculation of TSL (Tolerable Soil Loss) value or erosion that can be tolerated by the Wood and Dent equation (1983), described in Banuwa (2013). The depth equivalent value (DE) in the calculation of TSL, obtained by drilling the ground at 9 locations to get the value of the effective depth of the soil and the depth factor value is determined by Hammer (1981, described in Arsyad 2006). Minimum soil depth value (dmin) is obtained by analyzing the use of land with dmin value of each type of plant and the age of land use (UGT) and the rate of soil formation (LPT) is determined by Wood and Dent (1983, described in Banuwa 2013).

Analysis of the results of erosion prediction with IE (Erosion Index) is based on Regulation No. 61 2014. Simulation of Sekampung Watershed management using GIS (C factor improvements as much as 30%) based on Act Forestry No. 41/1999 Article 18, paragraph 2.

3. Results and Discussion

3.1 Ressults

From the sediment samplin was obtained sediment concentration values Cs contained in one liter of water samples. The water samples were taken at three different depths for two months (April 2015 and September 2015). Cs value in wet month showed greater value than the value of Cs in the dry months. Comparison Cs value was 1: 8. Cs value can be seen in Table 1.

Table 1. Data sediment concentration (Cs) in the Rainy season (April) and a dry Season (September)

Location: Sekampung, Outlet Dam Argoguruh Tigeneneng				
Rainy season			Dry Season	
No	Date	Cs (mg/liter)	Date	Cs (mg/liter)
	02-Apr-15	763.40	11-Sep-15	6 3.70
	04-Apr-15	365 3.90	12-Sep-15	1 8.00
	06-Apr-15	957 .60	14-Sep-15	9 4.40
	08-Apr-15	307 8.80	15-Sep-15	2 5.10
	10-Apr-15	414 8.30	16-Sep-15	1 7.00
	12-Apr-15	679 .70	17-Sep-15	1 51.80
	14-Apr-15	207 .50	18-Sep-15	2 2.50
	16-	214	19-	2

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	Apr-15	3.30	Sep-15		0.80
	18-	263	20-		6.
	Apr-15	2.40	Sep-15		40
	20-	293	21-		2
0	Apr-15	.50	Sep-15		2.00
	22-	103	22-		1
1	Apr-15	1.50	Sep-15		2.90
	24-	819	24-		2
2	Apr-15	.70	Sep-15		0.50
	26-	798	26-		3
3	Apr-15	.50	Sep-15		85.30
	28-	252	28-		5
4	Apr-15	.20	Sep-15		17.20
	30-	719	30-		4
5	Apr-15	.70	Sep-15		16.50

The calculation of the value erosion using SDR (Sediment Delivery Ratio) are listed in Table 2. The value of the three calculations erosion sediment load (SY) different (Based on the value of discharge). The average value erosion by using the value of SY with an average daily river flow in wet months and dry months had a value nearly equal to the erosion value with SY using river flow at the time of sampling. Erosion value obtained using SY with the average river flow over the last ten years had smaller value of the two calculations thereafter. The value indicates if the average daily river flow over the last ten years less than the value of river flow at the time of sampling and the average river flow in wet and dry months.

Table 2. Value Estimation of erosion by the SDR method (Sediment Delivery Ratio)

o	**Description**	**Erosion Value (SDR) (ton/ha/yr)**		
		Rainy Season	**Dry Season**	**average**
	value erosion prediction methods SDR to discharge the daily average during the past 10 years	85.38	6.91	46.14
	The value of SDR methods erosion prediction with an average daily discharge (wet months and dry months) over the last 10 years.	126.59	3.57	65.08
	estimation value erosion SDR method with daily discharge at the sampling time	124.84	3.64	64.24
	Average	**112.27**	**4.71**	**58.49**

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The total area of research	**214,092.20 ha.**
SDR Number	**0.04**

Rain erosivity factor (R) was obtained by using annual rainfall data expressed in centineters (Cm). R value data was obtained using average rainfall over the last five years on a four-point observation posts scattered rain in the research area. R shows the amount of rain the ability to be eroded soil, erosivity value in this study can be seen in Table 3.

Table 3. Erosivity rain value (R) and rainfall (CH) annual (2011-2015)

o	Location	The annual rainfall (average 5 years) (cm)	annual R (average 5 Years)	Percentage (%) area of research
	South Lampung	111,14	684,338	11,02
	Pesawaran	133,064	835,546	23,03
	Pringsewu (Pagelaran)	164,576	1047,458	21,44
	Tanggamus (Batutegi)	211,482	1472,594	44,51

Soil erodibility at research sites in the Sekampung Watershed has two values. The soil erodibility value was obtained from two types of soil. The most dominating soil type is the type of research sites Inceptisol with presenttase 95%. Erodibility value and soil types can be seen in Table 4.

Table 4. Values soil erodibility (K) on erosion prediction location

No	Soil Type	Number of K	Area (Ha)	Presentage (%)
1	Inceptisol	0.29	10,379.86 ha	5
2	Latosol	0.23	203,712.33 ha	95
	The total area		214,092.20 ha	100

LS factors obtained an average value obtained on the slope (%) by entering a value of slope length (L) of 1 meter to 20 meters. LS factor value on each slope can be seen in Table 18.

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Table 5. LS factor value

o	S (%) (L= 1m-20m)	average value LS	a centage (%) area	Pre
	3-8 %	0. 32		23
	8-15 %	0. 96		61
	15-25 %	2. 30		6
	25-45 %	6. 29		0
	45%	9. 56		10

CP factor is a combination of vegetation cover factor (C) and factors of soil conservation techniques and water (P). CP factor in estimating the value erosion by USLE method is the only factor that can be changed by man. The use of land and the forecast value of the CP can be seen in Table 6.

Table 6. Land use and value of CP on erosion prediction location

o	Land Use	CP Value	Are a (ha)	Precenta ge (%)
Forest	Dry Land Scondary	0.0 5	9,5 58.33	4.46
	Bushes	0.1 0	13, 213.05	6.17
	Water	0.0 0	1,2 19.10	0.57
	Plantation	0.0 7	9,4 73.68	4.43
	Setllement	0.2 0	15, 311.19	7.15
	Minning	0.2 0	60. 70	0.03
	Dry Land Agriculture	0.4 3	30, 398.87	14.20
Agricultural Field	Unirrigated	0.1 9	131 ,911.48	61.61
	Savannah	0.0 2	566 .14	0.26
0	Rice Field	0.0 2	2,3 79.67	1.11
	Total Area		214	100.00

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					,092.20

Erosion prediction value using USLE showed a greater value than the comparative value erosion by using SDR, but both the erosion prediction showed a greater value than the value of TSL. These conditions indicated if most of the land among the sites have erosion value greater than the TSL value. Comparison of the value erosion of the value of TSL can be seen in Table 7.

Table 7. Comparison of the calculation results of erosion using USLE approach SDR and methods, as well as the calculation of the value of TSL

o	Description	Value
	Average erosion using SDR method	58.49 Ton/ha/yr
	Average erosion using USLE (984 land units)	11.86 Ton/ha/yr
	Average TSL	31.26 Ton/ha/yr
	Average TSL: Average erosion using SDR method	1 : 1.86
	Average TSL: Average erosion using USLE method	1 : 3.6
	Average value erosion using USLE method: The average value erosion using SDR method	1,93 : 1

Simulation that conducted for CP factor under Law No. 41, 1999, is applied only to some land use that is allowed tobe converted into forest land use. Simulation of land use changes can be seen in Table 8.

Table 8. Comparison number of CP and CP simulation

o	Land Use	P Value	Simulation of CP value	Area (ha)	Percentage %
	Dry Land Scondary Forest	.05	0.01	9,558.33	4.49
	Bushes	.10	0.10	13,213.05	6.21
	Plantation	.07	0.07	9,473.68	4.45
	Setllement	.20	0.20	15,311.19	7.19
	Minning	.20	0.20	60.70	0.03

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Dry Land Agriculture	0.43	30,398.87	14.28
Unirrigated Agricultural Field	0.19	131,911.14	61.97
Savannah	0.02	566.14	0.27
Rice Field	0.02	2,379.67	1.12
Total Area		212,873.10	100.00

IE value after land improvement simulations showed a very significant influence, a very high IE grade can be lowered. comparison value of the actual IE and simulation IE is shown in Table 9.

Table 9. Comparison Value of erosion index Classification (IE) and after simulating the actual state land improvement

No	Before Simulation (actual condition)			After Simulation (simulation of land use)		
	Erosion Index (EI)	Area (ha)	Percentage (%)	Erosion Index (EI)	Area (ha)	Percentage (%)
	Very Low	36,292.97	17.05	Very Low	9,941.00	44.13
	Low	21,827.17	10.25	Low	4,594.70	39.74
	Moderate	45,056.94	21.17	Moderate	9,825.50	4.62
	High	2,590.44	1.22	High	2,614.75	1.23
	Very High	107,105.30	50.31	Very High	2,896.85	10.29
	Total	212,872.80	100.00	Total	12,873,12	100.00

3.2 Discussion

Water sampling in Sekampung River aimed to obtain sediment samples. Sediment is part of the land which is transported by water from a place that suffered erosion in watersheds (DAS) and flow into a body of water (Arsyad, 2006). The statement indicates if the sediment samples can be used to calculate erosion, as described by Asdak (2007), the sediment load calculation can be used as a material erosion estimation method SDR (Sediment Delivery Ratio).

3.2.1 Calculation of sediment and erosion value prediction using SDR (Sediment Delivery Ratio) method.

The value of SDR in Sekampung River in this research was 0.04, it is smaller than the measured value of SDR in Mamasa River. Alimuddin (2012), states that the measurement of SDR value in Mamasa River is classified into four regions or Chek dam, the SDR value of Chek Dam 1 is around 0,029 with 6,121.20 ha area, Chek Dam 2 is about

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0.02 with 21,163.17 ha areas, Chek Dam 4 is around 0,019 with 47,586.01 ha areas, and Chek dam 3 is 0, with 26,897.95 ha areas. The great SDR value indicates if a sizeable erosion in river flows a short distance (Woznicki and Nejadhashemi, 2013).

Values of sediment concentration ratio taken in the dry and wet months was 1: 8. This value is very influential on the erosion value obtained by SDR method in the calculation using the in three different rainfall datas.The average erosion value in the wet months is 112.27 ton/ha/yr, and the average erosion value in dry months was 4.70 ton/ha/yr. These values showed the ability of land and vegetation cover are not optimal to store water during the rainy season and flow it slowly, so it will not become run off that causes soil erosion. The effect of vegetation on runoff and erosion is mainly determined by the ability of vegetation to cover the soil surface (Banuwa, 2013).

Average value of erosion using SDR method from the three calculations of rainfall and sedimentsediment load was obtained amounted to 58.49 tonnes / ha / yr. This value is still lower when compared to previous research conducted in Sekampung Hulu Sub-Watershed. The average value of erosion occurred in the Sekampung Hulu Sub-Watershed is 67.50 tons / ha / year (Nippon Koei, 2003 in Banuwa, et al., 2008).

3.2.2 Prediction of erosion value using USLE (Universal Soil Loss Equation), TSL value and the comparison.

Prediction of erosion using USLE method is an estimation of erosion that is most commonly conducted to estimate erosion. USLE an erosion estimation method using the factors that lead to erosion.

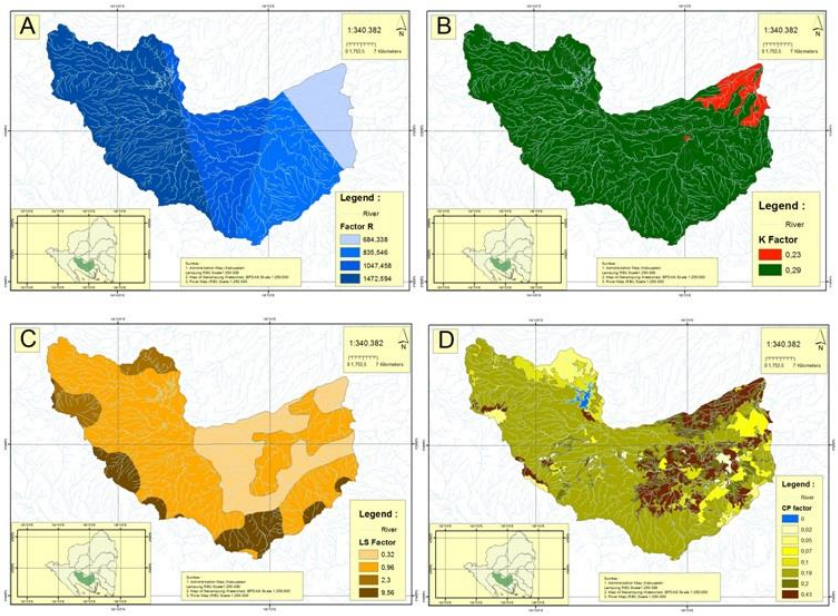

Figure 1. (A) The value of R factor in Regional Research, (B) The value of the K factor in Research Area, (C) Values in the LS factor Research Area, (D) Values CP factor in Research Area.

The erosion factor in USLE method, such as: rainfall erosivity, soil erodibility, land length and angle and vegetation cover, and the use of soil and water conservation techniques. The division of USLE factor at the research sites can be seen in Figure 1.

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Body of water use has an area of 1,219.39 ha, the estimation of erosion using USLE method is not included in the count. Body of water is not counted because of the erosion does not occur in the water. The overall area of erosion prediction using USLE method decreased from totalfrom the total area of research. The total area USLE estimation method of 212,872.80 ha of total area of 214,092.20 ha area of research.

Estimation factors of erosion using USLE method had been obtained and calculated. The average erosion value obtained at 112.83 tons/year. The erosion value is the average erosion value that was obtained from 984 land units.

From the calculation of the TSL value, this research obtained eight types of TSL value, which ranged from 18.13 tons/ha/yr up to 45.56 tons/ha/yr. The average TSL value was amounted to 31.26 tons/ha/yr. TSL value that had been obtained is still smaller compared to TSL value contained in Tapung Kanan Sub-Watershed, Riau Islands Province, that described by Sutrisna (2014), the obtained data of TSL value in Tapung Kanan Sub-Watershed ranged from 14.40 tons / ha / yr up to 30.00 tons/ha/yr.

Comparison of the erosion prediction results using SDR and USLE showed a very different value, which amounted to 1: 1.93. This value indicates if the erosion prediction of each method are very different. Despite the differences shown in the results of erosion prediction value using USLE and SDR, but both the erosion prediction method showed higher value than the value of TSL. The statement indicates if the average erosion that occurred at research location above the TSL. The difference between the two methods shows there are some weaknesses in each method. To estimate the amount of sediment result by calculating the SDR amount of a catchment area will obtain less accurate result, remenbering that the total erosion that was determined by USLE does not count moat erosion and sediment in the cavities of soil surface between the source area of erosion and waterways that the result of sediment are assessed (Asdak, 2007). Weakness of erosion prediction using USLE method described by Wischmeier (1976, in Banuwa 2013) that one of the weaknesses of the erosion using USLE method is the wide-scale average value of the parameters in areas as diverse drainage will reduce the accuracy of the calculation. The determining of CP factor in USLE method is very difficult to obtain, so it needs toconduct a depth investigation (Pradhan et al., 2012).

3.2.3 Simulation of land improvement under Forestry Act No. 41/1999 Article 18, paragraph 2.

One of CP factor improvements that can be conducted one based on Forestry Act No. 41/1999 article 18. The law describes the minimum area of forest land of at least 30% of the watershed area. The forest area that was found in the study site is only about 4.46% from 9,558.33 ha of Waterhed area.

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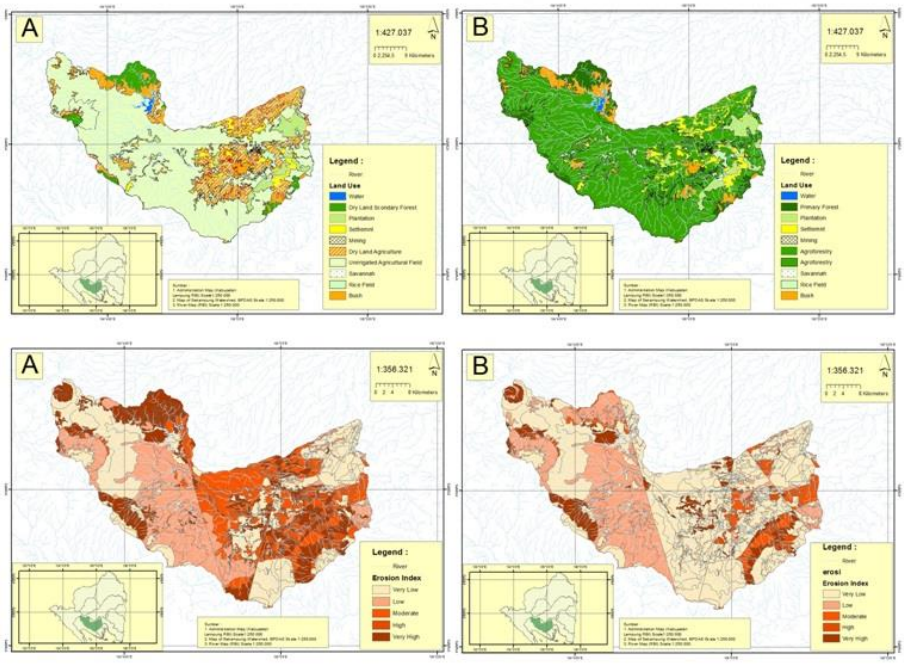

Figure 2. Top (A) Closure of vegetation prior to simulation, (B) Vegetation cover after the simulation, Down (A) Erosion Index before the simulation, (B) Erosion Index after the simulation.

Land improvements can be applied to the land that can be converted into agroforestry. Agricultural land that converted to forest (agroforestry) has an area of 75.81%. The total value of forest land by land improvement simulation of 80.28% of the area of research. Simulation of land improvement can be seen in Figure 2.

The average of the obtained fromn land improvement simulation were 32.02 ton/ha/th or decearse about 71.60% of the actual erosion before the simulation. A similar study conducted by Pradana (2015), The decrease of erosion in Dieng Pleteau by changing agricultural patterns into agroforestry decreased the erosion of 463.86 tonth be 115.96 tons/ha/yr.

The obtained Erosion index (IE) after land improvement simulation was much lower (IE value in Table 4). IE on the actual value is dominated by very high IE with a percentage of 50.30% and high IE by 1.21%, after the land improvement simulation was conducted, The obtained IE values for high and very high grade were 11.50% of the area of research.

4. Conclusions and Recommendations

4.1 Conclusions

The average value of erosion prediction using SDR (Sediment Delivery Ratio) at the study site in the Sekampung Watershed was 58.49 ton/ha/yr. Comparison of erosion value using SDR (Sediment Delivery Ratio)method with USLE (Universal Soil Loss Equation) method is 1: 1.93, USLE method has an average value of 112.86 tons/ha/yr, with TSL value of 31.26 tons/ha/yr. Simulation using USLE method is conducted by changing the land use of forest area from 4.46% to 80.28%, it can minimize the extent of Very High IE and minimize the erosion up to 71.60%.

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4.2 Recommendation

Suggestion for this research is the need for further research related to erosion by various methods combined with ground checks, land improvement and perform simulations, and applying the results of the research.

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Utilizing Grammarly in Teaching Writing Recount Text through Genre Based Approach

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Abstract

This study investigated on utilizing Grammarly, a free online rater, in teaching writing recount text through Genre-Based Approach (GBA). This study tried to describe GBA application in the class, to know how Grammarly and GBA led to students' writing recount text, and to know students' perception in utilizing Grammarly in GBA in writing recount text. This study employed pre-experimental design one group pretest-post test (Creswell, 2008: 301). Data in this study were obtained from questionnaires and pretest-post test. Data from questionnaires, to describe the second and the third question, were analyzed by using Likert Scales and categorized into three categories: Positive, Neutral, and Negative as suggested by (Azwar, 2012: 149). Data from pretest-post test, to know the improvement of the students' writing recount text were administered by using Match T-test. The finding revealed that students had positive perception in learning writing recount text by utilizing Grammarly through genre base approach. Students understood the material explained while they were enjoying the learning process. Getting better understanding on genre-base, students felt easier to produce recount text. Pair and group discussion played an important role in writing cycles (Hyland, 2007: 136-137 and Harmer, 2007: 30) Moreover, the data showed that students had positive perception in using technology in learning writing recount text. The students thought that using word processing and Grammarly, an online rater, helped them in writing process (Gebhard, 2009: 222) Grammarly told the students' error that students were motivated to revise their works.
Keywords: Grammarly, Writing Recount Text, Genre Based Approach

1. Introduction

Senior high school curriculum was developed from time to time. Competence Base Curriculum known as KBK (Kurikulum Berbasis Kompetensi) was implemented from 2004 to 2006. Then, School-Base Curriculum (KTSP) implemented from 2006 to 2012. Finally, curriculum 2013 was implemented in July 2013. When curriculum was developed-considered as adaptation for recent educational paradigm-then, teacher who used the curriculum need to provide effective teaching as part of curriculum development (Richards, 2001 quoted in Aisah, 2009).

Understanding genre in writing is necessary. Harmer stated, "We can communicate successfully, especially in writing, is because we have some understanding of *genre*" (Harmer, 2007: 30). Teaching writing was explicitly stated in senior high school curriculum (Law of Republic of Indonesia Ministry of Education Article 22, 2006).

There were four cycles suggested in teaching writing through genre-based approach; they were "building knowledge of the field", "modeling of the text", "joint construction", and "independent construction" (Gibbons 2002:60-61 quoted in Nisak, 2008). Teacher of English needed to know these cycles and implement those when teaching writing through genre-based approach.

Moreover, recent study found that writing skill seemed to be difficult for EFL students in language learning (Richards, 1990 quoted in Tuan, 2011) in such ways "(1) generating and

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organizing ideas using an appropriate choice of vocabulary, sentence and paragraph organization and (2) putting such ideas into an intelligible text" (Tuan, 2011: 1).

As Alwasilah stated on his longitudinal study "that teaching writing is focused on the theory and grammar with little exercise of writing and generally, the students writing are never given back to the students to be revised" (Alwasilah 2000: 108 quoted in Herawati 2009).

To minimize students' difficulties in learning writing skill for EFL students, implementing genre-based approach in teaching writing recount text gave alternative solution since genre based approach built students' knowledge, in such key points as; generic structures, appropriate linguistic choices, explicit grammar, sentence structures which enabled students to write a similar text in the next stage.

Recent studies showed that genre base approach brought benefit in teaching writing (Tuan, 2011; Yang, 2012; Nisak, 2008). Genre-based approach also enhanced students writing ability as Belcher stated, "Using the genre-based approach is its high face validity due to the fact that students are writing papers on topics that they are researching. It was helping them improve their ability to complete their written assignments successfully" (Belcher: 11).

Hyland stated, "One example of how these expectations are communicated to ESL learners is suggested by the computer program BRIDGE, used with civil engineering students at the Papua New Guinea University of technology. The program is design to assist teachers in creating useful feedback for students on their report" (Hyland, 2007: 181-182).

The students write their own writing using word processing in computer that computer tells the writers' error in such things; capitalization, punctuation, and spelling. Then, students consulted their own writing produced to Grammarly, an online rater. The use of technology here is to help the teacher and students to revise their own writing in process as Gebhard stated, "As with other language skills, computer technology has opened up new ways for teachers and students to process writing" (Gebhard, 2009: 222). This research report concerned on investigating of utilizing Grammarly in teaching writing recount text through genre based approach.

2. Literature Review

Utilizing Grammarly, a free online rater, in teaching recount text through genre-based approach was an alternative creativity in nowadays teaching and learning process. Utilizing Grammarly, teacher and students benefited in such key, points as, it checked students' errors in their writing and the students' scores as well.

Grammarly covered five main components to be checked. They were (1) plagiarism that detected students' writing originality, (2) Contextual Spelling Check that detected students' spelling, ignored words and commonly confused words, (3) Grammar which checked article usage, use of conjunctions, use of nouns. Then, Punctuation detected students' punctuation within a sentence, closing punctuation, formal punctuation. Finally, Style and word Choice checked students' writing style and vocabulary usage.

While students' difficulties on some features in writing such as "(1) generating and organizing ideas using an appropriate choice of vocabulary, sentence and paragraph organization and (2) putting such ideas into an intelligible text" (Tuan, 2011: 1), teacher was utilizing genre-based approach (GBA) in teaching writing. Since GBA trained students on such key points as generic structures, appropriate linguistic choices, explicit grammar, sentence structures that enabled students to write a similar text in the next stage. This activity, so-called modeling text, is a "scaffolding activity that involves teachers and learners discussing and exploring the stages of the genre and its key grammatical and rhetorical features" In this stage, the teacher gave "representative sample of the target genre" (Hyland, 2007: 132).

Combining technology, Grammarly an online rater, with genre-based approach in teaching writing recount text was an alternative creativity in nowadays teaching and learning

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process. Utilizing Grammarly in teaching writing recount text through genre-based approach filled the absence that "teaching writing which "is focused on theory and grammar with little exercise of writing and generally, the students writing are never given back to the students to be revised" (Alwasilah 2000: 108 quoted in Herawati 2009).

In this case, teachers could use technology to comment on the students' writing as Hyland stated:

> "In genre-based instruction, then, feedback is given to support students' writing development in systematic ways, reinforcing genre knowledge, community conventions, and suggestions for improvement. One example of how these expectations are communicated to ESL learners is suggested by the computer program BRIDGE, used with civil engineering students at the Papua New Guinea University of technology. The program is design to assist teachers in creating useful feedback for students on their report" (Hyland, 2007: 181-182).

Meanwhile Brown stated:

> "Computer adapted testing. Currently, most widely standardized tests are computer-bases. Sooner or later, most language students will need to perform such a test, designed to gauge the test-takers level as the responses are made. During the early items, right and wrong answer are electronically analyzed in order to present later items, from a bank of possible items that will be neither too easy nor too difficult and present an optimal challenge" (Brown, 2001: 146)

It was common sense point of view that schoolteachers assessed students' writing ability. Tomkins stated, "Large-scale writing test are a fact today often-in 11th grades" (Tomkins, 2008: 92). Teachers asked students to write and to respond a suitable prompts given in one or two hours (Tomkins, 2008: 93). While Gebhard stated, "As writing teachers, we have students write short stories, descriptions, arguments, and more" and "students respond to prompts in writing test" (Gebhard, 2006: 214).

Genre as an approach to language teaching referred to "grouping text together" those writers used to counter to recurring situation (Hyland, 2007: 4). Moreover, Teaching writing coincided with those of other language skills; listening, speaking and reading (Brown, 2001; 334), genre played an important role in teaching writing as Harmer stated, "we can communicate successfully, especially in writing, is because we have some understanding of *genre*. (Harmer, 2007: 30). Moreover, "we judge people as literate, in other words, if they can read and write in certain situation and for certain purpose (Harmer, 2007: 323). Then, Genre defines "as written text" to the demands of social context (John, 2002:3).

It was explicitly stated on The National Curriculum, so called, as school-based curriculum that various genres were parts of senior high school curriculum materials that students learned (Law of Republic of Indonesia Ministry of Education Article 22, 2006). Therefore, this study focused on students' perception in learning writing a recount text, students' perception in using technology through genre-based approach and how genre-based approach gave impact to the students' writing recount text.

To test the validity and reliability of Grammarly, then, the researcher uploaded a Recount Text taken from *(Hyland, 2007; 34)*

Table. 1. Some factual genres (English K-6 syllabus) (Board of studies, 1998, p.287)

Genre	Stages	Purpose
Recount	Orientation*	On Tuesday, we went on harbor cruise.

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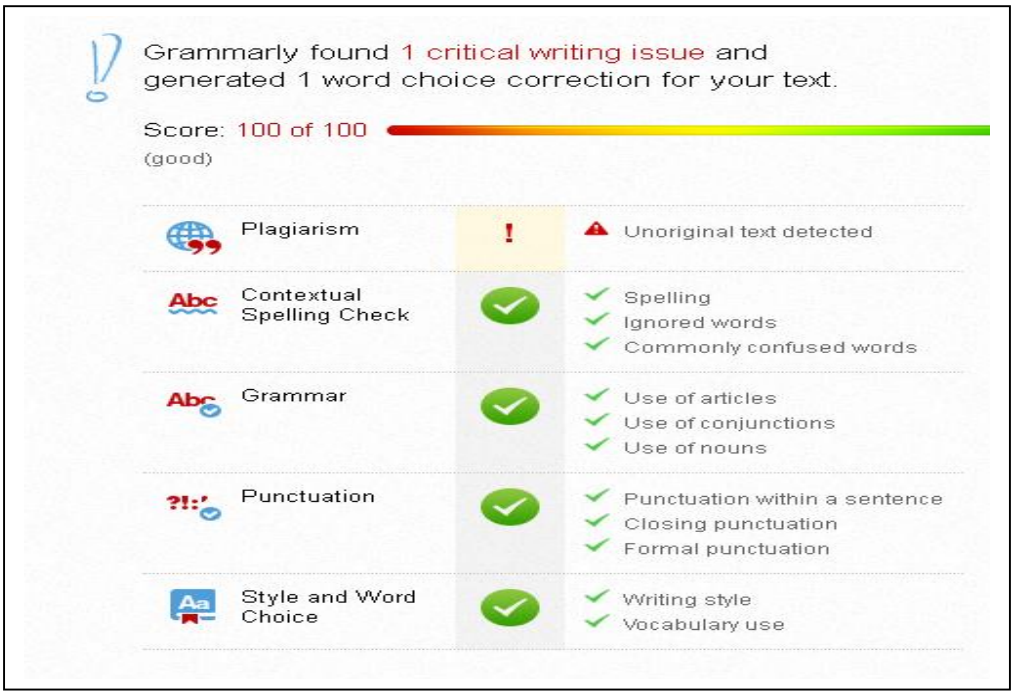
	Events in chronological order	We went underneath the harbor bridge and then we went past some submarines. When we got to Clifton Gardens, we had a picnic. After we had finished we played on the climbing. Then Mr. Robinson came over and said Mr. Moses was giving out frozen oranges. Then after we finished that, we went home.
	(Reorientation)	It was a nice-day out.

Source: (Hyland, 2007; 34)

Table. 2. Grammarly online rater program



From the result above, it was found that Grammarly could detect the text well since the text marked 100. The program detected the text as unoriginal text because the researcher took the text from some factual genres (English K-6 syllabus, Board of studies, 1998, p.287 quoted in Hyland, 2007; 34*)*

3. Methodology

This research used pre-experimental design to know whether utilizing Grammarly in genre-based approach (independent variable) had an effect in teaching recount text (dependent

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variable). The one-group pretest-posttest design was used in this study (Creswell, 2008: 301). The population of this research was the first grade of Senior High School in Pangkalpinang, Bangka Belitung Province. The first year students were chosen since writing recount text was learned by the students of the first semester of the first year based on curriculum developed at the school. Sugiyono stated, "The population is a generalization area comprising: an object / subject that have certain qualities and characteristics that was determined by the researchers to be learned and then drawn conclusions" (Sugiyono, 2012: 61).

There were seven classes of ten grade students. Every class contained thirty- students. Then, one group from seven classes was assigned to be the research sample. The simple random sample was assigned to obtain the sample from the population randomly. This was in line with Setiyadi statement, "There is research that toss coin to obtain one from the two parallel classes in one school, some are using the dice when there are six parallel classes" (Setiyadi, 2006:39).

The design of the research was as follow

T_1 X T_2

T_1 = pretest
X = treatment
T_2 = posttest

The pretest was administered to know the students writing recount text ability. Then, the teacher gave the students treatments for eight times within a month and ended by giving the posttest (Hatch and Farhady, 1982: 20).

Pretest and posttest were administered. They were essay-writing tests. The students were given a prompt. Then, they responded the prompt into recount text essay. The students did the pretest or posttest in one hour (Tomkins, 2008: 93). The pretest was administered before the treatments. The writing cycles were administered in classroom teaching-learning activities as suggested by (Hyland, 2007: 129 and Gibbons 2002: 60-61 quoted in Nisak 2008). Next, the posttest was administered. Then, continued by administering the questionnaires. All the activities were conducted in the classroom.

4. Research Finding

4.1 Learning Report Analysis

a. Grammarly through genre-based approach improve students' writing recount text

Before the t-test was used to compare the means of pretest and posttest, Kolmogorov Smirnov test was utilized to find out the normality distribution of pretest. The calculation using Kolmogorov Smirnov test was as follow

Table. 3. Tests of Normality

	Kolmogorov-Smirnov[a]			Shapiro-Wilk		
	Statistic	df	Sig.	Statistic	Df	Sig.
Pretest	.127	30	.200*	.972	30	.599
Posttest	.107	30	.200*	.939	30	.086

a. Lilliefors Significance Correction
*. This is a lower bound of the true significance.

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When significant (Sig.) is higher than 0.05, the distribution of pretest is normal. In contrast, when significant (Sig.) is less than 0.05, the distribution of pretest is not normal. The data showed that the significant (Sig.) of pretest was 0.200 which was higher than 0.05. It meant that the distribution scores of pretest were normal.
Then, to know the homogeneity of variance, the researcher administered Levene Test.

Table. 4. The Levene's test and t-test between pretest and posttest

Group Statistics

	Group	N	Mean	Std. Deviation	Std. Error Mean
Pretest & posttest	Pretest	30	45.3667	13.73012	2.50676
	Posttest	30	62.7667	9.48932	1.73250

Table. 5. Independent Samples Test

		Levene's Test for Equality of Variances		t-test for Equality of Means						
		F	Sig.	T	df	Sig. (2-tailed)	Mean Difference	Std. Error Difference	95% Confidence Interval of the Difference	
									Lower	Upper
Pretest & posttest	Equal variances assumed	2.887	.095	-5.710	58	.000	-17.400	3.04720	-23.499	-11.300
	Equal variances not assumed			-5.710	51.55	.000	-17.400	3.04720	-23.515	-11.284

The criterion of homogenous variance is when the probability is higher than 0.05 ($p>0.05$), while if the probability is less than 0.05 ($p<0.05$), the variance is not homogenous. The data showed that the significance value (Sig.) was 0.095 was higher than 0.05 ($p>0.05$). In conclusion, the sample of the population was homogenous.

The table provided the result from pretest and posttest. It showed that t-count = 5.710. The t-table with (df = N-1), at level of significance $\alpha = 0.05$ was 2.045. The table showed that t-count was higher than t-table. Therefore, genre-based approach improved students' writing recount text.

b. Genre-based approach lead to students' perception in learning writing recount text.

Table. 6. Students' Perception in Learning Writing Recount Text Through Genre-Based Approach

Perception Categories	Students' Perception	
	Number of Respondents	Percentage
Positive	29	97%
Neutral	1	3%
Negative	-	-

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Total Respondents	30	100%

The data showed that 29 or (97%) students had positive perception in learning writing recount text through genre-based approach while 1 or (3%) students' perception in learning writing recount text through genre-based was neutral.

The students understood recounted text explained by teacher (29 students) while (28 students) claimed that learning recount text through genre-based was enjoyable. Understanding genre based, the students felt easier in producing recount text (28 students). Then, scaffolding played an important role in writing cycles (27 students). Wash back was needed by students on their writing (28 students) to motivate them to revise their writing (29 students).

c. The use of technology leads to students' perception in learning writing recount text through genre-based approach.

The use of word processing helped students in writing process (29 students) since the program told them their error in spelling, repeated words, capitalizations, and punctuation. The students were motivated in writing recount text by the usage of Grammarly, an online rater, (27 students) since Grammarly gave wash back to students' writing (27 students) and the students believe that the wash back given by Grammarly meet its reliability (24 students).

From the interpretation above, it was found that that the students' perception was positive toward the use of technology in genre-based approach in teaching writing recount text while genre-based approach improved students writing recount text ability. Harmer stated, "We can communicate successfully, especially in writing, is because we have some understanding of *genre*" (Harmer, 2007: 30). It was found benefit in teaching writing using genre-based approach (Tuan, 2011; Yang, 2012; Nisak, 2008) Genre-based approach also enhanced students writing ability as Belcher stated, "Using the genre-based approach is its high face validity due to the fact that students are writing papers on topics that they are researching. It was helping them improve their ability to complete their written assignments successfully" (Belcher: 11)

5. Conclusion

The study found that utilizing Grammarly through genre-based approach improved students' writing recount text (Harmer, 2007) of the first grade of the first year at one of Senior High Schools in Pangkalpinang. In addition, the use of technology, Grammarly, benefited the students in writing cycles (Hyland, 2007, Brown, 2001 and Gebhard, 2009).

Therefore, these findings may be beneficial for students, educators or writing instructors text to utilize grammarly in teaching recount text through Genre Based approach and by understanding genre based, the students felt that it made them easier to produce recount text since pair and group discussion played an important role in writing cycles (Hyland, 2007: 136-137 and Harmer, 2007: 30).

Moreover, the data showed that 28 or (93%) students had positive perception in the usage of technology in learning writing recount text. The students thought that the use of word processing and Grammarly, an online rater, helped them in writing process (Gebhard, 2009: 222). Grammarly told the students' error in writing so that the students were motivated to revise their work. In other words, they had more practices in writing (fill the absence of little exercise in writing as stated by (Alwasilah 2000: 108 quoted in Herawati 2009)

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The Multiple Techniques Correlated with Students' English Writing Outcome and Their Learning Perception

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Abstract

Some studies have discussed about the specific technique in teaching English, especially in writing skill. The results indicated that the conducted technique had some influences or even correlations with students' writing outcome. However, the studies just focused on examining one or two techniques. In this study, the author aimed to assemble some techniques she has applied in English writing class to be correlated with the students' outcome and learning perception. The research questions are ; 1. What was the students' English writing outcome taught by multiple techniques?, 3. How did the students' perception about the multiple techniques?, 4. Are there any correlation of those techniques and the students' writing outcome and learning perception?. There were about 25 students of class twelve Ibnu Shina at Senior High School MA Ma'arif 06 Pasir Sakti as subjects in the study. Upon this study, it can be concluded that the multiple techniques which have been applied in the classroom are correlated with the students' writing outcome and their learning perception. English teachers are suggested to apply more than two techniques for particular skill and need in order to reach the maximum achievement of learning a foreign language.

Keywords : Multiple Techniques, English Writing Outcome, Learning Perception

1. Introduction

A technique is a tool used by the teacher to elaborate the materials for the students. The use of techniques in teaching and learning is supposed to be the most essential part for getting students' comprehension in particular subject. However, some techniques are commonly assembled to reach the need of students in the class, this is called multiple or eclectic techniques. Sadtono (1978) suggested in order the porsion of manipulative and comunicative in teaching language is arranged gradually as the level of teaching and learning followed by

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students. Further, a particular or multiple techniques make the teacher feels easier transfering the knowledge for his/her students because some procedures offered inside the techniques. Reed (2003) said that becoming an effective teacher requires development of three general skills: 1) knowledge of what is to be taught, 2) an understanding of how people learn what is to be taught, and 3) the ability to convey knowledge and skill from the teacher to the students. It is proved that a technique is very helpful for the teachers to solve the difficulties found in teaching a subject that regarded harder by the students.

English which becomes a foreign language in Indonesia, is perceived to be one of hard subject in the class. Regarding on that, in teaching English, the teachers are demanded to convey the material easily and understandable. One of skills in English, writing, is to be the concern of teaching and learning especially in Indonesia which goes to be a foreign language. Writing makes the learners scared and difficult to learn. This claim is in line with Nepomuceno (2011), who stated that,

> "Among the four macro-skills of language, writing appears to be the most difficult. It is unlikely for learners to be enthusiastic and exciting to do writing tasks, which is usually "a desk" activity, as compared to speaking tasks which are normally asked to move around classroom. The fact that writing outputs are documented or recorded makes students think twice (or more) whenever asked to write."

To respond that bad perspective of learning writing, there are many techniques appear to cover the difficulty of teaching and learning writing. On another hand, there are other previous studies discussed about techniques in teaching writing which related to this study. As conducted by Nur Cahyo (2013) about Mind Mapping technique to improve students' writing skill. He claimed that the use of the mind mapping was effective to improve the students' writing skill. The use of colorful pictures of mind mapping in the BKOF and MOT stages was effective to make the students more enthusiastic in the writing activities. All students could understand and respond to the researcher' instructions and explanations. The activities in the JCOT stage for using the mind mapping as a pre-writing planning strategy were successful to help the students generate or organize their ideas. They could also use the appropriate words they learnt to make the mind mapping. The activities in the ICOT stage to write the narrative text were effective through the mind mapping. The students could developing and generate their ideas using the mind mapping and they could produce the narrative text with the correct generic structure.

Another study was from Analia Ika (2012), Using Think Pair Share (TPS) to Improve the Descriptive writing Skill. Her study used collaborative classroom action research. The result

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of the research showed that TPS successfully helped in improving the students' idea in writing descriptive text. The score of the students' writing products improve significantly from preliminary study to Cycle 1 and from Cycle 1 to Cycle 2. The students' mean score improved from 56,8 in preliminary study to 58,7 in Cycle 1 and it could 73,69 in Cycle 2.

The last study was conducted by Setiyawati (2015) about The Students' Writing Ability and Their Learning Attitude Taught by DLC Technique. The research method was Classroom Action Research (CAR). The criteria of success was that the average score of the students was equal to 65 of 100 scales and 80 % of the students passed the minimum score. The result showed that the students' score in pre-liminary was 58.21 and in cycle-1 was 63.38. It means that there was an increase of 5.17 point. The average score in cycle-2 was 74.68 which mean that there was an increase of 11, 3 point. Only 32 % of students reached 65 of the score in pre-liminary, only 36 % of them reached the goal in cycle-I and 100 % of the students reached the goal in Cycle2. The students' attitude was improved marked with the increasing number of students who liked the DLC model of teaching. The researcher used the following data analysis technique; coding the students, rating their works with two raters, and t-test, descriptive statistics of learning attitude and calibration. Upon this research it can be concluded that the students' ability in writing descriptive text is improved and their mastery learning exceeds the target of 80% in which 100 % of students reached 65 score or more.

This study also involved the techniques of teaching writing which is different from the previous study in term of research design, analysis, and procedure. The researcher who is also a teacher tried to combine two techniques (Draw Label Caption and Mind Mapping technique) in one teaching and learning. Her record of teaching and learning was dropped into this recent study. This study is aimed at knowing whether there is a correlation between the multiple techniques used by the teacher towards students' writing outcome and learning perception.

1.1 Research Problem

The problem of the research was assumption of the real condition and questions around English class. There are some problems relate to students' writing outcome, students' learning perception, and the multiple techniques used by the teacher.

Firstly, the particular technique which was commonly used by the teacher sometime do not solve the students' writing problems. The students who have different level of difficulties also could not adapt with the technique which was being applied by the teacher. Therefore, the

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teacher tried to find multiple techniques to cover those level of difficulties. Secondly, all students who could or not follow the procedure of learning were known with their score of writing. The final score identified that the techniques which being used were well applied or not. Thirdly, the students' perspectives also contribute to the achievement in teaching and learning. Those three basic facts formulated to the following problems ; After the teacher applied the multiple techniques, some students got good score in writing but had bad learning perception. While, some students who got bad score in writing, had good learning perception. Hence, some students who got good score in writing, had good learning perception as well. Then, some other students got bad score in writing, also had bad learning perception.

1.2 Research Questions

After reviewing literatures and observing what exactly happened in the class, the following research questions were addressed based on problem background :

1. What was the students' English learning outcome taught by multiple techniques?
2. How did the students' perception about the multiple techniques?
3. Are there any correlation of those techniques and the students' learning outcome and learning perception?

These would be answered after the data analysis was done.

2. Methodology

The research design of this study is descriptive qualitative research which is kind of expose facto research. The participants of this study were about 25 students of class twelve Ibnu Shina at Senior High School MA Ma'arif 06 Pasir Sakti academic year 2016/2017. They were taken with random sampling technique from total of population 87 students in two another classes. The steps of random sampling technique are : (1). The whole students of eight grade, (2) Write the classes in peace of paper, (3) The paper wrapped and then put into a jar, (4). Then, there is a little slit on the jar's mouth to let one peace wrapped out, (5) The paper which come out firstly is as the sample of this research.

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There were basically two kind of instruments to collect the data in this study, they were test and questionnaire. Kusnaidi (2008:90) stated that test is a series of questions or statements used to measure the skills, knowledge, intelligence, ability or talent possessed by individuals or group. The test was conducted to know how was the score of students' writing and the questionnaire was given to know how was the students' perception about multiple techniques taught by the teacher. Both instruments was measured based on content and construct validity. The content validity was in line with the syllabus on curriculum and material development. And the construct validity was based on the theories which were determined as the indicators to develop the questions or statements in the questionnaire. While, to analyze the data in the research, the author used Pearson Correlation Product Moment.

3. Results

To answer research question 1 and 2 about the students' writing outcome and the students' learning perception taught by multiple techniques, the author have identified from the result of test and questionnaire. Both was depicted with these following explanations.

3.1 The Result of Students' Writing Outcome

The students' writing outcome showed the positive result from pretest to posttest. Their writing scores were analyzed by the teacher using descriptive statistics.

Table 1. Result of Students' Writing Outcome

Result of Pretest	
Mean	73,33333333
Standard Error	0,93573707
Median	70
Mode	70
Standard Deviation	4,584156711
Sample Variance	21,01449275
Kurtosis	0,169950739
Skewness	1,12148562
Range	15
Minimum	70
Maximum	85
Sum	1760
Count	24
Largest(1)	85
Smallest(1)	70
Confidence Level(95,0%)	1,935719612

Result of Posttest	
Mean	83,2
Standard Error	0,7
Median	85
Mode	85
Standard Deviation	3,5
Sample Variance	12,25
Kurtosis	0,857185659
Skewness	-0,94181772
Range	15
Minimum	75
Maximum	90
Sum	2080
Count	25
Largest(1)	90
Smallest(1)	75
Confidence Level(95,0%)	1,444728993

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It is quite clear that the result of descriptive analysis has informed the readers of the following facts. The mean of the pretest was 73 and posttest was 83. It meaned that there was significant increase from previous test. Further, the interpretation of standard deviation in pretest which was 4,5 indicated that the gap between the lowest score and the highest one were large. It showed decreasingly in posttest, where the standard deviation was 3,5 that meaned the teaching have effected the previous gap in pretest.

3.2 The Result of Students' Learning Perception

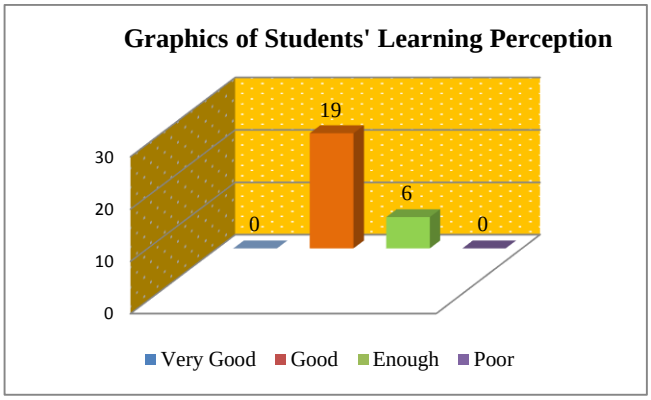

Figure 1. Result of Students' Learning Perception

From the results above, it could be known that the multiple techniques had affected the students' learning perception. It proved with the results on the graphics, from the total of 25 students there was no student said that multiple techniques was the best technique in their classroom. However, there were about 19 students assumed that their teaching and learning was very helpful with multiple techniques. Further, there were 6 students claimed that the multiple techniques had enough power on their learning. At last, there was no student who had not been effected with the multiple techniques.

3.3 Result of Multiple Techniques Correlated with The Students' Learning Outcome and Learning Perception

To answer research question 3, the author analyzed the data using Pearson formulated with SPSS 16 as these following explanation.

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Correlations

		Writing Outcome	Learning Perception
WritingOutcome	Pearson Correlation	1	.968**
	Sig. (2-tailed)		.000
	N	25	25
LearningPerception	Pearson Correlation	.968**	1
	Sig. (2-tailed)	.000	
	N	25	25

**. Correlation is significant at the 0.01 level (2-tailed).

Figure 2. Result of Correlation of Writing Outcome and Learning Perception

From the figure above, it depicted that the Pearson Correlation was 0.968. It meaned that there was a significant correlation between writing outcome and learning perception. That tight correlation was showed with the category of correlation close to +1. The sign of positive described that the correlation between writing outcome and learning perception had a straight correlation. It meaned that the more writing outcome of a student, the more learning perception of her/him. Thus, it could be concluded that the correlation of writing outcome and learning perception was tight, significant, and directed.

4. Discussion

In this section, the author tried to compare the findings of this study with the findings of previous studies. The comparison contains the writing outcome of students related to some techniques given in class.

The result of this study showed that the students' writing outcome was improved significantly from mean in pretest 73 become 83 in posttest. Further, the students' learning perception toward multiple techniques was also positive. It was proved with the average responses of students they have filled in questionnaire. This study also showed the correlation between multiple techniques and students' writing outcome and learning perception. It resulted that they have correlation each other.

Those were also happened on three previous studies. First, Nur Cahyo (2013) resulted that He claimed that the use of the mind mapping was effective to improve the students' writing skill. The students could developing and generate their ideas using the mind mapping and they could produce the narrative text with the correct generic structure.

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The second, in Analia Ika (2012), the findings of her study indicated that TPS successfully helped in improving the students' idea in writing descriptive text. The score of the students' writing products improve significantly from preliminary study to Cycle 1 and from Cycle 1 to Cycle 2. The students' mean score improved from 56,8 in preliminary study to 58,7 in Cycle 1 and it could 73,69 in Cycle 2.

The last, Setiyawati (2015) resulted that the students' score in pre-liminary was 58.21 and in cycle-1 was 63.38. It means that there was an increase of 5.17 point. The average score in cycle-2 was 74.68 which mean that there was an increase of 11, 3 point. Only 32 % of students reached 65 of the score in pre-liminary, only 36 % of them reached the goal in cycle-I and 100 % of the students reached the goal in Cycle2. The students' attitude was improved marked with the increasing number of students who liked the DLC model of teaching.

Based on the comparison of the findings in present and previous studies, it could be indicated that some techniques of writing which were combined by the teacher could increase the students' writing outcome. Other findings were the students' learning perception towards multiple techniques was also positive and they were correlated each other.

5. Conclusions and Suggestion

From the findings showed in the research, it can be concluded that the students' writing outcome and their learning perception had positive affects from the implementation of multiple techniques. Further, there was a correlation between multiple techniques and students' writing outcome and their learning perception. English teachers are strongly encouraged to be more creative in combining or modifiying the techniques in teaching and learning based on their students' needs. However, not all techniques need to be covered because they already had good procedure of teaching. It depends on how the teacher wants to direct her/his class as far as it is effective for the students.

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Theme-Based Multidisciplinary Instructional Design Model In Elementary School

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Abstract

Curriculum 2013 of Elementary School in Indonesia refers to the integrated curriculum model which is implemented through theme-based multidisciplinary instructional design. Creating this kind of learning needs a design that puts all the subjects in parallel in order to determine the synergy goals tied by theme. It is necessary to design the holistic paradigm, and it becomes a difficulty for the Elementary school teacher when they have to change their paradigm of thinking from designing a lesson plan pragmentatively to thematically. Designing a theme-based multidisciplinary design model must start from analyzing the relation of indicators between subjects and determine the core contentl to establish the relation itself, so the learning process can be running in harmony in order to achieve the whole indicators of all subjects. The theme-based multidisciplinary instructional design requires the components that can synergize; the organization of material, learning scenarios, and the integrated learning assessments. Therefore, even though this learning design contains only one scenario for a number of subjects in one study, but it has dual purpose; 1) to synergize the learning process for all subjects, so that it can be easier to achieve the success indicator, and 2) to integrate the learning outcomes of cognitive, affective and psychomotor aspects in the form of behaviors as a whole.

Keywords : *integrated curriculum, multidisciplinary, pragmentative, holistic.*

1. Introduction

Multidisciplinary learning model was born of the integrated curriculum. In Indonesia, this model is implemented in the form of theme-based learning as well as integrated which is applied in elementary school (SD). This learning is used since the 2004 curriculum of elementary school for the early class which is grade one to grade three. Then it continued to the 2013 curriculum for grade four to grade six. Multidisciplinary learning model draws on the knowledge of diverse subjects which is different but still within its boundaries, interdisciplinary analysis, synthesize and harmonize the relationship between the disciplines into a single coordinated and coherent unit.

In addition to multidisciplinary learning models, the integrated curriculum can also be organized in the form of Interdisciplinary and Transdisciplinary. The similarity of the three is a process-oriented learning that can connect a number of subjects as well as produce the student's ability comprehensively, in which aspects of cognitive, affective, and psychomotor

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are being into a single unit. In realizing this purpose, it needs a theme as the core material (core content) or problems as the focus of learning, or the project as an object of activity that have connectivity between the subjects, so that the children do not only get information about what they are learning (knowing), but also engage in doing something related to what they are learning (doing), and build attitudes to shape their character (be).

> *Integrated curriculum unites concepts across subject areas, such as mathematics and social studies, through learning experiences that enhance the child's skills, knowledge, and thinking. The experiences reflect a program's goals and educational standards, and are planned to make learning meaningful and engaging. Integrated curriculum is the how, what, when, and why of a program of study, which connects subject areas and developmental domains to enhance learning* (Donna, 2016).

Integrated learning can be based on the existence of an important issue to be solved from various angles of subjects. The problem that is usually used as the focus of learning is sourced from the surrounding environment of students. Through this integrated learning then students become closer with their environment. Glatthorn (2009) explains that

> "*In the integrative curriculum, the planned learning experiences not only provide the learners with a unified view of commonly held knowledge (by learning the models, systems, and structures of the culture) but also motivate and develop learners' power to perceive new relationships and thus to create new models, systems, and structures*"

The definition basically supports the view that the integrated curriculum is an educational approach that prepares the children for lifelong learning. There is a strong belief that supports the integration of the curriculum where schools have to look at education as a process to develop the life skills in the present century, not discrete, or separate subjects.

Integrated curriculum can also be developed through transdisciplinary approach. The teachers set up a curriculum based on the questions and problems around the students. The students develop their life skills as they apply the interdisciplinary skills and discipline in the real life context. It led to the integration of transdisciplinary (transdisciplinary integration), thus it requires a project-based learning and the negotiations between the curriculums.

Project-based curriculum development was oriented on the problems around the students. Some schools call it problem-based learning or place-based learning. According to Drake (2012), project-based curriculum planning involves three steps:

a. Teachers and students choose the research topics based on the students' interests, curriculum standards, and local resources.
b. Teachers understand what the students already knew and help them generate the questions to explore.
c. Teachers also provide the resources for the students and the opportunity to work in the field.

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d. Students share their work with others in a culminating activity. Students display the results of exploration and their review and evaluate the project.

Project based curriculum development showed that the students are far exceeded the efforts of the minimum required by the course goals, they make connections between different subjects to answer open-ended questions, develop what they have learned, even to apply them to solve the real-life problems (Curtis, 2002).

Various models of learning as the form of a multidisciplinary approach; such as unit-based learning, problem-based learning, theme-based learning and project based learning. In the implementation, thematic learning begins with organizing a number of the subjects in parallel, so that it can be illustrated the relationship between the subjects and theme became an integral tool of the subjects. Therefore, conceptually, actually there is a difference between theme-based learning and integrated-based learning viewed by the philosophical foundations and pedagogic.

> "*Thematic units focus on a particular topic chosen by the teacher. The topic itself is the main focus. This largely reflects a model of learning where the aim is for students to obtain information about the topic*" (Whyte, Fraser, Aitken; 2013).

Thus, beside to make the theme as a means to establish the connectivity between the subjects, the integrated thematic learning is also oriented on problem solving as a process. Students are exposed to a number of activities, from observing, critical thinking is required to analyze everything from the experience of observing, and it is expected the result of the ability to associate the old experience and new understanding, and be able to report it using logical thinking that is scientifically based on facts. Integrated thematic learning is not only to actively involve the children learn to understand (knowing), but also active in doing something (doing), and actively improve the attitude (be).

The advantages that would be produced from this study was built by professional teachers, starting from mastering the academic content of all subjects, organizing content into a number of interrelated subjects, designed it properly, until developing it into the learning as a whole. However, the result of Teachers Competency Test (UKG) in 2015, especially elementary school teachers showed that the scores of academic competence (read: professional) and pedagogical competence is average of 53.05 from the ideal score of 100 (Kemendikbud, 2015). If this problem is not getting solved then it certainly will be such a burden in the development of elementary school curriculum.

One solution to the problems faced related to the low competence of primary school teachers is to provide a number of alternatives in designing an integrated thematic learning model which is more simple to be understood and more implementable for primary school curriculum developer.

2. Objectives

Referring to the problem of the low competence of teachers as 2013 curriculum developers in primary school, through the efforts of this documentation analysis aims to;

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a. Generate an alternative model of theme-based learning materials organization design in the multidisciplinary learning.
b. Generate an alternative model of theme-based lesson plans design in the multidisciplinary learning.

3. Method

The method used to achieve the goal is by using documentation analysis.

a. Steps of Documentation Analysis

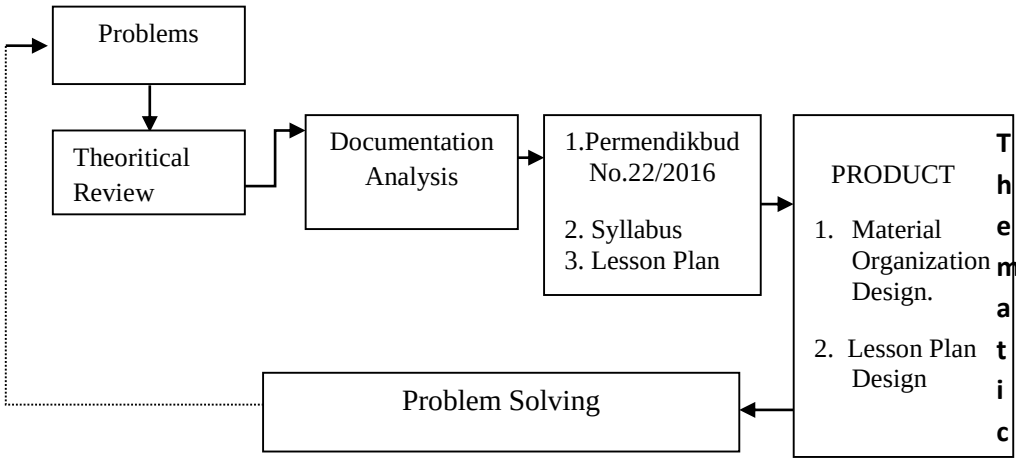

Figure 1. Documentation Analysis Design

Analysis of the documentation is done through these steps;

1. Limiting the most fundamental problems in the development of integrated curriculum in elementary school. It is concerned with the lack of teachers' ability in designing integrated thematic learning.
2. Exploring the integrated thematic learning design from the conceptual side.
3. Establish the scope and the components of integrated thematic learning design.
4. Pairing the product of syllabus and lesson plans documents with conceptual demands which is used to be.
5. Redesign the organization of materials, the instructional design, and the correct evaluation design which is easier for the teacher

b. Target Analysis
   1. Referring to the 2013 Curriculum of Primary School, the target analysis related to the design of integrated thematic learning model. It is sourced from;
   2. The Regulation of the Minister of Education and Culture of the Republic of Indonesia Number 22 Year 2016 about the Standard Process Primary and Secondary Education.
   3. Syllabus
   4. The Instructional Plan (RPP).

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4. Results

4.1 Policy Analysis

1. The 2013 curriculum document as a reference of learning development in elementary schools refers to Permendikbud No. 22 Year 2016 about the Standard Process of Primary and Secondary Education. This policy is very general. There are a number of syllabus and lesson plan components which are applicable to all levels of education. There is no characteristics appeared in the integrated curriculum development which should be developed in basic education, especially in primary schools.
2. The syllabus components contained in Permendikbud No. 22 Year 2016 consists of: a) the identity of the subjects, b) the identity of the school, c) the core competence, d) the basic competence, e) the special theme for SD / MI / SDLB / Package A, f) subject matter, g) learning, h) assessment, i) time allocation, j) learning resources.
3. The component of Lesson Plan (RPP) contained in the policy of Permendikbud No. 22 Year 2016 consists of; a) the identity of the school, b) the identity of the subjects, c) the class/semester d) subject matter, e) learning objectives which are formulated based on the basic competence, f) basic competence and indicators, g) materials, i) method, j) media , k) source, l) learning activities/steps of learning, m) assessment.

4.2 Document Analysis

1. Syllabus (guide line)

Syllabus is a curriculum document that becomes a reference source of Lesson Plan (RPP). For primary and secondary education, syllabus is not designed by the teacher, because it has become a 2013 national curriculum document prepared by the central government through the Ministry of Education and Culture (Kemendikbud). However, because this document has a role to be a source for designing lesson plans, it is important to be analyzed in terms of the conceptual basis and practicality in developing the 2013 curriculum of elementary schools.

Syllabus product which is designed by the Ministry of Education and Culture becomes one of the 2013 curriculum documents. It contains a number of separate components (fragmented) and the components that are integrated in all subjects. The separate components include; a) basic competence, b) subject matter, c) assessment, d) time allocation, and e) learning resources. While the components which are integrated related to; a) core competence, b) theme, and c) learning.

2. Lesson Plan

Lesson Plan (RPP) is a teachers 'product derived from the syllabus. An integrated thematic lesson plan designed by the teacher consist the components of; a) core competence for all subjects, b) basic competence of each subject, c) indicators for each subject, d) material for each subject, e) methods for each subject, f) time allocation for each subject, g)

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steps of learning for each subject. All components are arranged vertically into a lesson plan design.

4.3 Recommended Product

1. Materials Organization Design

Material organization which is arranged horizontally is the first step of thematic learning design. This organization design allows teachers to see how the material, basic competence, and indicators among the subjects are linked with one another. It can clearly be seen in figure 2 below;

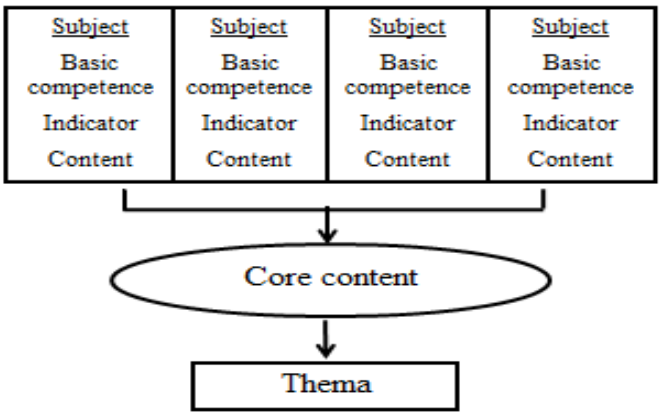

Figure 2. Organization of Subject Content

Figure 2 shows that after the teachers identify each subject complete with the basic competence, indicators and materials (content) horizontally (parallel), it will provide an overview to determine the core content of one of the subjects that mostly have a closeness with all the contents on any subjects. This way is the beginning of activities that allows teachers to design an integrated thematic lesson planning.

2. Lesson Plan Design

When the teachers design the learning begins with the organization of material in parallel, then the result will give a clue to look for the core subject among the subjects which has a function as an integral tool for other subjects. Thus, the core content of the core subjects can be found in order to select the theme as the learning process tools, as shown in figure 3 below;

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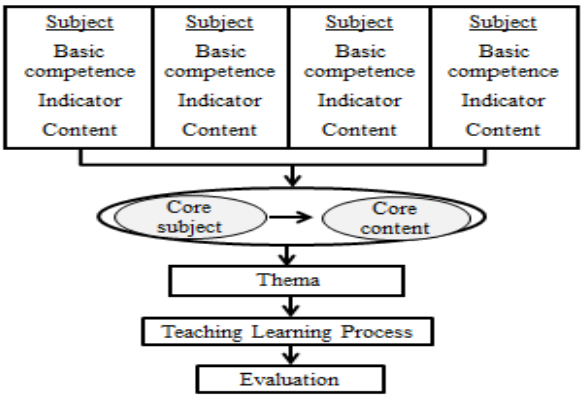

Figure 3. Thematic Lesson Plan

Organizations of the subject matter which is formulated in an integrated way can be the basic framework for designing the learning scenario. The teachers have an overview of the core subjects in learning, from the core subject; the core content will be born. If the core subject and the core content have been reflected throughout the indicators, the next step is the teacher can design a comprehensive learning scenario. It will facilitate all subjects incorporated in the learning. Core subject is a subject that has most relation to all of the subjects, while the core content is the core of the materials contained in all subjects and it served as a connection among the subjects in a study.

5. Discussions

The integrated thematic learning model which become the implementation of 2013 curriculum in elementary school besides standing on the concept of integrated curriculum, it is also based on the educational theories of humanistic and Gestalt, therefore the design of this learning model focus on learning objectives that combines the environmental resources of students, establishing the relationships between the subjects, and determine the subjects which are most relevant to the "student background, daily life, and future plans" (Hargreaves & Moore, 2000).

A condition that is found on the documentary evidence showed that actually, the teacher is being driven by the policy (Permendikbud. No. 67/2013) to prepare the students with skills and attitudes needed to be a productive member of society, to have the same job skills, also to have a critical thinking, problem-solving skills, and communication. A number of previous studies proved that the students are able to achieve the objectives in the development of higher level thinking and applying knowledge to the real problems and to work in groups on real-world issues through the curriculum integration (Victoria, 2015; Azevedo, 2013; Dowden, 2012).

Organization of thematic subject matter is an initial effort to synergize all of the components on the multidisciplinary learning design (Semiawan, 2008). Organization of this material has an orientation to make the theme as a tool to unite a number of subjects so that students have a comprehensive understanding of something they learned (Victoria, 2015). In

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addition, if the problem becomes a media of learning, the students are brought closer to the surrounding environment. In line with the results of their study, the students are expected to change their behavior as a whole both in terms of knowledge, attitudes, and skills.

> *Three parts of information must be established are the "know", the "do", and the "be". What do the children need to "know"? The "know" are the enduring understandings students need to take with them. Teachers begin with the facts the students will "know", which can be the topics of the standards plus more. These pieces of knowledge or lessons can then be grouped into topics or categories: pioneers, human systems, etc. Next the curriculum writers find the lessons: i.e. character and plot, cause and effect, conflict, and cooperation* (Drake, 2012).

Drake insists that in the integrated learning, there are some important steps that must be prepared for the students related to the attempt to know *(know)*, attempts to do *(do)*, and attempts to be *(be)*. Why do the students need to have knowledge?. Knowledge is a basic ability needed to be owned by the child to develop the skills and attitudes. The type of knowledge can be in the form of facts, concepts, procedures or principles. Bits of knowledge or lessons then grouped into topics or categories in the form of a theme. Furthermore, the curriculum designers find some of the materials which are suitable to the discussion of character, cause and effect, conflict, and cooperation.

To make the multidisciplinary learning design which is integrated with the curriculum standards in 2013 today, the first step should be to analyze the targets on the same field (knowledge, skills, or attitudes) in all subjects (Boyd, 2013). It was found in the basic competence for each subject. After having found the target for each subject, the next step is to know any content which become the study materials to achieve the targets, this process is more precisely termed as a jigsaw puzzle process.

When the teachers develop the organization of these materials into the learning scenario that incorporates all of subjects including the target and its material, it will be designed a comprehensive, integrated, and thematic study. No longer discussing the sake of knowledge, skills, and attitudes by subject but it has become a complete learning that can facilitate the formation of student behavior as a whole. The final step is an attempt to design the learning steps in order not to split apart (fragmented) between the subjects. This is facilitated by learning that encourages the students to engage directly (hands on experiences) to focus on a theme or project (Drake, 2012).

6. Conclussions

Connecting a number of subjects into a multidisciplinary design under the theme should be engaged with the efforts to change the paradigm and skills of teachers to face it positively. However, it must be accompanied by a number of studies, research, and creative efforts that could facilitate it. Theme-based multidisciplinary design model is a product of the analysis of 2013 curriculum documents of primary schools which allows the teachers to develop a curriculum in accordance with the policy of 2013 curriculum in primary schools. This design model is not only to connect a number of indicators and a number of subjects'

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materials, but also to incorporate the learning process to achieve an integration of learning outcomes. In arranging this design, it is started by placing all the subjects in parallel (horizontally) in order to know the similarity target and the relationship within the materials so that it can be found the core material and the core content that will be a connection tool between the subjects. Then, it is designed a learning which integrated the targets and the material into a comprehensive learning scenario.

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Language Learning Strategy Use and Learning Style: How Learning Style Affects The Use of Language Learning Strategy

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Abstract

Research into learning styles and strategies has focused on a wide variety of questions and issues. These include the relationship between learning strategy preferences and other learner characteristics such as educational level, ethnic background and first language and also the issue of whether effective learners share certain style and strategy preferences. Within the relationship of students' learning strategy and students' learning style, this quantitative study was conducted with the main purpose of finding the answer on how learning strategies are used by the students in relation to the different learning styles they possessed. This study was conducted in SMAN 1 Terbanggi Besar, and 30 students of grade XI were involved in the study. Following the Anova analysis results, it is revealed that the students tend to use the three strategy categories of cognitive, metacognitive, and social strategy in Listening, Speaking, Reading. In Writing, the students tend to use cognitive and metacognitive strategy. The findings generally reveals that there is no single strategy dominantly used in learning. And related to the results of the students' learning style identification, it is revealed that students possessed different learning styles. The nine categories of learning styles are identified to be in the students' preferences. The finding implies that learning styles are not dichotomous, they are not identified to be only black or white, present or absent. Therefore, assessing students' learning style will always be important since the findings resulted will vary one into another.

Keywords: *learning strategy, learning style, LLSQ, LSS*

1. Introduction

Many researchers and experts have defined Language Learning Strategies from different points of view based on various kinds of research. Language Learning Strategies (LLS) have been one of the most popular aspects researchers have focused on. Several studies on Language Learning Strategies (LLS) showed that various factors influence the selection and the employment of LLS (Kamarul, 2015:155). One of the factors influenced Learning Strategy investigated by researchers is on the learning style.

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As Brown argues, learning strategies do not operate by themselves, but rather are directly tied to the learner's underlying learning styles (i.e., general approaches to learning) and other personality-related variables (such as anxiety and self-concept) in the learner (Cohen,1996:10)

Research into learning styles and strategies has focused on a wide variety of questions and issues. These include the relationship between learning strategy preferences and other learner characteristics such as educational level, ethnic background and first language; the issue of whether effective learners share certain style and strategy preferences; whether strategies can be explicitly taught, and, if so, whether strategy training actually makes a difference to second language acquisition; and whether effective learners share attitudes towards, and patterns of language practice and use outside of the classroom (Wong & Nunan, 2011:145).

Learning styles are general approaches to language learning, while learning strategies are specific ways to deal with language tasks in particular contexts (Cohen, 2003; Oxford, 2003 cited in Wong & Nunan, 2011:146). It is important for learners to identify learning styles and recognize their strengths and thus expand their learning potential (Wong & Nunan, 2011:146). Oxford notes that once learners are aware of their own learning styles, it enables them to adapt their learning strategies to suit different learning tasks in particular contexts. Learners can take advantages of their learning styles by matching learning strategies with their styles; similarly, learners can compensate for the disadvantages of their learning styles to balance their learning by adjusting learning strategies (Wong & Nunan, 2011:146).

Investigating students' strategies and styles used in learning should be carefully done within the context of the students' learning environment. There are different strategies used by students in different level of education. The difference in the use of the strategies employed by university students with those of secondary school students is revealed in research. In a research conducted by Tse (2011:33), it is revealed that secondary students in Hongkong used LLS in a low medium use, with no high use; whereas university students used LLS in medium use, with no high use. In a research conducted by Tabanlioglu in university (2003), it is revealed that students' major learning style preferences were auditory learning and individual learning. Significant difference was found in the preference of tactile learning between males and females. The analysis with respect to the relationship between learning styles and strategies in her investigation revealed that visual styles had a significant relation with affective strategies; auditory styles had significant relationships with memory, cognitive, affective, and social strategies. There was a significant relationship between the individual learning style and compensation strategies. None of the learning styles had a significant relationship with metacognitive strategies (Tabanlioglu, 2003: 76).

Since every research contributed seemingly different result, a review on the research done within different context is certainly needed. Setiyadi (2014:361) argues that learners from different cultures seem to learn a foreign language in different ways; learners who live in a society where the target language is spoken as a foreign language, like Asian students, may use different learning strategies; therefore, a measurement of learning strategies that provide them with enough choices of strategies employed in their learning is definitely needed. By this reason, Setiyadi then proposed an alternative of learning strategy measurement for learners who study English as a foreign language

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(2014:361). This learning strategy measurement is considered to be the appropriate one to be used in Indonesian context.

Within the context of the different results in the study of learning strategy and learning style relationship, this study is conducted with the aim of finding out how learning strategies are used by the students in relation to the different learning styles they possessed. The investigation on how Indonesian high school students use their learning strategies in relation to their learning styles is expected to give valuable contribution to the research in the area of learning strategy and learning style.

1.1. Definition of Language Learning Strategies

Within the field of foreign/second language teaching, the term "language learning strategies" has been defined by key researchers in the field. Learning Strategies are defined as the special thoughts or behaviors that individuals use to help them comprehend, learn, or retain new information (O'Malley & Chamot, 1990:1). Learning strategies are also defined as specific actions taken by the learner to make learning easier, faster, more enjoyable, more self directed, more effective, and more transferable to new situations (Oxford, 1990:8). Cohen (1996:2) tends to differentiate the terms. In Cohen's taxonomy, second language learner strategies encompass both second language learning and second language use strategies. Taken together, they constitute the steps or actions selected by learners either to improve the *learning* of a second language, the *use* of it, or both. Language use strategies actually include *retrieval strategies, rehearsal strategies, cover strategies, and communication strategies.*

1.2 Definition of Learning Style

As it is the case with language learning strategies, the definition of learning styles is also a major concern among the scholars in the field. Some of the definitions of learning style are presented by reviewing the taxonomies of the learning styles by the scholars. Learning style is the way in which each person absorbs and retains information and/ or skills; regardless of how that process is described, it is dramatically different for each person (Dunn, 1984:12). Learning style represents each person's biologically and experientially induced characteristics that either foster or inhibit achievement. Instrumentation exists for identifying individual styles, but students can describe their strong preferences; they are, however, unaware of those elements that do not affect them Learning style represents each person's bio-logically and experientially induced characteristics that either foster or inhibit achievement (Dunn, 1984: 17).

Learning styles, is broadly described as "cognitive, affective, and physiological traits that are relatively stable indicators of how learners perceive, interact with,and respond to the learning environment" (Keefe, 1979a cited in Reid, 1987:87). Learning style diagnosis gives the most powerful leverage yet available to educators to analyze, motivate, and assist students in school. It is the foundation of a truly modern approach to education. (Keefe, 1979 cited in Dunn, 1984:10)

Dunn and Dunn (cited in Reid, 1987:89) define learning styles as "a term that

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describes the variations among learners in using one or more senses to understand, organize, and retain experience". Claxton and Ralston (cited in Tabanlioglu, 2003:9) define the term as referring to a learner's "consistent way of responding and using stimuli in the context of learning".

Learning styles are also defined as the general approaches –for example, global or analytic, auditory or visual –that students use in acquiring a new language or in learning any other subject. These styles are "the overall patterns that give general direction to learning behavior" (Cornett cited in Oxford, 2003:2).

1.3 Language Learning Strategy Questionnaire

The first instrument used in this study was Language Learning Strategy Questionnaire. The questionnaire, the LLSQ, has been developed in a predefined questionnaire of language learning strategies. The classification of the language learning strategies in the questionnaire was based on theory driving decision making and theories of skill-based learning strategies. These strategies cover four areas of the language skills: speaking, listening, reading and writing and each area consists of 20 items. In each category, the language learning strategies were classified into cognitive processes, metacognitive processes, and social processes. Language Learning Strategy Classification (LLSQ) which is inspired by the SILL of Oxford, measures learning strategies employed by English learners by providing choices ranging from "never " to "always" and the scores range from 1 to 5.

1.4 Learning Style Survey for Young Learner

Learning Style Survey for Young Learner (constructed by co-author Cohen, with Rebecca Oxford and Julie Chi) is developed with an interest in those style dimensions that seem to have the most relevance to language learning. The premise for the survey is that all language learners have a preference for how to learn. While they may have a general sense of their preferences already, this survey can help them deepen their understanding of those preferences by comparing and contrasting 11 different learning styles. The Learning Style Survey for Young Learners (Learning Style Survey Questionnaire) is designed to assess the clear indication of the students' overall style preferences. There are statements to be answered by the students. While answering the statements in the questionnaire the students are asked to decide whether they *often or always, sometimes, never or rarely* do the statements in the questionnaire and mark the item that best applies to their study of English by marking the option. The participants are also asked to respond to each statement quickly, without thinking about the statements too much and they are asked not to change their responses after they mark them.

2. Method

Within the relationship of students' learning strategy and students' learning style, this quantitative study was conducted with the main purpose of finding the answer on how learning strategies are used by the students in relation to the different learning

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styles they possessed. The participants in the study were students of SMAN I Terbanggi Besar, Lampung Tengah. There are 10 classes in the first grade, 4 classes of science program and 5 classes of social program in the second grade, 4 classes of science program and 5 classes of social program in the third grade. There are 25-34 students in each class.The sample of the study was randomly selected from the students from the second grade. 30 students from social program were involved in the study as the participants.

The data collection procedures of this research was started by administering the Indonesian version of Language Learning Strategy Questionnaire (LLSQ) to the students. The students were required to respond to the statement items in about 30 minutes. The time that was assigned for the students was determined according to the results obtained from the pilot study. To increase the credibility of the responses the researcher informed the students that they should be sincere in their answers and they shouldn't spend too much time on any of the items. The students were also asked to give an immediate response and that they shouldn't be hesitated and change their answers. The questionnaires were collected and the responses were computed for data analyses. The second questionnaire, the Indonesian version of the Learning Style Survey (LSS), was also administered in the same day. The Indonesian version of the Learning Style Survey (LSS) questionnaires were delivered to the students as the second instrument. The students were required to fill in the questionnaire in about 20 minutes. The time that was allocated for the completion of the questionnaire was also determined according to the pilot study results. The responses the students give to each question in the LLS were computerized for data analyses. For the purpose of finding how students with different Learning style used the learning strategy, the data taken from the two questionnaires (LLSQ and LLS) were computed and analyzed in SPSS using ANOVA.

3. Results And Discussion

In answering the question of this research, the researcher analyzed the data taken from the identification of the students' learning strategy and the student's learning style. Since the taxonomy of the learning style used in this researcher was in the categories of visual, auditory, and tactile; extroverted, and introverted; closure and opened; global and particular, the researcher analyzed those categories in the four language skills categories of Listening, Speaking, Reading, and Writing. Oneway ANOVA analysis was used to interpret the data taken from the students' learning style and students' learning strategy. This analysis was used to find out the dominant learning strategy used by the students under the nine categories of learning style. The analysis on how the students with different learning styles used the learning strategy is detailed in the table.

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Table 1. The Analysis on How the Students with Different Learning Styles Used the Learning Strategy in Listening

Learning Style	**Significance**	**Interpretation**
1. Visual	0.777	no dominant strategy
2. Auditory	0.828	no dominant strategy
3. Tactile	0.005 in metacog & soc	dominant strategy in metacog & soc
4. Extroverted	0.126	no dominant strategy
5. Introverted	0.332	no dominant strategy
6. Closure	1.000 in cog, 0.478 in metacog, 0.434 in social	no dominant strategy
7. Open	0.988	no dominant strategy
8. Global	0.285	no dominant strategy
9. Particular	0.882	no dominant strategy

It can be seen from the table that under the category of visual, auditory, extroverted, introverted, closure, open, global and particular style, there is no significant difference in the use of the learning strategy in Listening. The data shows that the three strategies of cognitive, metacognitive, and social are used by the students in listening. The significant difference of < 0.05 % can only be seen under the category of tactile style. The significant difference is on metacognitive and social strategy. The data shows that tactile students tend to use metacognitive and social strategy in Listening. The next tables will show that dominant strategy of cognitive, metacognitive and social strategy can also be seen only under certain learning style category.

Table 2. The Analysis of How the Students with Different Learning Styles Used the Learning Strategy in Speaking

Learning Style	Significance	Interpretation
1. Visual	0.045 in metacog & soc	dominat strategy is on metacog & soc
2. Auditory	0.252	no dominant strategy
3. Tactile	0.868	no dominant strategy
4. Extroverted	0.316	no dominant strategy
5. Introverted	0.735	no dominant strategy
6. Closure	0.978	no dominant strategy

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7. Open	0.273	no dominant strategy
8. Global	0.850	no dominant strategy
9. Particular	0.500	no dominant strategy

It can be seen from the table that under the category of auditory, tactile, extroverted, introverted, closure, open, global and particular style, there is no significant difference in the use of the learning strategy in speaking. The data presented in the table shows that the three strategies of cognitive, metacognitive, and social are used in speaking. The significant difference of < 0.05 % can only be seen under the category of visual style. The significant difference under the category of visual style is on metacognitive and social strategy.

Table 3. The Analysis of How the Students with Different Learning Styles Used the Learning Strategy in Reading

Learning Style	Significance	Interpretation
1. Visual	0.586	no dominant strategy
2. Auditory	0.298	no dominant strategy
3. Tactile	0.824	no dominant strategy
4. Extroverted	0.685	no dominant strategy
5. Introverted	0.563	no dominant strategy
6. Closure	0.883	no dominant strategy
7. Open	0.871	no dominant strategy
8. Global	0.319 in cog, 0.700 in metacog, 0.439 in soc	no dominant strategy
9. Particular	0.592	no dominant strategy

It can be seen from the table that under the category of visual, auditory, tactile, extroverted, introverted, closure, open, global and particular style, there is no significant difference in the use of the learning strategy in speaking. The data presented in the table shows that the three strategies of cognitive, metacognitive, and social are used in Reading. There is no dominant strategy used by the students with different learning style in Reading.

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Table 4. The Analysis of How the Students with Different Learning Styles Used the Learning Strategy in Writing

Learning Style	Significance	Interpretation
1. Visual	0.254	no dominant strategy
2. Auditory	0.960	no dominant strategy
3. Tactile	0.560	no dominant strategy
4. Extroverted	0.281 in cog, 0.677 in metacog, 0.868 in soc	no dominant strategy
5. Introverted	0.077	no dominant strategy
6. Closure	0.805	no dominant strategy
7. Open	0.341	no dominant strategy
8. Global	0.062	no dominant strategy
9. Particular	0.048 in cog & soc	dominant strategy in cognitive and social

It can be seen from the table that under the category of visual,auditory, tactile, extroverted, introverted, closure, open, and global style, there is no significant difference in the use of the learning strategy in speaking. The data presented in the table shows that the three strategies of cognitive, metacognitive, and social are used in writing. The significant difference of < 0.05 % can only be seen under the category of particular style. The significant difference under the category of particular style is on cognitive and social strategy.

The results of the analysis on the use the learning strategy by students with the learning styles of visual, auditory, tactile, extroverted, introverted, closure, open, global, and particular seem to be homogeneous. With the different styles the students possessed, there is no significant different on the learning strategy use. The significance of the learning strategy use is only seen in listening in the category of metacognitive and social strategy under the category of tactile style. In Speaking, metacognitive and social strategy are also significant under the category of only visual style. In Reading, there is no significant use of the learning strategy under the whole learning style categories. In Writing, cognitive and social strategy are significant only under the category of particular style. It reveals the homogeneous learning strategy used by the students with different learning styles.

The homogenous results revealed from the analysis seem to support the concept of how learning is influenced by different factors. With different educational and cultural background, different personalities, and different learning experience, everybody differ in his ways of learning a foreign language, which leads to different

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degrees of success (Xu, 2011:413). The findings of this study also supports the previous study conducted by Shi in Taiwan. In the investigation on the effect of learning styles on learning strategy use by EFL learners in Taiwan, it is revealed that learning styles did not have much influence on the learning strategy use (Shi, 2012:233).

Related to the learning strategy and learning style's relationship, it is important to note that students' learning styles preferences should be taken as the important consideration in learning. As Oxford argues, teachers can actively help students "stretch" their learning styles by trying out some strategies that are outside of their primary style preferences (2003:9). Styles and strategies help determine a particular learner's ability and willingness to work within the framework of various instructional methodologies (2003:16).

Understanding students' unique learning style can increase teachers' confidence and ability to incorporate varied instructional practices in a way that provides for differing levels of ability and unique students' learning preferences while maintaining an appropriate level of academic rigor. Further, research indicates that incorporating learning styles-based instructional strategies assist teachers in creating a comfortable learning environment, demonstrating true concern of their students, and promoting a love of learning (Honigsfeld & Schiering, cited in Wilson, 2012:74).

4. Conclusion

With the different styles the students possessed, there is no significant difference on the learning strategy use. It was revealed that under the category of the students' learning styles, significant difference in the use of the learning strategy is seen under the category of visual, tactile, and particular. In Listening, metacognitive and social strategy are dominant in the category of tactile. In Speaking, metacognitive and social strategy are dominant only in the category of visual. In Reading, none of the learning strategies are dominant in the whole learning style categories. In Writing, social and cognitive strategy are dominant in the category of particular. It reveals the homogeneous learning strategy used by the students with different learning styles. As it is argued, with the homogenous learning strategy used by the students, teachers can actively help students "stretch" their learning styles by trying out some strategies that are outside of their primary style preferences. Styles and strategies help determine a particular learner's ability and willingness to work within the framework of various instructional methodologies.

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Influence of Numbered Heads Together (NHT) Model to Increase Learning Outcomes

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Abstract

This research aims to improve the learning outcomes which used Numbered Heads Together (NHT) model on intermediate financial accounting FKIP Unsri. As for the purpose of this research is to determine the difference effect between Numbered Heads Together (NHT) model and conventional model (lecturer methods) to increase learning outcomes. Type of this research is quasi exsperimental nonequivalent control group design, the shape of pretest posttest. The population in this study are all students of the second semester in economic education academic year 2015-2016. Samples were taken by purposive sampling technique, students who follow courses intermediate financial accounting are two classes, Indralaya as an experimental class and Palembang as the control classes each amounted 45 students. Data collection techniques were used test and documentation. Prerequisite test analysis using normality test and homogeneity test. Data analysis technique used the paired-sample t-test. Statistical parametric hypothesis paired-sample t-test, obtained t_{count} for control class is -11.951 and t_{count} for experimental class is -24.048, therefore $p < 0.05$ it's mean H_0 is rejected. Therefore, the hypothesis in this research can be accepted, there are influnce between NHT method and the lecture method to increase the learning outcomes. And the differences learning outcomes after treatment can be seen from the average value of the two classes, namely 88.22 to 80.42 for the experimental class and control class.

Keywords : *Numbered Heads Together, Learning Outcomes*

1. Introduction

At this time education has been included into the primary needs in human life, because education has an important role for the progress of civilization. With education, people will be able to develop the potential within each individual to achieve his goal. Therefore, the renewal of learning in education should be done to improve the quality of education, especially to produce the human resources which qualified.

The problems that exist in the formal education always growed year to year, because education always required progressed in many aspect. And most of the learning process is still using conventional teaching methods or lectures, so the students just listen which teachers explain, and they did not participate actively in the learning process. According Hasibuan and Moedjiono (2004:13) the weakness of conventional learning is learners tend to be passive, setting the pace in the classical style is determined by the teacher, is less suitable for the formation of skills and attitudes, and tend to put teachers as the final authority, while the essence of learning is a process of communication among learners (students) and teachers (lecturers). It's cause many students didn't interested in the material submitted by lecturer and students consequently can't focus on attention to the material so that the college students didn't get maximum knowledge. And the impact is achieving the goal of producing high quality human resources through education will not be realized.

That's problem can be overcome if the lecturers as educators are able to provide an alternative learning for college students, so that they can easily understand the concepts and

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meaningful learning. Lecturer invites critical thinking, discussion and told the students to conclude that what was discussed. By doing such,college students are invited to work the brain is active and will not cause drowsiness. Thus, the college student achievement will increase as expected. One that can be done by lecturers to achieve this goal is to apply the appropriate learning methods. And one of the methods that can be used to achieve this goal is the cooperative learning, learning processes that foster a strong togetherness, good cooperation and able to arouse the intellect of college students as learners optimally. Cooperative learning consciously creating successive interactions compassion so that the source of learning for students not only from the lecturers and teaching materials, but also among students. There are many kinds of cooperative learning methods, one of the type is Numbered Heads Together (NHT) which is a type of learning developed by Kagen (1993). NHT is generally used to engage college students in strengthening the understanding of learning or to check students' understanding of the learning materials. In this case most of the activity centered on student learning (Student Center), which is studying the course material and discussions to solve the problem. NHT learning model is one type of cooperative learning that pressing in special structures designed to affect the pattern of student interaction and has a goal to improve the academic mastery. Based on the descriptions above, the writer interested to investigate and determine how the application of cooperative learning NHT methods can improve student learning outcomes. Based on the above, the problem in this research "is there any difference effect between the learning NHT method and conventional teaching method (lectures) toward the learning outcomes intermediate financial accounting subjects (AKM) on Economic Education Program Sriwijaya University (Unsri). The aim of this research is to ascertain whether there is difference in the effect of learning between NHT method and conventional teaching methods (lectures) on learning outcomes of college student which learning intermediate financial accounting subjects (AKM) on Economic Education Program Unsri.

2. Literature Review

2.1 Definition of Learning and Teaching

Every people in the world was never out of the learning process, whether formally or informally. Literally, learning is a process from didn't knowing to knowing. In science, learning is a cognitive behavior that requires a certain degree of openness conditions will produce a change in behavior or disposition to act. According to Indonesian dictionary, learning is trying to obtain intelligence or learning, practicing, changed behavior or responses caused by the experience. Meanwhile, according to Slameto (2003:2) learning is "a process attempts person to obtain a new change in behavior as a whole, as a result of his own experience in interaction with their environment". This means that learning is a process for obtaining a new behavior changes as a result of experience in the interaction with the learning environment. So, the learning is a process whereby from not knowing to knowing the conditions that can cause changes in behavior.

While the definition of learning according Hamalik (2006:57), is a combination that includes elements arrayed human, material, facilities, equipment, and procedures that influence each other to achieve the learning objectives. Humans are involved in this case are educators, students, and other personnel such as laboratory personnel, while the material includes books, blackboard and equipment supporting other learning activities. Learning procedure includes the schedule and method of delivery of information, practice and more. And the learning objectives can be formulated by the lecturer of the course accordaning to the curriculum has been designated.

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From opinion about teaching and learning on above, it can be concluded there is relationship between them. It's a process to create learning situations to achieve optimal learning.

2.2 Definition Methods and Learning Model

The learning method is a tool and a way in implementing a teaching and learning strategy (Hasibuan and Moedjiono, 2004:3). While learning method according to Endang Mulyatiningsih (2011:213) is the means used to implement the plan that has been prepared in the form of real or practical activity to achieve learning objectives. Thus, the learning method is the means used educators in delivering learning materials to learners in order to receive, respond to, control and develop teaching materials, facilitate the teaching and learning activities, and get outcomes learning optimally.

While learning model is a plan or a pattern which is used as a guide in the classroom learning or learning tutorial and to determine learning tools including books, movies, computers, curriculum and others. The learning model has special characteristics that rational theoretical rationale about what and how students learn (learning objectives), the behavior of teaching required so that the model can be implemented successfully, as well as the learning environment necessary for learning objectives that can be achieved. There are many models of learning, some of which are Examples of non examples, numbered head structure, Picture and picture, Numbered Heads Together (NHT), Cooperative Script.

2.3 Definition of Learning Model Numbered HeadsTogether (NHT)

Cooperative learning Numbered Heads Together (NHT) is one type of cooperative learning that emphasizes the special structure designed to influence the pattern of interaction of learners and the goal is to increase point of outcomes learning. This type was developed by Spencer Kagan in 1993 in Muslim Ibrahim (2000: 28) that "In a cooperative learning Numbered Heads Together (NHT) is more focused on engaging learners in reviewing the material covered in the lesson and check their understanding of the lesson content". Another opinion expressed Orphans in Lie (2008: 58) that the implementation of NHT teachers give assignments, students discussed to complete the task, then the teacher pointed to a number of students numbered entitled answered, aim to prevent the dominance of a particular college student. NHT cooperative learning model has the advantage of their numbering system. With this numbering system allows each member of the group tries to understand the answers toz the questions given so that each college student can be active in learning. Each group member has responsibility and equal opportunity to present their answers to the resulting group.

According to Ibrahim (2000:29), three objectives to be achieved in a cooperative learning Numbered Heads Together (NHT) model, namely: (1) to improve the performance of students in academic tasks, (2) the college students can receive their friends have a variety of backgrounds, (3) to develop the social skills of college students. The skills in question include sharing tasks, actively ask, respect the opinions of others, willing to explain ideas or opinions, work in groups and so on.

The characteristic of the cooperative learning Numbered Heads Together (NHT) model, as stated Ibrahim (2000: 29), namely: "(1) a heterogeneous group, (2) each member of the group has a number of heads of different, and (3) thinking together (Heads together) ". According to Kagen that cooperative learning model Numbered Heads Together (NHT) indirectly train the learners to share information, listen carefully and speak with the full calculation, so that learners more productive learning.

Cooperative learning model Numbered Heads Together (NHT) has elements of teaching and learning models as follows:

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a. Sintakmatik

Such measures can be developed into six steps in accordance with requirements which are as follows:

Step 1. Preparation, in this stage of lecturers prepare plans programs and learning activities semester (RPKPS) and worksheets that correspond to the type cooperative learning NHT model.

Step 2. Numbering (Numbering), in group formation adapted to the type cooperative learning NHT model. Lecturer divide college students into groups consisting of 4 to 5 people. Lecturers give numbers to each college student in the group and a different group name. A group formed by a mixture which in terms of social background, gender and learning ability.

Step 3. Question (Questioning) and thinking together (Heads Together), in group work, lecturers provide questions/distribute worksheets to each college student as a material to be studied. In the focus groups, each thinking together to resolve and make sure that everyone knows the answer to the question that had been in a worksheet or a question that has been given by the lecturer. Questions can be varied, from the specific to the general.

Step 4. Giving answers (Answering), in this stage, lecturer calling one number from each group, and the college student which has the same number of hand-picked and prepare answers to other college students in the class. The determination of this number is done by means of the draw, as well as for the determination of the group to be answered.

Step 5. Give conclusions, lecturer give the conclusion or the final answer to all questions related to the material presented.

Step 6. Giving awards, lecturer give the rewards words of praise or the symbols and give a higher value to the group that better learning results. This award is made to spur students' motivation, because motivation has an important role to determine the success of a lesson.

b. Social system

The social system prevailing in the cooperative learning NHT model is as follows:

- Students are briefed to experiment with his group.
- Students are free to express their opinions, ask questions, and answer questions.

c. Support system

System support cooperative learning NHT model, is a classroom, learning resources (books), instructional media, and worksheets.

d. Instructional impact that increased activity of students in the classroom, and improved student results.

e. Impact Companion, after following study is as follows:

- Increase cooperation between lecturers and college students, between college student and others, can improve the relationship and confidence in the learning process.
- Develop an attitude of responsibility, teamwork and healthy competition between groups.
- Students learn to accept other people's opinions.
- Students dare to express their opinions in public.
- Develop emotional control when they lose or win in the game.

Table 1 Syntax Cooperative Learning Numbered Heads Together (NHT)

Phase	Treatment Lecturers
Fase1. Outlines the objectives and prepare learners	Explaining the purpose of learning and prepare college students ready to learn.
Phase 2. Present information	Present information to students verbally

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Phase 3. Organize students into teams / groups	an explanation to the college students about the procedures for the establishment of a team / group performs an efficient transition
Phase 4. Helping teamwork and learning	Helping teams doing his job
Phase 5.Evaluation	Test Phase learners knowledge about various learning materials or groups present their work.

2.4 Definition of Learning Outcomes

The final goal will be achieved by the college students in learning activities at the course are hoping for a change in behavior. According Masidjo (2003:12) the occurrence of these changes are the result of changes made by the students' learning. In order to assess the success of the students in learning activities need to be implemented measurement results obtained through achievement test that is usually expressed in terms of numbers and certain value. Meanwhile, according to Hamalik (2010:159), learning outcomes showed student achievement, while the achievement of learning is an indicator of the degree of change in behavior of learners.

To know the development of the results have been achieved by someone in the studied, it should be evaluated. To determine the progress achieved, there must be criteria (benchmarks) in reference to its intended purpose so that it can be seen how much influence the teaching and learning strategies to the successful achievement of student learning outcomes. Learning outcomes is the success achieved by a student in the lecture as a form of learning achievement expressed in numerical terms.

2.5 Intermediate Financial Accounting (AKM) Course

The learning outcomes of Intermediate Financial Accounting (AKM) is to understand and assess the skillful balance sheet. While the description AKM course discusses the basic concepts of accounting, cash accounting, marketable securities, accounts receivable, inventory, the federal outposts and accruals, long-term investments, fixed assets, intangible assets, other assets, liabilities, capital.

2.6. Improved Student Learning Outcomes Course AKM through the implementation of Numbered Heads Together (NHT)

The world of education realized that learners have a way of learning that is different from one another. According to Anita Lie (2000:59), Numbered Heads Together (NHT) has a role in the learning process is as follows, expressed learning outcomes clearly, placing students heterogeneously in small groups, delivering the tasks to be done learners, both individual and group assignments, group work monitoring, evaluating learning outcomes.

By using cooperative learning type NHT, college students are expected to be enthusiastic in following the lecture and not be bored, but it is also hoped that the students become active and critical thinking, as well as able to work with other students in one class or a group , Given these conditions, will improve student results. After being given treatment, then given a test (posttest) to the two classes, namely the control class and experimental class, to determine differences in learning outcomes of these two classes, and to determine the influence of cooperative learning NHT model to increase the learning outcomes of college students intermediate financial accounting subjects (AKM).

2.7Research Hypothesis

The hypothesis in this research, there is difference in the effect between applying the NHT method and conventional methods (lectures) on the learning outcomes intermediate financial accounting subjects in economic education FKIP Sriwijaya University.

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3. Research Methodology

The population in this research is all students of economics education FKIP Unsri second semester of academic year 2015-2016, with sampling using Non Probability Sampling, by purposive sampling method. Sampling is purposive sampling technique in which the characteristics of the sample has been previously determined by the researcher. Then the sample at this research is the students who follow courses AKM two classes, Indralaya as an experimental class and Palembang as the control class, with the number of participants of each class is 45 college students.

1. Design Research

Design of the experimental method of this research was Quasi Experimental Design nonequivalent control group. This design has the experimental group and the control group. By using a quasi experimental method is expected to reveal whether there are differences in the application of NHT methods the learning outcomes of the course AKM by comparing the class of the treated and untreated class. The experimental group get a pretest, NHT and after the treatment was given posttest. The control group was given a pretest, treatment with another method which is then given a lecture posttest.

The quasi-experimental design types Nonequivalent Control Design Gruop assumed by the figure below:

O_1	**T**	**O_2**
---	---	---
O_3		**O_4**

Information :

O1 and O3 = assumed as student results before treatment

O2 = assumed as the experimental class student learning outcomes after treatment NHT method

O4 = assumed as student results are subject to control classroom lecture method of treatment

T = Treatment

2. Variable Research

The research variables are the object of research or what is the point of concern in a research. In this research there are two variables, the independent variable (X) is a cooperative learning NHT (Numbered Heads Together) and the dependent variable (Y) is the learning outcomes of AKM subjects.

3. Procedure Research

In conducting this research, conducted research procedures are:

1. Study Literature: Identifying the standards of competence, establish basic competence, selecting the material and prepare materials
2. Stage Pre Experiment
   a. Making Plans and Activities Learning Semester Program (RPKPS) and SAP AKM subjects based Numbered Heads Together (NHT) methods.
   b. Understand the materials on RPKPS and SAP AKM.
   c. Creating research instruments test for pretest and posttest:
   d. Determination of the sample by taking two classes. Determination of the experimental class and control class with the draw.

3. Phase Experiment

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This stage aims to retrieve and collect data through the provision of treatment such as the use of NHT methods. Before being treated, tested the ability of the initial pretest for 45 minutes. The next stage AKM learning NHT method is:

a. Providing a pretest / initial capability test
b. Lecturer deliver learning materials by the Numbered Heads Together (NHT) method is performed in 2 sessions. Each sessions for 4 credits (200 minutes).
c. Providing posttest to determine the ability after getting a lecture material and after the treatment.
d. Lecturer assess individually test the ability of the end (posttest).
e. Analysis of the research data.

4. Final Stage Experiment

The final step in this research is analysis research data that are scores pretest and posttest by using statistical analysis method t-test free samples (independent sample t-test). Pretest is given to know the initial capabilities, while posttest administration aims to look at the differences in understanding the materials provided to the students after being given treatment and to determine the effect of the NHT methods the learning outcomes of the course Intermediate Financial Accounting (AKM).

4. Data Collection Techniques

Data collection techniques are methods used to collect the data in the research. Data collection techniques used in this research is test and documentation.

5. Data collection instrument

The research instrument is an invaluable tool for researchers in collecting data (Suharsimi Arikunto, 2005:101). The instrument used in this research is a test of knowledge. The test is a matter which made for pretest and posttest will be used to measure the differences in learning outcomes between before treatment and after treatment. This test questions tailored to the material that has been given to the college student and developed by AKM. The criteria for categorization of the value of learning outcomes are as follows:

Table 2 Category Value

Category	Value
A (Very Good)	86 – 100
B (Good)	71 – 85
C (Enough)	56 – 70
D (Less)	41 – 55
E (Failed)	0 – 40

Source: Handbook for Academic Guidance and Counseling Unsri

6. Test Instruments

a. validity Instruments

In measuring the validity of the concern shown on the content and usefulness of the instrument. Instruments are valid means of measuring instruments used to obtain the data was valid. Valid means the instrument can be used to measure what should be measured. Having been tested on college students, the test instrument validity was tested using product moment correlation formula put rough numbers (row-score) with the SPSS application. After obtaining r_{xy}, then the next step of testing the validity by comparing r_{xy} and r_{tabel} product moment, first define the degrees of freedom, using the formula: df = n - 2. With dk is obtained, it can be searched r_{tabel} product moment at the level of 5%. Because the test is $r_{xy} \geq r_{tabel}$, then the conclusion is the quaestion valid and if $r_{xy} < r_{tabel}$, then the question is not valid.

b. reliability Instruments

Test reliability is defined as something that can believe or circumstances trustworthy. Reliability test used in this study is by Cronbach's alpha with SPSS. On the basis of

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decision-making is the value of Alpha in greater than r_{tabel} the instrument about - questions used otherwise realibel or consistent, otherwise if the Alpha value is smaller than the instrument r_{tabel} questions that are stated not realibel or inconsistent.

7. Data Analysis Techniques

The approach used in this research is a quantitative approach, the data analysis technique used is quantitative analysis.

a. Normality Test, is used to measure the degree of normality of the data in the study. Normality Test using SPSS One-Sample Kolmogorov-Smirnov Test. Rule hypothesis at significance level $\alpha = 0.05$ as follows:

H_0 = Data of pretest and posttest Experiment Class or derived from the Control class are normally distributed population

Ha = Data of pretest and posttest Experiment Class Control does not come from populations with normal distribution

If the calculation results show that the probability value (p-value) $\leq \alpha$ then H_0 rejected or H_1 is accepted; and if that probability value (p-value) $> \alpha$, H_0 accepted or H_1 rejected.

b. Homogeneity test, intended to determine whether the samples were taken of the population have the same variant and showed no significant difference or each other. statistical test for homogeneity is the F test by comparing the largest variant with the smallest. Formula homogeneity test with F test is as follows (Sugiyono, 2007:140):

Homogeneity of variance test done by first determining the hypothetical and the rules of acceptance or rejection of the hypothesis at a significance level $\alpha = 0.05$ as follows:

H_0 = there is no difference between the variance value pretest posttest experimental group or control group (both groups of data homogeneous)

Ha = variance there is a difference between the value of pretest posttest control experimental class (two sets of data are not homogeneous)

If the calculation results show that the probability value (p-value) $< \alpha$ so H_1 is accepted or H_0 is rejected, and if the calculation results show that the probability value (p-value) $> \alpha$, so H_0 is accepted or rejected H1. In the calculation of SPSS data output p-value is often expressed in terms of significance (sig.).

c. Hypothesis test, performed using inferential statistics with two possible statistical use parametric and non-parametric. If the data in analyzed normal distribution and homogeneous, then used statistical parametric and if the data is not normal or not homogeneous, then used the non-parametric statistics. Test the hypothesis of the study is done by comparing the learning results between the experimental group with the control class. According Sugiyono (2010:273), when the sample correlated / pairs, for example, comparing before and after treatment, or treatment, or comparing the control group or the experiment, we used t-test sample. In doing t-test condition data must be homogeneous and normal, with the hypothesis:

1. H_0: There is no difference between NHT method and a lecture methods on the learning outcomes AKM subjects Unsri Economic Education. (H_0: $\mu_1 = \mu_2$).
2. Ha: There is a difference between NHT method and a lecture methods on the learning outcomes AKM subjects Unsri Economic Education. in subjects AKM Economic Education Unsri.(Ha = $\mu_1 \neq \mu_2$).

And if the data normality test that the experimental group and the control group did not originate from populations normally distributed, used non-parametric statistics. In this research, researchers used a test formula is non-parametric statistical test Chi-Square Test.

4. Results And Discussion

1. Description of Research Results

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This research is quasi-experimental. The subjects in this research is a classroom AKM course. In this study, the experimental class (Indralaya) given treatment using the NHT method, while the control class (Palembang) is given only conventional method of lecture. With the subject of treasury stock, Stock Split ups, recording dividends, change / correction of errors, profits are not shared, and revenue recognition.

This research was held from March 28, 2016 until April 25, 2016. Data were obtained from the pretest and posttest as learning outcomes data using NHT method.

2. Test Instruments

To determine the reliability of items on the instrument particularly achievement test it must be tested instruments. The trials carried out on the class of instruments that is not a sample has been taking courses and AKM subjects. The trial instrument worn on the top half of the students who have followed the course AKM totaling 10 students.

a. Validity test

Table 3 Test Validity Instruments

	Scale Mean if Item Deleted	Scale Variance if Item Deleted	Corrected Item-Total Correlation	Cronbach's Alpha if Item Deleted
soal no.1	65,20	49,511	,881	,778
soal no.2	74,30	58,678	,819	,819
soal no.3	66,30	33,789	,798	,843
soal no.4	69,50	52,944	,897	,787
soal no.5	75,10	65,211	,333	,898

Source: Data processed SPSS

After the instruments tested, then tested the validity by using the correlation coefficient formula. By using SPSS 22 is obtained that the 5 items achievement test, there is one question that is not valid is a matter of the number 5. The question is invalid didn't used in this research, the number of test results are 4 question about a case study accounting.

b. The reliability test

Table 4 The reliability Test Instruments

Cronbach's Alpha	N of Items
,897	5

Source: Data processed SPSS

And r_{tabel} with a value of n = 5 with sig. 5% is obtained r_{tabel} amounted to 0.878 and the results of calculations obtained 0.897 SPSS. In conclusion alpha 0.897 > r_{tabel} 0.878 which means the items of instrument can be said realibel or reliable as a means of collecting data in the research.

3. Data Values Learning Outcomes

Description of research data "Effects of the application Numbered Heads Together (NHT) methods Against Student Learning Outcomes in Subjects AKM FKIP Unsri Economic Education, conducted by analyzing data pretest and posttest data is experimental class and control class. Data Subjects student results AKM on Economic Education FKIP Unsri are as follows:

a. Data pretest control class and the Experiment class descriptive analysis calculation results in the ability of the start / pretest (before applied NHT methods) from the experimental class:

Table 5 Characteristics Statistics pretest On the Class Experiment

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	N	Range	Minimum	Maximum	Sum	Mean		Std. Deviation	Variance	Skewness		Kurtosis	
	Statistic	Statistic	Statistic	Statistic	Statistic	Statistic	Std. Error	Statistic	Statistic	Statistic	Std. Error	Statistic	Std. Error
Pretest Kelas Eksperimen	45	32	40	72	2529	56,20	1,345	9,022	81,391	,096	,354	-,658	,695
Valid N (listwise)	45												

Source: Data processed SPSS

From the statistical data characteristics pretest the experimental class, then the next value can be categorized into very low, low, moderate, moderate, high and very high based on empirical data. Categorizing the value pretest the experimental class can be seen in Table 6.

Table 6 Categorization pretest Value Class Experiments Based on Empirical Data

Nilai	Kriteria	Frekuensi	Presentase
40 – 45	Very Low	6	13,33
46 – 51	Low	6	13,33
52 – 57	Enough	17	37,78
58 – 63	Good	4	8,89
64 – 69	Higher	7	15,56
70 – 75	More Higher	5	11,11
Σ		45	100%

Source: Data processed

In addition to categorizing the value based on empirical data, the value pretest also categorized based on the value of FKIP Unsri. Categorization can be seen in Table 7.

Table 7 Categorization pretest Value Experiments Class Based Criteria Value FKIP Unsri

Category	Fokus	Frekuensi	Presetase
A (Very Good)	86 – 100	0	0
B (Good)	71 – 85	4	8,89
C (Enough)	56 – 70	23	51,11
D (Less)	41 – 55	15	33,33
E (Failed)	0 – 40	3	6,67
Total		45	100

Source: Data processed

The result of the calculation of descriptive analysis for the ability of the initial (pretest) of the control class, are as follows:

Table 8 Characteristics Statistics pretest In Classroom Control

	N	Range	Minimum	Maximum	Sum	Mean		Std. Deviation	Variance	Skewness		Kurtosis	
	Statistic	Statistic	Statistic	Statistic	Statistic	Statistic	Std. Error	Statistic	Statistic	Statistic	Std. Error	Statistic	Std. Error
Pretest Kelas Kontrol	45	34	40	74	2629	58,42	1,131	7,587	57,568	-,681	,354	,395	,695
Valid N (listwise)	45												

Source: Data processed SPSS

From the statistical data characteristics of the pretest control class, then the next value can be categorized into very low, low, moderate, moderate, high and very high based on empirical data. Categorizing the value pretest the control class can be seen in Table 9.

Table 9 Categorization pretest Value Class Control Based on Empirical Data

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Value	Criteria	Frekuensi	Presentase
40 – 45	Very Low	4	8,89
46 – 51	Low	3	6,67
52 – 57	Enough	11	24,45
58 – 63	Good	15	33,33
64 – 69	Higher	10	22,22
70 – 75	More Higher	2	4,44
Σ		45	100%

Source: Data processed

In addition to categorizing the value based on empirical data, the value pretest was also categorized based on the value of FKIP Unsri criteria. Categorization can be seen in Table 10.

Table 10 Categorization pretest Value Control Class Based Criteria Value FKIP Unsri

category	Point	Frekuensi	Presetase
A (Very Good)	86 – 100	0	0
B (Good))	71 – 85	1	2,22
C (Enough)	56 – 70	34	75,56
D (Less)	41 – 55	8	17,78
E (Failed)	0 – 40	2	4,44
Total		45	100

Source: Data processed

b. Data posttest

The results of calculations of descriptive analysis on the ability of end / posttest from the experimental class:

Table 11 Characteristics Posttest Statistics Experimental Class

	N	Range	Minimum	Maximum	Sum	Mean		Std. Deviation	Variance	Skewness		Kurtosis	
	Statistic	Statistic	Statistic	Statistic	Statistic	Statistic	Std. Error	Statistic	Statistic	Statistic	Std. Error	Statistic	Std. Error
Posttest Kelas Eksperimen	45	25	75	100	3970	88,22	,801	5,372	28,859	-,181	,354	,603	,695
Valid N (listwise)	45												

Source: Data processed SPSS

From the statistical data on the characteristics posttest experimental class, then the next value can be categorized into very low, low, moderate, moderate, high and very high based on empirical data. Categorizing posttest values can be seen in Table 12.

Table 12 Categorization posttest Value Class Experiments Based on Empirical Data

Value	Criteria	Frekuensi	Presentase
75 – 78	Very Low	1	2,22
79 – 82	Low	2	4,44
83 – 87	Enough	15	33,33
88 – 91	Good	16	35,57
92 – 95	Higher	5	11,11
96– 100	More Higher	6	13,33
Σ		45	100%

Source: Data processed

In addition to categorizing the value based on empirical data, the value posttest also categorized based on the value of FKIP Unsri. Categorization can be seen in Table 13.

Table 13 Categorization posttest Value Class Experiments Based Criteria Value FKIP Unsri

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Category	Nilai	Frekuensi	Presetase
A (Very Good)	86 – 100	11	24,44
B (Good)	71 – 85	30	66,67
C (Enough)	56 – 70	4	8,89
D (Less)	41 – 55	0	0
E (Failed)	0 – 40	0	0
Total		45	100

Source: Data processed

The result calculation of descriptive analysis for the ability of the end (posttest) than the control class, are as follows:

Table 14 Characteristics Statistics posttest Control Class

	N	Range	Minimum	Maximum	Sum	Mean		Std. Deviation	Variance	Skewness		Kurtosis	
	Statistic	Statistic	Statistic	Statistic	Statistic	Statistic	Std. Error	Statistic	Statistic	Statistic	Std. Error	Statistic	Std. Error
Posttes Kelas Kontrol	45	30	66	96	3619	80,42	1,121	7,518	56,522	,362	,354	-,585	,695
Valid N (listwise)	45												

Source: Data processed SPSS

From the statistical data on the characteristics posttest control class, then the next value can be categorized into very low, low, moderate, moderate, high and very high based on empirical data. Categorizing posttest values can be seen in Table 15.

Table 15 Categorization Value Class Posttest Control Based on Empirical Data

Score	Criteria	Frekuensi	Presentase
66 – 70	Very Low	3	6,67
71 – 75	Low	12	26,67
76 – 80	Enough	10	22,22
81 – 85	Good	9	20
86 – 90	Higher	7	15,56
91 – 96	More Higher	4	8,88
Σ		45	100%

Source: Data processed

In addition to categorizing the value based on empirical data, the value posttest also categorized based on the value of FKIP Unsri. Categorization can be seen in Table 16.

Table 16 Categorization Value Class Posttest Control Based Criteria Value FKIP Unsri

Categori	Score	Frekuensi	Presetase
A (Very Good)	86 – 100	33	73,33
B (Good)	71 – 85	12	26,67
C (Enough)	56 – 70	0	0
D (Less)	41 – 55	0	0
E (Failed)	0 – 40	0	0
Total		45	100

Source: Data processed

4. Comparison of pretest and posttest results Experiment Class and Control Class

a. Results Pretest On the Class Experiment and Control

Based on the results of pretest scores experimental class and control class can be obtained recapitulation of the pretest scores experimental class and control class in the following figure:

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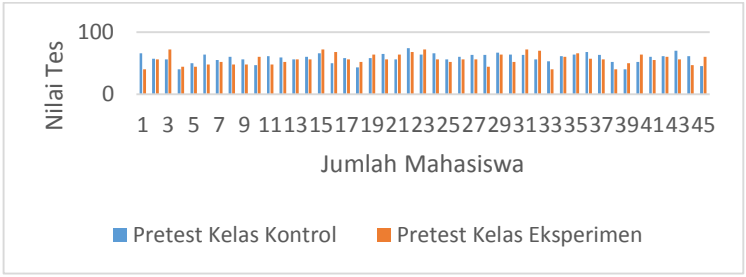

Figure 1 Results Pretest Experiment Class and Class Controls

Table 17 Specification Diagram Pretest Results Experiment Class and Class Controls

Nilai	*Pretest* NHT	*Pretest* Ceramah
21 – 40	3	2
41 – 60	30	23
61 – 80	12	20
81 – 100	0	0
Jumlah	**45**	**45**

Source: Data processed

From the diagram above, it appears that the value pretest most students in the experimental class received grades 41-60 as many as 30 students or 66.67% as well as a control class most students scored between 41-60 as many as 23 students or as much as 51.11 %. Based on these results it can be said the majority of the value pretest control class and experimental class is not too different.

b. Results posttest On the Experiment Class and Control Class

Based on the results of the posttest scores experimental class and control class can be obtained recapitulation of the posttest scores experimental class and control class in the following figure:

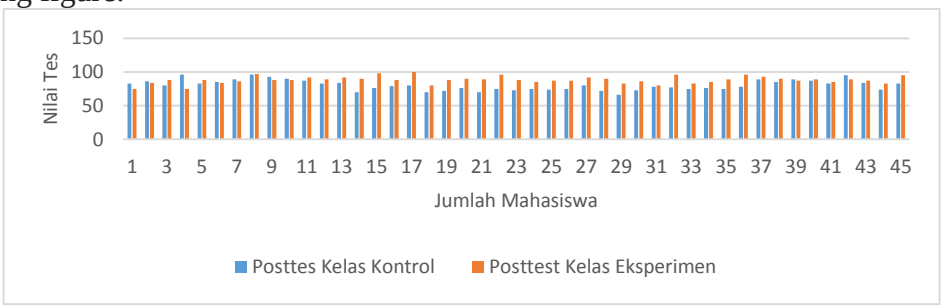

Figure 2 Results Posttest Experimental Class and Class Controls

Table 18 Specification Diagram posttest results Experiment Class and Class Controls

Nilai	*Posttest* NHT	*Posttest* Ceramah
21 – 40	0	0
41 – 60	0	0
61 – 80	3	25
81 – 100	42	20
Jumlah	**45**	**45**

Source: Data processed

From the diagram above, it appears that the value posttest most students in the experimental class received grades 81-100 as many as 42 students or as much as 93.33% while the control class students who scored between 81-100 as many as 20 students or 44.44%. Based on the analysis of the frequency distribution of values posttest experimental class is higher than the value of frequency distribution posttest control group.

5. Hypothesis Testing Results

a. Normality test

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Normality test is used to measure the degree of normality of the data in research. Normality Test using SPSS One-Sample Kolmogorov-Smirnov Test. Rule hypothesis at significance level $\alpha = 0.05$ as follows:

H_0 = Data pretest and posttest Experiment Class or derived from the Control class are normally distributed population

Ha = Data pretest and posttest Experiment Class or Control class does not come from populations with normal distribution

If the calculation results show that the probability value (p-value) $\leq \alpha$ then H_0 is rejected or accepted Ha; and if that probability value (p-value) $> \alpha$ then H_0 accepted or Ha rejected. The results can be seen as follows:

Table 19 Result Normality Test of Pretest and Posttest Eksperiment Class

One-Sample Kolmogorov-Smirnov Test

		Pretest Kelas Eksperimen	Posttest Kelas Eksperimen
N		45	45
Normal Parameters[a,b]	Mean	56,20	88,22
	Std. Deviation	9,022	5,372
Most Extreme Differences	Absolute	,131	,126
	Positive	,131	,126
	Negative	-,091	-,099
Test Statistic		,131	,126
Asymp. Sig. (2-tailed)		,051[c]	,071[c]

Source: Data processed SPSS

From the results of the calculations in the table above by using the One-Sample Kolmogorov-Smirnov test for normality test significance value (sig.) For pretest 0.051 and a significance value (sig.) To posttest 0,071. Sig. pretest and postttest > 0.05 or greater than α, thus H_0 is accepted, meaning that the data value of pretest and posttest experimental class derived from normal distributed population.

Table 20 Result Normality Test of Pretest and Posttest Control Class

One-Sample Kolmogorov-Smirnov Test

		Pretest Kelas Kontrol	Posttes Kelas Kontrol
N		45	45
Normal Parameters[a,b]	Mean	58,42	80,42
	Std. Deviation	7,587	7,518
Most Extreme Differences	Absolute	,130	,122
	Positive	,070	,122
	Negative	-,130	-,079
Test Statistic		,130	,122
Asymp. Sig. (2-tailed)		,053[c]	,092[c]

Source: Data processed SPSS

From the results of the calculations in the table above by using the One-Sample Kolmogorov-Smirnov test for normality test significance value (sig.) For pretest 0.053 and a significance value (sig.) To posttest 0.092. Sig. pretest and postttest > 0.05 or greater than α, thus H_0 is accepted, meaning that the data value of pretest and posttest control group derived from a population that is normally distributed.

b. Homogeneity test

Homogeneity of variance test done by first determining the hypothetical and the rules of acceptance or rejection of the hypothesis at a significance level $\alpha = 0.05$ as follows:

H_0 = there is no difference between the variance value with the value pretest posttest experimental group or control group (both groups of data homogeneous)

Ha = variance there is a difference between the value of the value pretest posttest control experimental class or classes (two sets of data are not homogeneous)

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If the calculation results show that the probability value (p-value) < α then Ho is rejected or accepted, and if the calculation results show that the probability value (p-value)> α then Ho accepted or Ha rejected. In the calculation of SPSS data output p-value is often expressed in terms of significance (sig.). Furthermore, the calculation of homogeneity test by SPSS 22, with the results as shown in Table 21.

Table 21 Test Results Variance Homogeneity pretest and posttest data Experiment Class

Levene Statistic	df1	df2	Sig.
2,844	11	28	,052

Source: Data processed SPSS

From the above table data showed that the homogenity of variance test significance value (sig.) Is 0.052 or greater than the price of significance α of 0.05. So H_0 accepted, it means there is no difference in variance between the value pretest to posttest experimental class values, in other words, both the data group have the same variant or homogeneous. Therefore, the data value pretest and posttest experimental class qualify normality, then the next statistical test can use parametric statistical tests.

Table 22 Test Results Variance Homogeneity pretest and posttest Class Data Control

Levene Statistic	df1	df2	Sig.
2,049	13	24	,062

Source: Data processed SPSS

From the above table data showed that the homogeneity of variance test significance value (sig.) Is 0.062 or greater than the price of significance α of 0.05. So H_0 accepted, it means there is no difference in variance between the value pretest to posttest control class values, in other words, both the data group have the same variant or homogeneous. Therefore, the data value pretest and posttest control group qualify normality (normal), then the next statistical test can use parametric statistical tests.

6. Hypothesis Testing

From the test results of the pre-requisite analysis showed that samples of both classes of the same number, the data were normally distributed and the variances homogeneous then uses the terms "when the number of members of the sample (n1 = n2), and variants homogeneous (σ12 = σ22), it can be used formula ttest well separated , as well as variants pooled and used to t_{tabel} values dk = n1 + n2 - 2 ". In testing this hypothesis formula used is "separated variant". T test results are summarized in Table 23.

Table 23 Hypothesis Test Results

Paired Samples Statistics

		Mean	N	Std. Deviation	Std. Error Mean
Pair 1	Pretest Kelas Kontrol	58,42	45	7,587	1,131
	Posttes Kelas Kontrol	80,42	45	7,518	1,121
Pair 2	Pretest Kelas Eksperimen	56,20	45	9,022	1,345
	Posttest Kelas Eksperimen	88,22	45	5,372	,801

Paired Samples Correlations

		N	Correlation	Sig.
Pair 1	Pretest Kelas Kontrol & Posttes Kelas Kontrol	45	-,337	,024
Pair 2	Pretest Kelas Eksperimen & Posttest Kelas Eksperimen	45	,314	,036

Paired Samples Test

	Paired Differences	t	df	

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		Mean	Std. Deviation	Std. Error Mean	95% Confidence Interval of the Difference				Sig. (2-tailed)
					Lower	Upper			
Pair 1	Pretest Kelas Kontrol - Posttes Kelas Kontrol	-22,000	12,349	1,841	-25,710	-18,290	-11,951	44	,000
Pair 2	Pretest Kelas Eksperimen - Posttest Kelas Eksperimen	-32,022	8,933	1,332	-34,706	-29,339	-24,048	44	,000

Source :Data processed SPSS

Based on the calculation results of different test paired-sample t-test were calculated using SPSS and presented in Table 23, it can be seen that the results of the experimental class correlation of 0.337 with sig. amounting to 0,024 and result correlation control class is 0.314 with sig. amounting to 0,036 or both classes are smaller than 0.05 so that means there is a significant relationship.

Table 24 Calculation of different test paired-sample t-test

		Paired Differences					t	df	Sig. (2-tailed)
		Mean	Std. Deviation	Std. Error Mean	95% Confidence Interval of the Difference				
					Lower	Upper			
Pair 1	Pretest Kelas Kontrol - Posttes Kelas Kontrol	-22,000	12,349	1,841	-25,710	-18,290	-11,951	44	,000
Pair 2	Pretest Kelas Eksperimen - Posttest Kelas Eksperimen	-32,022	8,933	1,332	-34,706	-29,339	-24,048	44	,000

Source: Data processed SPSS

To test the hypothesis:

1. H_0: There is no difference in the effect of NHT method with a lecture on the results of student learning in subjects AKM Unsri Economic Education (H_0: $\mu_1 = \mu_2$).
2. Ha: There is a difference in the effect of NHT method with a lecture on the results of student learning in subjects AKM Unsri Economic Education (Ha = $\mu_1 \neq \mu_2$

If the probability ($p < 0.05$) H_0 is rejected and if $p > 0.05$ then H**0** is accepted. And based on the calculation results of different test paired-sample t-test were calculated using SPSS and presented in Table 4:25 to note that t_{hitung} control classes -11.951 and t_{hitung} -24.048 experimental class, therefore $p < 0.05$ then H_0 is rejected, the means there are differences influence of Numbered Heads Together (NHT) methods with a lecture on the results of student learning subjects Intermediate Financial Accounting (AKM) in Economics Education Sriwijaya University.

From the results of SPSS also obtained mean control class and experimental class -32.022 and -22.000 which showed that the average learning outcomes after treatment is higher than the average of the results of study before treatment meaningful learning outcomes increased.

7. Discussion of Results
   a. Implementation Learning Cooperative Learning Methods Numbered Heads Together (NHT)

      Application of the Numbered Heads Together (NHT) method, this provides given opportunity for college students to engage actively and cooperate in the process of

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learning to express ideas / thoughts and make learning more meaningful, tailored to the context of everyday students themselves.

An important principle in the application NHT methods is that in the learning process, college students as a learning center that determines the direction of learning. Was students who actively promote knowledge and the duties of lecturers facilitate student (facilitator), and be a motivator, catalyst, and create learning strategies that can stimulate the interest and attention of students, student confidence, student satisfaction, students' curiosity, closer and familiarizing inter college student. Based on the results of monitoring, of the activities of students and lecturers in the learning process can be concluded that on the face / the first meeting, there are still many students who passively, not dare to ask and just listen and record only. In addition, there are still some students who have not been able to be quiet, when no student kurangmemperhatikan one group or another group that was presenting the results of their discussion. This happens because the students are not familiar with methods following study Numbered Heads Together (NHT).

On the face / the second meeting, the students look more active, students have the courage to ask, answer, discussion with a fellow student or lecturer, dared to issue an opinion or an idea, and began to be cooperating in the task group. During face-to-face / the second meeting of this there are still some students who have not been focused in subjects with this method, because they often speak for themselves with their friends.

b. Differences Learning Outcomes

The result is that the implementation of learning by using the NHT method which effect on college student learning outcomes. It could be said that this method is very influential on student results. This is evidenced by the differences in the acquisition value of the average pretest experimental class at 56.20 and the average value of 88.22 posttest experimental class. In the control group gained an average value of 58.42 pretest and posttest average value of 80.42. It follows, that when these two classes together and have not received material about the treatment were then given a pretest to determine the ability of the start of the second class, the amount of learning outcomes (pretest value) between the experimental class and control class is not much different. Not the differences are significant at the beginning of the student's ability, it can be said that the ability of the beginning of the second grade equivalent. Given equal ability at the beginning of the second class, the researchers chose a random way (Random in determining which class controls and where the experimental class). The results of the determination of the class by random (random) the result is that the control class is the class AKM Palembang, while the experimental class is a class AKM Indralaya. After learning early on the ability of these two classes, then the class is given the lecture material with the use of different learning methods. the experimental class learning method used is the NHT method, while the control class using the usual method used is conventional teaching methods (lectures).

In contrast to the average value of the pretest, the average value posttest between the experimental class control class there is a difference. This is evidenced from the calculation of the value posttes second class by using the t_{test}. T_{test} calculations were performed using SPSS, and the results of these calculations obtained t_{hitung} control classes -11.951 and t_{hitung} -24.048 experimental class, therefore $p < 0.05$ means that there are significant differences between the experimental class and control class. Differences in learning outcomes can be seen from the average value of the two classes, namely 88.22 to 80.42 for the experimental class and control class. The difference in the average value of these two classes is at 7.8. The presence of significant difference is due to the differences in learning methods are used in both classes. The results of these calculations

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prove that the method of NHT affect the results of student learning outcomes, especially learning outcomes AKM. In conclusion, the college students are taught using NHT has a higher learning outcomes than students taught using conventional teaching methods (lectures).

From the above, the results showed that there are differences in learning outcomes of students who are taught using NHT, the learning outcomes of students who were taught using conventional methods. In other words, this research is successful, as evidenced by the receipt of the alternative hypothesis (hypothesis) is that there is a difference between learning outcomes in the experimental class and control class, and learning outcomes of the experimental class is higher than the control class.

5. Conclusions And Suggestions

5.1 Conclusions

Based on the results of research and discussion can be concluded as follows, application of the Numbered Heads Together (NHT) method in subjects AKM done twice meetings and set the experimental class is Indralaya class. During the learning process to take place, the activities of lecturers and college students are appropriate and in accordance with the existing phases in the NHT method is the numbering, asking questions, thinking together, answered, concluded.

The increase in value before and after treatment in experimental class is higher than the control class that is equal to 7.8 points. It can be concluded that there are differences in learning outcomes of students who are taught using NHT, the learning outcomes of students who are taught using lecture method, which is the result of learning from the experimental class is higher than the control class.

This study has several limitations, including a limited time is one of the important factors that influence in this research. Time used during the learning process, especially the experimental class is minimal or fitting, so influential with the material presented during the learning. And the ability of researchers in applying NHT is not maximized so that the learning outcomes of students was not maximized.

5.2 Suggestions

Based on the results of this research, the researchers suggest some of the following:

a. Lecturers should consider learning courses AKM using Numbered Heads Together (NHT) as an alternative teaching methods because not only can improve the quality of student affective but also the cognitive learning students
b. Application of the NHT method not only can be used on subjects AKM, but can also be applied to other subjects.
c. The college students to always apply the stages of learning with the learning NHT method is mainly in the mapping, write and present their opinions and abilities of the ones in any learning activities that will be easier to understand and understand the material being studied.

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The Result of Worksheet Developing is to Facilitate Communication Disposition

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Abstract

This development research aimed to develop worksheets learner(LKPD) for facilitate communication disposition. Students were in Junior High School 9 Metro City Class VII F (2015/2016) exactly as the subject of this case.. Communication disposition is the tendency of attitude anyone when dealing with communication problems. As The Result, worksheets learner with game with characteristics thinking lower middle were going to be maximum influence because it contained brief dialogue with interesting colour sketch, using language that enables students to interpret problem to be a mathematical model, chart and table. To express ideas as the problem solving, according bahasa grammatical, and could be related in daily activities formed. The result of this research is worksheets learner (LKPD could facilitate communication disposition.

Keywords *: worksheets learner (LKPD), problem based learning, communication disposition*

1. Introduction

Nowaday, world global development requires people who have high capability, knowledge, and skills as supporting a better life. Education is one of the solution of this problem. Indonesian have low level of awareness about the importance of education. This is evidenced by united nations development programme (undp) in 2014 which states that indonesia is in 108 position of 187 countries.

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Indonesia has a low value in mathematics. Based on data of kemendikbud 2015 the average value of math national exam was 56.27. The average value of the math national exam in lampung was 47.73 (ranked fourth lowest of the 34 provinces). Low motivation shown by some students who did not attend mathematics lessons in the classroom and was not active in the learning activities. According to interviews with math teachers at junior high school 9 is Linier Equation System of Two Variables is one of the toughest material. Students did not understand its application in real life. Students acquired material from books or publishers worksheet which is contain simple descriptions and exercises without the necessary explanations. Worksheet has less relevance to real problems. Worksheet from publisher was unattractive and not help to develop mathematical communication skills. Students did not understand the lesson because worksheet was not in accordance with the characteristics of students of Junior High School 9 who low ability.

According to rescher in wahyudin (2008: 840) communication is a tool to systematization personal knowledge into a domain, and can be accepted as a new knowledge. Behavior in the learning process must be instilled affective attitude. The capabilities of students to learn mathematics is not only cognitive ability but also affective ability. In accordance with the applicable curriculum in learning procees should be inculcated affective attitude. One of important affective attitudes is the disposition of communication because of the tendency of this attitude is one of the underlying sentiment that is expected to assist in the maximum learning process of mathematical.

Disposition of communication is the tendency to think one's attitude when dealing with communication problems. According Ritchhart (2002: 31), disposition able to motivate, activate, and direct our ability. Disposition is curiosity, open-mindedness, metacognition, the search for truth and understanding, strategic thinking, and doubt to do did a good job with a deeper understanding and breadth of good thinking. This trend will be trained by utilizes worksheet in learning.

Mathematics learning activities in schools are performing tasks such routine matters and unreal problems. Students were given the task of print books or books worksheets that does not provide a real problem so that the material is easy to understand, while the task of the teacher must help students understand the material. This is suitable with the opinion of olteano (2014), that: the findings suggest that construction of tasks can be a productive base

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in helping teachers to the make fundamental changes in their understanding of what they should focus on in a teaching situation to improve mathematical communication. It means that the provision of duty of teachers can make students productive in gaining an understanding with the task execution so able to help teachers to provide fundamental understanding in students. The assignment of teachers able to make students focus on creating the learning situations that can increase communication disposition mathematics. The tasks from the teacher build up understanding of the subject matter. The task can not be separated in the learning process. Worksheet on Junior High School 9 metro has weakness. Worksheet still rely on certain books published by a company that does not clearly indicate the capabilities developed. According to most students worksheet makes feel boring with a lot of writing and formulas that have not been presented with a draw. Worksheet have a goal to make the atmosphere more fun of math learning and motivated to facilitate communication disposition. Worksheet designed that contain tasks which help students to understand the disposition of communication.

The learning mathematics based on problem and motivation of students with middle-level thinking is the reasons. Worksheet have a goal to make more fun atmosphere in math learning and motivated by why we need worksheet that can facilitate communication disposition. Learning will be easier if accompanied by worksheet which specially designed. According to the department of education general guidelines development of instructional materials (in prastowo, 2011: 203) worksheet is the sheet which contains tasks that must be done by learners with activities in the learning with instructions or steps to complete a tasks that have basic competencies to be achieved. Worksheet made have components that can help and guide them to understand the content and achieve learning objectives. The components consist of instructions, common learning goals, specific learning objectives, tasks, and conclusions. Thus, students are led to be easy to achieve the learning objectives.

Worksheet designed contain of tasks that help students understand the communication capabilities and dispositions of communication. The tasks that contain life problems that sometimes inserted a simple game to learn. This game could be the finishing the problems varied so that students do not feel pressured to finish tasks. The execution of tasks undertaken jointly make students exchange of information that train communication among students and with their presentation to the class practice communication skills with students and teachers

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by expressif the results of discussions and performing tasks by choosing the right words in his explanation.

Based on this background, this study aims to develop worksheet corresponding students, accompanied by the game so able to facilitate the disposition of communication.

2. Research Methods

The type of this research is research & development. The products developed by is "worksheet mathematics to develop communication skills in Linier Equation System of Two Variables. The subjects of this the study is 26 students of VIII F Junior High School 9 in academic year of 2015/2016. Students of VIII D with the number of 26 is try out test class with the same abilities with VIII F class. Development model used in this study using is a model by borg and gall in sukmadinata (2008). The procedure of research is do the preliminary research, design and syllabus, lesson plans, assessment instruments, expert test, readability test, limited group test, and a small group test.

The instrument this study is the observation sheet and test mathematical communication skills. Data collection techniques in research was interview, questionare, observating, documention etc. The data used is qualitative data. qualitative data is data that is described with words or sentences obtained from the images of learning activities during the study. The data analysis also uses descriptive analysis to analyze the data by describing or indeed describe the data that has been collected. Data collected in the form of tests, interviews, and documentation. There are several stages in the data analysis, namely data reduction, the presentation, and get the conclusion of data.

3. Results and Discussion

The learning process in the research has consisted of seven meetings using worksheet. The meeting was held two times a week that monday at 8:00 to 09:20 pm and wednesday at 8:40 to 10:00 pm. In this study, researchers used a code to indicate the student's name. This study discusses the developing of student worksheet in facilitating communication disposition.

The problem solving in worksheet by VIII grade student according to piaget already at the stage of formal operations. Eighth grade students are students with more than 12 years

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of age. Students are able to solve the problem on worksheet. In conjunction with this research, theory and constructivist view is that to obtain a new concept, students are always assigned to work in group in finishing the problem in worksheet.

Worksheet developed is still need to fix that at the first meeting and the fifth meeting. Improvements include fixes sentence in a given problem. Worksheet for another meeting had been understood by the students. Worksheet makes the students showed disposition comunication. Disposition students communication arise when students are working on worksheet. Finishing the problem in worksheet facilitate student disposition communication.

Learning mathematics using worksheet game makes students active. Students are active in learning for seven different meeting. Students are active at every meeting is M12 and M22 with high ability. The problems at worksheet can make some students develop communication skills and dispositions communication. According to baden and major (2005) problems are given at the time of study with group was able to make students acquire the knowledge and skills so as to resolve a given problem. Small group learning makes students work together in doing worksheet that contains the problems. Each group consists of 4-5 students that there is at least one student who has a better ability that other in group. This makes students able to finish and raises a disposition of communication with the help of the teacher as a tutor.

Students can build knowledge, especially mathematics from problem given. Students can understand the difference Linier Equation of Two Variables and Linier Equation System of Two Variables of the problems given in worksheet first meeting. Similarly, at each meeting, the students' understanding of workmanship worksheet awakened. Disposition of communication in a group of students with low ability undergone significant changes. Students with low ability represented by m18 and m24 have increased disposition communication. Students with moderate and high capability represented M8, M10, M12 and M22 have increased. Indicators mathematics communication disposition scored average percentage of 94.45%.

At the first meeting only gained 66.67%, but at the next meeting the increasing and obtain is the maximum results in the second to the seventh meeting of 100%. Each indicator has increased from the first to the seventh meeting. The average at the meeting of 5, 6, and 7 obtaining the maximum value of 100% on every indicator. This shows that worksheet can

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help students develop their communication disposition of the first meeting to the last. Flexible indicator is an indicator that obtained the highest percentage of the value of 100%. Each meeting obtain a percentage value of 100% from the beginning of the meeting. However, contrary to the disposition indicator seek truth and understanding which scored the lowest percentage is 58.33%.

This is due to the lack of ability of the students at the beginning of the meeting in the search for the relationship between the material being studied. At the first meeting of average disposition communication is achieved only 44.45%, but the average meeting disposition is increasing from the first to the last meeting.

During the learning in the classroom with students given worksheet for seven meetings accompanied by a little game students become active and provide questions. Students can develop a disposition towards learning mathematics if teachers are able to communicate mathematics well. This is accordance with NCTM (1991) the disposition of the students can be developed with teachers to convey and communicate mathematics in learning with love and teachers have high motivation in teaching mathematics and questions from the students posed to teachers is one form of communication of mathematics students , disposition of communication arise when students are working on worksheet and every question the teacher. The achievement indicators of communication disposition on try out class test are presented in table 1.

Table 1 results disposition communications

Indicator of Disposition Communication	Percentage -							Average
	1	2	3	4	5	6	7	
Curiosity	66,67	100	100	100	100	100	100	94,45
Flexible	100	100	100	100	100	100	100	100
Hesitation	66,67	66,67	100	100	100	100	100	88,89

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Strategic	33,33	50	100	100	100	100	100	80,55
Metacognitive	0	50	100	100	100	100	100	75
Searching for the truth and under-standing	0	33,33	50	66,67	100	100	100	58,33
Average	44,45	66,67	91,67	94,45	100	100	100	

4. Conclusion

Based on the results of research and discussion it can be concluded:

1. Worksheet developed with middle to lower level thinking with Linier Equation System of Two Variables material for junior high school students of VIII class based on the results of the development worksheet as follows:

a. The prerequisite material in the completion worksheet are algebra, linear equations one variable (plsv), and Line Equation. The prerequisites material presented when the teacher gives motivation. The structure of the concept of matter that explain the difference between PLDV and Linier Equation System of Two Variables , identify Linier Equation System of Two Variables in various forms and variables, finishing Linier Equation System of Two Variables by means of substitution and elimination, makes the mathematics from real problems associated with Linier Equation System of Two Variables , seeking to resolve a problem expressed in mathematics in Linier Equation System of Two Variables form, completing a mathematical model relating to Linier Equation System of Two Variables and interpretation, and finish Linier Equation System of Two Variables with line equation.
b. Worksheet with Linier Equation System of Two Variables material contains questions presented in the brief conversation at a meeting of one to five and the matter is presented in tabular form in the sixth meeting easy to understand so that students are able to work with both individuals and groups.

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c. Worksheet presented with compelling imagery and color at several meetings shaped to resemble a comic so able to make students interested in workmanship worksheet.
d. Language in worksheet enables students to interpret the problem in the form of mathematical models and charts, to express his ideas in solving problems, and in accordance with the rules of bahasa.
e. Worksheet contains matter relating to real life are often encountered in everyday life with some of the meetings is about the story in the form of comic dialogue and there is a meeting with the shape of the table. These issues require students to present them in a mathematical model of the sentence, presenting graphs, and solving the problems of the tables were presented so that students are able to finish well and is able to develop communication disposition.

2. Learning mathematics with worksheet Linier Equation System of Two Variables material has an average percentage meeting the highest indicator flexible communication disposition that is 100%, while the lowest percentage indicator communication disposition seek truth and understanding all that is 58.33%.

3. Learning mathematics with worksheet Linier Equation System of Two Variables material, the activity of problem solving using word problems concerning real life can be led to strategic indicators and the search for truth and understanding in communication disposition. Mathematics learning material with worksheet Linier Equation System of Two Variables can bring metacognitive communication disposition indicator of the questions provided by the teacher.

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LKPD Development in Terms of Critical Thinking Disposition

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Abstract

This development research aimsed to develop LKPD to develop critical thinking dispositions. LKPD in this study is LKPD by using games, comics, and problems. Critical thinking disposition is the tendency to think and act in a way that is critical of mathematics. Subject in the study development LKPD in X sains class in SMA Negeri 1 Tumijajar 2015/2016 school year with upper middle thought level of students'. The data of research was obtained through field notes, interview and observation sheet. The results of development LKPD that obtained include development games as SPLDV card and miracle star that make students work together in groups and make students motivated in finishing of LKPD. In mathematical comic and in presenting problem used language that is often heard by students but follow EYD. The result of the disposition of critical thinking is the highest achievement in the indicator curiosity. LKPD with PBL models can develop critical thinking disposition. LKPD can develop critical thinking dispositions.

Keywords: *PBL, LKPD with PBL, Critical Thinking Disposition*

1. Introduction

Education is a process of teaching and educating the nation's children to become adults who intelligent and noble personality. Education aims form human beings capable of critical thinking, creative, innovative, productive, responsible, and a good personality. In the face of these challenges required human resources has intellectual skill involving high levels of logical reasoning ability, systematic, critical, careful and creatif in solving problems. As stated in Law Decree No. 20 of 2003 on National Education System, that serves to develop the National Education skill and character development and civilization of the nation's dignity in order to achieve life nation, and aims to developed the potential learners to become a man of faith and devoted to God Almighty, noble, healthy, knowledgeable, skilled, creative, independent and become citizens of a democratic and accountable.

National Education Standards Agency (2007) states that learning mathematics is given at every level of the early pension aims for elementary and secondary students can use the ma-thematic as a way of reasoning (logical thinking, analytical, systematic, critical, creative and ability to cooperate). Therefore, students are required to understand the concepts, analyze the problem and resolve the problems that exist on the matter. It shows that the students' critical thinking skills Indonesia entered the low category. This is because the mathematics is done during these generally focus on issues that are algorithmic and routine so as not to trigger and cultivate critical thinking mathematical abilities of students.

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This condition causes the result of school education is only able to produce beings who lack self-awareness, lack of critical thinking, less creative, less independent, and less able to communicate flexibly with the learning environment or social life. Good critical thinking skills that can shape the attitudes and behaviors are rational. Critical thinking would not be perfect if the attitudes that accompany it are not critical. The tendency of the attitude that accompanies the process of critical thinking is often called critical thinking disposition. Students who have critical thinking dispositions will be more sensitive to stimuli so as to actualize the mindset held into an action.

Based on interviews with the vice principal of the curriculum that is also a professor of mathematics at SMA Negeri 1 Tumijajar, the attainment of student learning in mathematics are not as expected due to several factors, among others, students' attitudes toward mathematics courses of different too will have no effect on the ability of problem solving in math models and methods chosen by the teacher in the learning process also needs to be taken into weigh. SMA Negeri 1 Tumijajar is one of the schools curriculum of 2013. In the learning teacher using a book published by the government, most students feel difficult to understand. Besides the books of the government teachers also use the book PR Students (LKPD of the publisher), LKPD used was from his publisher that in most of the exercises is that the students were only accustomed to working on the problems without knowing the concept.

Many think that for students with middle to upper level of intelligence given enough exercises can already do the questions are related to the exercises. Though critical thinking skills is not enough just to do the exercises alone. Corresponding opinion of Bruner is that learning math is to learn about the concepts and structures of mathematics contained in the material being learned and look for relationships between concepts and structures mathematic it (Sunardi, 2009: 14). Based on interviews with students, including students with level thinking upper middle and students who have received the material system of equations and inequalities linear, express that students actually understand the methods of settlement system of linear equations is by way of elimination, substitution and The combined elimination substitution because it has been taught at the junior level. But sometimes students are still less careful in answering the questions and understand the problems of the system of linear equations. Although students still less scrupulous in understanding the problems of the system of linear equations, this material is still considered students is material that is not too difficult because of the problems they get are questions that are still easily resolved by way of substitution or elimination. So when students do not receive this material or challenged in following the spirit of learning. According Kaymakci (2012), is one of the LKPD teaching materials play an important role by providing a variety of assignments that are relevant to the material being taught, so that its use can help to achieve the learning objectives.

PBL is a learning model that trains students to face various problems be it a personal issue or individual and group problem-solved to alone or jointly. PBL learning model is one model of learning that enables students to develop critical thinking disposition, because in the PBL students faced with the problem as a stimulus to be focused and should be solved in

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learning activities. Tan (2004) stated, "Problem-based learn is an instructional strategy that encourages students to develop critical thinking and problem-solving skills that they can carry with them throughout Reviews their lifetimes," which means that the model PBL can assist students in developing critical thinking skills and problem solving. Learning with PBL models starting with administration problems associated with the real world, the students then actively define problems and identify their knowledge, learn and hook-right material with the problem, and ultimately make the solution of the given problem (Amir, 2011). Rusman (2010: 238) that the purpose of the model PBL is mastery of the discipline heuristic learning contents and development of problem solving skills. In solving the problem given the students would tend to think and act in a critical manner. According to Ennis (1996) defines a disposition to think as a tendency to do things in a certain condition. Based on the understanding and definitions given Ennis disposition of critical thinking mathematically can be defined as the tendency to think and act in a way that is critical of mathematics. Disposition of critical thinking would be formed when the learning process

One LKPD that support students to be able to solve problems in everyday life and the students interested and challenged in learning is LKPD model problem based learning (PBL). Learning to use LKPD PBL model is learning by LKPD beginning with the provision of the problem or problem situation to students. Students are then invited to understand the problem and start thinking how to resolve a given problem. In the case of there is also a game that challenges students to solve. When students get an idea or ideas about solutions to problems that are expected, then these students have interpretations of the issues presented where interpretation is one indicator of students' critical thinking skills.

The next phase in the PBL is organizing students to study and guide the investigation of individual or group. In this phase, students are grouped heterogeneously. During the discussion, students discuss a given problem and mutual expression. Each student may have a different way of solving problems. With the group discussions, each student can exchange ideas, and know the ability of himself and members of his group. Among the group members have already understand and do not understand. So that will be formed curiosity, open-minded attitude and a tendency to seek the truth. When students solve problems with the analysis of the students will have a tendency to systematic and analytical attitude. Students are also trained to deliver an opinion in the group so that students are trained to have confidence in critical thinking. This is one of the students' experiences with others during the learning indicator showing the disposition of critical thinking. in accordance with the needs and packing the learning process more meaningful, interesting, and can help students to enhance problem solving abilities. In LKPD there are also games that lead students to the spirit and challenged to complete the game, and there are comics that are interested in learning so that students can develop the skills disposition. Pinter (2011) revealed the game play is not only fun, but students can learn more effectively through activity and participation rather than passive instruction because they are usually more motivated and more active in reaching their goals. In the game also with games provide a challenge to improve the knowledge of pupils and students to socialize with their friends so that they can affect their

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cognitive and social development. Through the development of LKPD with PBL models will create a learning process that facilitates critical thinking disposition.

Based on the above background, then do research to develop models LKPD with problem based learning to develop critical thinking disposition.

The purpose of this is to know the results of research LKPD development using a model of Problem Based Learning and knowing the disposition of critical thinking of students by developing LKPD model Problem Based Learning.

2. Research Methods

This research is a Research and Development (R & D) or research development. This study follows the contours Borg and Gall (2008) with steps (1) conduct research preliminary , (2) planning, (3) develop the type / shape of the initial product, (4) Perform trial early stage , (5) make revisions to the main products, (6) Conducting trials la-food, (7) to revise facing operational product, (8) field test operations, (9) to revise the final product, (10) conduct dissemination and implementation of the product. Implementation of this research is only up to the seventh step is to revise the operational product. Products developed by the researchers is LKPD PBL mathematical model to develop students' critical thinking disposition.

The study was conducted in SMA Negeri 1 Tumijajar. The subjects were students of class X IPA 1 by the number of students 34 people, carried out in the first semester of the 2015/2016 academic year. Developing data collection techniques compiled in this study were (1) Data validation experts analyzed descriptively to examine the results of expert assessment of the learning device, (2) critical thinking disposition of data obtained by field notes, interview and observation sheet.

3. Results and Discussion

3.1 LKPD development model with PBL

This study follows the contours Borg and Gall (2008), which consists of seven steps. Based LKPD development research that has been done in SMA Negeri 1 Tumijajar result of these stages is the first stage of development is a preliminary study conducted by interviewing senior mathematics teacher the result that SMA Negeri 1 Tumijajar already using the curriculum of 2013. In 2013 the government has issued curriculum textbooks but textbooks government is still difficult to be read and understood by students. There are no handles LKPD good student of the publisher and the work of teachers. Not many publishers use the curriculum in 2013 and who had been taking is still in the stage of completion and there are no corresponding curricula, 2013. In the second step, namely the development of learning magnified by LKPD with PBL with material taken is a system of linear equations and inequalities. In the third stage is the initial product design is obtained that the initial product design LKPD development research is me-LKPD determine the design of the development, the charge LKPD by selecting the material system of linear equations and inequalities and divide into 6 LKPD materials, and preparation of learning instruments.

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In the fourth stage is test early stage that no expert test, test and test groups of limited legibility. In this expert test conducted by two experts that design experts and subject matter experts. Expert design by Bharata results obtained are 45 good category. Experts material by Paijo as a senior teacher at SMA Negeri 1 Tumijajar results obtained is 48 with very good category. In the legibility test conducted by students who have obtained such material is class XI LKPD improvements to the language. In the test group, namely the limited class X IPA 2, which first supplied the material and this LKPD during the learning obtained in LKPD 4 there that can not be solved so it needs to be fixed. In the fifth stage, namely the revision of the initial product is done by testing early stage. Advice from subject matter experts that you should use the language effectively and efficiently, or do not use language that is difficult to understand and LKPD 4 repaired. In the sixth stage of field trials are done in class X IPA 1. At the seventh stage, namely the improvement of the product, the final revision is done by paying attention to the notes in the study.

3.2 Critical Thinking Disposition

In the learning process students are given LKPD are expected to develop their critical thinking skills of students. LKPD use of some of the most interesting is the LKPD 3. In LKPD 3 students are asked to solve problems associated with SPLTV and magical star. In completing a miraculous star in them were troubled. Students working using complicated concepts SPLTV but many times they do. Finally, students worked again even though many times one still they do. In discussing student expression, there perde-ty of opinion among the group but ended up getting conclution gathering correct. In the process of this discussion the students were able to menyam-paikan opinions with reasons it is aligned with Ennis (1996), critical thinking is a process that in expressing goals include explicit reason of a trust and the activities undertaken. In this case the critical thinking indicators also appears that curiosity, open-minded, analytical, systematic, confident in critical thinking and the search for truth.

Games in defense-distance as long as the concept is interesting in the material delivered. At 3 LKPD this example, the teacher gives a magical star game that make students curious and excited. Pinter (2011) revealed the game play is not only fun, but students can learn more effectively through activity and participation rather than passive instruction because they are usually more motivated and more active in reaching their goals. In the game also accompanied pertan-dingan that provide challenges to improve students' knowledge and students socialize with their friends so that they can affect their cognitive and social development.

Teacher gives students opportunity to be in any way. No group has a unique work is by trial and error. Students working by trial and error did not get the requested results in a miraculous star that every line on the star have the same amount. Students are also constantly working to try and get the requested results. In this work the students discover new things that can not be found by other groups that every little triangle in the air before the magic star has the same amount. The group discovered this finding is not included students with high intelligence category. This shows that this LKPD develop students' critical thinking

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disposition. Then recapitulate the achievement of critical thinking dispositions indicators presented in Table A.

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Table A. Achievement Indicators Critical Thinking Dispositions

Indicators of critical thingking disposition	Meeting						Average of indicator
	1	2	3	4	5	6	
Curiosity	66.67	66.67	100	83.33	100	100	86.11
Open minded	16.67	16.67	50	66.67	83.33	83.33	52.78
Systematic	16.67	16.67	33.3	50	83.33	83.33	47.22
Analytical	16.67	33.33	50	50	66.67	83.333	50.00
Confidence in Critical Thinking	33.33	33.33	50	66.67	66.67	83.33	55.56
Truth Seeking	50	50	50	50	66.67	83.33	58.33
Average of meeting	33.33	36.11	55.56	61.11	77.78	86.11	

In Table A disposition of students' critical thinking is measured by several indicators. In workmanship LKPD students tend to want to know. it is seen from seeking other literature, ask the teacher and other students asked. In indicator open-minded students to accept others who are considered logical to relate what he knows. In systematic indicators of students lacking the inclinations systematic manner. In an analytical indicator of just a few students who have a tendency to analytical. In indicator of confidence in critical thinking, students are confident enough with their comments when delivered because they have first to find literature that support. In the search for truth indicators more than 50% of students are already looking for first settlement and convincing answer by asking the teacher or to friends.

Disposition critical thinking students are appearing with the teacher giving some fishing equation of students to solve problems in LKPD. The answer given by the student must be questioned again so that the students believe that the Java-tire right or wrong. This is consistent with the opinion of Jones, Bagford, and Walen, 1997; Ross, V., 2003 (Yunarti, 2011: 51), questions are used to test the validity of students' beliefs about an object in depth.

The average indicator of critical thinking disposition of the meeting of 1 to 6 increase. This is because students are used to learning and LKPD used than previous meetings. LKPD that is used to lure students to have inclinations positive attitude is critical thinking.

Based on the results of research and discussion obtained the following conclusions

1. Results of the research are the development of the model of PBL accompanied LKPD game system materials linear equations and inequalities for students with middle to upper-level thinking. LKPD with the game will be effective if (a) The

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material prerequisites in the system of linear equations and inequalities are linear equations and algebra. Structural material presentation begins by recalling the prerequisite material, the material continued SPLDV using media card, SPLTV material using a magic star games and comics mathematics, then the material SPtLDV by presenting problems in LKPD. (B) In card games like dominoes SPLDV are the questions and the answers. Problems that exist on the card is a matter that is not too long and can be completed quickly and make students work together in groups so that students do not need much time to work and indirectly own students to practice solving problems SPLDV. (C) In the magic star game every line has the same amount without a known amount of each of the lines so that students can explore their ability and challenged students finish the game. (D) Language in comics should use language that is often heard and used by students but still leads to the rules of the EYD. (E) Students are more challenging then the introduction of open ended questions are questions that makes the students interpret questions, analyze and evaluate students to revisit the settlement so as to develop critical thinking skills and critical thinking dispositions.

2. The average indicator increased disposition to think critically. Indicators of the lowest percentage of the average is a systematic indicators. Indicators highest percentage average is an indicator of curiosity. At the student with the ability of low, medium and high own curiosity is high.

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The Development of Media Mind Map with Freemind Applications On Course Introduction of Management in Economic Education Studies Program FKIP Sriwijaya University.

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Abstract

This research aims to develop instructional media with application of FreeMind on introductory course of management in order to produce a valid, practical, and potential effect. Before tested the product first be validated by experts on two aspects: the material and the design aspects of the media. Results obtained from the development stage to be obtained that the media mind map with FreeMind application developed otherwise proven its practicality, is seen from the results of the evaluation of a small group of filling the questionnaire given to the students obtained a value of 79.167 with a practical category. Supported the observation of the average activity of students is 75.417%, which means that the media used by students in learning activities in the classroom in a practical category (71-85). To determine the potential effect on the media mind map by using the Freemind application indicated by a score of learning outcomes management introductory course in the category, it is based on the results of the calculation of the value of N gain on the material 1 equal to 0.3918 (Effective medium category) and the calculation of N gain 0.3860 on the suibject 2 (Effective medium category).

Keywords : *Development of media mind*

1. Introduction

1.1 Background

One of the subjects given on Economic Education courses at FKIP UNSRI is introductory management. This course there are many management concepts that must be mastered by the student. To convey these concepts is not easy, let alone the basic concepts are interrelated to one another. Therefore, it requires the ability lecturer in selecting the right media to communicate. Gagne (in Sadiman et al, 2009) states that the media is a component that can stimulate students to learn.

Based on observations during the learning process, many students looking bored. This resulted in students' understanding of the management concepts that are given are not satisfactory as seen from still there are students who got a C (at 30%). Students'

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understanding of the concept is the cornerstone in doing analyzing the issue to the creativity in solving problems in management activities.

Learning media is a useful tool to facilitate learners in understanding the subject matter (Aha, 2005: 125). In effect the media is one component of the learning system. Use of media education can improve the teaching and learning process, which in turn can provide a satisfactory learning outcomes.

One type of learning media is a mind map (mind map). Mind map is a way to organize and present concepts, ideas, tasks, or other information in the form of diagrams (Fathurrrohman, 2015: 206). Mind Maps can transform information into knowledge, insight, and action. The information presented focus on the important parts so as to encourage people to explore and mengelaborasinya.

One application that can be used to create a mind map is FreeMind. Freemind is an application that is simple and easy to use. With this application media mind map becomes more interesting because it comes with images, colors and hyperlinks to different types of files. Based on the above researchers interested in conducting research entitled "*Development of Media Mind Map with Freemind Applications on Course Introduction of Management in Economic Education FKIP UNSRI*".

2. Formulation of the problem

2.1. Formulation of the problem

Based on the background research suggested, then the problem in this research are:

1) How to develop media applications Freemind mind map with the course Introduction to management that valid ?
2) How to develop media applications Freemind mind map with the course Introduction to practical management ?
3) How the potential effects of media mind map with FreeMind application to the understanding of the students in the course Introduction to management ?

3. Review of Literature

3.1. Instructional Media

Learning media is a tool that is used to convey information in the learning activities. Miarso (2004: 456) argues that learning media is anything that is used to distribute messages and can stimulate the mind, feelings, concerns, and the willingness to learn so as to encourage the process of learning a deliberate, purposeful and controlled.

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There are many types of media that can be used in the learning process. Arsyad (2009) classifies media into four groups: 1) media printing technology, 2) media audio-visual technology results, 3) media technology based on the results of the computer, and 4) the combined results of media printing technology and computers. Media that will be developed in this research is a form of computer-based media mind map with FreeMind application.

3.2. Mind Map

Mind map was first introduced by Tony Buzan a psychologist from the UK. Buzan (2008: 68) argues that the mind map is a way of summarizing the material to be studied to a map or graphical techniques making it easier to understand. Buzan believes that the use of mind mapping is not only able to jump-start the process of memory, but also enhances creativity and skills to analyze and optimize the function of the cerebral hemispheres.

Meanwhile, according to Legowo (2009: 5) mind map is the easiest way to put the information into the brain and take information out of the brain. Mind map is a way of noting a creative, effective, which maps simply mind-thoughts.

In principle, the media mind map consists of three main components: 1) the central topic: Focus your mind or issues to be developed and placed as a tree; 2) The main topic of the second-tier level of thinking as part of the central topics and put the branches encircling the tree; 3) sub-topics: the third tier level of thinking as part of caang placed as twigs (Fathurrohman, 2015: 206). Currently mind map can be created manually or by using computer applications. One of the applications that can be used to create a mind map that FreeMind application.

3.3. Freemind

The development of information technology has resulted in applications that facilitate in making the mind map are: FreeMind application. Freemind by Jorg Muller (Legowo, 2009: 21) is a tool for mind maps in the form of hierarchy diagram using nodes and lines are displayed graphically.

Freemind is a simple application that is easy to use and understand. Freemind has a set of features, including the following:

a) folding
   Folding is FreeMind ability to hide or display the information under the selected objects with easy control.
b) Navigation with a click
   Examples of navigation to the many features are just a click away, including opening / closing folds (fold) and unfolded (Unfold) and then link (link) with one click at the same time. HTML Links can be stored in the nodes, including a link to the World Wide Web or a local file
c) using Undo

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Undo feature is used to eliminate the effects of the previous menu option.

d) Smart Dragging and Dropping
Eg copy (copy) a node or nodes style; drag and drop to the selected node, put a text or a list of files from the outside.

e) Smart Copying and Pasting
This feature helps paste links from HTML or organize the content that were pasted on the front or top of the line; or paste a list of files selected.

f) Export map as HTML
This feature converts a mind map to a standard text hierarchical structure.

g) Using Find Facilities
This feature can be searched in a map based on a keyword and then displays the items found one by one by selecting the find next choice.

h) Using icons Built-in
The icons in the default (built-in) FreeMind can be used with colors and different fonts to decorate nodes.

i) Save maps in XML format
Freemind exhibit low cost of risk moved to the mind mapping application to another, because FreeMind stores maps (map) in XML format.

j) Using File Mode
File Mode can be used to surf (browse) files on your computer, see the folder structure as a mind map as shown in the following figure:

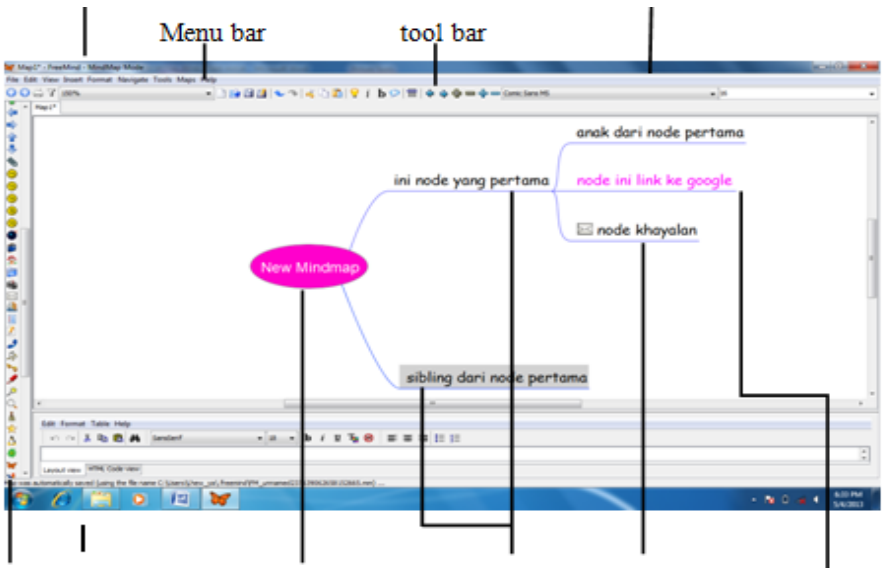

Figure 1. Display of FreeMind (Legowo, 2010: 36)

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3.4. Introduction of Management

Introduction of management courses has 2 credits taken by students of the V semester. This course learn about the concepts of knowledge management that includes planning, organizing, directing and monitoring. Utilization of media mind map with hopes FreeMind application can enhance students' understanding of concepts and relationships between concepts in management activities.

4. Research Goal

4.1. Research purposes

Based on the formulation of the problem posed, then the purpose of this study are:

1) Producing media mind map with FreeMind application in the course Introduction of management that valid
2) Producing media mind map with FreeMind application in the course Introduction of management which practical
3) Knowing the potential effects of media mind map with FreeMind application to the understanding of the students in the course Introduction to management.

5. Research Methods

This research is a form of research and development aimed at producing prototype instructional media course on introduction to management. Research and development (Research and Development) This refers to the R & D cycle Borg and Gall (in Sukmadinata, 2007).

5.1. Research procedure

Prosedur research covered in this study followed the steps in the development of research which is adapted from Sukmadinata modification based on her research research2007 .

Steps by step that media development research with application FreeMind mind map is described as follows:

1. Preliminary studies

Pilot study was conducted to obtain preliminary information on the media used in teaching the course Introduction to management. Including analysis of needs, then identify basic competencies and indicators, the latter is put through the analysis of teaching materials that will be included in the media mind map developed.

2. Product development

At this stage, to determine the validity of the products is done twice validation experts, namely matter experts and media experts. At the stage of expert review, the products have been designed to be observed, and evaluated by experts. The experts had been studying the material aspects (content) and media (layout) of each prototype. The suggestions of the experts used to revise a device developed.

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3. Products Testing

In this phase media mind map development, researchers implement media mind map that has been prepared. At the time of trial test observations to obtain data to improve media mind map. The results of the trial observation then discussed between researcher and teacher. Implementation of the trials carried out in several stages, namely the trial one to one, small group and field evaluation.

4. Data collection technique

Collecting data in this study include: validation experts, interviews, observations, student feedback questionnaires and tests. The data collection techniques can be seen in the table below:

Table 1. Data Collection Techniques

No	Data Collection Techniques	Instrument	Data
1	Validation	Validation sheet	Advice and criticsm
2	Interview	interviews sheet	Students response
3	Observation	Observation sheet	Observation result
4	Questionnaires	Questionnaires sheet	Students response
5	Test	Questions	Students Understanding

5. Data analysis technique

Data that have been obtained from the data collection process will be analyzed with the following steps:

1). Analysis of Data Validation

Validation test given to experts is in the form of a questionnaire using the scale Linkert with the technique of scoring is Very Good (SB) score of 5, Good (B) score of 4, Enough (C) score of 3, No Good (TS) score of 2 and Strongly good (STB) score of 1 is given to each indicator shows the level of validity.

Furthermore, the average obtained adjusted to the category as shown in Table below:

Table 2. The Category level of validity Media Learning

Scores	Category
4,21 - 5,00	Very Good / Very
3,41 – 4,20	Good / Valid
2,61 – 3,40	Pretty Good / Fair Valid
1,81 – 2,60	No Good / Invalid
1,00 – 1,80	Very Not Good / Very Invalid

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Sugiyono (2010)

2). Interviews Data Analysis

3). Observation Data Analysis

Data on the observation will be analyzed descriptively by determining the magnitude of the frequency of each activity are then calculated the percentage. Then calculate the percentage shown in the following table:

Table 3. Category of Score Results observations

Scores	Category
81 – 100	Very Active
61 - 80	Active
41 - 60	Quite Active
21 - 40	Not Active
≤ 20	Very Inactive

Sugiyono (2010)

4). Data Analysis Questionnaire

Questionnaire data obtained by calculating the scores of students who answered all items contained in the questionnaire statement. To determine whether the media mind map used in learning practical introduction to management, this data is then interpreted by the criteria of practicality by Djaali and Mulyono (2008) which is in the following table.

Table 4. Category level of practicality of use media

Skor	Kategori
86 - 100	Very Practical
71 - 85	Practical
56 - 75	Quite Practical
41 - 55	Not Practical
20 - 45	It is Not Practical

Sugiyono (2010)

5). Data Test Analysis

To see the difference in the results obtained student in pre-test and post-test used a score gain. To obtain N-gain formula is used:

N_{gain} = Post Test – Pre test / 100 – Pre Test ..... (1)

(Hake, 1999)

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For criteria normalized high and low gain can N_gain which clasifications as contained in the following table:

Table 5. Category Rating Score Gain

Criteria N_{gain}	Category
Jika $N_{gain} \geq 0{,}7$	High
Jika N_{gain} $0{,}7 > N_{gain} \geq 0{,}3$	Average
Jika $N_{gain} < 0{,}3$	Low

(Nasution, 2007)

6. Results and Discussion

6.1. Research result

The results of research media development using an application FreeMind in the course of introduction of management for students of economics education FKIP Sriwijaya University includes the results of phase preliminary study, the results of the product development phase and the results of the test phase of a product that aims to see the validity of the media, the level of practicality and potential effects of media developed. In detail described as follows:

A .Results Preliminary Study Phase

1. Analysis of Needs

The results obtained by researchers from observation and unstructured interviews with colleagues and students about the problems or obstacles encountered in the learning process. Problems on the course include:

a) No teaching materials have not been able to make students understand the material presented well
b) Need other instructional media that can support the delivery of learning materials in order to gain maximum learning outcomes (percentage value of C decreases).
c) The lack of interest of students to participate in learning activities for active learning media used has not been able to provoke the enthusiasm of the students.

2. Identifying Basic Competencies and Indicators

Identification of interest is the first step in the development stage of learning materials including media development Freemind mind map using the application. In formulating the basic competencies and indicators should contain aspects of the ABCD (Audience, Behavior, Condition, Degree).

3. Material analysis

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In this course, the researchers developed a media mind map with FreeMind application by selecting some material Sylabus meeting that had been developed previously. Some of the material is taken as the material tested on an introductory course management is the evolution of management theory and division of labor and organization structure.

B. Results of Product Development

At this stage the researchers conducting the preparation of teaching materials with the help of media applications FreeMind program to produce a valid practical teaching materials and has a potential effect. Validation by experts include media and content experts carried out before the media tested its use on student opinions and suggestions expert reviews on the inputs used to memperbaikai media to be eligible tested.

C. Evaluation of the Formative Evaluation Tessmer

Products that have been developed before implemented into the field, the product first in the evaluation using the evaluation Tessmer. Tessmer evaluation consists of: expert review, one to one evaluation, small group and field evaluation test.

Furthermore, a more detailed media development process is performed as follows:

a) Expert review / Validation Expert

Evaluation by the expert review / validator that consists of 2 validator are validator validator validator design and material. Analysis of data on the assessment of the media mind map validator result score of 4.17 on a 3.67 aspect of the content and media aspects so that the mean score of 3.92 on a valid category.

b) Evaluation A-One (One-to-One Evaluation)

The evaluation was conducted on students who have been selected by the researchers for small-scale trials. At this stage the first prototype involves three students were considered to represent a group of high ability, medium, and low.

Observations and interviews at this stage in terms of look learner is like this and means learning multimedia learning multimedia can attract learners, motivating the students to learn and practice in learning. Thus the multimedia has been through a process of expert review and one to one then this learning multimedia declared valid and practical. Furthermore, learning multimedia was named prototype 2 and ready to process small group evaluation.

c). Evaluation Small Group (Small Group Evaluation)

Evaluation was conducted on a small group of 6 students who performed in the study. The results of the questionnaire responses of students in the evaluation phase of the group obtained a score of 79.167% categorized practical. the results of observations on the

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evaluation of the small group of 75 417%, it means that the media mind map in the category of practical use by students in the learning activities Introduction to management.

d). Field Test Results (Field Test)

Revision of the results of the second prototype then conducted a field test (field test). The results of pre-test and post-test students in learning to use the media mind map in 2x material made in detail presented in the following table:

Table 6. Comparison of Study Results Pre Test and Post Test

The average valueof Material 1				**The average valueof Material 2**			
Pre Test	**Post Test**	**Changes (Increase& Percent)**		**Pre Test**	**Post Test**	**Changes (Increase& Percent)**	
69,86	81,67	11,81	16,90%	65,83	79,02	13,19	20,04%

Sources: Primary data is processed

To be able to derive conclusions from the results of post and pretest the learning outcomes were then converted using the formula N gain, the calculation results obtained are = 0.3918 (Effective medium category) on the material 1 and 0.3860 (Effective medium category) on the material 2 , Based on these results it can be concluded that the potential effects of media mind map with FreeMind application introductory course on effective management included in the category.

7. Conclusions And Suggestions

7.1. conclusion

Based on the results of research and discussion in the previous chapter, some conclusions can be drawn as follows:

1) Results validity media Freemind mind map with applications developed can be declared invalid after validation by experts / expert review in two aspects, after going through the stages of evaluation one by one (one to one evaluation). The media thus eligible for use in learning activities.
2) Practicality media mind map with FreeMind application developed otherwise proven its practicality, is seen from the results of the evaluation of a small group of filling the questionnaire given to the students obtained a value of 79.167 with a practical category. Practicality modules developed can also be seen from the liveliness of the students shown in field tests, namely the observation of the average activity of students is 75.417%, which means that the media used by students in learning activities in the classroom in a practical category (71-85).

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3) From the analysis of observational data obtained evaluation stage one to one of the modules developed is 78.33% included in the category of practical, small group in evaluating the results of questionnaires obtained was 79.167 (practically category) with the results of observations obtained a score of 75.417. The results of the field test observations obtained a score of 79.583%, which means the module is used by students in the practical category (71-85). It can be concluded that the modules developed fall into the category of practical.
4) Measurements on the potential effect on the media mind map with the application FreeMind use learning outcomes data show that the application of media mind map on a course of instruction management has an effective rate in the medium category, this is based on the results of the calculation of the value of N gain in material 1 (the evolution of management theory) by 0.3897 (effective medium category) and the calculation of the gain 0.4026 N in the material 2 (the division of labor and organization structure) shows the results of effective medium category.

7.2. Suggestion

From the research that has been done, it is recommended to students, faculty, institutions and other researchers as follows:

1) Learners, can make the media mind map with FreeMind application as an alternative medium of learning interesting and fun to improve the understanding of the introductory course material management in order to obtain satisfactory academic results.
2) Lecturers can use the media mind map with FreeMind application which has been developed as a selection of teaching materials that can be used to improve learning outcomes.
3) Institutions, can be an inspiration and a reference for the improvement of learning and quality improvement, especially in the introductory courses of management.
4) For other researchers, can be used as reference material in the development of better products and perfect.

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Developing Cooperation Economic Model in Junior High School Through the Role of School Committee's Improvement in Bandar Lampung

Erlina Rufaidah

The goals to be achieved in this research is to (a) develop a Model of Economic Cooperative Junior High School through the optimization of the school committee in the city of Bandar Lampung ; and (b) implement the Cooperative Economic Model that is designed to improve the quality of the individual and the school as a whole. This study uses methods Research and Development developed by Borg and Gall implemented within two years of activity. First year : model development stage, based on data obtained at the seminar on early models, designing the initial model, comparative studies, revision, and produced a model school cooperative economy through increasing the role of the school committee. Second year : disseminating the cooperative economy model school, test models, validate and revise the model, implement the model. The expected outcome of this research is the formation of the cooperative economy model secondary school in the metro city. With this result presumably can be disastrous for other schools in forming a cooperative mode.

Keyword: *Economic Cooperation, Role of School Committees, Community Development Program*

1. Introduction

In the Decree of the Minister of National Education number: 044 / U / 2002, explaining that the School Committee is an independent body that accommodates the community participation in improving the efficiency, quality and equity of education management in the education unit, both in pre-school education, education track or path education outside of school. The role of the school committee for education in the school of which is to help the business consolidation of schools in realizing the guidance and development of piety towards God Almighty, democracy education from an early age (life of the nation, educational introduction to defend the state, citizenship, organizational, and leadership), skills and entrepreneurship, physical fitness and exercise, creativity and inventiveness, as well as the appreciation of art and culture (MONE, 2001: 17).

According to the Decree of the Minister of National Education number 044 / U / 2002 on the Board of Education and the Committee sekoah explained that the School Committee functions as follows: (1) Encouraging the growth of the attention and commitment of the community towards the implementation of quality education. (2) Cooperate with the public (individuals / organization / business / industry) and the authorities with regard to the implementation of quality education (3) Collect and analyze the aspirations, ideas, demands, and a variety of educational needs submitted by the public (4) Provide input, consideration and recommendation to the education unit about: education policies and programs, education and Expenditure Budget Plan School (School Budget), the performance criteria of the educational unit, the teaching workforce criteria, the criteria of educational facilities, other matters related to education. (5) Encouraging parents and communities to participate in education to support improved quality and equity of education (6) To raise funds in order to

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finance public education in the education unit. (7) Evaluation and oversight of policies, programs, implementation and education outcomes in the education unit. (Ninik, 2011)

The role of the school committee that is vital in the development of quality education requires the contribution of the school committee as advisers, supporters, controller, and a mediator for fundraising. The role needs to be supported by the participation of school committees in developing economic activity and productivity of the cooperative, meaning that the school committee as a driver of economic and entrepreneurial world pioneer in the framework of student progress / i in the learning process.

Empowerment and improving the function of the school committee, can be done by fostering cooperation with the public. With the synergy between the school committee with the school is expected to give birth to a shared responsibility between the community (parents) and the school as partners in the education building. The role of the school committee as a mediator for training and entrepreneurial skills of students can be realized by forming cooperatives as one container to train students in entrepreneurship. Beside that, the positive impact of the formation of cooperatives, which was initiated by the school committee can help parents who have limitations in terms of revenue. Later, the income of the cooperative was formed, expected to be used to meet the needs of students such as books, uniforms and other support in the learning process.

2. Literature Review

Law on National Education System No. 20 of 2003 article 17, paragraph (1) basic education is an underlying level of education secondary education; (2) basic education shape of Elementary School (SD and Islamic Elementary School (MI) or other equivalent forms and Junior High School (SMP) and Madrasah Tsanawiya (mts), or other equivalent form.

Junior High School (SMP) is the formal basic education in Indonesia after completing primary school (SD) or equivalent. Junior High School implemented within a period of 3 years, starting from grade 7 to grade 9. Students in grade 9 are required to follow the National Examination affect whether or not students' graduation. Junior high school graduates can continue on to higher education, ie secondary education (high school) or vocational secondary schools (SMK) or equivalent. Junior high school students are generally aged 13-15 years.

Junior High School (SMP) including compulsory for every citizen aged 7-15 years in Indonesia. 9-year compulsory education covers primary education, namely primary school (or equivalent) of 6 years and junior high school (or equivalent) 3 years. Junior High School (SMP) organized by the government or private. Management of junior high schools in Indonesia that were previously under the Ministry of Education, now the responsibility of local government district / city since the implementation of regional autonomy in 2001. Meanwhile, the Ministry of Education only acts as a regulator in the field of national education standards. Structurally, junior high school is the unit of technical education service districts / cities. In the academic year 1994/1995 to 2003/2004, this school never called junior secondary school (JSS).

Referring to the thought of Edward Sallis, Sudarwan Danim (2006) identify the characteristics of quality schooling, namely: The school focuses on customers, both internal and external customers, the School focuses on efforts to prevent problems that arise, with a commitment to work right from the beginning, school has investments in human resources, so

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as to avoid the various "psychological damage" which is very difficult to fix, the school has a strategy to achieve quality, both at the level of leadership, academic personnel, and administrative staff, the school manage or treat complaints as feedback to achieve quality and position error as an instrument to do the right thing in the next period, the school has a policy in planning to achieve quality, both short term, medium term and long term, the school sought the repair process by involving everyone in accordance with the duties, functions and responsibilities , the school encourages people deemed to have creativity, capable of creating quality and stimulate others in order to work quality, school clarifying roles and responsibilities of each person, including the clarity of direction work vertically and horozontal, schools have strategies and evaluation criteria are clear, the school looked or put the quality that has been achieved as a way to improve service quality further, the school looked at quality as an integral part of work culture, the school puts continuous quality improvement as a must.

Munker defines a cooperative as an organization helping who runs "urusniaga" is set, that based on the concept of mutual help. Activities in urusniaga solely for the purposes of economic and not social as contained gotong royong (Arifin Sitio and Tamba Halomoan, 2001: 18).

The main purpose of cooperatives is to realize a just and prosperous society based on the material and spiritual Pancasila and the Constitution - the Constitution of 1945. In Chapter II, Article 3 of Law - Law No. 25 of 1992, states that the cooperative aims to "Promote the welfare of members in particular and society in general as well as help build national economic order in order to realize an advanced society, just and prosperous based on Pancasila and the Constitution - 1945".

Furthermore, the cooperative functions stipulated in article 4 of Law No. 25 of 1992 on cooperatives, namely, to build and develop the potential and economic capacity of the members in particular and society in general to improve the economic and social welfare, participate actively in efforts to enhance the quality of human life and society and strengthen the economy of the people as the basis of the strength and resilience of the economy a national cooperatives as a teacher.

Trying to realize and develop the national economy is a collective effort based on the principle of kinship and democracy ekonomi.Keberadaan school committees that legally stipulated in Decree of the Minister of National Education No. 044 / U / 2002. Based on the Minister of Education, the school committee aims to (1) Accommodate aspirations and community initiatives in the delivery of operational policies and education programs in the education unit; (2) increase the responsibilities and the role of society in education; (3) Creating an atmosphere condition of transparent, accountable, and democratic in the administration and quality education services in the education unit. Thus, the school committee is an independent body that embodies the role of the community in order to improve quality, equity and efficiency of education management in the education unit.

Further in the Decree of the Minister of Education explained that, where the school committee acting as (1) Giving consideration (advisory agency) in the determination and implementation of education policies in the education unit; (2) Support (supporting agency), both tangible financial, thought and energy in education; (3) Access Control (controlling agency) in the framework of transparency and accountability of the organization and education outcomes in the education unit; and (4) The mediator between the government (executive) with the community in the education unit.

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The fourth related to the role of the school committee in the above can be described as follows:

(1) The role gave consideration, do the school committee on aspects of school planning Educational Work Plan (RKS), the Annual Work Plan (RKT), and the School Budget and Activity Plan (RKAS), the implementation of school programs, and resource management education.

(2) The role of providing support, done in resource management, infrastructure management, and budget management.

(3) The role of control, implemented in the control of educational planning in schools, monitoring the implementation of school programs, and monitor output (output) education.

(4) The role of interfaces, liaise with the public schools, the education agency and the corporate world in terms of planning, implementation, program and resource management.

3. Research Methods

This study uses research and development (Research and Development) is a research method that is used to produce a particular product, and test the effectiveness of the product.

According Sujadi (2003: 164), Research and Development or Research and Development (R & D) is a process or steps to develop a new product, or enhance existing products, which can be accounted for. Such products are not always shaped objects or hardware (hardware), such as books, modules, learning tools in the classroom or in the laboratory, but it can also software (software), such as computer programs for data processing, learning in the classroom, library or laboratory , or models of education, learning, training, coaching, evaluation, management, and others.

According Sugiyono (2011: 407) methods of research and development is the research methods used to produce a particular product, and test the effectiveness of the product.

Steps Research and Development:

According Sugiyono (2011: 408) measures the implementation of the strategy of research and development being done to produce a specific product and to test the effectiveness of the product in question, is: Potential and problems, gather information and Literature, Product design, validation Design, Improved Design, Product trials, Revision Products, test Usage, Revised Product and Preparation of Bulk Products

Based on the above steps, this study consisted of two phases that are arranged in a two-year budget for 2014 and 2015. The first year is a field of research that will be conducted at the Junior High School (SMP) in Environmental Education Office in Bandar Lampung. This study will explore the implementation of the school committee in the implementation of cooperative economics junior. The arrangement of the research design will be carried out as follows:

Research Activities First Year, Location research, conducted in the first phase of research is to determine the location of the first year of the study. In determining the location of the research should have the desired characteristics of the school, the junior high school

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that has a commitment to implement a cooperative economic system in the school. The choice of location is a Junior High School in the city of Bandar Lampung.

Data Collection, the second stage conducted by researchers is to collect data needed for research purposes of schools that have been established as a research location. Data collection is done at the beginning of the study until padatahap prepare the research report.

The design of the model, after getting the input of various parties, it will formulate a draft model of cooperative economy in the school through the school committee. At this stage a preliminary draft that still needed further verification.

The development of cooperative economic model by increasing the role of the committee stems from the school committee is an independent body that embodies the role of the community in order to improve quality, equity and efficiency of education management disatuan education. School Committee through its role as a Support Agency or Supporting Agency implemented within the resource managers, infrastructure managers, and managers of the budget, which is then followed from the school to parents. The role of the school committee functioning ie Mediator Transportation Agency or Agency in which the school committee to liaise with the public schools, the education agency and the business world in this case the planning, implementation, program, and resource managers. Furthermore, from parents are given training, equipping, and training and provide capital to prepare and produce soul enterprenuer then packaged and given a container of the school committee of planning the establishment of a cooperative school.

Cooperative is an association of people, usually have the economic capacity is limited, which through a form of business organization supervised democratically, each contributing an equivalent to the necessary capital, and are willing to bear the risks and receive the rewards are well worth the effort they did (ILO Revrisond Baswir, 2000: 2).

Of school cooperatives formed will produce output that best benefit that will be returned to the student's parents to meet their needs to be met such as books, school uniforms, and others. Implementation of school cooperatives formed by the school committee would be controlled as well as the role of committees namely the Board of Control (Controlling Agency), implemented in the control of educational planning in schools, monitoring the implementation of school programs, and monitor output. So the development of the economic model of cooperatives through the increased role of the school committee is expected to create learners who have the Good Character and for the cooperative schools have been formed into the required supplier market and then generate revenue.

Comparative Study, To verify the results of the initial draft, the researchers along with other timpeneliti study visits to various schools in other areas. Determining the location of this appeal, it is judged that the local government has a strong commitment to realize the application of cooperative economy in school.

Revised Draft Model, After the previous stage, the draft document early models have been formulated previously considered sufficient reason to be revised so it will be feasible to implement.

Product of Year One, the product is the first year the cooperative model documents SMP economy through increasing the role of the school committee in the environmental development program. This model was piloted in other schools with similar characteristics and different schools in the second year of research activities.

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Research Activities Second Year, Implementation Model for Economic Cooperation Junior High School through the increased role of the school committee in the environmental development program. Objective, To know the level of successful implementation of Economic Cooperation Model Junior High School through an increase in the role of the School Committee Community Development Program. The activities include: Seminar and socialization model, the event is attended by practitioners of education, especially school principals, teachers, school committees, school superintendent, and the Department of Education to promote the economic model cooperative secondary school by increasing the role of the school committee that had been set in the first year of research activities. Trial Model At this stage, will be piloted in schools that have been determined as the first step in the implementation of the cooperative economy model secondary school through the increased role of the school committee. The trial results will then be revised by experts through the Forum Group Disucsion (FGD). Validation and Revision Model, Validation and revision of the model, is a step in modeling to determine the suitability of the model with real direpresentatifkan system. There are four stages in the process of validating the model, namely: (1) Validation of conceptual, (2) logical validation, (3) experimental validation, and (4) operational validation (Landry et al., 1983). Implementation Model, The next step is the implementation of a model that has been revised in schools that have been identified as other research sites are located in urban areas (urban), namely Bandar Lampung city and in rural areas (sub-urban), the Right Way district. Model Implementation Results Data Processing, Data processing is performed to determine the results of the implementation of the model in the field. This study used survey method with quantitative approach which refer to historical data, followed by a verification and validation testing. Report of Research and Publications, data processing results as a basis for the preparation of research reports, the next seminar and published in research journals. Done entire research activity.

RESEARCH RESULT

The results of the study in the first year, namely (a) the identification of the existence of cooperatives in all secondary schools located in the city of Bandar Lampung (b) interviews with the school on the following school cooperative development efforts with the involvement of school committees. The need for identifying the cooperative school is to classify schools by school cooperatives were established, growing, and has not yet formed. Furthermore, from the data obtained will be applied to strategic steps to resolve the problem of different cooperative development of the school through the optimization of the role of the school committee. As for the distribution of schools already have cooperative and who have not had a cooperative presented in the data table 4.1

Analysis of the first 36 secondary schools located in the city of Bandar Lampung indicates that there are 5 schools (13.88%) who do not have cooperative while the rest (31 schools or 86.11%) own the cooperative. This indicates that most of the junior high school in the city of Bandar Lampung have noticed the importance of cooperatives in schools. Koperasisekolah economy model development at the level of secondary school (SMP) through increasing the role of the school committee.

Cooperatives today still need to be developed in order to compete with other private business development and this is an ideal entrepreneurship education in schools. The problems faced by cooperatives, especially the aspect of balance, and the business aspects of capital, working capital for the cooperatives is crucial important needs attention from all

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stakeholders. Is a classic constraints on capital availability. However, such capital must be tailored to the needs of cooperatives and cooperative operations in case of shortage of working capital will lead to cooperative stagnant growth, the issue of capital is very important for the cooperative because of the cooperative school should be careful in managing capital.

Problems cooperative schools that have experienced difficulties in the management and development led to the cooperative as a business entity that is in selokah must have a corporate culture that is conducive to be mengatualisasikan dirinyaditengah reality of the liberalization of the economy that continues bergeraksehingga school cooperatives will have appeal as a means of collector potential of the economies of its members are small -small and spread in the scope of school because the cooperative is to be promoted as an ideal business entity (non-profit and social character).

The development of technology that can develop the cooperative school record should be adopted in all units of goods and prices of goods into the computer so that at any time can be checked if there is an error in recording units of goods that have been issued. Students can also cause these obstacles come up, because if we include students as members or customers in existing cooperatives in this school might be better off developing cooperative and will be more advanced, because the number of students more than the number of employees or teachers at the school ,

Governments need to develop cooperative so that it will be a strong reason why the cooperative Indonesia to move forward. Cooperatives in fact been aided by the government through fresh funds, but supervision of such aid needs to be improved. Due to the nature of its support is not required is returned, it can be things that are not mendidik.Akibatnya, the cooperative will be dependent only wait for further assistance from the government. In addition to government aid such harm would also make the cooperative could not compete because it continues to be a parasite country canal.

Development of cooperatives in Indonesia are carried out from the top (bottom up) but from above (top down), it means developing cooperatives in Indonesia instead of the public consciousness, but it appears from government support socialized down. Cooperatives should be formed because of the awareness of the community to help each other meet the needs and welfare which is the purpose of the cooperative itself, so that the government stay into a constructive course. In Indonesia, the government is working double besides support should also be mensosialisasikanya first down so the people into understanding of the benefits and objectives of the cooperative.

Cooperative school as a place of education cooperatives as well as the economic activities of, by, and for the students, the existence need to be developed. For that perluperanan of several parties such as school principals, school committees of parents or the community needs to be contained. Principals can play a role in creating the climate and conditions that encourage the growth of the cooperative school, provide guidance, convenience, and protection to the cooperative school, and was responsible for the smooth running of the school cooperative.

At the government level, for enhancing the cooperative school, can be done by setting the wisdom in giving guidance, supervision, protection, and provision of facilities to the school cooperative, provides ease of procurement of school equipment and other facilities, as well as provide convenience and help in the problem of capital. A teacher can play a role in

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the development of school cooperatives such as directing the cooperative activities of the school in accordance with its objectives, provides practical steps in running a school cooperative, gives practical advice, counsel and consulting assistance on the problems faced by school cooperatives, as well as responsible fully responsible for the implementation of cooperative business activities of the school.

Several things can be done to develop a cooperative school. From the institutional side, diperluka their inventory and identification (mapping) of the cooperative school is there to set technical policy program further. In the context of regional autonomy, the relevant authorities need to authorize a proportionate in setting school cooperative as a legal entity under one roof in accordance with their respective competences (appropriate work areas). In terms of productivity and efficiency, efforts to encourage increased productivity and efficiency of school cooperatives need to work with other cooperatives in the sectors of production and distribution. If normal conditions, the cooperative school can be given a greater role in the service sector and trade in accordance with the mechanism market.For increasing the role of the government and the business world can provide good facilities in the development, facility / infrastructure and partnerships to the cooperative school.

4. Conclusion

In the development of the cooperative school, need to build a system or model of cooperative development of a holistic school with systematic monitoring system and open condition to the involvement of various parties. Thus will help the cooperative to become more professional, independent and able to compete. Cooperative school can be more developed and more professional in carrying out their duties. Cooperative schools need to take more initiative and creative to promote cooperatives in Indonesia, especially in the sphere of school. Schools, government, along with the school committee and the stakeholders can take more initiative and support the cooperative schools to achieve common goals in promoting cooperative Indonesia.

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Developing Of Materials Teaching In Conomic Materials Activities Consumer And Producer In Sma State 2 Gedongtataan Pesawaran District

Erlina Rufaidah

Abstract

This research is motivated low ability students in understanding the economics learning materials and their application in life. The learning activities are conducted focusing on use of the lecture method (conventional). Students tend to be difficult to understand the material as a central learning rests on educators not a student. Teaching materials are used only to help students understand the material teoristis. On the application of difficult students understand the material because the main focus of learning is the student trying to memorize the material and read the material completely. This research aims to develop teaching materials in the form of learning modules based economy guided inquiry approach. The concept in this approach teaches students in understanding learning materials with a model of case studies, students are expected to expand their knowledge and understanding of results material adapted to field conditions.

The research was conducted on Class X SMAN 2 Gedongtataan Pesawaran District in the Academic Year 2015/2016. The method used in this research is the Research and Development. Stages of development of learning modules Economists use models ASSURE: (1) analysis, learners, (2) Formulate standards of learning modules, (3) Selection of materials, motode and models, (4) Utilization methods and technology, (5) Participation of students, (6) Evaluasi and revision. Poses trials conducted by (1) Trial Expert Materials, (2) Trial Expert Desaign, (3) Trial Linguists. These results indicate aspects of ease, the attractiveness and completeness of information has increased in the experimental class compared to the control class. Konsukuensinya teachers are required to be creative and innovative in presenting the material as well as the use of methods and learning models.

Keywords: *Module Economics, Economic Activities, Guided Inquiry*

1. Introduction

Education is a major aspect in improving the human competencies. Modernity in all aspects of life requires the availability of human resources Bedaya high competitiveness khsususnya education. Superior quality of education is an effort to increase the potential of learners through formal and informal institutions. Conception of education emphasizes the creation of human beings who have a high knowledge, extensive knowledge and has character. Superior quality of education can not be separated from the high quality of education sector in educational institutions. Improving the quality of education and learning

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should be continued effort to achieve an effective learning system and are relevant to the advancement of science and technology.

The paradigm of the majority society to an educator (teacher) is the only source of learning for the students, teachers should be learning is not understood as the only source of learning, but with his position as a teacher activist role must also be able to plan and create learning resources more so as to create a conducive learning environment. According Munadi (2008: 5), the sources of learning than teachers called as a conduit or liaison instructional messages are held and / or created in a planned manner by teachers or educators, usually known as a "medium of learning". The use of media or tools recognized by many educational practitioners greatly assist the learning process activities both inside and outside the classroom, especially to help increase student achievement and able to escort students achieve the function and purpose of education. The function and the learning objectives will be achieved when using the right media at the time of learning.

Teaching materials are part of the learning media in the form of print and non-print materials then contain meteri study are summarized in several forms including modules, student worksheets, compilation, handouts, audio-visual, recording and more. Preparation of teaching materials appropriate creative and innovative learning materials with varied approaches will increase the interest of learners in the learning process.

Economics is a social science that discuss and learn about the human activities directly related to ibusi distr, consumption and production of goods and services. The basic problem of economics is always facing humanity is not limited number of human needs while the number of limited means of satisfying human needs. The economy was close relation to the increase in prosperity and fulfillment. Economic learning in schools focuses on meeting the learning material is teoristis and less attention to the function of economics in public life. Teaching materials related to the field of economic imu it shall be able to combine the study of economics in theory and economic role in life.

According to Nani (2013: 45) subjects Economics aims to make the students have the following capabilities.

1. Understand a number of economic concepts to link events and economic problems with everyday life, especially those that occur in the environment of individuals, households, communities and countries.
2. Showing curiosity to a number of economic concepts needed to explore the science of economics.
3. Establish a wise attitude, rational and responsible with the knowledge and skills of economics, management, and accounting that are beneficial to themselves, household, community, and country.
4. Make responsible decisions about the socio-economic values in a pluralistic society, both nationally and internationally

Fulfillment educational purposes need to promote the role of educator as facilitator (referrer) learning activities so that students not only acquire knowledge of a source of learning, but students can search for learning resources themselves through teaching materials available, so that learning can be a student-centered and not focused on educators (teacher).

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According Munadi (2008: 4-5), there are three principles need to be considered by the teacher, namely:

a. The learning process resulted in changes in the behavior of students is relatively permanent.

b. Protégé has the potential, in love, and the ability of the Seed is grown naturally on endlessly.

c. Changes or achievement of ideal quality that does not grow linearly aligned processes of life.

Based on the three concepts above, it appears that the teacher plays a role of instigators (facilitator) in the process of optimizing the students to produce a relatively permanent change in behavior. Teachers called activist role, because with the consideration that the student is a person who has a natural seed inseparable from his environment. The learning process focuses not only on the level of intelektualias students, but also the aspects of the behavior of learners in keeping the values and norms. The purpose of the learning will be achieved when students are able to be independent in their learning activities so that the limitations of educators in providing the materials had little influence on the development of students.

The learning process in grade X SMAN 2 Gedongtataan used are based on the lecture and question and answer. Teaching by relying verbalistic such as lectures and question-answer method is much easier, does not require much preparation. In the aspect of the interests of teachers, the way it was easier. Learning activities that occur continuously sera will be by the same method without innovation will bring a sense of boredom on the learner. Learning is not an educator taste alone, but we must consider the interests of student learning. For teachers who have good public speaking skills, taught by relying on lectures might be able to attract the attention of students. The ability to speak is a talent that has always honed in the long term and not all teachers have the expertise to speak who is able to attract all students. This condition causes the learning is still centered on the teacher, so many students who have a low level of understanding. Techniques learned by rote theory and formula will lead to a lack of understanding of the subject matter which is the cause of the lack of understanding of students. then the understanding of the concept of the material should be strengthened so that students are able to solve the problems properly.

Learning Instructional Materials Economics in SMAN 2 Gedongtataan class X is still individualistic and competitive by ignoring the social skills of students, how to construct the students' understanding, in terms of improving students' skills in problem solving, and less associated with the background of the students' understanding that lead to understanding of the concept of student the material is still low so as to obtain results which are not satisfactory. This condition is very supportive of the need for the development of teaching materials guided inquiry-based economy so that students get a variety of activities, especially activities that challenge students to use reasoning in mengkontruksikan economic concept.

2. Literature Review

Medium of learning is one of the facilities that can be used as a means of information and communication in the learning process. The word comes from the Latin media medius,

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which literally means middle, intermediate or introduction. The word "middle" itself means is located between the two sides, it is also known as "intermediary" or that mediate both sides tersbut. Because of its position at the center of it could also be described as an introduction or link, ie which deliver or connect or channeling something from one side to the other.

The main purpose of learning to use the media in the learning process is to streamline the communication process of learning so as to achieve the goals desired. Learning media has an important role in the learning process that can clarify the presentation of information and messages delivered by the teacher, guide and improve attention, motivation and interests of students, as well as streamline and improve the quality of learning in class. Besides learning media can also be used by students as a learning tool independently, or together with other students without the presence of a teacher.

According Munadi (2013: 7-8), learning media can be understood as anything that can convey and deliver the message from the source in a planned manner so as to create a conducive learning environment in which the recipient can make the learning process efficient and effective manner.

Reduced the scope of understanding of media, AECT (Association of Education and Communication Technology) in Sadiman (2006: 19) explains that: "With the inclusion of a variety of influences into the treasures of study such as science with printing, behavior (behaviorism), communication, and the pace of technological development electronics, media in its development appears in different types of formats (print modules, movies, television, film frame, the movie chain, radio programs, computers and so on) each with characteristics and its ability to own ".

According Udin Saefudin Sa'ud (2008: 214) instructional materials are learning materials that are directly used for learning. In the Complete Dictionary of Indonesian, the material is defined as everything that is used for a specific purpose, while teaching means that the instructions given for a person refuses to obey (know something), so the teaching material is anything that is used with the aim of giving instructions for a person refuses to obey (k

Teaching materials also mean any kind of material used to help teachers / instructors in carrying out the teaching and learning activities in the classroom (Abdul Majid, 2005: 174). Another definition of teaching materials is the information, tools, and text that required teachers / instructors for the planning and review of implementation of learning (Abdul Majid, 2005: 173).

Skills formulate the question becomes an important part in guided inquiry approach as formulating the research question. The ability to ask questions and the courage to uncover an important part in the implementation of the strategy. Hanafiah and Grandchildren (2009: 77) revealed the inquiry is a series of learning activities that involve maximally entire ability of learners to search and investigate in a systematic, critical and logical so that they can find their own knowledge, attitudes and skills as a manifestation of their behavior changes. The ability of inquiry detailed in various indicators have looked at the results of the Alberta Learning Centre in Cartono (2007: 25). Six stage known as inquiry model is Planning, Retrieving, Process, Create, Sharing, Evaluating.

Manufacturer of a person or company conducting the production. Production activities are activities associated with the effort to create and increase the value of goods and

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services. Production includes the human effort to produce goods and services that have utility in an effort to satisfy human needs.

The theory of the behavior of production proposed by David Ricardo (in the book Principles Of Political Ecomonic And Taxation) concerning the legal low of deminising return "when one of factors of production (input variable) plus continuous use, while factors other productions are fixed, then additional output (MP) generated due to additional per unit of production factors initially increased, but then decreased.

Learning device is a series of media and means used and prepared by educators and students in the learning process in class. Development of instructional media is a series of processes activities undertaken to produce a set of learning based on the method and theory of development that has been there. According Heinichetal in Affandi and Badarudin (2011: 22-23) mentions a few steps in the preparation of teaching materials using models ASSURE including: (1) analyze learners (learning analysis), (2) stateobjektive (stated goal), (3) selec menthods media (mediadan use of materials), (4) utileze edia and materials (use of media and materials), (5) require learner particiation Evaluate and revise (participation of students in a class).

The use of the model focuses on the ASSURE model function as a step (procedure) to guide the planning and design guidance mengkombinasikanantara learning material, motode and media. ASSURE model selection module in the development of education in the world due to the need to print human resource competitiveness is not merely a phenomenon know as knowledge, but this model is directed to develop a learning module with guided inquiry approach.

Economic development activities learning module aims to optimize the role of media as a tool in learning independently. The spirit of students to learn increases when teachers can plan lessons based PAIKEM. Success in learning is determined by many factors, including the role of teachers as educators, the condition of students, learning resources, instructional media, learning tools, the learning environment and an adequate system.

The process of developing a module based on terori-learning theory and principles of learning, namely economic concepts in relation to the economic activity of consumers and producers.

3. Research Methods

This study uses research or the development of Research and Development. Definition of Research and Development by the Son (2011: 67) is a research method that intentionally, systematically, aiming / directed to mencaritemukan, formulate, refine, develop, produce test the effectiveness of products, models, methods / strategies / ways, services, certain procedures newer, superior, effective, efficient, productive and meaningful. The procedure of research and development by Borg and Gall in Pargito, (2010: 50) includes five main steps, namely: (1) analyzing the product to be developed, (2) develop initial product, (3) expert validation and revision, (4) small-scale field trials and product revision, and (5) a large-scale field trials and the final product.

Step economic development of learning modules ASSURE use the model to test the expert and product trials. Process expert test was conducted to determine the feasibility of the

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resulting product. While product testing conducted to obtain information about how the characteristics, advantages and disadvantages of learning media is learning modules. ASSURE instructional design models suitable for use in a micro-scale learning activities such as learning that takes place in the classroom and training programs. The effectiveness and attractiveness of the product development results will be viewed through a trial use in the classroom. Product development results will be used as a medium of learning economy in the tenth grade.

Product development is carried out in the form of learning modules, in the form of teaching materials Guided Inquiry-Based Approach to facilitate the understanding of economic concepts in relation to the economic activity of consumers, producers and the role of stakeholders. Products economic learning modules will be designated for student / i grade X SMAN 2 Gedongtatan. Effective use of instructional materials in the learning process is seen from the Economics student achievement should be based KKM.

Design development will explain the procedure adopted in making the product. ASSURE based development model, the development of teaching materials research procedures guided inquiry-based approach to facilitate the understanding of economic concepts in relation to the economic activity of consumers, producers and the role of stakeholders.

In research on the development of economic learning module consists of six stages of development procedures performed among five early stage and one additional step of assessing and repairing. ASSURE model learning plans put forward by Sharon E. Maldino, Deborah L. Lowther and James D. Russell in his book titled 9 issue of Instructional Technology & Media For Learning about planning ASSURE model learning includes six stages as follows:

1. Analyze Learners Characteristics

The first stage in the implementation of the model is to analyze terhadapa ASSURE student characteristics. This activity is an analytical technique to determine the general characteristics, basic competence (early), learning styles and learning motivation for learners. General Karektristik basically describes the condition of students such as: age, class, occupation and gender. The method can be performed to determine the general katerteristik including observation, interviews, and pre-test.

2. State Standart And Objektives

The next stage is to define the standards and learning objectives to be achieved. These activities serve to direct the development concept in accordance with the standards of education of students. The standards can be diketahhui of competency standards that have been defined. The method used to formulate learning objectives according to the Persons (2011: 67) using the ABCD format.

a. A means to an audience, form the student or students who become our learners.

b. B means behavior, an attitude that describes the new capabilities that must be possessed after the students through the learning process.

c. C means conditions, conditions or circumstances permorma current students do the measuring process.

d. D means the degree, the criteria on which to base the measurement of student success.

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3. Select Menthods, Media, And Materials

The third stage in planning for effective learning through media selection, methods and appropriate learning materials. The learning method is a method used educators in delivering learning materials. Learning methods can be classified into several types, namely cooperative, discovery, problem solving, permainana, discussions, demonstrations, and presentations.

4. Utilize Materials

The fourth stage emphasizes the pembalajran successful achievement through the use of media and learning method possible. The learning process is carried out should try to take advantage of learning materials and media optimally, as educators in efforts to improve the competence of students. The characteristics of successful learning has such characteristics can improve learning outcomes, provide motivation for students to study harder, improve memory students in understanding the subject matter, and provide insight to students in the application of the subject matter into life.

5. Require Learner participations

The fifth stage is to increase student activity or participation in learning activities. The learning process is not just knowing the learning material but should be able to understand and apply the material studied sebgai learning outcomes.

According Cruickshan in Personal (2011: 126) suggests several steps educators in increasing student participation through:

a. See kesipan students in participating in learning.
b. Presenting information and materials clearly and logically in the learning process.
c. Associating new information with the information that has been learned.
d. Deliver the knowledge and skills in information varies.
e. Providing opportunities for students to be able to understand and berlaih new knowledge and skills.
f. Providing opportunities for students to deepen their knowledge and skills learned.
g. Helping students in the application of knowledge and skills.

6. Evaluate And Revise

The last stage in the development of the model is to evaluate and revise ASSURE perncanaan learning and practice. Evaluation consists of two parts, namely evlaluasi summative and formative evaluation. Summative evaluation leads to the assessment of effectiveness, efficiency, attractiveness of the program after diimplementasikan.Evaluasi formative done systematically and gradually start of the first step is the analysis needs to be a prtotype program that is ready to use.

According Personal (2011: 147-148) steps in the formative evaluation process is (1) Analysis of needs, (2) Evaluation of individuals, (3) evaluation of small groups, and (4) The field trials.

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4. Research Result

Results of research learning modules based economic development approach guided inquiry, DAPT summarized as follows:

1. The research process of economic development of the learning modules using ASSURE desaign models. Deasign economic pembelajran module uses a six-step diantarnya analyze pembelajara, the economic objective of making the learning modules, selecting the material, mamadukan materials and media, involving the participation of students, evaluation and revision. Analysis of the results of development using a formative evaluation that learning desaign economic experts, the economic matter experts and linguists modules. While the testing process uses the same laiinya subject that individual students (2-3 students), small groups (9-12 students) and field (two experimental and control classes).
2. The test results showed that the learning module developed economies have a tendency of systematic, highly relevant, interesting, accurate and flexible, and easy to understand and use in learning activities.

Module-based economy guided inquiry learning is more effective when used in the process pembelajran and increase student interest in learning the material, especially the economy. The results of students in the control class that uses worksheets and classroom experiments that modules are very different economy and superior economics that uses the module. The results of experimental class learning on average higher than the control class. The accepted understanding of students also cenderng minagkat economic application-related subject matter in everyday life.

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ISBN : 978-602-0860-11-4