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PROCEEDINGS

INTERNATIONAL CONFERENCE

2nd SHIELD 2017

52nd Dies Natalis Unila

Bandar Lampung - 18-20 September 2017 - 4 International Speaker

Organized by:

Postgraduate Program
and Institute for Research
and Community Services
University of Lampung

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PERTANIKA JOURNALS

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social and humanities
development
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Proceeding of International Conference 2nd SHIELD 2017
Bandar Lampung, September 18-20th 2017

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Foreword

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 (SHIELD) 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.

The authors of Proceeding of 2nd SHIELD International Conference come from academicians, practitioners, policy makers, researchers and professionals from multi-disciplines related to Social Sciences and Humanities, Economics, Education, Law, and Sustainable Development.

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.

Head of Commite

Prof. Dr. Muhammad Akib, S.H., M.Hum.

Welcome Address
Report by the Organizing Committee

***Dear distinguished guests and participants*,**

In this globalization era, advancement in science and technology has led to remarkable gains. However, despite the remarkable gains, many countries particularly Asian countries face inequalities and uneven progresses. 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 holds The 2nd SHIELD Conference as a place for academicians, practitioners, policy makers, researchers and professionals from multi-disciplines relating to Social Science and Humanities, Economic, 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 second international conference, four keynote speakers from different disciplines and different countries were invited. Seventy-five authors initially submitted their abstracts before submitting their full papers, but finally only 49 full papers were accepted for publications. 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, we hope that the research articles can be documented and communicated throughout the countries.

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

Sincerely yours,

Professor Muhammad Akib

Remarks by the Rector of the University of Lampung

The 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 Second SHIELD International Conference, jointly organized by Postgraduate Program and Institute for Research and Public Services, the University of Lampung. 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 Second SHIELD International Conference.

Along with an increase in the activity of national development and dynamic development of the international world due to globalization, then it 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 these issues, practically the University of Lampung through its Postgraduate Program in collaboration with its Institute Research and Public Services organizes the Second International

Conference with such disciplines as social sciences, humanities, economics, education, law and sustainable development. This international conference presents several keynote 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 Sumatera Island and is strategically located for the development progress.

As the arena for discussion, communication, and enrichment of the knowledge of participants, this conference is expected to provide a significant contribution to capturing opportunities for the development of science today. This conference 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 sciences, humanities, economics, education, 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 researches from world experts, this conference invites four keynote speakers from four countries who will present their main papers. These speakers are:

1. Prof. Dr. Arief Hidayat, S.H., M.S., Chairman of the Constitutional Court, Republic of Indonesia
2. Prof. Ryohei Kada from Shijyonawate Gakuen University, Japan.
3. Dr. Fonny Dameaty H. from University of Malaya, Malaysia.
4. Dr. Jenny H. Panchal from James Cook University, Singapore.

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

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

Sincerely yours,
Rector,

Prof. Dr. Hasriadi Mat Akin

INTERNATIONAL CONFERENCE
2nd SHIELD 2017
University of Lampung

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Commodification of Papuan Poverty in Tourism Magazine

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Abstract

Tourism magazines are not different from other types of magazines. They also stand with text, which shaped all forms of language including words and pictures. They are usually equipped with beautiful photojournalism to attract tourists. However, in contrast to their articles in general, there is an article featuring depressing photographs of Papuans who are perfunctory below the poverty line. This research is conducted to analyze the discourse of photojournalism in *Manusia Rawa Papua* article on *National Geographic Traveler Indonesia* magazine. The research was done by doing text analysis using Charles Sanders Peirce's semiotics theory. Based on the signs from the semiotics perspective, the result of this study shows a hidden message that Papuans are still classified as poor. This pathetic condition is then used as a commodification to attract the attention of magazine readers, who come from the upper middle class.

Keywords: *commodification, photojournalism, semiotics, tourism magazine;*

1. Introduction

Tourism plays an important role in the economic sector. The increase of visit numbers will increase the profit for some types of business in the tourism industry and the employment opportunities in tourist destinations (Wahab, 1997: 13). However, there are three stimuli that usually affect these tourists' decision to travel; one of them is symbolic stimulus. Symbolic stimulus is the word, sentence, and image that the travel industry propagates for media promotion, such as newspapers, general magazines, and tourism magazines (Ross, 1998: 69). The existence of a symbolic stimulus that can influence the tourists' visit impacts the media industry; whose stakeholders are competing each other to feature interesting photojournalism.

Basically, tourism magazines are not different from other types of magazines. They also stand by text. Peter Garrett and Allan Bell in their book, *Approaches to Media Discourse*, mentioned that texts are all forms of language, including words, speech, music, images, sound effects, and imagery (1998: 3). But, as a promotion media of tourist destinations, tourism magazines would require photojournalism in order to describe the destination's condition more clearly to the readers.

However, tourism magazines do not always featuring beautiful photojournalism. One of the proofs can be seen in the article *Manusia Rawa Papua* in *National Geographic Traveler Indonesia* volume 7 number 7, which was published in July 2015. Contrast to other articles in the same magazine or other tourism magazines, this article shows the depressing photographs of Papuans who are perfunctory under the poverty line. From this article, it is safe to see that communities in Udagaga, Kayobiro, and Adona (UKA) village in Papua fulfill their daily necessities from local in their village. Yet the fact that the article *Manusia Rawa Papua* became *Editor's Choice* article in *National Geographic Traveler Indonesia* volume 7 number 7 makes it more interesting.

National Geographic Traveler Indonesia is a reference for Indonesian readers who like to travel, both inside and outside the country. The majority of its readers are groups of men and women aged 20-35 years with Socioeconomic Status (SES) A+, A, and B and work as employees or employers[1]. This reader group indicates that *National Geographic Traveler Indonesia* is a magazine

[1] *Pasang Iklan Majalah National Geographic Traveler.* (n.d.). August 21, 2017. https://pusatpemasanganiklan.com/majalah/76-national-geographic-traveler

that consumed by upper middle class. This fact is also reinforced by the high rate of advertising on *National Geographic Traveler Indonesia* as can be seen in the following table.

Table 1. Rate card of *National Geographic Traveler Indonesia* 2015

Position	Rate
COVER 2	29700000
COVER 2 (+ hal 3)	51000000
COVER 3	27000000
COVER 4	33000000
SINGLE PAGE-DISPLAY	24500000
SINGLE PAGE-DISPLAY (DPS)	45500000
ADVERTORIAL	33000000

Source: http://www.gramediamajalah.com/ratecard/print/6/national-geographic-travel

Media content actually does not reflect events perfectly. It is a representation of a world that has been selected and translated by the media. It is very likely to be used as commodities in commodification practice (Mosco, 2009: 133). Based on this statement, Papuan poverty reflection that is featured in article *Manusia Rawa Papua* is then suspected of being deliberately commodified in commodification practice. Therefore, the research question that will be discussed in this research is "How the commodification process of poverty occurs in photojournalism in article *Manusia Rawa Papua,* based on Charles Sanders Peirce's semiotics analysis method?". Regarding this research question, the purpose of this research is to analyze the commodification process of poverty in article *Manusia Rawa Papua* based on the study of meaning of icon, index, and symbol.

Prior to this research, the author have found some previous research on photojournalism studying both non-tourism and tourism magazine, and the commodification of poverty in the mass media. One research that discusses photojournalism is a research entitled "Problems in Photojournalism: realism, the nature of news, and the humanitarian narrative" by John Taylor in 2010. Through this research, Taylor raised three problems that often arise related to the importance of photojournalism in the daily press. The first problem concerns to the compromised nature of photography as a foundation for authentic eye-witness reports. The second problem derives from the poor states of the newspaper industry as a reliable source of public record. Then, the third problem relates to how effective hard-hitting documentary record might be, given that readers are supposed to be quickly bored by images of suffering, unknown strangers. The result suggests that photography is not present as a medium that offers meaning in a transparent way. Then, it also suggests that depressing photos are allowed in the press, as long as it can lead readers to the truth and provide positive knowledges.

Another research that discusses photojournalism in tourism magazine is a research entitled "Analisis Foto Jurnalistik Majalah Travel Xpose (Studi Analisis Semiotika Mengenai Foto Wisata Indonesia dalam Rubrik Domestik Majalah Travel Xpose)" by Dawam Syukron in 2013. This research is conducted to gain the meaning of photojournalism in *Travel Xpose* magazine. The meaning includes denotation, connotation, and mythology and ideology based on Roland Barthes' theory. The research was conducted by qualitative approach using semiotics analysis method. The result showed that photos, whether that records incidental events or planned and factually based on the field, had a hidden meaning behind them. The photos are shown to attract public sympathy.

Meanwhile, the research that discuss commodification in mass media can be seen from a research entitled "Komodifikasi Kemiskinan dalam Acara Televisi (Analisis Semiotika John Fiske Mengenai Komodifikasi Kemiskinan dalam Acara "Orang Pinggiran" yang Ditayangkan di Trans 7)" by Anis Haifa K. Nisa in 2014. This research raised the poverty that became a media product and a popular show to attract the attention of the audience or advertisers. The purpose is to determine the process of commodification poverty that occurred in the show *Orang Pinggiran*. The research was conducted with qualitative approach using John Fiske's semiotics analysis method, with level of reality, representation, and ideology. The result showed that at the level of reality, the signs of poverty are clearly displayed through the shabby clothes, the expression of sadness, and the house that is not

feasible. At the level of representation, editing techniques can make the show more dramatic and moving. At the ideological level, it is clear that this show has a close relationship with capitalist ideology. Poverty is seen as a high-value commodity. Then, the characteristics of audience that tend to accept what they see without seeing what happens behind the text are exploited by the capitalist by designing a product that has the greatest potential to profit as much as possible using the smallest capital.

Based on the aforementioned research studies, the author have not found a study that focuses on researching the commodification of poverty in tourism magazine using photo semiotics analysis method. Thus, the result of this research are expected to complement some previous research on commodification, semiotics, or photojournalism in tourism magazines.

1.1 Commodification

Vincent Mosco, in his book entitled *The Political Economy of Communication*, wrote that commodification is the process of transforming use values into exchange values. Based on Adam Smith's explanation, the use values and exchange values are two values that can distinguish a product. The use values come from human satisfaction of a particular want or need, while the exchange values is based on what the product produces in exchange (2009: 129). More specifically, Mosco defines commodification as the process of transforming goods and services, including communication, which are valued for what they will bring in the marketplace. Meanwhile, commodities are a form of production that is regulated through the exchange process. Commodities are a special form of product when their production is organized through the exchange process (2009: 156).

Communication is mentioned as a potential arena as a place of commodification. Speaking of communication, Mosco discloses three types of commodification that are important for communication. The first type is commodification of content. This commodity is at the center of the study of the political economy of media and communications. This commodity occurs when the message or content of the communication is treated as a commodity. The second type is the commodification of audiences. In this commodification, the political economy puts some attention on the audience, especially in an attempt to understand the general practice in the way advertisers pay for the size and quality (the trend for consumption) of audiences, magazines, websites, radio, or television programs. The third type is the commodification of labor. Communications workers who are also commodified as wage labor have grown significantly in the media job market (Mosco, 2009: 133-141).

1.2 Market-Driven Journalism

John H. McManus, in explaining market-driven journalism, reveals that market advantage should apply very well to commercially produced journalistic products. The journalistic product can trade on four different types of markets at the same time. It starts from the market for audiences, where media companies can sell a certain number of newspapers or parts of television viewing. Then, the stock market, where the company's shares can be bought and sold. Furthermore, the advertising market, where companies can sell the attention of audiences. Not to be missed, a market for resources, where companies trade valuable information. However, market-based journalism can work well if trading with three types of markets, with stock markets, with raw product suppliers, and with consumers. The journalistic product can be a commodity of the media company if each market is operating well (1994: 5).

1.3 Photojournalism

According to Edwin Emery Slosson, a well-known journalist from United States, photojournalism has a function like words. It serves to inform, persuade, and entertain media consumers. The effectiveness of the use of photojournalism depends largely on how the photograph was taken by a photographer and precisely placed and combined by the editors in the mass media. Moreover, in the technique of placement and arrangement of photographs or images, each media has different characteristics. Sometimes, beauty is not the main consideration that determines whether or not a photo is loaded in the mass media. Meaning and story can also be a decisive consideration of whether or not a photo is published in the mass media (Muhtadi, 1999: 102-103).

2. Representation

In his book, *Representation: Cultural Representations and Signifying Practices,* Stuart Hall mentioned that representation is the production of the meaning of concepts in the mind through language. Representation connects concepts and languages that allow humans to refer to things, people, or events in both the real world and the fictional world. According to Hall, representation arises because of the principle of similarity and difference to build relationships between concepts or differentiate them from one another. In order to successfully elicit representation, humans need a common conceptual map. However, the conceptual map also needs to be translated into a common language so that people can connect concepts and ideas with some written words, spoken voices, and meaningful visual images called "signs" (1997: 17-18).

2.1 Charles Sanders Peirce's Semiotics Theory

Something can be called as a sign if it represents something. Charles Sanders Peirce explained, semiotics depart from three main elements called triangle meaning theory. This theory consists of sign, object, and interpretant (Kriyantono, 2006: 263). The object is something referencend by a sign. Then, interpretation is a sign that is in someone's mind about the object being referred to a sign (Sobur, 2012: 115). These signs are identified by Peirce into 66 different types of signs. Three of them commonly used for studying semiotics are: (1) icon, this sign is designed to represent a reference source through a form of replication, simulation, imitation, or equation, (2) index, this sign representing a reference source by pointing to it (explicitly or implicitly) with other reference sources, (3) symbols, this sign representing the object by agreement in a specific context (Danesi, 2012: 33).

3. Research Methods

This research applies qualitative research. There are three methods that can be used in qualitative research (Baxter, 2004: 348). One of them is social text analysis. Something can be called a social text, as long as it contains symbols and meanings: varies from conversations at home or at work, to photos and movies. Baxter mentioned that the semiotics approach is included in social text analysis (2004: 353).

The source of research data was collected from *Manusia Rawa Papua* article in *National Geographic Traveler Indonesia* volume 7 number 7, published by Kompas Gramedia in July 2015. The ten pages-article consists of written text and ten photos. The primary data used are the ten photos that featured in the article. But, this research does not ignore the written text to see the photo context. Literature review was also conducted to find out the larger content about poverty in Papua.

After collecting the data, the research continued by identifying the signs of poverty commodification contained in the photo by analyzing the type of signs according to Peirce's semiotic analysis perspective. All of the photos that featured were analysed one by one by considering three types of signs. Then, the research continued with the overall interpretation of the poverty commodification in *Manusia Rawa Papua* article. The final step is to draw the conclusion of the interpretation of the signs that has been identified previously and to give criticism of the results that have been obtained.

4. Results and Concluding Discussion

The analysis was conducted on ten photos that featured in *Manusia Rawa Papua* article using Peirce's semiotics theory. Here are the results of analysis that has been done by the author.

Figure 1. Photo from page 86-87

Table 2. Sign identification of Figure 1

Type of sign	Sign	Object
Icon	Visualization of two Papuans	Same with the sign
Index	Clothes	Simple and shabby clothes
Index	Rowing boat	Rowing boat that small and simple in poor condition
Symbol	The title of the article "*Manusia Rawa di Tanah Papua*" (Human swamp in the land of Papua)	Written text in the middle of the photo
Symbol	Photo caption "*Menggunakan perahu sederhana, penduduk setempat ini baru kembali dari hutan rawa tempat mereka beraktivitas. Sungai adalah nadi transportasi utama bagi warga*." (Using a simple boat, these locals have just returned from the swamp forest where they do their activity. River is the main transportation route for the residents.)	Written text in the lower left corner of the photo

Overall, this photo of two Papuans was taken to illustrate the daily life of the people living in Papua. The Papuan are depicted as if very primitive with the writing of '*manusia rawa*' (human swamp). In the photograph, the two Papuans are seen wearing clothes that simple and shabby. In addition, they are seen rowing small simple boat in poor condition to travel from one place to another. Indonesian Team for the Acceleration of Poverty Reduction (Badan Koordinasi Penanggulangan Kemiskinan Republik Indonesia) and Research Institution SMERU (Badan Penelitian SMERU) explained that two examples of poverty problems are the inability to meet basic consumption needs, such as clothes, and lack of access to other basic living needs, such as transportation (Susanto, 2006: 35). This shows that the Papuan still have poverty problems. Judging from the aspect of taking photo, the composition of photo that used to make this photo has a sale value. As described in *Digital Masters: Travel Photography* (2008: 69), the composition of this photo is included in the category of One center of interest and a clean background.

Figure 2. Photo from page 88

Table 3. Sign identification of Figure 2

Type of sign	Sign	Object
Icon	Visualization of male workers in port	Same with the sign
Index	Loading and unloading cargo	Loading and unloading cargo with hands and a small wooden board
Symbol	Photo caption "*Suasana aktivitas di Pelabuhan Teminabuan, Ibukota Kabupaten Sorong Selatan. Pelabuhan ini menjadi titik awal perjalanan panjang menuju Kampung Udagaga, Kayobiro, dan Adona (UKA).*" (Activity atmosphere at Teminabuan Port, in the capital of South Sorong Regency. This port became the starting point of a long journey to Udagaga, Kayobiro, and Adona (UKA) village.)	Written text in the outside the photo

Overall, this photo of the harbour was taken to illustrate the profession of Papuan that living around Teminabuan Port. The Papuan is shown earning money by doing lower class jobs, such as being a longboat driver or unskilled laborers. Besides that, the activity of loading and unloading cargo seen in the photograph relies solely on hands and a small wooden board. This activity will certainly take a long time if done without the help of high-tech tools. Corruption Eradication Commission (Komisi Pemberantasan Korupsi) explained that one of the characteristics of the poor is not having the ability to conduct productive business activities (Papilaya, 2013: 21). Thus, the Papuan are still classified as poor. Judging from the aspect of taking photo, the composition of photo that used to make this photo has a sale value. As described in *Digital Masters: Travel Photography* (2008: 72), the composition of this photo is included in the category of Leading lines.

Figure 3. Photo from page 89

Table 4. Sign identification of Figure 3

Type of sign	Sign	Object
Icon	Visualization of a child	Same with the sign
Icon	Visualization of houses on stilts	Same with the sign
Icon	Visualization of bridge	Same with the sign
Index	Crossing the bridge	Walking across the bridge without fear of falling
Symbol	Photo caption "*Mentari menghangatkan Kampung UKA pagi itu. Di kampung ini, arah bangunan rumah menghadap ke sungai. Semua aktivitas dilakukan di atas rumah panggung dan jembatan yang menghubungkan satu rumah ke rumah lainnya*." (The sun warmed up UKA village that morning. In this village, the direction of the house building faces the river. All activities are carried out on stilts and bridges that connect one house to another.)	Written text in the outside the photo

Overall, this photo was taken to illustrate neighbourhood residents in UKA village. Residents live in houses on stilts whose condition looks easily damaged. The materials that used for the walls and roofs of these houses appear to have inferior quality compared to most urban houses. Besides that, residents have to cross the bridge that conditions is also fragile to move from one house to another. The bridge is made using small woods that are unable to withstand heavy loads. However, a child that featured in the photo is not afraid to cross the bridge without adult supervision. The photo shows that situation like that is commonly experienced by children in UKA village. Judging from the aspect of taking photo, the composition of photo that used to make this photo has a sale value. As described in *Digital Masters: Travel Photography* (2008: 69), the composition of this photo is included in the category of One center of interest and a clean background.

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Figure 4. Photo from page 90

Table 5. Sign identification of Figure 4

Type of sign	Sign	Object
Icon	Visualization of photos of former President and Vice President of Indonesia	Same with the sign
Icon	Visualization of old electronic equipments	Same with the sign
Index	House interior	House interior that are not durable, dirty, and messy
Symbol	Photo caption "*Interior rumah warga di Kampung UKA. Sebuah televisi, aki untuk sumber listrik, dan tak lupa foto Presiden Republik Indonesia*	Written text in the outside the photo

	SBY-Boediono yang belum diganti." (The house interior of a resident in UKA village. A television, battery for power source, and photos of President of the Republic of Indonesia SBY-Boediono that has not been replaced.)	

Overall, this photo was taken to illustrate the house interior of Papuans. The condition of the house interior looks very different form the condition of the house interior in most urban areas. This interior uses materials that are not durable, such as bamboo walls and floor woods. The furniture in the house looks dirty and messy. This house also still has the old electronic equipment that is not widely used anymore. Besides that, this house displays photos of former President Susilo Bambang Yudhoyono and Vice President Boediono whose term has expired on October 20, 2014. The backwardness of Papuans in possessing the latest goods can be caused by two reasons, the slow distribution of goods in Papua and the inability of the Papuans to buy expensive goods. Because, Papua is a province located in the easternmost region of Indonesia and difficult to reach by other areas. This is consistent with John Kenneth Galbraith's explanation that geographical location can be a major cause of poverty (Susanto, 2006: xxv).

Figure 5. Photo from page 90

Table 6. Sign identification of Figure 5

Type of sign	Sign	Object
Icon	Visualization of a woman	Same with the sign
Index	Clothes	Simple and shabby clothes
Index	Sago processing	Sago processing with simple tools
Symbol	Photo caption "*Sementara pria bekerja ke hutan rawa, kaum perempuan mengolah sagu*." (While men work in swamp forests, women process sago.)	Written text in the outside the photo

Overall, this photo of sago processing was taken to illustrate the activities of men and women in UKA village. The women in this village are described having the routine of sago processing using their own hands. Sago processing is done with simple tools, such as bamboo and coconut leaves. In addition, the men in this village are described having a routine to work in swamp forest. The research conducted by Soedarto explains that people in Papua (formerly Irian Jaya) live in subsistence life because of their socioeconomic and cultural environment, as well as their human resource capacity are still very limited (Soeradji, 1998: 333). That research can be said is still relevant to the condition of Papuan today. Judging from the aspect of taking photo, the composition of photo that used to make this photo has a sale value. As described in *National Geographic Photography Field Guide: Travel* (2005: 53), the composition of this photo is included in the category of The rule of thirds.

Figure 6. Photo from page 90

Table 7. Sign identification of Figure 6

Type of sign	Sign	Object
Icon	Visualization of cassowary bird	Same with the sign
Index	Eating food	Eating food calmly
Symbol	Photo caption '*Kasuari dijadikan hewan peliharaan warga.*' (Cassowary is made into resident's pet.)	Written text in the outside the photo

Overall, this photo of cassowary bird was taken to illustrate the life condition of Papuan who are still very close to nature. In contrast to the condition of residence in the developed region that overrides the existence of nature, Papua is still filled with simple places to live in the midst of nature, without changing the natural conditions. Cassowary bird that featured in the photo is also seen eating food calmly. This bird does not feel disturbed and feel safe as if it was in its natural habitat. However, the bird is mentioned to be a resident's pet. In fact, as the *Encyclopædia Britannica* explains, cassowary is the most dangerous bird in the world[2]. This bird has fierce and aggressive nature, and easy to attack if it feel disturbed. So, cassowary being resident pet can show that knowledge of the Papuan is relatively low. Judging from the aspect of taking photos, the composition of photo that used to make this photo has a sale value. As described in *Digital Masters: Travel Photography* (2008: 69), the composition of this photo is included in the category of One center of interest and a clean background.

Figure 7. Photo from page 92-93

Table 8. Sign identification of Figure 7

Type of sign	Sign	Object
Icon	Visualization of a man	Same with the sign
Index	Catching fish	Catching fish in a blackish

[2] *6 of the world's most dangerous birds.* (n.d.). May 7, 2017. https://www.britannica.com/list/6-of-the-worlds-most-dangerous-birds

		brown river
Index	River	Blackish brown river
Symbol	Photo caption "*Salah satu rutinitas kaum pria adalah menjaring ikan di sungai. Air sungai dengan rupa cokelat kehitaman ini bersumber dari rawa*." (One of the men's routines is catching fish in the river. The river with this blackish brown water is came from the swamp.)	Written text in the outside the photo

Overall, this photo of fish catching was taken to illustrate one of men activities in UKA village. As mentioned in figure 5 analysis, this activity shows that Papuans are still live in subsistence life. Besides that, the fish catching is done in the river whose water is blackish brown. The color of this river water shows that the availability of clean water is still limited in UKA village. National Development Planning Agency of Republic of Indonesia (Badan Perencanaan Pembangunan Nasional) explained that the inability to fulfill basic needs, such as clean water, is one element of poverty (Papilaya, 2013: 21). Thus, Papuan are still classified as poor. Judging from the aspect of taking photo, the composition of photo that used to make this photo has a sale value. As described in *Digital Masters: Travel Photography* (2008: 69), the composition of this photo is included in the category of One center of interest and a clean background.

Entong di Kampung UKA menggiring jeriken air dari sungai melewati papan kayu menuju rumahnya. Meskipun berair keruh, tak ada pilihan lain untuk mendapat sumber air.

Figure 8. Photo from page 94

Table 9. Sign identification of Figure 8

Type of sign	**Sign**	**Object**
Icon	Visualization of a boy	Same with the sign
Index	Taking water	Taking water that is dark brown and turbid
Index	Water source	Water source that came from the blackish brown river
Symbol	Photo caption "*Entong di Kampung UKA menggiring jeriken air dari sungai melewati papan kayu menuju rumahnya. Meskipun berair keruh, tak ada pilihan lain untuk mendapat sumber air*." (Entong in UKA village bring water jerrycan from the river through a wooden board to his house. Though the water is turbid, there is no other choice to get a water source)	Written text in the outside the photo

Overall, this photo of a boy named Entong was taken to illustrate the way the Papuan in UKA village get water. Entong mentioned forced to take water from the blackish brown river and turbid because there is no other water source that condition is cleaner. As mentioned in figure 7 analysis, this activity indicates that the availability of clean water is still limited in UKA village. Judging from the aspect of taking photo, the composition of photo that used to make this photo has a sale value. As described in *Digital Masters: Travel Photography* (2008: 69), the composition of this photo is included in the category of One center of interest and a clean background.

Figure 9. Photo from page 95

Table 10. Sign identification of Figure 9

Type of sign	**Sign**	**Object**
Icon	Visualization of a boy	Same with the sign
Index	River	The river that became the main source of life and the playground
Index	Playing on the river	Playing on the river as an entertainment
Symbol	Photo caption "*Sungai tak hanya menjadi sumber kehidupan utama bagi warga. Bagi bocah yang mendiami kampung ini, sungai adalah taman bermain sederhana yang menjadi sumber kebahagiaan paling berharga*." (The river is not only the main source of life for the residents. For the boy who lives in this village, the river is a simple playground that becomes the most precious source of happiness.)	Written text in the outside the photo

Overall, this photo of a boy was taken to illustrate the situation of children's play activity in UKA village. The river that became the main source of life, the main transportation route, the place to fish, and the water source is also a playground for children in UKA village. This is due to the entertainment of children in the village is very limited. In addition, the tools that used to play by the children in the river is very simple, such as nets and leaves. Judging from the aspect of taking photo, the composition of photo that used to make this photo has a sale value. As described in *Digital Masters: Travel Photography* (2008: 69), the composition of this photo is included in the category of One center of interest and a clean background.

Figure 10. Photo from page 95

Table 11. Sign identification of Figure 10

Type of sign	Sign	Object
Icon	Visualization of elementary school students	Same with the sign
Symbol	Photo caption "*Dengan bangunan sekolah yang seadanya, anak-anak di Kampung UKA tetap bersemangat menuntut ilmu. Sekolah Dasar YPK Maranatha adalah lembaga pendidikan satu-satunya di kampung ini*." (With a simple school building, children in UKA village still eager to study. YPK Maranatha Elementary School is the only educational institution in this village.)	Written text in the outside the photo

Overall, this photo of classroom was taken to illustrate the educational institution in UKA village. Classroom filled with students shows that Papuan in UKA village is still aware of the importance of education. However, in the photo caption mentioned, YPK Maranatha elementary school in the photo is the only educational institution in UKA village. Besides, this school is in poor condition. Based on education achievement data in 2015-2016 from Ministry of Education and Culture of Republic of Indonesia (Kementerian Pendidikan dan Kebudayaan)[3], the achievement rate of junior high school and equivalent in Papua has reached 642.700 and 415.800. Then, the achievement rate of secondary school education and equivalent has reached 484.300 and 376.900. Meanwhile, the achievement rate of junior high school and equivalent in DKI Jakarta has reached 1.080.100 and 958.000. Then, the achievement rate of secondary school education and equivalent has reached 913.600 and 679.100. Thus, many Papuans that still only achieve education up to elementary school and lag far behind other provinces. In fact, as presented by the Indonesian Team for the Acceleration of Poverty Reduction (Badan Koordinasi Penanggulangan Kemiskinan Republik Indonesia) and Research Institution SMERU (Badan Penelitian SMERU), the lack of access to education is one of the poverty problems.

4.1 Commodification of Papuan Poverty in Manusia Rawa Papua Article

According to the authors' interpretation, the photojournalism that examined in this research contain a hidden message that Papuans are still classified as poor. The authors' interpretation is reinforced by data from the Indonesian Central Agency on Statistics (Badan Pusat Statistik) which shows that Papua was the poorest province in Indonesia when the *Manusia Rawa Papua* article was published. In March 2011[4], DKI Jakarta became the richest province with the percentage of poor population of 3,75% and Papua became the poorest province with the percentage of poor people

[3] Ministry of Education and Culture of Republic of Indonesia (2016, June). *Indonesia educational statistics in brief 2015/2016*. May 9, 2017. http://publikasi.data.kemdikbud.go.id/uploadDir/isi_AA46E7FA-90A3-46D9-BDE6-CA6111248E94_.pdf

[4] Indonesian Central Agency on Statistics (2011, December 1). *Laporan bulanan data sosial ekonomi edisi 19*. March 24, 2017. https://www.bps.go.id/website/pdf_publikasi/IP_Desember_2011.pdf

31,98%. In March 2012[5], DKI Jakarta became the richest province with the percentage of the poor at 3,69% and Papua became the poorest province with the percentage of poor people 31,11%. In March 2013[6], DKI Jakarta became the richest province with the poor percentage of 3,55% and Papua became the poorest province with the percentage of poor people 31,13%. In March 2014[7], DKI Jakarta became the richest province with the percentage of poor people of 3,92% and Papua being the poorest province with the poor percentage of 30,05%. Then in March 2015[8], DKI Jakarta became the richest province with the percentage of poor people of 3,93% and Papua became the poorest province with the percentage of poor people of 28,17%. From these various data, it can be concluded that during the last five years until the *Manusia Rawa Papua* article was created, Papua is constantly the poorest province in Indonesia.

Based on the result of research that has been done, the photojournalism in *Manusia Rawa Papua* article shown the representation of poverty. Production of the meaning of the concept of poverty is translated into a common language, which can be seen through the types of signs in Peirce's semiotics perspective. Starting from the icon, the signs are Papuan and cassowary bird. All these residents are shown with simple and shabby clothes or even without clothes and footwear. Cassowary birds also should not be resident's pet. Then, the index, the signs are objects and various activities of the Papuan. Clothes and home interior indicate that these two things are not a priority for Papuans. In addition, the Papuans' acitivity are usually carried out without adequate equipment. Next, the symbol, the signs are written text and photo captions. These signs strengthen the conditions of poor Papuans.

As mentioned before, media content is a representation of the world and very likely to be a commodity. The representation of poverty displayed through photojournalism at the same time is used as a commodity to attract the attention of magazine readers, who are mostly from middle to upper class. This phenomenon is in line with Bob Krist's exposure in *Digital Masters: Travel Photography* that the desperation of the poor in various countries can attract the attention of tourists and photographers because of the great distance between rich and poor communities (2008: 135). The representation of poverty displayed through the photojournalism is also reinforced by the composition of high-value photographs and photos information that explain the poor condition of Papuan.

The commodification process in photojournalism in *Manusia Rawa Papua* article takes place when the actual photo has the value to communicate the condition of the Papuan community to the reader transforming into exchange value as it can generate profit in the market. The commodification process investigated in this research belongs to the type of commodification that is important for communication according to Mosco. That type of commodification is the commodification of content because the treated as a commodity.

5. Conclusion

From this research, it can be concluded that the photos in the magazine is able to provide a world representation to magazine readers. The process of displaying representation at the same time can also be a commodification process. Through the signs in Peirce's semiotics perspective, the result of the analysis in this research indicates that Papuan poverty is turned to be a commodity by the magazine.

Nevertheless, the commodification of Papuan poverty can not only be used for the benefit of the magazine. This commodification can also bring benefit to the Papuan. Therefore, the depressing conditions shown through photojournalism can lead to awareness of readers and even governments, that the Papuan still need a lot of help to improve their living condition.

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[5] Indonesian Central Agency on Statistics (2012, December 3). *Laporan bulanan data sosial ekonomi edisi 31.* March 24, 2017. https://www.bps.go.id/website/pdf_publikasi/IP_Desember_2012.pdf

[6] Indonesian Central Agency on Statistics (2013, December 2). *Laporan bulanan data sosial ekonomi edisi 43.* March 24, 2017. https://www.bps.go.id/website/pdf_publikasi/IP_Desember_2013.pdf

[7] Indonesian Central Agency on Statistics (2014, December 1). *Laporan bulanan data sosial ekonomi edisi 55.* March 24, 2017. https://www.bps.go.id/website/pdf_publikasi/IP_Desember_2014.pdf

[8] Indonesian Central Agency on Statistics (2015, December 7). *Laporan bulanan data sosial ekonomi edisi 67.* March 24, 2017. https://www.bps.go.id/website/pdf_publikasi/Laporan-Bulanan-Data-Sosial-Ekonomi-Desember-2015.pdf

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Paksi Benawang at Tanggamus : Married Rite, Marginalized and Local Wisdom

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Abstract

This article aims to analyze the married rite, marginalized and local wisdom in the Paksi Benawang of Tanggamus. People of Benawang are a group of indigenous people who are included in the existing Kepaksian Tanggamus people. So far, the paksi Benawang has been marginalized in terms of culture and power. The research used ethnography method, by conducting in-depth interviews and observations. The results show that since regional autonomy, they have begun to do reconstruction, reproduction and even the revitalization of their traditional life, as a response to their marginalization over the years. This is seen in the aspects of the marriage system. The system of marriage has reflected the power delegation. Kepaksian is an institution that is flexible and relative. Adat (custom tradition) is a discussion, dialogue and agreement. This shows that a growing local wisdom is to build harmony in society.

Keywords: *Married Rite, Power, Local Wisdom, and Adat (custom tradition;)*

1. Introduction

This paper is a result of research and studies on the culture of Indigenous communities in the Sai Batin custom of Tanggamus. In a society in Tanggamus, Lampung has two indigenous groups, the indigenous group of Sai Batin and indigenous group of Pepadun. In addition, there are also other ethnic groups reside in the region, such as Semendo and Java. This study focused on the indigenous people of Sai Batin, due to scarcity of research results and research on indigenous people in the Sai Batin cutom of Tanggamus. The Sai Batin Tanggamus have indigenous sub-groups called Paksi. The Paksi have four sub-groups, they are Paksi Benawang, Paksi Ngarip Padang Ratu, Paksi Pematang Sawah, and Paksi Belungu.

This study examined the marriage rituals in indigenous communities in the Kepaksian of Benawang. The marriage ritual is very important for the indigenous people of Paksi Benawang as for other indigenous people in Lampung because marriage is considered the most important life cycle in the history of human life. Because it has many meanings, it can be said that the marriage ritual is one of the core of cultures, and the symbol of adat (custom tradition) itself. As a symbol, marriage rituals are also affected by such profound social and cultural changes. Socio-cultural changes have marginalized indigenous people's lives and caused local wisdom neglected. This paper attempts to examine how the marriage rituals of the indigenous people of the Paksi Benawang in the marginalized situation of customs and culture, and within the importance of local wisdom in all aspects of development.

2. Research Methods

This research used qualitative method with ethnographic approach (Hammersley and Atkinson (1983). The ethnographic approach is used due to the need of deep understanding and "thick description" (Geertz, 1973). The data can not be explored and deep without carrying out a profound understanding. The research was carried out in Tanggamus District of Lampung Province, located on the west coast of Lampung. The data collection techniques are in-depth interviews, observations and FGDs (Foccus Groups Discussion).

These three things are done to explore knowledge, perception, and observe behavior and actions. FGDs were conducted to equate perceptions between customary and clan leaders in Tanggamus, so that with their discussions they formulated themselves about the potential of their local wisdom. Informants in this research are traditional leaders and traditional patrons who have knowledge and experience about the adat in Tanggamus who usually have their customary titles.

The data analysis was done through three techniques namely triangulation, peer review and member check. Triangulation is a strategy to check the validity of the data by doing a combination of interviews, observations and documentations. This combination of three techniques was to cross check the data mutually so that the data obtained are valid. For example, the results of the interview then were cross checked with the observations and then with the documentation. The member check was done by confirming back to the informant about the existing data, or confirming the data to other informants about the validity of the data. Peer review was done by discussing the data obtained with the experts in their field, or with friends of a group of disciplines who have the same interest in the field, to discuss, criticize and get advice from them. These three data analyzes were used in making the formulation of local wisdom potentials in Tanggamus district. For mapping the culture area, in addition to the three analyzes, the research also applied the FGDs (Foccus Groups Discussions) to determine the area where they reside, by establishing the mapping with them.

3. Result and Discussion

One of the Kepaksian in Tanggamus is Paksi Marga Benawang. It is said that the story of the people of Marga Benawang of Lampung Sai Batin were originated from Skala Bekhak. People believed that the king Khaja Baniting – entitled Ratu Mas Anak Dalom – and his followers moved from Skala Bekhak to find a new place by searching from Ranau Lake down to stream and arrived at the seaside around Semaka Bay.

People call it the bay because of the sea that jutted into the mainland, while the name Semaka is the name of a large river that flows from in from Ranau Lake to the nearby ocean. The word Semaka was derived from from the word Semang and Kak. Semang means ‘afraid’ and Kak means ‘if’. When combined, the two words Semang and Kak become Semangkak which means ‘afraid of the big river’. It was believed that the river was inhabited by various wild animals like snake, crocodiles and many more that make people feel afraid or worry to bathe, wash clothes or even to cross the river. The word Semangkak is then changed into Semaka.

After the arrival of the King Khaja Baniting and the Queen Ratu Mas Anak Dalom and his followers in the land of Semaka, then the indigenous people formed a custom community named as kingdom of Beniting (Kebumian Tanjung Intan) at the border of Pekon Payung which nowadays is located around West Kota Agung District. The name Baniting was derived from the word Babitting which means a belt. This was because the

people believed that a leader or a king could transform into a tiger. The belt then is used to distinguish the real tiger and the transforming king who used to wear white belt. From the Kebumian Tanjung Intan, the generation of Banitting migrated to beach site and titled as Khaja Semaka (with Kebumian Tanjung Hikhan) that nowadays known as Kelurahan Pasar Madang.

At the era of Khaja Semaka, a delegation from Pagaruyung Minangakabau came to Skala Bekhak to spread the teaching of religion of Islam. But the entry of Pagaruyung to Skala Bekhak caused a battle with Skala Bekhak. Indigenous people of Khaja Semaka came to help Skala Bekhak to face the troops of Pagaruyung. Returning from the war, the title (adok) of the king Khaja changed to Sultan Khaja Semaka and then the society moved to Tanjung Bukhenai.

The history was started in Tanjung Bukhenai. The small kingdom led by Sultan Khaja Semaka began to be well known by many merchant ships that stopped to take the rattan and spices. However, the area was often got flooded as it lied nearby the big Semaka River. They finally moved again in the area of Benawang located around the Tambak Udang beach in an area now known as Pekon Kutabatu. The kingdom of Sultan Khaja Semaka experienced its heyday after Benawang authorized under the Kebumian Tanjung Dukhian. Many ships stopped to pick up rattan and spices. Every ship that stopped by brought along their tribute in the form of money and gold. However, at that time the people and the Sultan Khaja Semaka did not know money. They did not know currency exchange. So every ship that stopped and paid the tribute of money and gold to the king would just put the tributes in front of and next to the palace. At some point, the ships that stopped to pay the tribute in the form of money and gold declared that the kingdom has got a lot of money and the king sultan Semaka justified with the word Benawang. Since then, the kingdom was well known as Benawang which literally means 'having a lot of money'. The word Benawang was derived from the word 'bena' that means sowing or abundant, and the word 'wang' means money.

The kingdom of Benawang continued to develop the power. The Hulu Balang (chief of army) was always standby. They also established Bandakh and Paksi there. After the entry of Pagaruyung bringing Islam, Skala Bekhak formed the Kepaksian. Then Semaka also formed some Kepaksian which were: Paksi Benawang, Paksi Padang Ratu, which was given territory in an area known now as Kampung Kandang Besi in the West of Kota Agung, Paksi Belu which was given an area from Way Awi to Way Belu. Paksi Belu was then replaced by Paksi Way Nipah (Pumatang Sawah).

Paksi Padang Ratu then moved to be given the territory with the natural boundary of Way Belu to Way Ngarip area. The last was Paksi Belunguh from Belalau and given the dividing area of the Boeway Nyata from Way Beringin to Way Kandis. But before the Paksi came to the land of Semaka, the Benawang clan had formed some units of Bandakh which had territory having certain titles (adok) like Bandakh Negeri Semuong which had the area up to Way Konyekh at Bandar Sukabumi now, Bandakh Pekon Balak which had area of Way Konyekh to Way Ngarip, Bandakh Boeway Nyata which is given the territory from Way Jelai to Way Kandis which then due to the arrival of Paksi Belunguh, its area was reduced from Way Jelai to Way Beringin. As far from Way Kandis to Bandakh Limau border belonged to Boeway Batakhegak, Bandakh Badak, Bandakh Putih (Cukuh Balak), Bandakh Pertiwi and Bandakh Kelumbaian.

In the community of Benawang there are 4 bandakh: Tala Gening, Muakhas, Maja and Belungu. The Kingdom of Benawang started to be well recognized along with the gallantry of Sultan Khaja Semaka and his Hulu Balang. This gave rise to the fact that Raden Fatahila who was under attacked by the Dutch requested assisting troops from the Kingdom of Semaka. At that time, Raden Fatahila handed over his authority to his son Sultan

Maulana Hasannuddin. Sultan Khaja Semaka later was given the title Perwira Utama (the Chief Commander) as well as Pangeran (the prince). Since then he was entitled Pangeran Perwira Utama Sultan Khaja. But gradually the Dutch intruded into Semaka with a mission to disintegrate the kingdom. After the bandakh were no longer united, then the kingdom was easily defeated.

In the Kesaibatinan of Tanggamus, there are five levels of social hierarchy, namely Paksi, Bandakh (12 bandakh created by the Paksi), Buwai (the offspring), Punggawa (subordinate of the bandakh) and Suku (subordinate of the Punggawa). The initial title of the king was Khaja Baniting, and then changed to Khaja Semaka. After Pagaruyung entered Tanggamus with Islam, Sultan Raja Semaka was given the title of Perwira Utama. However it was protested and then the title was changed to Pangeran Raja di Lampung. The title was given to recognize his success of helping Fatahillah to seize Batavia from the Dutch.

The marriage rite is considered the most important in the life phase of a person, including for the Sai Batin indigenous people. The marriage rite is called Tayuh Balak. The Sai Batin customary community is a society with patrilineal system (lineage based on male line). The life after marriage is mostly done by living in a male house (patrilocal), which also means that marriage is the man taking a woman. In the custom of Sai Batin Tanggamus, there are two forms of marriage, namely Semanda and Metudau. In Semanda, the bride (man) was taken by the groom (woman), in other words, the man follow what the woman wants. In contrast, Metudau is a way of marriage in which the man takes the woman away from her house. This way is called *Sebambangan* (elopement). The marriage is usually carried out within the community in the tribe (endogamy). However, since 1970's many marriages have been done through exogamy way in which a member of the community marries someone from outside of his clan.

3.1. Metudau: Ngambil Gadis (A Man Taking A Woman to Marry)

When a woman agrees to get married to her lover, then they will make an agreement to take the woman out from her home. This way, the woman will be fetched or 'stolen' and brought into the home of the bachelor or to the house of the tribe leader. Before taken away, the woman leaves a letter, called a pengepik / pengeluakhan / sukhat along with some amount of money. After that, someone will be delegated to inform the woman's family about it. Then the woman's family comes to the place of the man's family to confirm the information. This step is called nyusui tapok or nyusui hasok. After that the woman's family goes back home, and tell the results of the visit to other family members.

After that the man's family will pick up the woman from the house of their leader – ths event is called ngebayan. The woman is then placed in the house of the bachelor while waiting for the wedding procession. The man's family then comes to the woman's house to determine some matters as the money to give for their deliberation process – called Bandi Lunik – and some amount of money requested by the woman's family which is called Bandi Balak. They are also to determine the procession of marriage or Tayuhan. After the deal, the man comes again to the woman's place to invite their presence during the tayuh processions. The visit of the woman to the bride's place in the Tayuh procession is called Kuwakhi. The woman's family brings along for the man's family some food called Buwak Tiyuh / Mi Tiyuh, which consists of lauk pauk (side dishes), rice, lepot (sticky rice cakes), banana, chickens, cakes, cigarettes and betel levaes.

At the time of the Tayuh procession, in the afternoon they carry out the ngabahu procession that is a procedure of introducing the man's family member to the woman's family. Then in the evening the man's family carries out the Manjau Pedom phase in which the man's family stay for a night in the woman's house. In the next day, the woman along

with the man's family returns to the man's house carrying the woman's stuffs called Benatok to the bachelor's place.

The parts of Tayuh Balak procedure are gained as told by our informants and from informants' writings. The procession of Tayuh Balak referred to a major intention in the traditional time to finish the muli (woman) and mekhanai (man) period as single or unmarried persons. The processions are bukhasan, sebambangan, ngabakh tahu, bunut, bubanggan, nayuh, ngabahu, nglolok, and nyilau salai.

Bukhasan is a decision taken by a singel woman and a single man who have been in love to get married. The Bukhasan goes through some phases among others are nguwakhi, setunggaan or tandang. Nguwakhi is a way the man meeting the woman. This process takes place at the kitchen of the woman's house in an evening. It begins as the man asking the woman to open the door of her house – called khangok ngilu. For this purpose, the man recites the following words repeatedly:

….”*tabikpun ngalampukha tehaguk dikutti, say delom lain ki sembekhana mekhanai numpang manjau sekhabok kattu wat selah ni dapok sekhta mulli nisuka olok sekhta passok….”*

Then the mother or the aunt of the woman comes over to the bachelor asking who the man is and where he is from. Having known the man, the mother or aunt goes back in, and soon the woman comes to open the door and let the him come in.

Setunggaan is a way in which the mulli (woman) and mekhanai (man) encounter outside the house that begins by making a deal to meet while looking for some vegetables. In addition, there is also a way of meeting in which the lovers are separated by wall or called sesiahan. The sesiahan way did not exist before the Japanese colonization era. The sesiahan was started as the people lived in poverty and found it very difficult to have proper clothes for the meeting. As the result they felt embarrassed to meet. And sesiahan is a way out to those lovers who could not meet in a proper meeting session.

Sebambangan or elopement is the process of the man 'stealing' the woman for the sake of getting a marriage. After the woman and the man agree to live together, the man will flee the woman from her house. This way of escaping is preceeded by the woman informing her family about the action which is called Ngeni Pandai. This notification is made through leaving a letter and some amount of money conveying that the woman apologizes for any wrongdoing, and asks for the sincere prayer of her parents as she will marry man whose village of origin is also mentioned in the letter. The letter is put at a certain place at her house expecting that it will be easily found by her family. The sebambangan should be well planned in such a way to avoid any failure.

The next phase is Ngabakh Tahu. The man's family is well prepared to proceed the process. After taken from her house, the woman is usually not placed into the man's house but to the house of the leader of the community which is called lamban jukhagan. The leader then summons a messenger to hurry to the woman's village to meet the adat leader of the woman's village. The encounter is meant to convey a message stating that the woman is now in the man's village as they had agreed to live together.

After ngabakh tahu, then comes the Bunut process. This process takes place after the family of the woman is informed about the marriage plan. The woman's family, under an order from the adat leader, will go to the place of the man's family to meet the woman. The meeting is meant to confirm whether there is regret from the woman. If the delegation finds that the woman regrets the plan, then the delegation will bring the woman back home.

As Bunut procession confirmed the woman's decision, they will do the Bubanggan step. This is a procession when the woman is immediately moved from the adat leader's house to the man's house. The next step is ngebayan. Through this process, the neighbors, friends, muakhiyan, punabbayan, lebbu kelama come to the woman's house. This way is

also called manjau kebayan. In this kebayan phase, the family of the man comes again to the woman's family to do the bubanggan – that is having a clear discussion related to how the wedding will be carried out. The discussion should not leave any unclear point to carry out.

Nayuh Balak is a great celebration procession. After the discussion solving any possible problem carried out by the two families, then the man's family plans for a celebration. First of all, the man's family comes to the customary leader's house to inform that they plan to celebrate their son's marriage and seek for advice from the adat leader. Their arrival at the house of the leader should bring along some sugar wrapped with sebekhah or tappan cloth and coconut that symbolize a tasty and sweet life to come. The adat leader then responds by giving salt to symbolze to complete taste. Secondly, adat leaders on behalf of the families of bride-to-be, invites his people (muwakhian) to find out how the marriage should be carry out, such as determining what day, how and so forth.

The meeting which is led by the leader or Tuha Batin decides the job descriptions to carry out by the community. This process is called Hejjongan. The duties are given to the main member of the community or called anak lom. The tasks to carry out vary from who to carry umbrellas, who to carry the sword and so forth. The tasks distribution is based on decision of the Tuha Batin. The people who are assigned with their duties must perform their duties well. In performing the tasks, there are certain conditions applied, for example, those who are assgined to carry the yellow and white umbrellas must be a young man having a wife. Likewise, other duties come with certain conditions criteria and conditions.

The meeting also decides the need to make what they called as bahaan (rice wrapped in banana leaves or plates called pikhingan), tikuk, and other food. They also immediately plan for the time to carry out each task, for example when to prepare for the Bakas Negak Khubu (place of cooking), mekhanai kehibus (looking for leaves of enau palm), and babbay bukhakdayan (installing decoration). They also decide other processions as when the youth people (mulli mekhanai) can go to find the needed leaves (*tandang kebulung*)*, nyakhak hibus, mipis* (preparing the spices)**,** *babbai ngelepot* and some other technical preparations.

The next step, the man's family sends a delegation to the woman's family informing the day of the celebration and expecting the woman's family to attend (kuwakhiri). The delegation consists of a group of four young married men (khagah), four young married women (babbai), four young unmarried women (mulli) and four young unmarried men (mehaknai). In other condition, the delegation can consist of groups of three people each of each criterion. The next step, the people prepare some kinds of traditional food to serve such as rice / cakes (called talaman bahaan) which consists of buwak/mi tiuh, buwak/mi kelama, buwak/mi pengebayan, buwak/mi pengakhut (goggoh kawin) buwak/mi kuwakhi. This talaman bahaan should be served in a talam (tray), and the cakes are made of four or five heads of banana.

Other foods served are called mi tiyuh which are dishes and cakes prepared for the family of the woman's parents. Then there are mi kelama – dishes and cakes prepared for the extended family of the man's mother; mi penebayah prepared for the brothers of the man's father and mother; mi kuwakhi for married women of woman's family; mi pengahut (also called goggoh kawin) which is served for the bachelors of both sides. These servings indicate that the man and the woman are no longer available as single. In addition, when a woman has come to eat the goggoh kawin serving, it means that she is eligible for nguwakhi or namukan bujang (to find a man for her life).

The event is usually held in the afternoon in the procession of tayuh or hajat. The process respectively started by the activities of the youth (muli mekhanai) and married siblings (babbai bakas). Before the event, the muli mekhanai do the tandang kebulung which is looking for vegetables and banana leaves. Then in a second Saturday night, the

mulli mekhanai do the nyakhak bulung activity that is guided by the leader of the youth group in the village.

In this event, the unmarried women must wear a shawl and a long cloth while the unmarried men should wear bulipat (a kind of sarong) and cap. The event begins with the men and women working together in an activity called nyakhak bulung, and after that there is a dance show where the men are to dance and the women sing. The last event is called sukhatan.

In the next Sunday evening, the mulli mekhanai held a mipis activity, in which they prepare to grind the spices guided by the leader of the youth (ketua bujang). After the spices are prepared, they continue with another dance occasion and end with the nyukhat activity.

In the evening, the married women in the village do ngelepot activitiy – the making of sticky rice cake wrapped in palm leaf or called lepot. The next morning, the event to do is pemajaan that is a big cooking event done by every house in the village to prepare the meals for the celebration. In this pemajaan event, some young men from outside of the village may pay a visit to the women – this event is called ngudan.

On the determined day for the nayuh, the very privileged part is the kuwakhi – the family of the bride (pesabaian). The noble people or called jakhu adat, the community leaders and religion leaders all present to represent the pebesan that had been prepared by the committee. The main activities of tayuh are buharak, butammat, buadok, and pangan bahong.

In the following afternoon, the youth (mulli mekhanai) gather for an activity called nganik mi pengakhut or mi hagoh kawin which is a customary tradition indicating that there are two lovers to end their status as singles and get married. In the tayuh occasion, the brother of the man and woman gathered to in witness that the bride and groom to be are going to get married. This is also witnessed by some youth men and women from other villages. To end the event, they also pray for good life of the couple.

The next procession is Nyambai Balak. It is an activity in an evening when some ladies come to help for the celebration – they are called the battu ladies. All gathered in a house called baya house. Initially, the men fetch their women from their house carrying a lantern called petromak. After all the ladies get together and are ready for the occasion, then the groom-to-be call the bride-to-be to enter a certain place called tarup. The bride must wear a long cloth and a scarf. Then the head of the village youth (ketua bujang) guides the men from outside of the village who want to join the nyambai show. The event is opened with an introduction and followed by suahan khukuk and dances. After drinking and eating the cake together the event continued with a sukhatan activity.

There is an activity called Buwak Tiyuh in which the man's family shares some cakes for woman's family. As soon as the woman's families arrive at their village, then they distibute the cakes to their relatives (muakhiyan). Those who receive the cake will usually respond with giving some items such as glasses, plates and so forth which will be collected and made into a benatok (stuffs carried by the woman for her marriage).

Afterward, there is Ngabahu / Ngalollok activity in more or less a week after the celebration. The groom's family, along with the bride, pays a visit to the bride's family. This si meant to ask for apologize and to be introduced with the bride's family members. In the ngabahu, they bring along one rooster, cigarettes, ngasan (betel leaves) bananas and cakes. These stuffs are mentioned in the processions, as the following phrase:

"….Sikam khopoklah buikhing-ikhing babbai kadalih bakas ngattakkon anak butting kutti khopok haga seinong-inongan ngalalakkopkon tutukh pekakha di pedatong khukuk Butottok-tottok ngasan buselok-selok buak bupakai-pakai putti bubaha-baha leput buikok-ikok. Ki batok sikam khopoksangu dalih pedatong…."

After the visit or *ngabahu/ngalollok*, the bride's family gives some stuff called *benatok* to bring along by the bride for her new marriage life.

Nyilau Salai is an event done after Ngabahu. Approximately one week or ten days after the ngebahu, the bride's extended family (muwakhiayan) gather again to plan the Nyilau Salai, which is intended to ensure the residence of her married daughter.

3.2. Semanda: Ngambil Bujang (A Woman Taking A Man to Marry)

In contarst with Metudau, Semanda is a marriage through which a man goes to the woman's family. As the consequence, the man loses his right for any inheritance from his family. Usually this way of marriage is done because the man is not blessed by his family to marry the expected woman. The man's family is informed after the wedding ceremony carried out. The man will also live in the house of the woman's family. In this procession there is a rite called Mulang Mengan. The family of the woman is invited for dine by the family of the man. Then the woman's family will inform to attend the celebration.

4. Conclusion

Adat (custom tradition) is a matter of agreement obtained from the consensus. All problems in a society are solved through agreement. Therefore adat is a form of local wisdom, because it is flexible and dynamic. A relatively homogeneous society tends to exhibit a harmonious and equilibrium life. Traditionally, adat is able to show itself as a local wisdom that is beneficial to people's life.

The results of this study indicate that Tanggamus has the potential of abundant local wisdom. A local wisdom is a capital that is very important for the basis of development of a region. This is often ignored and not recognized. People think that local wisdom is something that is considered ancient and contrary to modernization. In fact, local wisdom is a social capital for a development.

In any society around the world, people recognize rituals in their everyday life. A marriage ritual is an important and meaningful phase in the life of a human being in a society. The rituals are important as they serve as a form of notification and official recognition from the indegenous people. Similarly, the indigenous people of Sai Batin in Tanggamus recognize the ritual in the form of traditional ceremonies. The traditional ceremony in the Sai Batin indigenous community in Tanggamus is called Nayuh Balak. One of the most important ceremonies in society is the life cycle ceremony. The life cycle ceremony is a ritual that indicates a person moving from one phase to the next phase in life. The rituals may vary in accordance with the life phase such as pregnancy, birth, baby naming, circumcision, marriage, and even death. Each transition is marked by a ritual, as a form of formal notice and recognition from the public to that person.

Theoretically, the passage of life cycle has ever been studied by an anthropologist named Arnold Van Gennep (1960) in his research entitled Rites of Passage. Van Gennep explains every transition in human life is done through ritual, for example: a marriage. Marriage is considered a Rites de Passage or a transition of one's status in life. Van Gennep considered all marriage ceremonies as the "Rites De Passage" which symbolizes the transition of the status of each bride and groom who once live separatedly, then after the ceremony, they are required to live together as a husband and wife in their own house of their newly built family. Rites De Passage consists of 3 levels: Rites De Separation is a farewell ceremony from an original status; Rites De Marga is a procession ceremony to get a new status; and Rites D'agreegation is an admission ceremony in a new status.

Although Van Gennep emphasizes his research on marriage rituals, he also considers that each phase of a person's life cycle is important. Theoretically Van Gennep explains that:

> "*Thus, although a complete scheme of rites of passage theoretically includes preliminal rites (rites of separation), luminal rites (rites of transition) and postliminal rites (rites of incorporation), in specific instances these three types are not always equally important or equally elaborated…" (Van Gennep, 1960:p11)*

From the explanation above, it can be said that every indigenous community may have a set of ritual for life cycle ceremony. However not every part of the rituals is important. This is highly dependent on the customs and traditions of each of the indigenous people. Each indigenous community has its own culture that determines which parts are important in each phase of life.

For Van Gennep (1960), most societies in the world consider a marriage as the most important phase of life. This is also applied for the Sai Batin indigenous people in Tanggamus. It does not mean that other life phases are not performed by ritual or ceremony. One aspect that influences these rituals or ceremonies is the influence of religion. The indigenous people of Sai Batin in Tanggamus are adherents of Islam. The influence of Islam on indigenous life is so great. One of them is the influence of Islam on the procession of the birth ceremony. Besides the influence of religion, many other socio-cultural changes contribute to the changes in traditional ceremonies in a society, including modernization, acculturation, assimilation, innovation, information technology and even globalization. What is difficult to explain is moment when the change began, because theoretically the change may take place every time as a society and culture is very dynamic.

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A study of Students' Reading Motivation Factors in Second Language Acquisition at the Third Grade of a Senior High School in Pangkalpinang

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Abstract

This study investigated on students' extrinsic motivation factors in learning reading. It was stated that motivation played a key role in success of second or foreign language learning (Lucas et.al, 2010), particularly classroom language learning. This study employed descriptive in nature. A survey was administered at one of senior high schools in Pangkalpinang. The 20-item survey questionnaire was designed. The questionnaires in this study were adapted from Mori (2002). It attempted to describe students' extrinsic factors in learning reading at one of senior high school in Pangkalpinang. Data from questionnaires were tabulated and were subjected to a nonparametric statistical analysis. The study revealed that students were instrumentally motivated (Deci and Ryan, 2000; Lucas et.al 2010). They would like to succeed in State Examination, to succeed in competing to others to enter higher education, or to find job that English was one of factors that support their chance to get the job.

Keywords: *extrinsic motivation, reading motivation, motivation;*

1. Introduction

Motivation plays a key role in the rate and success of second or foreign language learning, particularly classroom language learning (Lucas et.al, 2010). In line with Dornyei (1998: 117), "motivation provides the primary impetus to initiate learning the second language and later the driving force to sustain the long and often tedious learning process."

Several studies (Lucas et.al. 2010 and Yeung, 2012) have been undertaken in order to investigate second language learning motivation factors. Lucas et.al, (2010) in their study on intrinsic motivation factor of vocational students state that students are found to be mainly motivated intrinsically in the three macro skills such as speaking, reading and listening. Then, they find that the respondents are intrinsically motivated to learn the second language to attain certain goals because students need to get new knowledge or skill by means of mastering certain skills, in this case speaking, reading and listening. Meanwhile students' extrinsic motivation factors on learning L2 were claimed as the other General Education Curriculum subjects (Mathematics and Natural Sciences, Humanities and Social Sciences) had materials that were mostly printed and taught in English. As a matter of fact, these were considered as extrinsic factors, it appeared that the learners had taken it upon themselves the responsibility for their learning in the L2.

Yeung (2012) puts motivation as one of the instrumental factors, which can be grouped into two areas. The first area relates to increasing job opportunities and salary potential. The second area relates to further study and communications. Seventy percent of students took an English language elective course to improve their English for career preparation. Moreover, in terms of pragmatic reasons, vocational students agree that a determination to obtain good examination results is one of the motivating factors to learn English and being accepted into universities.

Those two previous studies above investigate students' motivation factors in learning English at vocational school in Japanese context. This study seeks to examine students' motivation in learning English at senior high school level in Indonesian context at one of senior high schools in Pangkalpinang.

The formulation of the research Questions:
a. Are the students intrinsically and extrinsically motivated to learn to read in English?
b. What specific extrinsic motivation factors that students refer to learn to read in English?

2. The Literature Review

2.1 The Nature of Motivation

In the field of second language acquisition (SLA), a great deal of research has been done in order to investigate second language learning motivation. As Mori and Yeung claimed that motivation is one of the main elements that directly linked to success in developing a second or foreign language. It determined the extent of active and personal contribution in language learning at different stages (Mori, 2002 & Yeung, 2012).

According to Deci & Ryan (2000), motivation is hardly a unitary phenomenon. People have not only different amounts, but also different kinds of motivation. That is, they vary not only in level of motivation but also in the orientation of that motivation. Orientation of motivation concerns the underlying attitudes and goals that give rise to action. As an example, a student can be highly motivated to do homework out of curiosity and interest or, alternatively, because he or she wants to get the approval of a teacher or parent. A student could be motivated to learn a new set of skills because he or she understands their potential utility or value or because learning the skills will yield a good grade and the privileges a good grade affords.

While Yeung (2012) proposed that there was no single-theory could possibly explain the complexity of foreign/second language learning motivation in different contexts. As he summarized motivation into seven-faceted, the first one was the integrative dimension, which included integrative motives; affective motives; language attitudes; intrinsic motives/attitudes towards L2; and learning/enjoyment/interest. The second one was the instrumental dimension. The third one was the macro-context–related dimension, which had multi-cultural/inter-group/ethno-linguistic relations. The fourth one was the self-concept–related dimension (generalized/trait-like personality factors), which included the self-concept; confidence/self-efficacy; anxiety/inhibitions; success/failure-related (attribution) factors; expectancy; and need for achievement. The fifth one was the goal-related dimension. The sixth one was the educational context–related dimension (learning/classroom/school environment). In addition, the seventh one is the significant others–related dimension (parents, family, and friends).

Regarding to multi-dimensional of motivation in L2 acquisition that were indicated by much discussion about the nature of language learning motivation, one alternative that has been introduced is the differentiation between intrinsic and extrinsic motivation which this study concerned with those two motivations, intrinsic and extrinsic.

2.2 Intrinsic and Extrinsic Motivation

Lucas et.al (2010) categorized two general types of motivation, one based on intrinsic interest in the activity per se and the other based on rewards extrinsic to the activity itself. These types of motivation are not categorically different, but rather lie along a continuum of self determination. While in Self-Determination Theory (SDT; Deci & Ryan, 1985), they distinguished between different types of motivation based on the different reasons or goals that gave rise to an action. They explain that the most basic distinction was between intrinsic motivation, which refers to doing something because it was naturally interesting or enjoyable, and extrinsic motivation, which refers to doing something because it leads to a separable outcome.

According to Lucas et.al (2010), intrinsic motivation (IM) referred to motivation to engage in activity because it was enjoyable and satisfying to do. Ryan and Deci (1985) believed that intrinsic motivation was founded upon innate needed for competence and self-determination. They hypothesized that when people were free to choose to perform an activity, they would seek interesting situations where they could rise to the challenges that the activity presents. By determining to meet these challenges, learners developed a sense of competence in their abilities.

Ryan, Kuhl and Deci (1997) also argued that despite the fact that humans were liberally endowed with intrinsic motivations, it was clear that the maintenance and enhancement of this

inherent propensity required supportive conditions, as it could be readily disrupted by various non-supportive conditions.

Cognitive evaluation theory (CET) was presented by Deci and Ryan (1985) had the aim of specifying factors that explained variability in intrinsic motivation. CET was framed in terms of social and environmental factors that facilitated versus undermine intrinsic motivation, using language that reflects the assumption that intrinsic motivation, being inherent, will be catalyzed when individuals were in conditions that conduce toward its expression. In other words, it would flourish if circumstances permitted. Put in this way, the study of conditions that facilitate versus undermine intrinsic motivation was an important first step in understanding sources of both alienation and liberation of the positive aspects of human nature.

Dailey (2009) urged that extrinsic motivation did have short-term motivational characteristics. However, students with did not necessarily have positive attitudes about the L2, and research shows that such students could be more likely to discontinue language studies. While (Noels et.al. 1999) believed that students who took the language to fulfill an academic requirement were more likely to end any language learning classes in the future. If the motivation to learn an L2 is to pass a class or receive an academic credit, then once completing this goal, there might be no point for an individual to continue studying after receiving their mark.

In a school setting, Dornyei (1994) argued that students could lose their intrinsic interest if they had to meet extrinsic requirements. For example, required reading at school or mandatory language classes could cause loss of intrinsic motivation. According to Brown (2007), "In a language course, extrinsic pressures are most often manifested in foreign language requirements set by the institution and in established standardized test scores that must be achieved." In this type of L2 learning environment having these extrinsic pressures, it could not be blamed for them for losing intrinsic motivation. Many external pressures seem to prevent any enjoyment in the classroom, which was the primary factor of intrinsic motivation.

Deci and Ryan (200) claimed that intrinsic motivation was clearly an important type of motivation, most of the activities people do were not, strictly speaking, intrinsically motivated. This was especially the case after early childhood, as the freedom to be intrinsically motivated became increasingly reduced by social demands and roles that require individuals to assume responsibility for non-intrinsically interesting tasks. In schools, for example, it appears that intrinsic motivation becomes weaker with each advancing grade.

Extrinsic motivation was a construct that pertains whenever an activity was done in order to attain some separable outcome. Extrinsic motivation thus contrasts with intrinsic motivation, which referred to doing an activity simply for the enjoyment of the activity itself, rather than its instrumental value. For example, a student who did his homework only because he fears parental sanctions for not doing it was extrinsically motivated because he is doing the work in order to attain the separable outcome of avoiding sanctions. Similarly, a student who did the work because she personally believed it was valuable for her chosen career was also extrinsically motivated because she was doing it for its instrumental value rather than because she found it interesting. It could be right that many of the educational activities prescribed in schools were not designed to be intrinsically interesting, a central question concerns how to motivate students to value and self-regulate such activities, and without external pressure, to carry them out on their own.

2.3 Related Previous Studies

Deci and Ryan (2000) concluded that intrinsically motivated behaviors, which were performed out of interest and satisfy the innate psychological needed for competence and autonomy, were the prototype of self-determined behavior. Extrinsically motivated behaviors—those that were executed because they were instrumental to some separable consequence—could vary in the extent to which they represent self-determination. Moreover, contextual conditions that support one's feelings of competence, autonomy, and relatedness were the basis for one maintaining intrinsic motivation

Lucas et.al (2010) investigated intrinsic motivation in second language learning. The study tried to identify what specific L2 communicative skill students were more motivated to learn. The study involved 240 freshman college students from different universities and colleges in Metro Manila. A 48-item questionnaire was administered to the selected respondents. The results of the study showed that students were intrinsically motivated to learn speaking and reading skills and that they were

intrinsically motivated via knowledge and accomplishment. These may suggest that students are motivated to learn these linguistic skills due to the very nature of the skills which they find interesting and relevant to them. The mastery of these linguistic skills somehow helped them achieve their learning goals that might bring benefits to them in the future and becoming more self-determined with respect to extrinsic motivation.

Yeung (2012) studied for motivation factors for English language learning of vocational students in Hong Kong. The qualitative case study approach was employed with self-completion questionnaires, semi-structured interviews, diary notes and informal talks as research tools. The results showed that vocational students had intrinsic and strong instrumental motivations for learning English. In the process of learning, participants regarded English as a functional language that was tied up with their careers.

3. Research Methodology

3.1 Research Design

The study was descriptive in nature. A survey was administered at one of senior high school in Pangkalpinang. The 20-item survey questionnaire was designed. The questionnaires in this study were adapted from previous questionnaires devised by Mori (2002).

The participants in this study were the third grade at one of senior high school in Pangkalpinang. There were seven classes at the third grade. Three classes were science major and the other four classes were social major. Two classes consisted of 50 students were chosen to be the sample in this study. One class was from science major (IPA_1) and the other one was from social major (IPS_1). It was considered that the sample chosen represented the population of the third grade.

3.2 Data Collection

The questionnaires in this study were prepared before they were distributed to thirty-target respondents. The proponents of this study used only one type of scale, which was a 5-point agree/disagree scale. The idea for this questionnaires came about from Mori (2002) study, the proponents did not fully adapt the questionnaire used in that study as it involved several variables namely Intrinsic motivation and Extrinsic motivation and it used Likert scale to measure the variables. The modified questionnaire covered items on the different intrinsic motivation factors and extrinsic motivation. The table below presented the distribution of the items in the questionnaire:

Motivation Factors	Questionnaire Items
Intrinsic	1, 4, 7, 8, 9, 10, 11, 12, 15, 16
Extrinsic	2, 3, 5, 6, 13, 14, 17, 18, 19, 20

The proposed scale had the following response option definition:

5 = Strongly Agree
4 = Agree
3 = Neither Agree nor Disagree (this is considered neutral)
2 = Disagree
1 = Strongly Disagree

Moreover, considering to ethical issue, permission to conduct this mini research at the school was proposed. After the letter of proposal to conduct, the research at the school was approved by the charge of the school. Then, the questionnaires were administered to the 30 respondents at one of the classes at the school. The data obtained from the questionnaires were tallied and subjected to non-parametric statistical analyses of the data.

4. Data Analysis

Since questionnaires were adapted from Mori (2002), it was considered that the questionnaires were expected to be reliable and valid based on some conditions. They were (1) The information requested was known to the respondents since the statements were about their motivations in learning reading, (2) The questions were phrased clearly and unambiguously, (3) The questions referred to current perceptions of these students, and (4) The questions were non-threatening, not embarrassing, and did not violate the privacy of the respondents.

The scores from questionnaires were tabulated and were subjected to a nonparametric statistical analysis. This analysis was used because there were several response variables (referring to the motivations factors) that were employed to explain a single classification variable (referring to reading). To ensure the quality of the analysis and interpretations, consultations with statisticians were made.

Scores obtained from questionnaires were analyzed and formulated by using Likert Scales. The motivation was categorized into three categories, they were High, Medium, and Low as suggested by (Azwar, 2012: 149). A scale consisted of ten items and every item scored one for strongly disagree, two for agree, three for cannot decide, four for agree and five for strongly agree.

The questionnaires of students' intrinsic motivation in learning reading were 10 items. Every item has been scored. The minimum range was 10 x 1 = 10 and the maximum range was 10 x 5 = 50. The spread distribution of the data was 50 - 10 = 40. So that, the every deviation standard result s was 40/6 = 7 and the mean σ was 10 x 3 = 30. Finally, the score categorization of the students' intrinsic/extrinsic motivation in learning reading was:

High			X	≥	(37)
Medium	(37)	<	X	≥	(23)
Low			X	<	(23)

4.1 Research Finding

a. Student's intrinsic and extrinsic motivation in learning reading

Figure 1. Student's intrinsic and extrinsic motivation in learning reading

b. What specific extrinsic motivation factors that students refer to learn to read in English.

Figure 1 showed that students were intrinsically and extrinsically motivated to learn to read English. Mostly students were motivated to learn to read English since they would like to advance their study to higher education or found their job. Twenty-four students (80%) were highly motivated to learn to read English because they wanted to be success in their state examination. Having been successful in doing state examination, they hoped to find a job that English was as a skill to support their chance to get the job or they would compete with others students from different areas to enter higher education.

4.2 Discussion

The finding suggested that they were intrinsically and extrinsically motivated. Extrinsic motivations were more dominant. In line with Yeung (2012), his study results showed that vocational

students had intrinsic and strong instrumental motivations for learning English. In the process of learning, participants regarded English as a functional language that was tied up with their careers. In this study, students were highly motivated to learn to read English because they would like to success to do state Examination. Having succeeded doing State Examination, students would like to advance their study to higher education or compete with others to find job which English was a skill that support their chance to get the job.

These, extrinsic motivation factors, may suggest that students are motivated to learn these linguistic skills due to the very nature of the skills which they find interesting and relevant to them. The mastery of these linguistic skills somehow helped them achieve their learning goals that might bring benefits to them in the future and becoming more self-determined with respect to extrinsic motivation (Lucas et.al, 2010)

Students extrinsic motivation factors such as; success on doing state examination, success on competing with others to enter higher education, or to find a job were the main factors that students extrinsically motivated to learn to read English. Deci and Ryan (2000) suggest that extrinsically motivated behaviors—those that were executed because they were instrumental to some separable consequence—could vary in the extent to which they represent self-determination. Moreover, contextual conditions that support one's feelings of competence, autonomy, and relatedness were the basis for one maintaining intrinsic motivation.

5. Conclusion and Recommendation

5.1 Conclusion

The study showed that the students were extrinsically motivated. Reading as one of other three language skills were learned by students because instrumentally, Deci and Ryan (2000), they would like to success in State examination, to success in competing to others to enter higher education, or to find job that English was one of factors that support their chance to get the job.

The natural of the language learning could maintain students' motivation. The students' reading skills that support students' accomplishment- success in State examination, to success in competing to others to enter higher education, or to find job that English was one of factors that support their chance to get the job -was considered as the natural language learning. As Lucas et.al (2010) claimed that students are motivated to learn linguistic skills due to the very nature of the skills which they find interesting and relevant to them. The mastery of these linguistic skills somehow helped them achieve their learning goals that might bring benefits to them in the future and becoming more self-determined with respect to extrinsic motivation.

5.2 Recommendation

Since students were extrinsically motivated to learn to read English for accomplishment and instrumental (Lucas et.al. 2010 & Deci and Ryan 2000). In learning reading, students wanted to get success in state examination, to success in competing to others to enter higher education, or to find job that English was one of factors that support their chance to get the job was considered as the natural language learning. Moreover, contextual conditions that support one's feelings of competence, autonomy, and relatedness were the basis for one maintaining students' extrinsic motivation (Deci and Ryan, 2000)

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The Effect of the United State Presidential Election on Jakarta Islamic Index: Evidence from Indonesia Stock Exchange

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Abstract

The objective of this research is to investigate market reaction of Jakarta Islamic Index stocks towards the US presidential election 2016. Jakarta Islamic Index is one of Islamic Indices in Indonesia which has high market capitalization and high liquidity. There are no previous studies regarding this issue. We employed an event study to investigate the effect of this event. The results show that there was no significant difference in abnormal return before and after the US presidential election 2016, however there was significant difference in trading volume activity before and after the US presidential election 2016, in where from first day up to seventh day trading volume activity was significantly higher than prior the US presidential election.

JEL Classification: G12- Trading Volume, G14-Event Studies

Keywords: *Jakarta Islamic Index, Event Study, Abnormal Return, Trading Volume;*

1. Introduction

One vehicle of investing is through the capital market. Capital market has an important role in the economic activities of the state that serves as a provider of facilities that bring together the parties who have excess funds (investors) and parties that require funds (issuer) (Darmadji and Fakhruddin, 2011: 2).

Capital market as one of the economic instruments can not be released from various environmental factors, both economic and non economic environment. Non economics such as political events in where political events do not interfere directly to the capital market, but the event is absorbed by investors that will be a consideration for investors in doing their activities. Political changes that occur in a country, directly or indirectly will affect the economic conditions of the country. The changing of policy which happen have a major impact on the economy and financial sectors of a country

On November 8th, 2016, the election of the President of the United States (US) seized all the attention of the world community. No wonder that this presidential election is very influential on the reaction of capital markets in various countries. Donald Trump was elected as President of the US had an impact on the fall of exchanges in Asia. Two consecutive trading days, the Composite Stock Price Index (IHSG) or Jakarta Composite Index (JCI) fell sharply, at about 6%. On November 11th, 2016 the index plummeted about 4% from 5,450.31

to 5,231.97, on November 14th the index again slumped around 2% to a value of 5,115.74. The weakening is the largest among the Asia indices (Katadata.co.id).

The election of the US President in 2016 as we know goes controversially, it is because of the candidacy of Donald Trump followed by his policy plans. One of Donald Trump's policies is to ban the Muslims entering the US (*Berdikarionline.com*, 2016). The policy plan was likely to be very impact on companies that apply the concept of Islamic finance in its activities, including in Indonesia, in which the majority of the population is Muslim and the capital market in Indonesia, especially for companies listed on the Jakarta Islamic Index (JII). In addition, according to Marta (2016) who is editor of Kompas.com, "*Trump effec*t" on the Indonesian economy is of course not only on financial markets and capital markets, but also export performance and direct investment Indonesia. An important anti-globalization and impact-free Trump policy weakens Indonesia's exports to the US either directly or indirectly."

The study of the election effect of the US President towards stocks market in 2016 is included an event study. Event study is a study that studies the market reaction to an event whose information is published as an announcement. The reaction can be measured by using abnormal return (Hartono, 2013: 585), it can also be measured by using trading volume activity (Malindasari, Sukartha and Wirakusuma, 2016).

Previous studies regarding an event study which conducted in Indonesia among other: Yuniarthi and Sujana (2016) found that there was no reaction on capital market before and after Jokowi become president of Republic Indonesia in where the stocks used were all stocks listed in BEI, in contrast to research conducted by Sirait, Tiswiyanti, and Mansur (2012) with the object of all banking shares listed on the IDX found that there were significant abnormal returns before and after the change of the Minister of Finance 2010.

Another study conducted by Melati, Saryadi, and Widiartanto (2014) found that there were significant differences in trading volume activity before and after the presidential election on 9th of July on LQ45 index. However, Syaputra (2016) found that trading volume activity before and after the event of Britain to Exit (Brexit) on the ASEAN-5 index was not significant

The phenomenon of the JCI and JII's decline on November 11th, 2016 which allegedly the effect of Donald Trump's candidacy and victory over the US of presidential election held on 8th November 2016 and the diverse results of previous similar research, and the lack of research on the effects of non-economic events on the Jakarta Islamic Index, therefore the authors interested to lift the title of research "***The effect of the United State presidential election on Jakarta Islamic Index: evidence from Indonesia Stock Exchange".***

2. Literature Review And Development Hypothesis

2.1 Capital market

Capital market is a meeting between parties who have excess funds by selling securities (Tandelilin, 2010: 26). Permana, Mahadwartha and Sutejo (2013) stated that to mobilize the capital market required an information that can affect the demand and sale of stocks in the capital market. Based on these statements the capital market can be interpreted as a container or place to meet the needs of investors or fundraisers by securities transactions in which the movement of capital markets is strongly influenced by the perceptions of the actors.

2.2 Jakarta Islamic Index

Jakarta Islamic Index (JII) is one of Islamic indices in Indonesia capital market. JII consists of 30 companies selected which is based on Sharia compliant. JII stocks have high market capitalization

and high liquidity. Stocks included in the Sharia Index are issuers whose business activities are not in conflict with sharia, such as (Darmadji and Fakhruddin, 2015: 185-186):

1. Gambling and gambling-related businesses or games are prohibited.
2. The efforts of conventional financial institutions (ribawi) include banking and conventional insurance.
3. Enterprises that produce, distribute and trade food and beverages are classified as haram.
4. Enterprises that produce, distribute and / or supply goods or services that damage the morals and are harmful.

In addition, in the process of selecting stocks that enter JII, Indonesia Stock Exchange (IDX) performs the selection stages which also consider the aspects of liquidity and financial condition of the issuer, namely:

1. Choosing a collection of shares with a primary type of business that is not contrary to sharia principles and has been recorded for more than three months (except included in 10 major capitalization).
2. Selecting shares based on the annual financial statements of the year or the middle of the year that have a ratio of liabilities to assets up to 90%.
3. Selecting 60 shares from the stock arrangement above is based on the order of the largest market capitalization during the past year.
4. Selects 30 stocks of companies in order based on the average liquidity level of regular trading value over the past month.

2.3 Event Study

Event study is a study of market reaction to an event (event) whose information is published as an announcement. The emerging reaction can be measured by using abnormal return because in the event study there is new information or new events that change the value of the company in the form of increase or decrease in stock value (Hartono, 2013: 585-587). In addition, market reaction can be measured by looking at stock liquidity or trading volume activity. Trading volume activity is one of a variation of event study (Malindasari, Sukartha and Wirakusuma, 2016).

2.4 Hypothesis

The elected event of Donald Trump as a president of the US caused a sharp decline in Asian bourses, where Indonesia experienced the sharpest decline for JCI, along with a decline in JII, it indicated that the elected of Donald Trump as a president of the US in 2016 is a bad news for the Indonesia stock exchange.

According to Engkuchik and Kaya (2012), the 1997 crisis in Asia led to a rise in stock liquidity in Malaysia as well as a decline in stock prices. The fall in stock prices is caused by the concerns of individual shareholders of future losses, with low stock prices will attract potential investors to buy shares and that will make the stock trading volume increase. Listyaningsih and Krishnamurti (2016) stated that in the global financial crisis the fall of the capital market, the independent inverstor will sell its shares more than institutional investors, which in general investors will sell risky stocks to avoid losses. Unlike institutional investors who will retain their shares and wait for what will happen in the future.

JII is a thirty stocks which have high liquidity and high market capitalization in Indonesia which consists of blue chip stocks (Listyaningsih and Krishnamurti, 2016). According to Darmadji and Fakhruddin (2013: 7) blue chip stock is the common stock of a company with a high reputation, as a leader in similar industries, has a steady and consistent income in paying dividends. So these types of stocks have a tendency to move long-term positive and have a very strong financial foundation in the company.

Based on these statements, logically JII stocks will be more likely to be maintained, however the huge decline experienced by JCI that is 4.01 percent and JII of 5.23%, the authors assume that the election of the President of the USA in 2016 which refers to the policy of banning Muslims entering the US has a huge impact that makes JII which consists of blue chip stocks with strong financial strength forced to release its stocks. This study therefore posits the following hypothesis:

H1: There is a difference abnormal return before and after the US presidential election in 2016.
H2: There is a difference trading volume activity before and after the US presidential election in 2016.

3. Metodolology

3.1 Event Study

This study assessed abnormal return and trading volume activity of JII stocks before and after the presidential election of the US. This study uses an event study methodology. This study used observation period is 21 days exchange consists of:

1. Event date is November 8th , 2016
2. Event period is a period of 10 days prior to the event (t-10), namely October 25th, 2016 until November 7st, 2008 and the period of 10 days after the event (t + 10) that on 9th November 2016 until 22th November 2016.

This study estimates the average abnormal return (ARt) and cumulative abnormal return (CARt) for 10 trading days prior to announcement through 10 trading days after (Krishnamurti, Sawicki & Zhoungqi 2006).

Abnormal return is used to determine whether the event of the US presidential election has an impact on the rate of stock return. Abnormal return is the difference between the actual return that occurs with the expectation return. Abnormal return occurs because there is a new information or new event that change the value of the company in the form of increase or decrease in stock value (Hartono, 2013: 586 & 609). The abnormal return is the difference between actual return with expected return (Jogiyanto, 2003: 434). Abnormal stock returns are calculated by using equation (1).

..... (1)

AR_{it} is abnormal return for each stock i for period t; R_{it} is realization return on stock i for period t; R_{mt} is market return on JCI for period t. The expectation return in the study is calculated using a market adjustment model in which the return of expectation is the market return (Jogiyanto, 2003:445). This procedure is most commonly used because it avoids errors and extra computations associated with estimating security betas.

Trading volume activity (TVA) is the ratio between the number of shares traded at a certain time with the number of shares of the outstanding shares in a certain period. TVA of stocks are calculated by using equation (2) (Malindasari, Sukartha, dan Wirakusuma, 2016).

..... (2)

TVA_{it} is trading volume activity for each stock i for period t; S_{it} is number of stock i traded for period t; Q_{it} is outstanding stocks of JCI for period t.

3.2 Data

The sample used in this study using purposive sampling method with the criteria used: JII stocks for period of June to November 2016, ie 30 stocks. All data is from IDX. Table 3.1 consists of 30 JII stocks as a sample size in this study

Table 1 The List of Jakarta Islamic Index Stocks The period of June to November of 2016

No.	Code	Name of JII Stocks
1	ALLI	Astra Agro Lestari Tbk.
2	ADRO	Adaro Energy Tbk.
3	AKRA	AKR Corporindo Tbk.
4	ASII	Astra Internasional Tbk.
5	ASRI	Alam Sutera Realty Tbk.
6	BSDE	Bumi Serpong Damai Tbk.
7	ICBP	Indofood CPB Sukses Makmur Tbk.
8	INCO	Vale Indonesia Tbk.
9	INDF	Indofood Sukses Makmur Tbk.
10	INTP	Indocement Tunggal Prakarsa Tbk.
11	JSMR	Jasa Marga (PErsero) Tbk.
12	KLBF	Kalbe Farma Tbk.
13	LPKR	Lippo Karawaci Tbk.
14	LPPF	Matahari Department Store Tbk.
15	LSIP	PP London Sumatra Indonesia Tbk.
16	MIKA	Mitra Keluarga Karyasehat Tbk.
17	PGAS	Perusahaan Gas Negara (Persero) Tbk.
18	PTBA	Tambang Batubara Bukit Asam (Persero) Tbk.
19	PTPP	PP (Persero) Tbk.
20	PWON	Pakuwon JAti Tbk.
21	SCMA	Surya citra Media Tbk.
22	SILO	Siloam International Hospitals Tbk.
23	SMGR	Semen Indonesia (Persero) Tbk.
24	SMRA	Summarecon Agung Tbk.
25	SSMS	Sawit Sumbermas Sarana Tbk.
26	TLKM	Telekomunikasi Indonesia (Persero) Tbk.
27	UNTR	United Tractors Tbk.
28	UNVR	Unilever Indonesia Tbk.
29	WIKA	Wijaya Karya (PErsero) Tbk.
30	WSKT	Waskita Karya (Persero) Tbk.

Source: Indonesia Stock Exchange is accessed on December 20th, 2016

4. Empirical Results

4.1 Abnormal Return

Based on Table 4.1, the different test shows that in the election of the US president in 2016, for abnormal return shows that nine of ten days show no significant difference. Only on the 6th day after the event date shows that there is a difference significant at the level 10%, which means H1 in this study is rejected, in where there was no significant difference on abnormal return before and after the election of the US president in 2016 at JII.

The significant difference occurred only on the 6th day indicates that the information contained in the event is not directly used by investors to make decisions. This is because not all information received by investors can be directly used in decision making, but the information must be interpreted first (Hartono, 2013: 554-555).

In addition, according to the authors because of shareholder concerns over Donald Trump's victory which resulted in the release of high-risk stocks at low prices that are expected to minimize losses, but investors are reluctant to buy high-risk stocks. Generally investors will sell risky stocks to avoid losses (Listyaningsih and Krishnamurti, 2016).

Tabel 2 The Difference Test of *Abnormal Return*

Day	AAR		Test	Z-*Value* (t-*Value*)	p-*Value*
	Before	After			
1	0.0036890	0.0003510	*Wilcoxon Signed Ranks Test*	-0.524	0.600
2	0.0062393	0.0133747	*Wilcoxon Signed Ranks Test*	-1.142	0.254
3	-0.0080313	0.0006257	*Wilcoxon Signed Ranks Test*	-0.298	0.766
4	-0.0082877	-0.0063280	*Wilcoxon Signed Ranks Test*	-0.339	0.734
5	-0.0080717	-0.0174090	*Wilcoxon Signed Ranks Test*	-0.381	0.704
6	0.0007990	0.0136777	*Paired Sample T-Test*	-2.019	* 0.053
7	-0.0042680	-0.0029500	*Paired Sample T-Test*	-0.304	0.763
8	-0.0046470	-0.0059153	*Wilcoxon Signed Ranks Test*	-0.010	0.992
9	-0.0017977	-0.0017073	*Wilcoxon Signed Ranks Test*	-0.339	0.734
10	0.0037900	-0.0027340	*Paired Sample T-Test*	1.271	0.214

*** *Indicates statistical significance at the 0.01 level*
** *Indicates statistical significance at the 0.05 level*
* *Indicates statistical significance at the 0.10 level*

The addition test conducted and the result is on Table 4.2. Based on the logistic regression test shows that the sig value. is 0.470 which is greater than 0.05, it means the AR has no effect on the AR 10 days before and AR 10 days after the event date, thus the logistic regression results obtained supports the different test that reject the H1.

Tabel 3 Regression Logistic Test of Abnormal Return

Variable in the Equation						
		B	S.E.	Wald	df	Sig.
Step 1[a]	*Abnormal Return*	-30.698	42.538	0.521	1	0.470
	Constant	-0.046	0.267	0.029	1	0.865

a. Variable(s) entered on step 1: *Abnormal Return*.

4.2 Trading Volume Activity

In Table 4.3 based on the difference test shows that trading volume activity of day 1 up to day seven is significant at level 1% up to 10%. These indicate that there was a significant difference before and after the election of the US president in 2016. On the 1st day until the 7th day after the event day, trading volume activity on JII shows a significant difference and higher ATVA compared to the days before the event. It means that H2 in this study is accepted in where there is a significant difference in trading volume activity before and after the election of the US president in 2016 atJII.

The significant difference is expected due to Donald Trump's victory, which is responded negatively by market participants, which raises concerns for stockholders who make high-risk stocks released at low prices to minimize losses. This led high trading volume activity occurred after the election of the US President in 2016. Additionally, in order to avoid further losses, the sellers dominated the market just after the announcement and caused the level of liquidity to go up (Engkuchik & Kaya 2012).

Next, addition test conducted and the results on Table 4.4. Based on the logistic regression test shows that the sig value is 0.066 which is smaller than 0.10, which means ATVA has an influence on ATVA 10 days before and ATVA 10 days after event date at a significance level of 10%, thus the logistic regression results obtained supports H2 in where there is a significant difference on trading volume activity before and after the US presidential election in 2016.

Table 4 The Difference Test of *Trading Volume Activity*

Day	ATVA		Test	Z-*Value*	p-*Value*
	Before	After			
1	0.001779	0.002087	*Wilcoxon Signed Ranks Test*	-1.893	* 0.058
2	0.001613	0.002048	*Wilcoxon Signed Ranks Test*	-2.130	** 0.033
3	0.001633	0.003164	*Wilcoxon Signed Ranks Test*	-4.258	*** 0.000
4	0.001728	0.002860	*Wilcoxon Signed Ranks Test*	-2.551	*** 0.011
5	0.001479	0.002456	*Wilcoxon Signed Ranks Test*	-3.579	*** 0.000
6	0.001218	0.002212	*Wilcoxon Signed Ranks Test*	-3.415	*** 0.001
7	0.000887	0.001681	*Wilcoxon Signed Ranks Test*	-3.028	*** 0.002
8	0.001153	0.001130	*Wilcoxon Signed Ranks Test*	-0.267	0.789
9	0.001421	0.001254	*Wilcoxon Signed Ranks Test*	-0.324	0.746
10	0.001333	0.001697	*Wilcoxon Signed Ranks Test*	-0.957	0.339

*** *Indicates statistical significance at the 0.01 level*
** *Indicates statistical significance at the 0.05 level*
* *Indicates statistical significance at the 0.10 level*

Table 5 Regression Logistic Test of *Trading Volume Activity*

Variable in the Equation						
		B	S.E.	Wald	Df	Sig.
Step 1[a]	Trading Activity	-419.77	228.619	3.371	1	0.066
	Constant	0.717	0.462	2.411	1	0.120

a. Variable(s) entered on step 1: *Trading Volume Activity*.

5. Conclusion

Based on the results of testing the effect of the election of the US president on abnormal return and trading volume activity on JII can be concluded as follows:

1. There is a difference abnormal return only on the 6th day before and after the election of the President of the US in 2016 at a significant level of 10%.
2. There is a significant difference on trading activity volume on the 1st day until the 7th day before and after the election of the US President in 2016.Additional testing is performed that is logistic regression obtained results for abnormal return that AAR does not affect the AAR 10 days before and 10 days after the event (event date) and for trading volume activity that ATVA affect 10 days before and 10 days after event date. These regression results support the difference test.

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Principled Materials Develoment for Kindergarten Students

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Abstract

English language education for children has become a burning issue, particularly in EFL countries in Asia. In Indonesia, English is also taught in some kindergartens, especially in urban area. The success of English language Teaching (ELT) for young learners relies on various factors, one of them is the teaching materials. Teaching materials in teaching English for young learners have different characteristics compare to materials for adult (Tomlinson, 2005). This article aims to discuss the principled ELT materials for young learners based on the theory of second Language Acquisition, Communicative Language Teaching and ELT Materials Development.

Keywords: *SLA, CLT, Principled Materials Development, Young Learners;*

1. Introduction

English language education for children has become a burning issue, particularly in EFL countries in Asia. For example: in Thailand, English education become a compulsory subject from 1st grade of elementary school in 1994, in Korea from 3rd grade in 1997, in Taiwan in the 5th and 6th grades in 200 (Hirofumi, 2013). Even in China, Japan, Singapore and South Korea pre-school children are going to English classes (Tomlinson, 2005).

In Indonesia, English is also taught in some kindergartens, especially in urban area. When elementary schools have guidance from the government by providing the curriculum which consists of standard of competence and basic competence (Standar Kompetensi dan Kompetensi Dasar SD/MI, BNSP, 2006) English teaching in kindergarten has no guidance from government. The teachers in kindergarten construct their own curriculum, employ teaching methods and use books or materials they feel appropriate for their students (Rahmat, 2009).

It can not be avoided that teaching materials play important role in the sucess of teaching and learning in the classroom. The most important teaching and learning materials that guides teachers' and learners activities in many classrooms seems to be the coursebook (Pinter, 2006: 115). In many countries, teachers have found themselves with lack of suitable materials, either because materials are

not available or because they do not reflect changes in the curriculum. When textbooks are inadequate, teachers often lack of time and expertise to develop appropriate materials learners (Garto, Copland and Burns, 2011). Yet good materials may have an important role to play as they can become the 'de facto' curriculum. It can become a support for less experienced teachers who have yet to gain in confidence (Cunningsworth, 1995: 5). Considering the important of materials that can support teaching and learning English in young learners class, this article aims to discuss the principled materials for young learners based on the theory o Second Language Acquisition and Communicative Language Teaching

2. Discussion

2.1. English for Young Learners

2.1.1. Who young learners are

Young learners are the learners who learn English in the young age. They are the elementary students that that learn English (Kasihani, 2008). However, primary education is very different in various parts of the world. In some context, primary school lasts from five to eleven years of age, while in other context children start school late, at the age of six or seven, and state primary school can carry on until children are 14 years of age (Pinter, 2008). Even, in some contexts, children start learning English in kindergarten at the age of five or even earlier (kasihani, 2008; Pinter, 2008).

The experts of Teaching English for Young Learners have various idea in defining who young learners are. Some of them suggest that young learners are children whose age between five and twelve years of age (Cameron, 2001: xi; Linse, 2005: 2). While others propose that young learners are the students between four or five and twelve years of age (McKay, 2006: 1; Arnold and Rixon, 2008: 38). Whereas Pinter (2009: 1-2) suggest that young learners are the children at the age between four and fifteen. In this study, the participant are the kindergarten students whose age are between five to six years olds. Based on the range of age proposed by the expert, they are also can be categorized as young learners.

2.1.2. Young learners learning characteristics

Having knowledge of young learners learning characteristics can give the teacher understanding on what they should do for ensuring optimal English language learning (Musthafa, 2008: 4). In addition, the teacher should also take into account that the children's cognitive development influences the students successful in learning a new language. As Brown (2001) highlights that children will be successful in learning a new language as long as the teacher takes into consideration their characteristics and intellectual development in teaching learning process. Some learning characteristics of young learner will be discussed in the following subsection.

The first learning characteristic of young learners is that they learn through physical experience or in other words young learners conduct learning by doing (Halliwell, 1992; Sollars,

2001; Girard et al., 2003; Musthafa, 2008; Suyanto, 2008). According to Harmer (2008: 82) "children's understanding comes not just from explanation, but also from what they see, hear, touch and interact with."

Based on the characteristic above, it is suggested that the teacher should provide appropriate activities that make the students use their physical and also language at the same time. As asserted by Wessels (1991) role play is one alternative that can make the students experience with the language and also their body because in role play the students say the language, use their physical expression such as mime and gesture.

The second is that they have difficulties to differentiate between abstract concept and the concrete one, especially for children at the age between five to seven (Suyanto, 2008; Brown, 2001). In the teaching learning activity, the teacher must avoid abstract concepts and focus on concrete items that children understand and are familiar with. For example the teacher should start with familiar topics such as colors, numbers, animals, fruit, food and drink or body parts.

To facilitate their learning, Suyanto (2008) argues that introducing concrete words can be conducted by using pictures. It is in line with Akbary (2008) and Leny (2006) who highlight that pictures are believed as effective tools to introduce new words to young learners. The other teaching media to provide students with concrete objects are realia (Suyanto, 2008; Mumford, 2005). Additionally, Budden (2008) states that realia is used to make the learning experience more memorable for the learners by creating the link between the objects and the word or phrase they represents.

The third is that young learners have relatively short attention and concentration span (Ytreberg & Scott, 1990: 2; Brown, 2001; Alwasilah 2000; Harmer, 2001). They cannot be expected to sit down and do particular activity for long time. They are very easy to get bored, lose interest after several minutes of the activity. However, they "can also concentrate for surprisingly a long time if they are interested" in the activities prepared by the teacher (Girard et al., 2003: 28).

For this reason, various activities should be carried out by a teacher. The teaching units must be short to reflect the limited concentration span of young learners (Frohlich-Ward, 1991; Brown, 2001). The activities in the classroom must be changed every 10-15 minutes to take over their interest (Suyanto, 2008). Consequently, the teacher should provide the activities that stimulate their curiosity and capture their attention which in turn make them enjoy the lesson and want to learn English more and more (Brown, 2001).

The forth is that young learners learn best when learning is kept as a whole (Halliwell, 1992; Musthafa, 2008). It means that very young children are able to understand what is being said to them even before they understand the individual words because they grasp the meaning not only by words or phrase but also from intonation, gesture, facial expression, action and circumstances. As a result, it is important to use expression, mime and gesture to convey meaning to young learners (Phillips, 1993). It is in line with Suyanto (2008: 19) who argues that children find it difficult when the

language is broken down into pieces (e.g., words, phrases, sentences, and paragraph as analytical unit).

The other way to create learning to be kept a whole is by conducting the activity in which language is used comprehensively, such as storytelling activities (Read, 2008). Further, she asserts that by telling stories, children can be trained to concentrate their attention on the whole context rather than in partial. After having language input comprehensively in storytelling activities, children tend to joining in with part of the story (Pinter, 2006). The teacher can take this moment to invite the students to practice the language in the story by inviting them to practice the language used (Girard, 2003).

The last is that young learners enjoy repetition (Kwiatkowska, 2008). It is in line with Fleta (2007: 11) who claims that "children have the natural tendency to repeat and they learn through repetition". They also enjoy rhythmic and repetitive language more than adults do (Peck, 2001 cited in Elcilic and Akca, 2008).

The activities conducted in classroom should be conformed to the characteristics of young English language learner and their development, the effective learning conditions for them, and the kinds of instruction that best meet their needs. Knowing young learners learning characteristics can also help the material developer to write and design the materials that can be used in young learners class.

2.2 Second Language Acquisition by young learners.

2.2.1. Second Language Acquisition (SLA) definition

SLA is the study to describe and explain the learners' linguistic or communicative competence that take place in either a naturalistic or an instructional setting (Ellis, 1994: 14). Since the language acquisition is a complex, multifaceted phenomenon some expert have their own findings and principles but it is generally agreed that SLA is facilitated by : a rich and meaningful exposure to language in use, affective and cognitive engagement, making use of those mental resources typically used in communication in the L1, noticing how the L2 is used, being given opportunities for contextualized and purposeful communication in the L2, being encourage to interact, being allowed to focus on meaning (Tomlinson, 2013).

In the preschool years, children's progress in learning English as a second language can be assessed in four stages: Stage 1—new to English, Stage 2—Becoming familiar with English, Stage 3—Becoming confident as a user of English and Stage 4—Demonstrated competency as a user of English (Clarke, 1994 in Clarke 2009).

In details, students in preschool have to:

- Learn new vocabulary
- Recognize new non-verbal language, gesture and facial expressions
- Recognize differences in stress, rhythm and intonation

- Differentiate the grammatical structure of the new language
- Adopt new ways of behaving and new values
- Understand jokes, metaphors and idiomatic language

Those skills are adapted from ESL Stage A 1 Teacher support materials for lower primary new arrivals (in Clarke, 2009).

Besides, Cameron (2009) also proposes the key principles of children learning a foreign language

1. Children actively try to construct meaning
2. Children needs space for language growth
3. Language in use carries cues to meaning that may not be noticed
4. Development can be seen as internalizing from social interaction
5. Children's foreign language learning depends on what they experience

In the years before school, the main focus for young children is developing oral English language through the dimensions of listening and speaking and The first stage can be learn new vocabularies (Cameron, 2003; Clarke, 2009).

2.3. Communicative Language Teaching (CLT)

2.3.1. Definition of CLT

CLT first emerged in Europe in the 1970s and flourished in the 1980s. European applied linguists saw the need for language instructors to focus on communicative competence rather than on the mastery of structures alone. It has no monolithic identity, and no single model of CLT is universally accepted as authoritative. However, according to Richards and Rodgers (1986), CLT starts with a theory of language as communication, and its goal is to develop learners' communicative competence.

2.3.2 Communicative Competence

Communicative competence is the ability of classroom language learners to interact with other speakers, to make meaning, as distinct from their ability to recite dialogues or perform on discrete-point test of grammatical knowledge (Savignon, 2002). Communicative competence includes the knowledge of language and competence to use the language in various context. Savignon (1983: 8-9) states the characteristic of communicative competence

1. Communicative competence is dynamic, based on the negotiation of meaning between two or more interlocutor who has the language rules. In this regard communicative competence can be charaterized as interpersonal.
2. Communicative competence involves the using of language, either written or oral, and also the other symbol system.

3. Communicative competence is contextual. Communication always take place in various communication events. The succeed of communication relies on the knowledge of the participant toward the context and experience.
4. Considering of the dichotomy between competence and performance, competence refers to what is known about the language, while performance refers to what is done. Only performance can be observed. By performance, the competence can be developed, persisted and evaluated.
5. Communicative competence is relative, not absolute, and depend on the collaboration among the participants. This thing that make level of communicative competence.

However, it has been repeatedly reported that young learners' teachers face difficulties practicing them in their classroom (see Jeon, 2009; Prasongsook, 2010.). It is not surprising because CLT is a method that has its origin in EFL teaching for adult in western countries where groups are small and classrooms well-equipped. It may not be appropriate for teaching children in over-crowded classrooms with few resources and very different educational tradition (Enever and Moon, 2009 in Garto, Copland and Burns, 2011)

2.3.2. Basic Principle of CLT

There are ten core assumptions of current communicative language teaching (Richard, 2006)

1. Second language learning is facilitated when learners are engaged in interaction and meaningful communication.
2. Effective classroom learning task and exercise provide opportunities for students to negociate meaning, expand their language resources, notice how language is used, and take part in meaningful interpersonal exchange.
3. Meaningful communication results from students processing content that is relevant, purposeful, interesting, and engaging.
4. Communication is a holistic processs that often calls upon the use of several language skills or modalities.
5. Language learning is facilitated both by activities that involved inductive or discovery learning of underlying rules of language use and organization, as well as by those involving language analysis and reflection.
6. Al product of learning, the ultimate Language learning is a gradual process that involves creative use of language, and trial and error. Although errors are normal product of learning, the ultimate goal of learning is to be able to use the new language both accurately and fluently.
7. Learners develop their own routes to language learning, progress at different rates, and have different needs and motivations for language learning.
8. Successful language learning involves the use of effective learning and communication strategies.

9. The role of the teacher in the language classroom is that of a facilitator, who creates a classroom climate conducive to language learning and provides opportunities for students to use and practice the language and to reflect on language use and language learning.
10. The classroom is a community where learners learn through collaboration and sharing.

2.2.3. CLT in EYL

The classroom activities typically have some of the following characteristics (Richard, 2006), for young learners class the activities must not higher than what the students do in their first language, for example: (1) they seek to develop students' communicative competence through linking grammatical development to the ability to communicate. Hence, grammar is not taught in isolation but often arises out of communicative task, thus creating a need for specific items of grammar. Students might carry out a task and then reflect on some of the linguistic characteristics of their performance,
(2) they create the need for communication, interaction, and negotiation of meaning through the use of activities such as problem solving, information sharing, and role play, (3) they make use of content that connects to students' lives and interests, (4) they allow students to personalize learning by applying what they have learned to their own lives, (5) classroom materials typically make use of authentic text to create interest and to provide valid models of language.

Another useful distinction that some advocates of CLT proposed was the distinction between three different kinds of practice—mechanical, meaningful, and communicative practice (Richard, 2006).

Mechanical practice refers to a controlled practice activity which students can successfully carry out without necessarily understanding the language they are using. Examples of this kind of activity would be repetition drills and substitution drills designed to practice use of particular grammatical or other items

Meaningful practice refers to an activity where language control is still provided but where students are required to make meaningful choices when carrying out practice. For example, in order to practice the use of prepositions to describe locations of places, students might be given a street map with various buildings identified in different locations. They are also given a list of prepositions such as across from, on the corner of, near, on, next to. They then have to answer questions such as "Where is the book shop? Where is the cafe?", etc. The practice is now meaningful because they have to respond according to location of places on the map.

Communicative practice refers to activities where practice in using language within a real communicative context is the focus, where real information is exchanged, and where the language used is not totally predictable. For example, students might have to draw a map of their neighborhood and answer questions about the location of different places, such as the nearest bus stop, the nearest cafe, etc.

The other expert, Labov and Franshel (1977:20 in Faridi, 2011) state that children can develop and communicative competence by using the following ways:

(1) Communicative competence is gained together with linguistic competence simultanously, they do not learn partially. For example: learning the grammar and then apply it in the conversation, but they learn integratively in interactive and meaningful communication.
(2) Communicative competence which is develop by children involves the usage and interpretation about the usage of language for various goals and can be used various pattern too. The language which is adapted variously by the children, will be worthty for the environment.
(3) Children can get communicative competence in interactive environment by involving them in meaningful interaction.
(4) Children is very active in language development, including making hypothesis, testing, and reviewing what they got. In some years, their development of communicative competence will be observed.

2.4. Principles in Developing Materials for Language Teachinh

2.4.1. ELT Materials

Materials are anything which is used by teachers and learners to facilitate the learning of language (Tomlinson, 2011). There are five types of materials, namely: electronic media, paper-based media, realia, and processes. He specifies that materials are anything which is used by teachers and learners to facilitate the learning of language, and we could take this further by arguing that the defining characteristic of material is that the materials designer build in a pedagogic purpose.

There are five key purposes of materials (Mishan and Timmis, 2015)

- Materials meet a psychological needs
- Materials provide exposure to the language
- Materials are vehicles of information
- Materials provide a stimulus for other activities
- Materials can act as teacher education

Principled materials development is materials development wich takes into account current practice , but goes beyond it to consult first principles drawn from second language acquisition (SLA) and language teaching theory.

Principles to guide their writing (Bell and Gower, 2011 in Tomlinson, 2013)

- Flexibility
- From text to language
- Engaging context
- Natural language

- Analytic approaches
- Emphasis on review
- Personalized practice
- Integrated skills
- Balance of approaches
- Learning to learn
- Profesional respect

Six principles of materials design identified by Nunan (1988 in Tomlinson, 2013)

- Materials should be clearly linkied to the curriculum they serve
- Materials should be authentic in terms of text and task
- Materials should stimulate interaction
- Materials should stimulate interaction
- Materials should allow learners to focus on formal aspects of the language
- Materials should encourage learners to develop learning skills to the world beyond the classroom

Tomlinson use the principle of second languae acquisition (SLA) to develop critera for the development and evaluation materials (2013).

- A rich and meaningful exposure to language in use
- Affective and cognitive engagement
- Making use of those mental resources typically used in communication in the L1
- Noticing how the L2 is used
- Being given opportunities for contextualized and purposeful communication in the L2
- Being encourage to interact
- Being allowed to focus on meaning

Mishan and Timmis (2015) propose three principles in developing materials

- Materials should give affective and cognitive challenge

  Affective means that materials should consider motivation that increase of intrinsic interest, (linguistic) self-confidence and self-esteem, avoid anxiety. Besides, materials should also give challenge by deploying the cognitive domain (e.g. employment of Bloom's taxonomy, namely: knowledge—remember, understand—describe, explain, apply, analyses, evaluate, and create;

  as revised by Anderson and Krawthwohl, 2001 in Mishan and Timmis, 2015)
- Materials should consider learner input and output
- Materials should interpret 'consciousness-raising" (C-R) activities

The quality of a text book can be identified by considering the characteristics of good language teaching materials (Tomlinson, 1998: 7-22):

- Materials should achieve impact

Impact is achieved when materials have noticeable effect on learners, that is when the learners' curiosity, interest and attention are attracted. If this is achieved there is a better chance that some of the language in the materials will be take in for processing. Materials could achieve impact through: novelty, variety, attractive presentation, appealing content.

- Materials should help learners feel at ease

Materials can help learners to feel at ease in a number of ways. For example: most learners feel more comfortable with materials with lots of white space than they do with materials in which lots of different activities are crammed together on the same page. Besides, most learners more relaxed with materials which are obviously trying to help them to learn than they are with materials which are always testing them.

- Materials should help learners to develop confidence

Developing learners' confidence can be done by providing activities that encourage them to use their existing extra-linguistic skills, such as those which involve being imaginative, being creative and being analytical.

- What is being taught should be perceived by learners as relevant and useful

It can be achieved by narrowing the target readership and/or by researching what the target learners are interested in and what they really want to learn the language for.

- Materials should require and facilitate learner self-investment

It would seem that learners profit most if they invest interest, effort and attention in the learning activity. Materials can help them to achieve this by providing them with choices of focus and activity, by giving them topic control and by engaging them in learner-centered discovery activities.

- Learners must be ready to acquire the points being taught

It can be achieved by materials which get learners to focus attention on features of the target language which they have not yet acquired so that they might be more attentive to these features in future input.

- Materials must be should expose the learners to language in authentic

Materials can provide exposure to authentic input through the advice they give, the instruction for their activities and the spoken and written texts they include.

- The learners' attention should provide the learners with opportunities to use the target language to achieve communicative purposes

Using language for communication involves attempts to achieve a purpose in a sitation in which the content, strategies and expression of the interaction are determined by the learners.

- Materials should take into account that the positive effect of instruction are usually delayed

In order to facilitate gradual process of acquition it is important for materials to recycle instruction and to provide frequent and ample exposure to instructed language features in communicative use. It is equally important that the learners are not forced into premature production

of the instructed features (they will get them wrong) and that test of proficiency are not conducted immediately after instruction (they will indicate failure).

- Materials should take into account that learners differ in learning style

The important point for material developers is that they are aware of and cater for differences of prefered learning styles in their materials and that they do not assume that all learners can benefi from the same approaches as the 'good language learners'.

- Materials should take into account that learners differ in affective attitudes

Obviously no materials developer can cater for all affective variables but it is important for anybody who is writing learning materials to be aware of the inevitable attitudinal differences of the users of the materials.

- Materials should permit a silent period at the beginning of instruction

This silent period can facilitate the development of an effective internalized grammar which can help learners to achieve proficiency when they eventually start to speak in the target language.

- Materials should maximize learning potential by encouraging intellectual, aesthetic, and emotional involvement that stimulates both right and left brain activities

A varied series of activities making, for example, analytic, creative, and evaluative and rehearsal demands on processing capacity can lead to deeper and more durable learning.

- Materials should not rely too much on controlled practice

Controlled practice appears to have little long term effect on the accuracy with new structures are performed (Ellis, 1990: 192 in Tomlinson, 1998:21).

- Materials should provide activities for outcome feedback

Feedback which is focused first on the effectiveness of the outcome rather than just on the accuracy of the output can lead to output becoming a profitable sourse of input.

3. Conclusion

Teaching materials in teaching English for young learners have different characteristics compare to materials for adult (Tomlinson, 2005). They should fulfil some criteria, such as: First, materials for children should provide rich of authentic language in entertain environment. It can be employed by making use of young children's stories, songs, poems, and rhymes to language in use. It is because literature not only provide art but also entertainment (McMillan, 2003). Besides, stories provide rich and authentic uses of the foreign language (Cameron, 2003).

Second, materials for children should provide a lot of language linked kinaesthetic activity through drama, games, and TPR. Because children learn through physical experience or in other words young learners conduct learning by doing (Halliwell, 1992; Sollars, 2001; Girard et al., 2003; Musthafa, 2008; Suyanto, 2008). According to Harmer (2008: 82) "children's understanding comes not just from

explanation, but also from what they see, hear, touch and interact with." That is why the materials for children should make them doing something while learning at the same time.

Third, materials for children should focus more on meaning than form, young learners learn best when learning is kept as a whole (Halliwell, 1992; Musthafa, 2008). It means that very young children are able to understand what is being said to them even before they understand the individual words because they grasp the meaning not only by words or phrase but also from intonation, gesture, facial expression, action and circumstances. It is in line with Suyanto (2008: 19) who argues that children find it difficult when the language is broken down into pieces (e.g., words, phrases, sentences, and paragraph as analytical unit).

Forth, materials for young learners should focus more on informal implicit learning than formal explicit teaching (Tomlinson, 2005: 9). Materials for young learners should not discuss about the language or linguistics matter but should provide example how the language is use so that they can learn from the model from the materials (Cameron, 2003).

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General Competencies for Managers in Indonesian Banking Industry: Perspectives of First-line and Middle Managers

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Abstract

This study was an empirical study of managerial competencies in first-line and middle managers in the banking industry in Indonesia. Managerial competencies were identified using literature review, competency menu and database of "A Generic Competency Model for Managers" by Spencer & Spencer (1993), and a questionnaire-based survey by assessing the importance and frequency of the use of managerial competencies in the work. The results of the study proposed a preliminary generic competency model for managers in the banking industry in Indonesia and described the necessity to classify managerial competencies at different levels of management. This article concluded with implication for research and practice.

Keywords: *competency, model, managers, banking* ;

1. Introduction

ASEAN Economic Community (AEC) in banking sector will take place in 2020. This prompted an inter-banking agreement in ASEAN in the form of ASEAN Banking Integration Framework (ABIF). One of the principles agreed upon is a principle of reciprocity. The important point of the principle of reciprocity is a balance in the number of banks allowed for expansion throughout ASEAN, or so-called Qualified ASEAN Bank (QAB). Based on that principle, not only many foreign banks will expand to Indonesia, but also there will be opportunities for Indonesian banks that had been having trouble to expand to other countries, to be able to open branches and get the same treatment in other countries.

This phenomenon is a major challenge for Indonesian banks in competition, not only on a national scale, but also on a regional and global scale. Meanwhile in Indonesia, the quality of banking services is still not standardized comprehensively, ranging from head office, main branches, to sub-branches. This is also contributed by the relatively stagnant productivity of human resources in banking sector (Financial Services Authority, 2014). Therefore, Indonesian banks should focus on three main things: strengthening technology, strengthening capital, and strengthening the competitiveness of human resources system (Financial Services Authority, 2014). One important aspect that needs to be prepared quickly is competent human resources (Niagara, 2014).

The requirement for competencies in banking involves at least two main aspects: technical competencies required in the field of work, and managerial competencies or the competencies related to the ability to lead (Indonesian Bankers Association, 2015). In this case, managerial competencies are a crucial aspect that must be further developed to face ABIF in 2020. As estimated in 2020, 55% of jobs in Indonesia will be administrative or managerial compared to the present which is only 36%. While the availability of employee's quality at the middle management cannot meet market demand, so that Indonesia is estimated to experience a gap between the needs and availability of managers by 40 to 60 percent (Tong & Waltermann, 2013:5). In addition, top managers at state-owned banks in Indonesia particularly are also faced with competencies gaps in leadership and management, such as competencies in conforming performance to achieve success, visionary leadership, customer focus, and leadership turnover (Said, 2015). Therefore, developing the managers more systematically is crucial for state-owned banks in Indonesia to secure market position and ensure economic growth and success (Handy 1987:15). This can be done through the modeling of managerial competencies, which is not only associated with successful performance, but a capability to describe the future orientation and employee's potential (Ey, 2006:4).

This modeling of managerial competencies uses behavioral competency model which refers to the result of the research conducted by Spencer & Spencer (1993). This model was chosen because a context-sensitive process identifies the competencies, describing what the organization actually does to achieve success, rather than referring to specific theory references to make the organization successful. In addition, this method not only identifies the managerial competencies required, but also classifies them at different levels of management, as the focus and orientation at different levels of management ranging from first-line managers, middle managers, and top managers/executives are different (Spencer & Spencer, 1993:7).

The expected outputs of this study were identification of the managerial competencies in general for the managers in banking industry to perform effectively and identification of the difference of managerial competencies at the first-line and middle managers. This identification processes can result in a preliminary managerial competency model that can be used as a framework in the development of a competency model in subsequent studies. Based on this background, the problems formulated in this study were: 1) what are the managerial competencies in general for the managers in Indonesian banking industry to be able to perform effectively? 2) is there any difference in the assessment of managerial competencies based on the frequency of use and the level of importance on first-line and middle managers in the banking industry in Indonesia?

2. Materials and Method

"Managerial competencies are more than knowledge and skills, but a key set of corporate success to realize vision and mission in creating added value and improving business performance, especially the development of human resource within the organization" (Krajcovicova, *et al.*, 2012:1119). "The combination of managerial competencies and efficient organizational management can be a key success factor and make it a competitive advantage" (Martina, *et al.*, 2012:129). Therefore, identifying managerial competencies and their development is an important thing in the objectives of human resource management to achieve the organization's strategic objectives.

Managerial competencies are defined as the specific type of individual competencies, i.e., activities, knowledge, skills, or attitudes as well as the personal characteristics needed to improve management performance" (Martina, et al, 2012:131). Boyatzis (1982:23) defines managerial competencies as "the characteristics causally related to effective or superior performance". Performance effectiveness is the achievement of the required outcomes in work through specific actions consistent with the policies, procedures, and environmental conditions of the organization (Boyatzis, 1982:12).

Managerial competencies can also be called role competencies, since role competencies are only relevant for the employees holding managerial positions. "Role competencies are categorized into the competencies related to activities, people, resources, and information. Role competencies contribute to the plug-and-play model since it has no significant difference in the organization" (Palan, 2007:52). This view is in line with what Spencer & Spencer (1993: 54) has pointed out that

"managerial competencies are a special part of impact and influence, expressing the intent to have certain specific influences." Those specific intentions (to develop others, lead others, and improve teamwork and cooperation) are important, especially for managers. Spencer & Spencer further developed it in a generic competency model for managers, since such competencies are so common among managers.

In its development, managerial competencies as a subject in scientific studies have become a center of discussion. An agreement on the opinion on the decisive aspects of managerial competencies has never been achieved. In addition, there is no agreement on the opinion of how to develop the best and most appropriate managerial competencies (Bakanauskiene & Bartnikaite, 2006:68-69). The absence of such agreements because the concept of competency and managerial competencies are not neither static nor universal, as those directly related to the contextual managerial role. The process of identifying the work of manager that includes basic requirements and managerial characteristics is influenced by various factors such as environmental, occupational, people, and situational factors (Mintzberg, 1973:103), thus it is necessary to identify the managerial competencies sensitive to the context and function of the business.

In developing the managerial competency model, data collection techniques can be done through several methods, such as literature review, focus group, structured interview, Behavioral Event Interviews, surveys, observations, work logs, competency menus, and databases (Marelli, et al, 2005: 544-551). At least, there are two different methods used in collecting data in order to complement each other's disadvantages of using a single data collection method. Thus, based on the consideration of the factors of validity, reliability, application of the competency model used in the framework of development and strategic planning: efficiency, practicality, and acceptance of respondents to participate in this study (Marelli, et al, 2005: 544), this study used literature review, competency menu and database of a generic competency model for managers by Spencer & Spencer (1993) and survey.

The survey was conducted using online semi-open questionnaire on two sample groups of managers from first-line and middle management. The sampling technique used was quota sampling with the number of respondents in each sample group of at least 20 subjects selected from individuals who have a good understanding of the research questions and have a good performance on the institution. This number allows for hypothesis testing through simple statistical tests such as t-test, chi-square, ANOVA, or discriminant function analysis to determine the difference in the mean of competencies shown in various levels of management (Spencer & Spencer, 1993: 97). The samples in this study consisted of 20 samples of first-line managers and 20 samples of middle managers of two state-owned banks, PT. Bank Rakyat Indonesia, Tbk. and PT. Bank Negara Indonesia, Tbk. The total number of respondents is 80 managers from both state-owned banks. However, from the expected number of research samples, only 43 respondents provided feedback within 3 months of questionnaire distribution, with 3 duplicated questionnaire responses, totaling only 40 respondents consisting of 13 samples of first-line managers and 37 samples of middle managers.

The identification of managerial competencies was done by assessing the 14 managerial competencies from generic competency model for managers conducted by Spencer & Spencer's (1993) as a preliminary list of competencies. The competencies were then ranked by looking at the aggregate mean of the frequency of use and the level of importance of managerial competencies based on the real conditions in carrying out managerial roles performed by the two sample managers groups. The respondents rated by using Likert scale consisting of options 1 = never use, 2 = rarely use (0-30% time spent), 3 = sometimes use (31-60% time spent), 4 = often use (61-90% time spent), and 5 = always use (91-100% time spent) in measuring frequency of the use of competencies in work. In addition, the respondents also ranked the level of importance of competencies in the work with the options 1 = less important, 2 = nice to have/considerably important competencies, and 3 = essential competencies. The data were then tested by using Mann-Whitney U Test to determine the differences in managerial competencies based on the frequency of use and the level of importance between first-line and middle managers. By this method, it was expected to know the general managerial competencies that must be possessed by managers in banking industry to perform effectively and the managerial competencies that differentiate from the two sample managers groups based on the frequency of use and the level of importance of 14 managerial competencies in the work.

3. Findings

The results of the respondents' assessment in Table 1 show the aggregate mean of respondents' assessment to the level of importance of 14 managerial competencies for the managers' work is 2.82. This means that the average respondents stated that the 14 managerial competencies are essential, required in carrying out managerial roles. None of the respondents gave a less important assessment. The respondents' assessment ranged from 2.59 to 2.98, with the competency of interpersonal understanding at the lowest competencies assessment required in the managers' work in banking industry. While the competencies that get the highest assessment are impact and influence, followed by analytical thinking, information seeking, initiative, and self-confidence as the top five essential managerial competencies required in managers' work in banking industry.

Table 1. The Assessment of the Level of Importance and
The Frequency of Use of 14 Managerial Competencies

COMPETENCIES	SCORE OF IMPORTANCE			SCORE OF FREQUENCY OF USE			AGGREGATE MEAN	AGGREGATE RANK
	MEAN	STD DEVIATION	RANK	MEAN	STD DEVIATION	RANK		
Impact and Influence	2.98	0.16	1	4.12	0.71	7	7.1	2
Achievement Orientation	2.83	0.38	7	4.27	0.59	4	7.1	3
Teamwork and Cooperation	2.83	0.44	8	4.17	0.7	6	7	6
Analytical Thinking	2.93	0.26	2	4.29	0.56	1	7.22	1
Initiative	2.9	0.3	4	3.95	0.71	12	6.85	10
Developing Others	2.76	0.49	10	4.29	0.75	2	7.05	5
Self-Confidence	2.9	0.3	5	4	0.92	10	6.9	9
Interpersonal Understanding	2.59	0.5	14	3.95	0.63	13	6.54	14
Directiveness/ Assertiveness	2.68	0.52	13	4.02	0.79	9	6.7	13
Information Seeking	2.93	0.26	3	3.78	0.82	14	6.71	11
Team Leadership	2.85	0.42	6	4.22	0.57	5	7.07	4
Conceptual Thinking	2.83	0.38	9	4.1	0.58	8	6.93	8
Organizational Awareness and Relationship Building	2.71	0.46	11	4	0.77	11	6.71	12
Expertise/ Specialized Knowledge	2.71	0.46	12	4.29	0.56	3	7	7
MEAN OF OVERALL ASSESSMENT	2.82	0.38		4.10	0.69		6.92	

Note: At the same mean, competencies in the rank follow the order of managerial competencies of Spencer & Spencer's (1993) generic competency model for managers

Meanwhile, the frequency of use of 14 managerial competencies in managers' work shows that the average respondents gave an assessment of 4.10 or is categorized often use the 14 managerial competencies in their work (about 61-90 percent of the time spent in working using such managerial competencies). The respondents' assessment ranged from 3.78 to 4.29, with the competency of information seeking at the lowest competency assessment used in the work. The competency of analytical thinking obtains the highest assessment as a frequently used competency in work, followed by developing others, expertise/specialized knowledge, achievement orientation, and team leadership as the top five managerial competencies that managers often use in banking industry.

When viewed from both aspects of the assessment, based on the level of importance and frequency of use of competencies in the work, the competency of analytical thinking gets the highest assessment with aggregate mean of 7.22, followed by the competencies of impact and influence, achievement orientation, team leadership, and developing others as the competencies that rank the top five based on the results of the overall assessment of the respondents. While the managerial competency that gets the lowest assessment is the competency of interpersonal understanding with aggregate mean of 6.54.

However, if the assessment of managerial competencies is seen specifically from the two levels of management, there is an assessment gap between the frequency of use of competencies in the work and the manager's perception of the level of importance of managerial competencies required to perform effectively. Table 2 shows that both management levels do not show significant competencies differences in work, both first-line and middle managers provide an assessment of the competencies of analytical thinking, expertise/specialized knowledge, and team leadership as part of the top five frequently used managerial competencies. The difference lies in the competency of achievement orientation in first-line managers obtaining the highest assessment as the managerial competency that is often used, while the middle managers provide the highest assessment on the competency of developing others followed by the emergence of competency of impact and influence as the top five most frequently used managerial competencies. This is also supported by Mann-Whitney U Test result showing the significance of 0.136 with a 5% confidence level ($p > 0.05$), meaning that there is no difference in the assessment of the frequency of use of managerial competencies in first-line and middle managers.

Table 2. The Assessment of the Frequency of Use of 14 Managerial Competencies in First-Line and Middle Managers

COMPETENCIES	FIRST-LINE MANAGERS			MIDDLE MANAGERS		
	MEAN	STD DEVIATION	RANK	MEAN	STD DEVIATION	RANK
Impact and Influence	3.77	0.83	12	4.26	0.59	5
Achievement Orientation	4.23	0.83	1	4.26	0.45	6
Teamwork and Cooperation	4	1	5	4.26	0.53	7
Analytical Thinking	4.15	0.55	2	4.33	0.55	3
Initiative	3.69	0.75	13	4.07	0.68	9
Developing Others	4	1	6	4.44	0.58	1
Self-Confidence	4	0.82	7	4	1	13
Interpersonal Understanding	3.69	0.75	14	4.07	0.55	10
Directiveness/Assertiveness	3.85	1.07	9	4.07	0.62	11
Information Seeking	3.85	0.8	10	3.78	0.85	14
Team Leadership	4.08	0.64	3	4.3	0.54	4
Conceptual Thinking	4	0.58	8	4.15	0.6	8
Organizational Awareness and Relationship Building	3.85	0.8	11	4.07	0.78	12

Expertise/Specialized Knowledge	4.08	0.64	4	4.41	0.5	2

Note: At the same mean, competencies in the rank follow the order of managerial competencies of Spencer & Spencer's (1993) generic competency model for managers

Meanwhile, managers' perception of the level of importance of managerial competencies in the work illustrates the need to differentiate the classification of managerial competencies between first-line managers and middle managers. Table 3 shows that both levels of management provide a similar assessment of the importance of competency of impact and influence as the managerial competency that gets the highest assessment. However, in first-line managers, the competencies of initiative and achievement orientation become the essential competencies as the top five managerial competencies required in the work. While in middle managers, the competencies of team leadership and teamwork and cooperation become the essential competencies as the top five managerial competencies required in the work. This is supported by Mann-Whitney U Test result showing a significance of 0.030 with a confidence level of 5% ($p < 0.05$), thus there is a difference of assessment of the level of importance of managerial competencies in first-line managers and middle managers.

In addition to the 14 managerial competencies presented as a preliminary list of Spencer & Spencer (1993), the respondents also added other managerial competencies that managers must have in banking industry. A total of 13% of respondents expressed the need for competencies of concern for accuracy and integrity. Meanwhile, 10% of respondents expressed the need for competency of customer service orientation, and 3% of respondents expressed the need for competencies of entrepreneurial innovation, communication, and professionalism.

Table 3. The Assessment of the Level of Importance of 14 Managerial Competencies in First-Line and Middle Managers

COMPETENCIES	**FIRST-LINE MANAGERS**			**MIDDLE MANAGERS**		
	MEAN	**STD DEVIATION**	**RANK**	**MEAN**	**STD DEVIATION**	**RANK**
Impact and Influence	2.92	0.28	1	3	0	1
Achievement Orientation	2.85	0.38	4	2.81	0.4	10
Teamwork and Cooperation	2.62	0.65	8	2.93	0.27	5
Analytical Thinking	2.85	0.38	5	2.96	0.19	2
Initiative	2.92	0.28	2	2.89	0.32	7
Developing Others	2.54	0.66	10	2.85	0.36	9
Self-Confidence	2.85	0.38	6	2.93	0.27	6
Interpersonal Understanding	2.38	0.51	13	2.67	0.48	14
Directiveness/Assertiveness	2.38	0.65	14	2.81	0.4	11
Information Seeking	2.92	0.28	3	2.96	0.19	3
Team Leadership	2.62	0.65	9	2.96	0.19	4
Conceptual Thinking	2.77	0.44	7	2.89	0.32	8
Organizational Awareness and Relationship Building	2.54	0.52	11	2.78	0.42	13
Expertise/Specialized Knowledge	2.54	0.52	12	2.81	0.4	12

Note: At the same mean, competencies in the rank follow the order of managerial competencies of Spencer & Spencer's (1993) generic competency model for managers

4. Discussion

Based on the aggregate mean of 14 managerial competencies, the highest and the lowest scores of the competencies essential and often used by managers in banking industry are analytical thinking, impact and influence, achievement orientation, team leadership, developing others, teamwork and cooperation, expertise/specialized knowledge, conceptual thinking, self-confidence, initiative, information seeking, organizational awareness and relationship building, directiveness/assertiveness, and interpersonal understanding. Specifically, there are different assessment of the level of importance of 14 managerial competencies between first-line managers and middle managers, although the frequency of use does not indicate any difference in the assessment of these 14 managerial competencies at both levels of management.

This difference may occur because "first-line managers typically require good technical skills to teach their subordinates and supervise their routine tasks" (Slocum, et al, 2010: 11). "The most important distinction between first-line managers and middle managers lies in the emphasis in managing group performance and allocating resources. Middle managers tend to be eliminated from the technical aspects of the job, so whatever technical skills they have less to provide direct assistance to them. In many organizations, developing subordinates and helping them to grow in the organization is essential to make a manager seen as a successful manager" (Slocum, et al, 2010: 12). This simply explains why the competency of developing others gets the highest assessment and is often used in work in middle managers, and more emphasizes on the competencies of impact and influence, team leadership, and teamwork and cooperation as the essential competencies required in their work than in first-line managers.

At junior managers' level, self-competence such as professional knowledge and functional skills, time management, and communication become the necessary basic competencies. As managers grow in organization, they start to require more interpersonal competencies to manage skills and develop relationships. The competencies required include cooperation, leading others, and managing conflict (Noor & Dola, 2009: 231). This illustrates that managers at different levels require different competencies (Krajcovicova & Cambal, 2012; Tap, et al, 2002; Boyatzis, 1982), since the focus and orientation at various management levels ranging from first-line managers, middle managers to top managers are different. Thus, it is important to divide managerial competencies in varying levels and qualities (Krajcovicova & Cambal, 2012: 76).

4.1 Limitations

Some limitations may affect the results of this study. First, the number of participants in first-line managers is less than the number of participants in middle managers. So, the result of identification of managerial competencies has tendency in the view of middle managers level. Second, this study used a positivistic approach in developing the competency model. The respondents were limited in selecting 14 specified managerial competencies. Although some respondents mentioned other competencies needed outside 14 of the managerial competencies, the difference of competencies can be generated if constructivist method is used in developing competency model. However, on the other hand, quantitative method provided an efficient way to conceptualize and organize answers in a broader scope. Although there were some limitations, this study has the adequacy of data as a first step in developing a preliminary managerial competency model that can be developed further.

4.2 The Implications for Future Research

This study aimed to develop a managerial competency model in banking industry. The first task in the study was to identify the managerial competencies in general for the managers working in banking industry based on their view on the importance and frequency of the use of 14 managerial competencies as a preliminary list in developing a competency model. The second task was to identify the difference of the assessment of 14 managerial competencies from first-line and middle management levels. The results of this study provide a preliminary managerial competency model that should be tested further through interview, Focus Group Discussion (FGD), and observation to strengthen the developed competency model.

5. Conclusion

Managerial competencies as part of human resource management literature is often assumed as behavioral competencies, as they are intended to illustrate how people behave when they complete their work. So, the identification process of competencies done is a process that is sensitive to the context, because managerial competencies are not fixed and should be related to the needs of the organization. Managerial competencies are essentially different for operational, tactical, or strategic management. Therefore, it is important to divide managerial competencies in various levels and qualities.

This study proposed a preliminary model of general competencies for banking managers which can be used as a starting point for future research in developing competency model in the banking industry in Indonesia. The results of the study showed a difference in the assessment of the importance level of 14 managerial competencies between first-line managers and middle managers. However, in the frequency of use, the two management levels did not indicate any difference in managerial competencies. In general, these 14 managerial competencies become essential managerial competencies to perform effectively and are often used in carrying out managerial roles in banking industry. Further studies are needed to assess the addition of managerial competencies beyond a generic competency model for managers developed by Spencer & Spencer (1993), such as competencies of concern for accuracy, integrity, customer service orientation, entrepreneurial innovation, communication, and professionalism to adjust the relevance of the needs of managerial competencies in banking industry in the future and to test the model by interview, FGD, and observation on the managers who have superior performance and professional who understand the research problem to strengthen the developed competency model.

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The Implementation of Diversion in Child Criminal Justice System in Indonesia

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Abstract

Based on Article 7 of Law Number 11 Year 2012 regarding Child Criminal Justice System (CCJS Law) which stipulates that at the level of investigation, prosecution and examination of children's cases in the district court must be pursued for diversion and the crime is punishable by imprisonment under seven years and not residiv. Diversion itself is intended to ensure that child crime cases can be settled out of court. However, in practice diversion often cannot work well, for example, because the families of the victims who reject the diversion attempt. Then it raises the question of why the diversion cannot be implemented in accordance with the provisions of Article 7 of the CCJS Law and what are the factors that inhibiting the diversion implementation in CCJS. Using the socio-legal research method, this study found that the five inhibiting factors that form the basis of law enforcement theory which are consists of substance, law enforcement, facilities and society, and culture greatly influence the implementation of diversion in CCJS. Thus, it can be concluded that law enforcers should improve their performance and knowledge about the diversion and the need for public education through legal counseling to understand the intention of the diversion itself. Ultimately, the diversion is expected to be optimally applied.

Keywords: *Implementation, Diversion, Child;*

1. Introduction

Children are a very important asset of the nation. The interest comes from the fact that later, the succession of a country, the future and the survival of a country. These tasks will be carried out by the children of Indonesia as the next generation of the nation. Because of the importance of children's role in the continuity and future of a country. Encouraging regulation in one of the articles of the 1945 Constitution of the State of the Republic of Indonesia is needed to ensure the survival of the child. It is mentioned in the provisions of Article 28B paragraph 2 of the 1945 Constitution of the State of the Republic of Indonesia which stipulated that:

"*Every child shall have the right to live, grow and to develop and shall have the right to protection from violence and discrimination*".

However, what we need to understood is, although in his nature a child is sacred. However, it is not close the possibility when those have growing up later. Those children will be trapped in mischief, which is not uncommon the delinquency will lead to a crime. As we know if there

is a crime that has been regulated in the prevailing laws and regulations in Indonesia was violated. So, it will lead to a consequence that is nothing but punishment of the offender. It is only done as a form of law enforcement to reach a peaceful and prosperous society. However, what if the perpetrator of a crime is a child? Is it appropriate for a child to be punished / punished for his mistakes? Is it an effective way to make the child aware of his mistakes? Then, would not it disrupt the growth and development of children who dealing with the law.

Those doubts of the enforcement of the criminal law which in this case are accommodated through Law Number 8 Year 1981 regarding Criminal Procedure Law, tried to be overcome by the Government of the Republic of Indonesia with the enactment of Law Number 11 Year 2012 regarding the Child Criminal Justice System. The distinguishing factor between these two criminal procedural instruments is the emergence of diversion which requires the settlement of a criminal case of a child out of court. This diversionary effort then seems to be a panacea for fear of the fate and future of children who dealing with the law. Thus, it is hoped that through this diversionary effort children who are who dealing with the law would not waste their childhood by being spent for the duration of the sentence. However, at the level of its implementation turned out to not be able to run properly. As for not being able to run well diversion efforts is none other than caused by factors that influence law enforcement as proposed by Soerjono Soekanto. These factors consist of:[1]

a. Its Own Legal Factor;
b. Law Enforcers Factor;
c. Facility Factor;
d. Community Factor;
e. Cultural Factor.

Using the method of socio-legal research, the method of research approaching a problem through a merger between normative analyses with the approach of non-legal science in seeing the law.[2] This research is about analyzing the causes of failed diversion efforts and how to overcome the failure in the implementation of the diversion effort.

1. Discussion

1.1. Protection of the Rights of the Child

Indonesia has ratified the Convention of the Right of The Child through Presidential Decree No. 36/1990 on the Ratification of the Convention of the Right of The Child. The Convention contains the affirmation of the rights of the child, the protection of the child by the state, and the participation of various parties (state, public and private) in ensuring the protection of the rights of the child.

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[1] Soekanto, 2014, *Faktor-Faktor yang Mempengaruhi Penegakan Hukum*, RajaGrafindo, Jakarta, hlm. 8

[2] http://ferrykoto-pasca15.web.unair.ac.id/artikel_detail-154176-Pendidikan-Pengantar%20Kuliah%20Metode%20Penelitian%20Sosio%20Legal.html diakses pada 25 Agustus pukul 11.43 WIB

In the opening of this convention which later described normatively in the trunk, among others about:

a. Recognition that for the sake of the child's development fully and harmoniously the child must be able to grow and develop in a family environment with full of affection and understanding;
b. Children with various physical and mental inadequacies require special attention and care including the need for legal protection;
c. Child protection is undertaken with due regard to the importance of the role of the cultural and cultural values of each nation insofar as to include the harmonious protection and development of the child.[3]

The child who is dealing with the law in this case is an immature child emotionally, intellectually, mentally and psychologically in accounting for his actions. Specifically Law Number 11 Year 2012 on the Child Criminal Justice System determines that the child is had already 12 (twelve) years old but not yet 18 (eighteen) years old who is suspected of committing a crime.[4]

It is s important to guarantee on the certainty of child growth and development in harmony. Being one of the important issues in the development of criminal law, in this case with the enactment of Law Number 11 Year 2012 on Child Criminal Justice System becomes the proof which becomes the legal protection instrument for children dealing with the law. Where in the regulation, the CCJS Law emphasizes its enforcement based on restorative justice and not based on retributive justice.

1.2. Shifting of The Retributive Justice towards Restorative Justice

As we have explained above, in generally the criminal law enforcement instrument or which becomes the formal law of the criminal law applicable on the basis of Law Number 1 Year 1946 is the Law Number 8 Year 1981 regarding Criminal Procedure Code. Where in the enforcement of Law No. 8 of 1981 on Criminal Procedure Law as a formal law of the criminal law has a purpose to:

> "seek and obtain or at least approach the material truth, is the complete truth of a criminal case by applying the criminal procedural provisions honestly and appropriately in order to find out who is the perpetrator who can be charged for a violation of the law, and further request the examination and the decision of the court to find out whether it is proved that a criminal offense has been committed and whether the accused person is to be blamed".[5]

If we consider the formulation of the purpose of Law No. 8 of 1981 on the Criminal Procedure Code, thus, we can conclude that the form of justice that would be accommodated by Law No. 8 of 1981 on the Criminal Procedure Code is retributive justice, which is basically in

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[3] Rosidah, 2014, *Budaya Hukum Hakim Anak di Indonesia,* Pustaka Magister, Semarang, hlm. 48-49

[4] Pasal 1 angka 3 Undang-Undang Nomor 11 Tahun 2012 tentang Sistem Peradilan Pidana Anak

[5] Hamzah, 2015, *Hukum Acara Pidana Indonesia,* Sinar Grafika, Jakarta, hlm. 9

combination with the theory of punishment. Criminal law provided pursuant to this criminal procedure is aimed at:[6]

a. Retaliation, making the offender suffer;
b. Prevention efforts, prevent the occurrence of criminal acts;
c. Rehabilitate the perpetrators;
d. Protecting the public.

However, this raises a doubt if this form of justice is imposed on a child dealing with the law. It will be able to affect the mental, psychological and receptive development of the child when returning to society. Therefore, criminal law enforcement and punishment should not be seen as the only hope for completing or resolving crimes completely, because in essence crime is a "humanitarian problem" and a "social problem", which cannot be solved solely with criminal law. As a social problem, crime is a dynamic social phenomenon that is always growing and associated with other complex phenomena and social structures.[7]

The inability of retributive justice to accommodate the protection of children's rights further encourages the idea of a more equal justice between the recovery of justice for victims and the perpetrators of child crime. To achieve that goal, thus, the idea of restorative justice emerges as a reaction to the discontent of retributive justice which emphasizes only 3 (three) needs of the criminal justice system:

a. Sanction the perpetrator;
b. Helping to rehabilitate the perpetrator;
c. Strengthen community security and safety.

Restorative justice then satisfies the fourth requirement of the criminal justice system that is the need to remedy and restore the victims of crime and society as much as possible.[8] Restorative justice aims to empower victims, perpetrators, families and communities to remedy an unlawful act, using awareness and persistence as the foundation for improving social life.[9] Restorative justice is being the major reflection of the CCJS Law.

1.3. Diversion and Its Rejection

As a form of restorative justice, the idea of diversion was formally established in articles 6 through 14 of Law No. 11 of 2012 on the Child Criminal Justice System. Diversion itself can be interpreted normatively based on article 1 point 7 of the CCJS Law as:

"the transfer of settlement of cases from the criminal justice process to proceedings outside the criminal justice"

According to the Academic Paper Draft Law on Child Criminal Justice System it is argued that diversion is a transfer of settlement of cases of children suspected of committing certain criminal acts from a formal criminal process to a peaceful settlement between a suspect or a

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[6] Rosidah, 2011, *Asas-Asas Hukum Pidana,* Pusataka Magister, Semarang, hlm. 71
[7] Maroni, 2016, *Pengantar Politik Hukum Pidana,* Aura, Bandar Lampung, hlm. 43
[8] Muladi dan Diah Sulistyani RS, 2016, *Kompleksitas Perkembangan Tindak Pidana dan Kebijakan Kriminal,* Alumni, Bandung, hlm. 114
[9] Rosidah, 2014, *Loc.Cit*, hlm. 103

defendant or a perpetrator of a crime with a victim who is facilitated by the family and / or the community, child's social advocates, police, prosecutors or judges.[10]

Diversion itself has several objectives as set forth in article 6 of CCJS Law which consists of:

a. Achieve the peace between victim and child;
b. Finishing a child's case out of court;
c. Avoid children from deprivation of liberty;
d. Encourage people to participate;
e. Infuse a sense of responsibility to the child.

The case pursued by diversion can be seen from several provisions set forth in article 7 of the CCJS Law. In Article 7 paragraph (1) of the CCJS Law for example determines that:

"at the level of investigation, prosecution, and examination of a child's case in a district court must be attempted to diversify."

Indeed, in general cases of children filed at the district court level are often classified as Criminal Offenses. However, if we recall the purpose of the diversion as set forth in article 6 of the CCJS Law and the investigation of cases in the High Court of a devolutive nature. Thus, there is reason to justify that diversion may also be attempted at the High Court examination level.[11] Then, in the provisions of Article 7 Paragraph (2) of the CCJS Law, we can concluded that the case of a child who is obliged to be diverted while conducting an investigation, prosecution and examination in a district court is a case of a child whose crimes are:

a. Threatened with imprisonment under 7 (seven) years, and the explanation of article 7 paragraph (2) letter a of the CCJS Law determine that the provision of "imprisonment under 7 (seven) years refers to the criminal law;
b. It is not a crime repetition.

In his opinion R.Wiyono pointed out that if there is a criminal offense in contrary to the above two conditions in which it would cause logical consequences of child crime to be not obliged to diversion. Thus, the notion of "not obliged to be diverted" has a meaning that is not imperative or facultative. This means for a crime of a child who is punishable by imprisonment of more than 7 (seven) years or in the case of a child committing a criminal act. It can be attempted to divert.[12]

However, according to M Nasir Djamil, former chairman of the House of Representatives' Committee for Child Criminal Justice Commission III, said that the aforementioned matters may have logical consequences for the actions of children who dealing with the law to be not required to be diverted. Caused if the child is threatened with imprisonment more than 7 (seven) years. Hence, the crime is a serious criminal offense or if he / she commits a repetition of a crime. Thus, it can be concluded that the purpose of diversion. That is to instill a sense of

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[10] M. Nasir Djamil, 2013, *Anak Bukan untuk Dihukum,* Sinar Grafika, Jakarta, hlm. 137 dalam R. Wiyono, 2016, *SistemPeradilan Pidana Anak,* Sinar Grafika, Jakarta, hlm. 47

[11] Ibid, hlm. 50

[12] Ibid, hlm. 51

responsibility to the child not to repeat a similar criminal act is not achieved. Thus, resulting in the logical consequences of the diversionary effort against it is not mandatory.[13]

Although the diversion effort has been designed in such way, however, at the level of its implementation, not infrequently these diversion efforts experienced rejection by the victim or the victim's family. This can be seen from one example of a case that occurred in the jurisdiction of the Kotabumi District Attorney, where there is a suspect with the initials HS Bin Y who commits a criminal act of fencing as stipulated in article 480 of the Criminal Code. The North Lampung Police Investigator who handles the case carried out the legal process of investigation based on Police Report Number: LP / 930 / XI / 2014 / POLDA LPG / RES LU, Investigation Order Number: SP. Sidik / 659 / XI / 2013 / Reskrim dated 26 November 2013, and Notice of Commencement of Investigation Number: SPDP / 197 / XI / 2014 / Reskrim.

The State Prosecutors of Kotabumi through the Public Prosecutor in this case conduct a diversion effort as outlined in the Minutes of Diversity Number: 02 / N.8.13 / Ep.1 / 12/2014. The point of diversion is the perpetrator to compensate the victim of Rp. 2,000,000, the perpetrator promised not to repeat his actions and if the agreement is not met then the legal process will continue. However, the victim and the victim's family subsequently refused this diversion attempt. Due to the intention of made HS to be processed in court and properly punished as regulated in Criminal Code. Because of the criminal acts committed by HS has been disturbing local residents. Thus, the victim and the victim's family want HS to be sentenced to prison in accordance with his actions. Although in the end, the Kotabumi District Court through Determination Number: 11 / Pid.Sus-Anak / 2014 / PN.Kbu stipulates the process of examination of the child and ordered the prosecutor to remove the child from the prisons of Kotabumi Children's Prison. Because the Judge considers that the diversion at the Court's examination level has been successful.

The above case examples show that conceptually, diversion does have a noble purpose. However, at the time of implementation, people tend to refuse to implement diversion efforts primarily by victims or families of victims.

1.4. Factors Affecting Law Enforcement (Diversion)

As we have explained in the beginning of this paper. According Soerjono Soekanto, there are at least 5 (five) factors that affect law enforcement, not least in the diversionary effort. In fact, it can be said that these five factors determine whether the diversion can be implemented or not by all parties. The five factors are:[14]

a. The legal factor itself, which in this case is limited to the law alone;
b. Law enforcers factors, namely parties related to law enforcement;
c. Facility Factor, namely facilities that support law enforcement;
d. Community, ie the environment in which the law is applicable or applied;
e. Cultural factors, namely the work, creativity, and sense that is based on human initiative in the social life.

Specifically in the enforcement of SPPA Act these five factors have the following effect:

[13] Ibid, hlm. 51-52

[14] Soekanto, 2014, *Faktor-Faktor yang Mempengaruhi Penegakan Hukum*, RajaGrafindo, Jakarta, hlm. 8

a. The legal factor itself.
Criminalization of law enforcement agencies as provided for in articles 96, 100 and 101 of the SPPA Act. It has been subjected to judicial review by the Constitutional Court. Where based on Decision No. 110 / PUU.X / 2012 the three formulas of criminal provisions in the SPPA Act are contrary to the 1945 Constitution and therefore have no binding power. In this case, it resulted in the diversion of pursuits under the provisions of the SPPA Law to have no force of force. Thus, if law enforcement officers, inter alia, investigators, prosecutors, judges and court officials, are deliberately not performing a diversion-seeking duty as defined in the SPPA Act. Thus, these law enforcers cannot be sanctioned for their actions. This then becomes quite risky because diversion becomes unenforceable against law enforcement to work to the fullest.

b. Law Enforcers Factor.
As we have described above. Based on the decision of the Constitutional Court Number 110 / PUU.X / 2012 decided the revocation of article 96, 100 and 101 of the SPPA Act. It is feared that diversionary implementation will be difficult. Due to the absence of compulsory force of law enforcers to seek maximum diversion, even if law enforcement officers continue to seek diversion as a way of settling child crime cases, the degree of understanding of law enforcement agencies in seeking diversion will play a significant role in the success of diversionary efforts in a case of child crime. For example, as the case in the Kotabumi District Court we have described at the beginning of this paper shows that the knowledge of law enforcement is very important.

c. Facility Factor.
Then, in case of handling this child case, not infrequently the factors of this tool greatly affect the process of investigation of a child crime case. Like a special examination room of children in police or local police station. Or sometimes in the case of the child in question should be arrested. The absence of a child-specific cell becomes a problem that is quite difficult to solve. Whereas in this case the child should be treated not like a criminal, however, it must be treated as someone who needs to be made aware of his wrong behavior and taught to be responsible.

d. Community Factor.
In this case it is sometimes people tend to refuse to diversion diversion in a problem that involves the child as the perpetrator. It is then necessary to be socialized to the public that it is important to keep the mental and psychic children in contact with the law. Because, if the child is actually even punished where later he will be sentenced to prison and placed in a penitentiary, it has consequences that the child will be constantly mixing with people committing the criminal acts within the prison. In addition, the inclusion of the child into a correctional institution will not necessarily guarantee that the child will realize his or her guilt. Especially based on the criminology approach in which the division of criminals by Lindesmith and Dunham classifies criminals to be:
1. Criminals whose whole orientation is guided by a group of offenders; 2. Criminals whose orientation is largely guided by non-lawbreakers. So, we can draw a conclusion that in the end if a child who committed a crime was put in a penitentiary. He will have

the potential to become one of the types of criminals of the two categories presented by Lindesmith and Dunham. In addition, community awareness needs to be willing to accept children who commit such crimes to re-blend in the community concerned. Without stigmatization of errors that the child ever did.

e. Cultural Factor.
In the case of non-penal criminal countermeasures. Cultural factors play an important role. Therefore, cultural factors greatly affect the mental health of the people concerned. Due to this factor is closely related to the pattern of community life concerned with the settlement of child criminal cases. It is hoped that by putting forward the noble values that exist in society. The victim does not simply seek falsehood from the child offender or even attempts to blackmail the child offender in the case of compensation for the crime committed by the child. Although the compensation is included in one of the elements of the diversionary effort.

2. Conclusion

In the end it can be explained that the diversionary effort includes a form of reform of criminal law that is ultimum remedium. This means that criminal law is the last drug in the eradication of crime. In addition, diversion effort is necessary because it is in line with the mandate of the 1945 Constitution specifically concerning the protection of children's rights and growth. In addition, because of the five factors that influence law enforcement, it plays an important role in the implementation of diversion in Indonesia. Thus, a legal awareness effort is needed to awaken the stakeholders in this case is the community, especially to be able to accept the concept of restorative justice as well as the concept of diversion. It is hoped that in the future the problems of diversion implementation which accept the acceptance factor by society can be reduced as much as possible. Thus, the diversion effort can run optimally in terms of settling cases of child crime.

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Legislation

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Undang-Undang Nomor 1 Tahun 1946 tentang Kitab Undang-Undang Hukum Pidana

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Models & Patterns of Clientelism in Lampung Local Election

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Abstract

Klientelime is a renewal of the concept of patronage, patron clients commonly referred to in some scientific literature. Research on patron-client in the context of local politics, especially in local election is still rare. Previous researches are still conducted within the national scope, such as presidential and legislative elections. This research tries to answer the question of how the clientelism process runs in the local context in Lampung Province.

The study was conducted in Bandar Lampung City in September 2016 until January 2017 as part of the author's dissertation. The author also conducted research on the context of the election of the Governor of Lampung in 2014, the study was conducted with secondary data in 2015. This study used qualitative methods through an in-depth interview approach to the informants related to the research. Informants consist of political actors, public figures and also researchers or academics. In addition to interviews researchers also conducted a study of literature, especially on research in the context of Governor Election last 2014.

The result of the research shows that clientelism among voters occurs in the selection of Bandar Lampung mayor 2015. There is a symbiotic mutualism between incumbent candidate (Herman HN) and brokers. Voters can be influenced by the choice of imaging and gifts in programs that benefit the voters, also with the concept of pork barrel politics or giving needs necessary for voters to use funds or local budgets, although with debt. A slightly different pattern occurs in the context of the 2014 election Lampung Governor, candidates are numerous, but the strength of the company *Sugar Group Company (SGC)* which is engaged in the sugar trade fully support the nomination of a candidate. Clientelism is happening more to the company and candidate candidates.

Keywords : *model, pattern, patron-client relationship, Bandar Lampung Local Election (pilwakot) 2015, Lampung Governor Election (Pilgub) 2014;*

1. Introduction

The relationship between the electorate and the candidates in a regional head election has always been interesting to be studied in the field of study of political science. Research on relationships or relationships between voters and candidates for regional heads in the Indonesian context is more often discussed about voter behavior, political participation, campaign methods. Things that researchers still rarely studied are about money politics, vote buying, and patronage and clientelism.

Direct local elections since the era of regional autonomy in 2005 have a positive and negative impact. The positive impact is the emergence of the enthusiasm of the voting community against a new method of direct election different from the new order regime. The enthusiasm was correlated with the

high number of voter participation in regional head election spanned in the initial five years, the 2005-2010 era. Entering the following year, enthusiasm declined, voices bought and the appearance of patron-client symptoms in the election.

One of the negative impacts of the election of regional heads, according to Aspinal and Sukmajati (2015) which conducted research on legislative elections in 2014, legislative elections became a venue for the exchange of interests and the circulation of money and goods as a lubricant to get votes. The legislative election of 2014 was then considered an election laden with money politics. Third party roles in elections, known as political brokers, are becoming stronger and more influential as bridges between candidates and voters (Aspinall & Sukmajati, 2015: 2-10).

The election of the governor in Lampung in conjunction with the legislative elections in April 2014, is interesting to be used as research material, since the time is secured by legislative elections, so that there may be a similar political phenomenon. The implementation of the election of the Governor of Lampung Province is a battleground for political, economic and social and cultural interests in Lampung.

The direct election of the regional head of one volcano held in Lampung province in December 2015 is also an interesting analysis, as there are eight districts and cities that hold the democracy party. The case of Bandar Lampung Local Election (Pilwakot) became interestingly studied for allegedly a strong patron-client pattern with the absolute victory of Herman HN.

Researchers have allegedly there is a phenomenon of patron-client in local politics of Lampung, in Lampung Governor election period 2014. This condition become very interesting in view from political politics perspective. Similarly, with the election of local election simultaneously (Pilkada serentak) in December 2015, one of which is the Selection of Mayor of Bandar Lampung. How is the relationship between voters and candidate pairs in Lampung Governor election 2014 compared with the case of mayor election in 2015 ago at Lampung Province? Both of these objects are featured in this paper.

2. Literature Review

2.1 Patron-Client Relations

The relationship of patron-client can be seen in the literature of the 1970s, as characteristic for pre-industrial societies. One of the first to define it is Scott (1972: 92) defines conceptually the patron-client relationship as:

> 'The special case of a two-person relationship involving friendships in which an individual from a higher socioeconomic status (patron) uses his own influence and resources to provide protection or benefit, or both, to a lower status person Responded by offering support and assistance, including personal services or protection. '

This definition describes the asymmetric relationship between patrons and clients. As Lande explains (in Schmidt, 1977: xiii) patron-client are relations consisting of only two persons, thus being micro entities. The personal bond should be based on mutual trust (Eisenstadt and Roniger, 1984). Tilly (2004) argues this relationship refers to basic units such as social organizations as network trust.

Patron-Client in the opinion of Scott (1972: 92) has several criteria as follows: First; There is an inequality in social status, which represents the difference in power, wealth and position. The client is a person who enters into an unbalanced exchange relationship, he is unable to fully repay the grant of patrons, the obligation to liability him up and rely on the patron. Second; On going face-to-face meetings. The nature of this relationship is instumental with both parties take into account the profit and loss, the element of sense remains influential because of the closeness of the relationship. Third; Bond is flexible and *widespread.* The widespread nature is seen not only in working relationships, but also on

neighbor relationships, proximity from generation to generation or friendship. This type of exchange is not only money or goods, but it can also be power assistance and even strength protection support.

The patron relationship of clients has several conditions to be formed, according to Legg (1983: 29), which makes the relationship established namely: First ; Patron mastered many resources to unlimited. Second*;* Their relationship, that between patron and client is a personal relationship. third*;* The decision to exchange is based on mutually beneficial and mutual understanding (symbiotic mutualism).

The opinion expressed by Huntington (1984: 154) also reinforces the above definition that the patron-client relationship is tied individually and is based on mutual but unbalanced exchange of benefits. The higher status patron provides protection, economic assistance and reflection of his status to his clients, and hands down on their behalf to connect with government officials. Clients respond with loyalty and respect, as well as with labor, giving small gifts at a certain time, and providing political support.

Clientelism in the last decade is redefined by the fact that clientelism persists in the developed world 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 democracy and the platform program, but was forced to evolve into a network of exchanges with a complex pyramid is the exchange between clients, brokers*,* and patron (Kitschelt and Wilkinson 2007: 8).

Hopkin (2001) argues otherwise, it provides a more recent definition of clientelism, than what has been defined by Scott. Hopkin's opinion that clientelism involves many parties who share the state resources for groups or individuals in an exchange and sometimes less equitable and less personal. This relationship pattern is more materialistic than the old definition of clientelism (Hopkin, 2001: 3).

Kitschelt and Wilkinson (2007: 4) define it slightly differently. They argued that clientelism has developed into a more symmetrical exchange relationship (not asymmetric), rational (not normative) and mediated by liaison (brokers) are not face to face. Kitschelt and Wilkinson provide a new definition of clientelism as a direct exchange or transactions of citizens in exchange for direct payments or compensation 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 the patron-client relationship (Volintiru 2010). First; There is a mutual relationship (mutualism symbiosis) between patrons and clients, they are the main suppliers of goods and services to the broker to make transactions. This condition represents a full-scale social hierarchy. Second*;* This definition contributes to emancipation for the client, since there is no longer an asymmetric relationship or domination, but a commercial transaction between one another and each offering what is desired. The fact is not always the same as this second definition. It turns out that patrons and brokers have a political or economic monopoly (Medina and Stokes, 2007), or at least part of an economic or political oligopoly. This fact shows that there is still an asymmetric relationship in practice, therefore, client dependence remains significantly higher than that of patrons. Third, this new definition contributes to the need for intermediation in modern patronage networks, election clientelism requires a larger mobilization structure that can no longer be served by client patron relations in the definition suggested by Scott (1972).

2.2 Patronage or Clientelism

Patronage or clientelism is a concept of power born of an unequal relationship between patrons on the one hand and clients on the other.This imbalance is fundamentally closely related to the unequal ownership of resources in society. Hence, in this phenomenon the interrelation has been tied up by interest and manipulated by its own ends although both are in an unbalanced position (Agustino, 2014: 173). Patronage or clientelism as' a benefit sharing among politicians to distribute something individually

to voters, workers or campaign activists, in order to gain political support from them (Shefter 1994: 283 in Aspinall, 2015: 4).

Can be interpreted as patronage is the provision of cash, goods, services and other economic benefits (such as work or contract projects) distributed by politicians, including benefits addressed by individuals (eg, cash envelopes) and to groups / communities. For example a new football field for the youth in a village (kampung) (Aspinal & Sukmajati, 2015: 4). Patronage may also be in the form of cash or goods distributed to voters derived from personal funds (for example in sound purchases) or from public funds, such as government-funded pork barrel projects. Patronage refers to material or other advantages distributed by politicians to voters or supporters, whereas clientelism refers to the character of the relationship between politicians and voters or supporters (Aspinall & Sukmajati, 2015: 4).

Patronage manifests due to an unequal relationship but requires each other. On the one hand patrons appear as individuals who have advantages both seen from aspects of wealth, status and influence, while on the other hand, clients present as members of society who do not have these resources. Relationships in this context can be interpreted as relationships based on 'exchange of interests'. The basic assumption of this conceptual framework lays a way of thinking that affirms that relationships will occur if both parties can benefit from the relationships they intertwine. Mechanically, the patron group provides economic assistance and protection to the client group or subordinates, and in return for the gift, the client class provides his devotion and loyalty to the patron (Agustino, 2014: 174).

Although patronage relationships are based on a value of exchange of interests, but the exchange remains unbalanced. This is because of the direct control over the primary resources (or first order resources) contained in the scope of society or state. These sources may include positions, occupations, licenses and more. The current phenomenon manifests a second-tier patron that lacks primary or strategic resources, but has access to it (second order resources) called a broker. The brokers who mediate between the main patron and the client thrive as they are 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 the act of favoritism in the interaction of a person with various parties, inside and outside the organization.There is a similarity between patronage and nepotism, in the sense that the criteria used in enacting others are not rational and objective criteria, but subjective criteria. These subjective criteria may be based on considerations of primordialism, such as ethnicity or regionalism, as well as other considerations such as being derived from an alma mater, or even because of the similarity of interests and hobbies outside the official (Siagian, 1994: 58).

3. Methodology

This research uses qualitative research type. Qualitative research looks at most of social life intrinsically. 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 or basic theory. This is what makes the research has flexible and more interesting data. According to Harper and Schwandt in Lawrence Neuman (2006: 157), qualitative research remains open to change, qualitative research is willing to alter the direction or focus

of a research project and may leave their original research question in the middle of their research project. The case studies by Neuman (2006: 40) can be carried out by individuals, groups, organizations, interest groups, events, or units based on geography.

3.1 Data source

Source of data in this research comes from primary data; Sourced from direct research field in the form of interviews or voters and political brokers. This data in the form of interviews and documentation obtained by researchers during the study took place. Other data are sourced from secondary data; In this study comes from supporting literature materials and or information obtained through third parties deemed to be related to the issues studied, such as books, regulations and documents and laws relating to this research.

To collect data in this study, the researcher used three data collection techniques with field observation, in-depth interview. As well as literature study

4. Results and Discussion

4.1 Local Election

Elections, including local elections as part of elections, are an important tool and instrument of democracy, democracy embodied in the electoral process to elect leaders who are deemed worthy of holding the mandate of power. Huntington (in Azhari, 2004: 180) defines democracy as referring to the opinion of Joseph A. Scumpeter who defines democracy procedurally with elections as the essence of democracy, Huntington adds free, honest, competitive elections to the conditions of freedom of expression, assembly, Freedom of the press and freedom of criticism of the authorities without any intimidation and retaliation.

Etymologically, democracy is made up 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.

Democracy in the opinion of Henry B. Mayo (2005: 12) is a political system that describes that public policy is determined on the basis of a majority by representatives who are effectively monitored by the people in periodic elections based on political equality principles and held in an atmosphere Ensuring political freedom. Affan Gaffar (2004: 7-9), interpret democracy into two different forms namely normative and empirical, normative interpreted as democracy to be implemented by the state, more see democracy as a form that already exist in practical politics, more empirical accepted by the community because it is considered more in line with the existing norms. Democracy is divided into three forms, according to Jeff Haynes (2000: 25-30), namely formal democracy, surface democracy and substantive democracy, where elections are the initial stage or foundation for democracy.

Simultaneously elections (pilkada serentak) or concuttent election in Geys opinion (2006: 652) is defined as a mechanism that establishes the electoral system several elections at the same time or together; Europa Union cases, for example, the use of a simultaneous electoral system of parliamentary, national, regional and local elections greatly influenced voter behavior and the outcome of an election, the electoral system simultaneously increased voter turnout in the ballot box. Concurrent elections have a particularly negative point about voters' knowledge of the candidates they will choose, as Andersen points out (in Tjenreng, 2016: 36-37) that the limited ability of individuals to process large amounts of information makes voters unable to search for or understand each Information needed to make good choices in each type of election, consequently voters tend to prioritize political choices.

Concurrent electoral models, according to LIPI (Lembaga Ilmu Pengetahuan Indonesia) can be divided into five parts. First, elections simultaneously once in five years for all public positions at the national to district level, these elections include legislative elections (DPR, DPD, Provincial/ DPRD and region/ DPRD Kabupaten/Kota), presidential election and election, this model is often called election

seven boxes or wholesale elections. Second, the elections are held simultaneously for all legislative (central and regional) positions and then followed by simultaneous elections for executive (central and regional) positions. Third, the election is simultaneous with the election interrupted by the level of government, differentiated the time for national elections and local / local elections. Fourth, national elections are then followed by simultaneous elections in each province based on the agreement of time or local election cycle in each province. Fifth, simultaneous elections to elect members of DPR, DPD and DPRD as well as president and vice president and then followed after a certain period of time with concurrent executive elections for one province. The five simultaneous election variance models of the LIPI study result, the simultaneous electoral election to be implemented closer to the fifth variant model, with an extended simultaneous pilkada scope of simultaneous pilkada in six stages covering a number of provinces and districts (Tjenreng, 2016: 38-39) .

4.2 The model and the pattern of patronage in Lampung Governor Election in 2014

The results of the study and research of Ward Berenschot and Darmawan Purba (2014) need to be observed in reviewing the pattern of patron-client in Lampung governor election in 2014. Financial support from Sugar Group Company (SGC) allows Ridho to do any activities. Many sacks of sugar are decorated with images of Ridho, he also adorned them with music concerts, the distribution of cattle and goat sacrifices, shadow puppets with motor gifts and many other prizes. Based on the results of the study there is also the distribution of money with a certain amount. In the end, it won 44 percent of the vote, ahead of its competitors. This achievement has a cost, according to estimates by observers interviewed, up to 500 billion rupiah (43 million USD).

The political influence of SGC is quite large in local politics. Sugar Group has long contributed to politicians. Since 2011 the company has funded election campaigns of the regents, leading to the election of candidates belonging to SGC in Tulang Bawang and Tulang Bawang Barat.

Tulang Bawang and Tulang Bawang Barat districts have large plantations managed by Sugar Group. These companies can benefit a lot by putting their own people in a position of power. The main reason for SGC to acquire land is the end of 30 years of land lease with the status of tenure (HGU) for some of the plantations owned by SGC.

SGC is also involved in a number of land conflicts with other companies, such as prolonged legal battles with the Salim group over land and factory ownership as well as with villagers. In 2012 villagers in Tulang Bawang protested against SGC, as the company took their land and cut access to their village. With the governor and the local district head who is now his ally, SGC will not be disturbed by the hassles. It is possible that SGC will use their politicians to obtain licenses to get more land to expand their plantations.

Bureaucrats as well as local politicians have extorted money from this company by threatening to take and make deviations in the use of SGC land and its production. SGC is currently working in a weak legal framework and is against the government regarding land use.SGC was then vulnerable to use like ATM (authomatic teller machine) by individuals at all levels of government as well as politicians.

The business calculations of high-ranking SGCs are very pragmatic, they realize that there needs to be political contacts to obtain land licenses and avoid illegal levies. Business considerations ultimately led SGC to plunge into practical politics by supporting certain politicians. The elected politician is a charismatic young character, M. Ridho Ficardo who is also the biological child of Fauzi Thoha, a key manager at the SGC company.

Observations of researchers on the pattern of campaigns during the election of the Governor of Lampung on April 9th, 2014 indicates that the purchase became a common scene that occurred. Voters become increasingly pragmatic in their relationship with politicians.Disappointment of the political process and the great primary need fosters patron-client relations. This pattern was well captured by Ridho as a candidate for governor at the time by creating the right image that is young, energetic and rich.

The involvement of Sugar Group in Lampung governor election 2014 can be seen clearly, but local journalists do not dare to name this company explicitly for fear of retaliation with the withdrawal of advertisement on their media. As a result voters do not really know what the business interests of SGC are, though they keep voting. (Berenschot & Purba, 2014)

In addition to the strong financial support from SGC sources, Ridho's victory is also caused by a third party network or brokers working maximally. The work of the brokers is also supported with the all-round honor. There is an acknowledgment from a political broker that the moment before joining the broker himself only has a used motorcycle to get around the village, after pilgub himself can replace it with a new car. On the other hand, a broker network is acquired with a kinship network or a party that is already considered a relative or close friend. Ridho's political broker was acquired in that way, with a mature strategy and usually information obtained by word of mouth and confidential.

The political brokers at Lampung governor election have their own stages and stages, one or even three stages. The source of money comes from the first hand, can be directly distributed to the voters or can pass the next stages, second hand, third new to the voters.

Figure 1 . The model of patronase in Sugar Group Company (SGC)

Source: Berenschot & Purba (2014)

In the picture above explains that for the sake of business, especially in terms of management and control of sugarcane plantation, SGC competes with Salim Group. In order to win the business competition, SGC conducts patronage practices by providing campaign assistance for candidates who will fight in local elections. The funding of campaigns derived from sugar sales gains has been done since 2011, namely Tulang Bawang and Tulang Bawang Barat districts. The success inspired SGC to contest the 2014 Governor Election by including M. Ridho F, a son of Fauzi Thoha, one of the main managers of the SGC company.

Figure 2. The pattern of patronage in Lampung Local Election 2014

Source: Data processed 2015

4.3 The model and pattern of patronage in Bandar Lampung Local Election 2015

Incumbent Mayor of Bandar Lampung, Herman HN has its own network in the selection of mayor of Bandar Lampung. The winning team reported to the Bandar Lampung Election Commision (KPUD) who served as Leason Officer (LO) consisted of three persons: Rahmat Husein DC, Resmen Khadafi and Aryanto Yusuf. All three are people directly elected by Herman HN without the involvement of Yusuf Kohar as his partner to decide, Yusuf Kohar only knows and agrees only.

The tasks of this team of three are in particular the thinking team and the drafting team covering the whole from the content of the speeches, the preparation of campaign materials and the affairs of the approach to the constituents even to legal assistance in the case of alleged reports in the elections. The three teams also have the authority and freedom to move in the field of implementation in the field up to the evaluation of activities. The three teams coordinate directly with Herman HN and have their own work assignments and specifications.

> "(Team) Aryanto and Khadafi, so this is because initially he has no burden whatsoever taken made in the framework of winning this yesterday the results of the same discussion - the same true Mr. Herman HN candidates but then he would do also even the contents of the speech he must also convey It is because we are the same ... .. So if Khadafi affairs of the law, if my affairs politics, affairs with the people, if Ariyanto he had communication with the organizers ..... who cover Herman HN issue I must.Indeed, divided Khadafi affairs of legal affairs, Aryanto communication with the organizers for example with the KPU if I the contents of the campaign with Mr. Herman HN ". (Source: Interview with Rahmat Husein, Oct 12, 2016)

Team three which is the core team of the winner and officially reported to the KPU Bandar Lampung has another team that is not officially registered in the election organizer (KPU). The companion team is divided into several coordinators, namely the sub-district coordinator, village level coordinator and the neighborhood level coordinator (RT). The task of each of these coordinators is to prepare the stage and gather the voting community. For the operational activities of each village coordinator prepared a fund of two rupiahs prepared to provide food and drink for the masses in attendance.

> "There (korcam, korkel, korRT) but emang we can not list to the KPU ... because we do not want right there will be a subordinate kecamatan coordinator who betray him who - for groceries apparently from the candidates so we avoid ... (coordination) via Mobile by phone And meet directly ... (the task of coordinator) preparing the stage ... for example, from 20 sub-districts we have counted 1 meeting snacknya 3000 rupiah, then tarup and all kinds of results such as 1 village 2 million, 1 sub district for example there are 7 sub-districts then the co- 14 million for that purpose ... one campaign point was 2 million ".(Source: Interview with Rahmat Husein, Oct 12, 2016)

Team three is given an individual operational fund per week, which amounts to between five hundred dollars to one million rupiah. The funds are used for field operations, ranging from gasoline vehicles, communication costs and drinking. Operations for the collection of mass submitted to the district coordinators, depending on the sheer number of subdistricts dikecamatan, so the field of operational funds to collect the different masses in each subdistrict. The team finished third after the mayoral election, was given an award by the Mayor Herman HN with the position of experts in Bandar Lampung with a monthly salary of seven million five hundred thousand rupiah.

> "Our operational every week kisarnya 500 thousand - 1 million ... still if experts are too paltry temehlah principle, when the cave would see him meet". (Source: Interview Rahmat Husein, 12 Oct, 2016)

Teams of three (LO), which serves as a link, this link connecting both external and internal parties. External coordination to the Election Commission, the City Election Supervisory Committee, the Police and then to Gakumdu and all the other things that are external. Internal liaison, coordinating three teams to witness to and to the candidate's campaign team.

> ". If you talk to another team (certainly) exist, can not be 86.6% with only 3 people. This means that there is a campaign team, a team under the witness and that we are communicating. Witness our right of every district there are three witnesses every polling station we have two witnesses so all the witnesses that we carry out educational witness bearer party's collaboration with the work of the LO it for communication. "(Source: Interview Resmen Khadafi, 21 Oct, 2016)

Figure 3. Successful Team of Herman HN-Yusuf Kohar

Source: compiled from the interviews in 2016

Successful team and Joseph Herman HN Kohar as in the picture above, the structure if the author of the interview. Most teams are formed in pair Herman HN -Yusuf Kohar more dominated by private people of Herman HN. The main team is a team of three who is a partner Officer's Leason all appointed by Herman HN as incumbent Mayor Herman unfounded personal closeness with the three of them. The three had worked with Herman HN on the tenure of Mayor Herman HN earlier, in 2010-2015.

Three teams; Rahmat Hussein, Resmen Khadafi, Aryanto Yusuf was a near Herman HN and given the responsibility as well as experts in Bandar Lampung with a salary of seven million five hundred thousand rupiah per month, before officially becoming LO. Then resigned because dtunjuk as LO, and take office after a couple of Herman HN-Yusuf Kohar officially sworn in as Mayor and Deputy Mayor was elected.

Figure 4. The pattern of clientelism Herman HN to Voters

Source: Data processed in 2016

The pattern of clientelism used by Herman HN to keep the quantity of political support of the voting public in Bandar Lampung city can be divided into four types, namely with the main program in accordance with a campaign promise he was good at the early period of the term of office in 2010 until the time of winning Pilwakot Bandar Lampung, 2015. four types of patterns used include infrastructure development, particularly roads and flyovers in the city, the provision of regional health insurance in the form of health card; outside BPJS and KIS Jokowi, provision of free education for elementary, junior high school through community development programs and social and religious assistance, in particular death, marriage up with the help of the teacher of religion.

5. Conclusion

This study focused on patron-client relationships and dynamics in local politics in Lampung. Constraints in this study is the sensitivity of the investigation as it relates to the ruler. So this research, especially on the review of Lampung Governor Election more examines theories of patron-client and secondary literature studies of other research. The field data obtained more fully in the review Bandar Lampung Lcal Election in 2015.

Need to conduct further research involving a larger respondents in quantitative frame in order to see the public perception of patterns of local political or clientelism in Lampung, especially in gubernatorial and other elections in Lampung. A challenge the author to do so in future research.

Interim conclusion that the author of patron-client relations in Lampung gubernatorial 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. Puppet wrapped (wayang) door price with very attractive prizes, gifts of motorcycles and other luxury goods. The findings of the distribution of sugar in some places although not proven in Gakkumdu. Various reports by the Supervisory Committee gathered by the sub-district and district / city are always raw in Gakkumdu because of the loss of evidence.

Herman HN incumbent victory in Bandar Lampung Local Election in 2015 an easy victory when seen from its investments since taking office since 2010. The victory Herman HN successful these political imagery in the community, Herman victory due to the performance shown during his tenure as mayor is considered successful, so community believe and choose to return. Herman victory is also due to his position when he was head of the region, many produce populist pro-people policies. Herman popularity factor is also huge, so if he had advanced from any independent paths, Herman HN can still win.

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Positive Protection: Protecting Genetic Resources Related to Traditional Knowledge in Indonesia

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Abstract

Genetic Resources is foundation of human life, as a source of food, industrial raw materials, pharmaceuticals, and medicines. From its utilization may provide financial benefit to the provider and the user of it. Unfortunately, most of it obtained from developing countries through bio-piracy, including Indonesia. Furthermore, in the early 1980s, access and benefit sharing (ABS) to genetic resources became an international issue. It leads to the adoption of the Convention on Biological Diversity (CBD) in 1992. However, since it was approved, the whole ideas of excellence of it could not be implemented, problem on it still arises. Intellectual property right laws, in certain aspects are possible for using to protect traditional knowledge from their utilization. However, in the same time, intellectual property regime also becomes "a tool" to legitimate of bio piracy practices.

Due to international massive pressure, mostly developing countries, it proposes two kind of protections, are positive protection and defensive protection. This paper will examine one of it, which is positive protection. By using the normative method and qualitative approach, this paper identified at least two kind of positive protections that we can develop in order to protect genetic resources related to traditional knowledge, are optimize the patent law and develop the sui generis law. Furthermore, it can do by some revision by adding new substances, improvement on the Articles, or even by doing the deletion on certain articles. Moreover, in order to develop the sui generis law, it identified several minimum elements that shall be contained on it, inter alia: the purposes of protection; scope of protection; criteria of protection; the beneficiaries of protection: the holder of traditional knowledge; the kind of rights to be granted; how does the rights acquired; how to enforce it; how does the rights lost or expired; and dispute resolution.

Keywords: *Positive Protection, Genetic Resources, Traditional Knowledge.*

1. Introduction

Indonesia as a developing country that rich of natural resources, arts and cultural has a wide range of traditional knowledge that requires legal recognition and protection as an internationally recognized work of the nation. Knowledge, technologies and resources are the fundamental needed for human life, including Traditional Knowledge (TK). Traditional knowledge is essential for food security and people health in developing countries.

Indonesia has billion of Genetic Resources (GR)[1] and traditional knowledge related to genetic resources. It has economic values that need to be maintained and developed, so it can be utilized in a sustainable manner for the Indonesian prosperity, as mandated in the Constitution of Republic of Indonesia. TK needs to be protected because some of TK innovations and practices also have significant contributed for human life such as traditional agriculture, medicine, environmental conservation, traditional selection and breeding methods, pest and disease management, etc. TK is also often becomes a starting way to success for modern industries, particularly the development of new pharmaceutical products, cosmetics, agriculture, etc. For instance, Shaman Pharmaceutical, a pharmaceutical company that headquartered in San Francisco has a project called ethno-medically driven drug discovery process. This project was carried out in order to find new compounds that can serve as a remedy by exploiting TK. Conducting the comparative researches of plants used by two particular tribes to threat the same disease did this project. This project is expected to be able to minimize the cost of research.[2]

The rapid development of modern biotechnology over the past decades has enabled us to use Genetic Resources (GR). Developments in utilizing GR as new products that contribute to human well-being, such as food sources into effective medicines, make GR can no longer be regarded as ordinary commodities, because GR as well as commodities that have commercial value, at the same time, it also has benefit for non-commercial utilization:

a. In commercial utilization, companies can use and take the advantages of GR to developed specific enzymes, genes, or small molecules. All of these then be utilized further by making it into a product that is beneficial to the human life, such as making it as medicines;
b. In non-commercial utilization, through the researches and analysis, GR can be used to increase the knowledge or understanding of the environment and the natural world.

In line with that, the prospect of developed countries toward the value of TK is quite different from the perspective of developing countries. From the perspective of developed countries, they tend to think how they can get the widest access to the knowledge for creating new products, and get huge benefits from commercialization ofit. Meanwhile, from the view of developing countries, especially those that have a wealth of biodiversity and TK, they tend to think how to create fair and equal equitable sharing of benefit that arising from utilization of their TK related to GR.

However, despite there is an existing different perspective between developed and developing countries, it was agreed that to protect the TK it is very important for both parties. Due to some reason such as: First, it plays an important role in the economic and social life of those countries. Placing value on such knowledge helps strengthen cultural identity and the improved use of such knowledge to achieve social and development goals, such as sustainable agriculture, affordable and appropriate public health, and conservation of biodiversity; Second, developing and developed countries are implementing international agreements that may affect how knowledge associated with the use of GR is protected and disseminated, and thus how their national interests are safeguarded. [3] Moreover, TK has huge potential to create sustainable economic development in many countries.

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[1] Genetic Resources (GRs) refer to genetic material of actual or potential value. Genetic material is any material of plant, animal, microbial or other origin containing functional units of heredity. Examples include material of plant, animal, or microbial origin, such as medicinal plants, agricultural crops and animal breeds. http://www.wipo.int/tk/en/genetic/ , accessed on 22-08-2017.

[2] Carsten Fink, *Patent Protection, Transnational Corporations, and Market Structure: A Simulation Study of the India Pharmaceutical Industry*, in Imas Rosidawati, 2013. "Konsep Perlindungan Pengetahuan Tradisional Berdasarkan Asas Keadilan melalui Sui Generis Intellectual Property System (The Concept of Traditional Knowledge Protection Based on the Principle of Justice through the Sui Generis of Intellectual Property System)". *Jurnal Hukum Ius Quaiustum*, No. 2 Vol. 20. Page 163.

[3] WIPO Publication No. 920 Booklet No. 2: Page 10. Available at Secretariat of WIPO.

As previously mentioned, as well as having historical value and cultural value, it also has economic value. Nevertheless, the purpose to protect TK not merely due to it, TK should be protected due to pharmaceutical companies and bio-prospectors are misappropriating on it and making huge profits.[4] Mostly these companies before getting patent rights on medicine products, cosmetics, and etc., they would conduct some research starting from a kind of TK, which is owned by a group of indigenous people. This knowledge often they got without permission from the owner of the knowledge. In addition, most of the owners sometimes do not get benefit share from the utilization of it. These circumstances in the end encourage the spirit from several developing countries to demand justice for accessing and sharing the benefit (ABS).

According to the discussion on ABS implementation itself, there are several reasons that can be used by developing countries and development agencies why TK should be maintained, protected, and developed. Generally at least there are five possible reasons why TK should be protected are:

1. Equity considerations
   The custodians of TK should receive fair compensation if the TK leads to commercial gain;
2. Conservation concerns
   The protection of TK contributes for conserving the environment, bio-diversity and sustainable agricultural practices;
3. Preservation of traditional practices and culture
   Protection of TK would be used to raise the profile of the knowledge and the people entrusted with it both within and outside communities;
4. Prevention of appropriation by unauthorized parties or avoiding bio-piracy;
   Protection of TK is one way to reduce the number of bio-piracy on medical TK, and also to ensure fair and equitable treatment between the holder and user of TK itself;
5. Promotion of its use and its importance to the development
   In addition, rather than protecting TK in a way to limits access to it, government should be an aim to promote the use of TK itself, complimenting this with measures to prevent misappropriation.[5]

In sum, concerns to the TK will be lost faster; lead the international communities to primarily focused on the need to control the actions of the scientific and commercial sector and in the particular the unapproved and uncompensated use of the TK. It is important, because the loss of it is impacting to loss of global cultural diversity, and it is automatically affecting to conservation and biodiversity.

2. Discussion

In order to protect the Traditional Knowledge (TK) related to Genetic Resources (GR), World Intellectual Property Organization (WIPO) generally proposes two forms of protection that are Positive and Defensive Protection. In establishing such protection, each protection model

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[4] Graham Dutfield, 2006. *Protecting Traditional Knowledge: Pathways to the Future.* Geneva, Switzerland: ICTSD. Page 15.

[5] Carlos M Correa, 2001. *Traditional Knowledge and Intellectual Property: Issues and Options Surrounding the Protection of Traditional Knowledge: a Discussion Paper.* Geneva: Quaker United Nations Office. Page 5.

developed will depend on the circumstances and needs of each country. As suggested by Daniel Robinson[6] there is no size fits all formula for TK protection.

Defensive protection of TK is one way to prevent third parties from obtaining or exercising invalid IPRs over the TK. It can be an effective way in blocking and preventing granted IP rights to the wrong parties. However, it does not automatically stop the misappropriation act on TK. It needs national regulations. National regulations are the primary mechanism for achieving protection and practical benefits for TK holders. While Positive protection requires legal recognition of rights over TK, either under IPRs regime or sui generis regimes. Based on Secretariat of CBD Report, it noted some countries such as Indonesia and Paraguay still rely on IPRs regime to protect their TK. Although, some special characteristics of TK, such as communal and lack of written evidence are not suitable protected by conventional intellectual property systems. Finally, the awareness that IPRs system are ineffective to protect it, raises an awareness from some developing countries to develop their own sui generis systems in order to protect their TK.

After the ratification of the Nagoya Protocol next step that should be done by the Government of Indonesia is to implement the provisions of the Nagoya Protocol through national legislation and to prepare the supporting infrastructure both at national and regional level. Specifically, these elements are suggested in order to prevent the missapropriation of TK and ensure equitable benefit sharing from industrial and commercial uses.

Article 15 and Article 16 the Nagoya Protocol mandates to the Parties shall take appropriate and proportionate national legislative on access and benefit sharing from the utilization on genetic resources and traditional knowledge related to genetic resources. In line with it, according to the Indonesian Summit on Sustainable Development (ISSD) that was held on January 21st, 2004 in Yogyakarta, it be achieved an agreement which is mandating to the Government of Indonesia in order to implement the national development it cannot be separated from the sustainability of national plan development which is set forth in the points of Biodiversity Action Plan for Indonesia. One of it proposes to establishment the national legislation to ensure the implementation on Access and Benefit Sharing (ABS) from the genetic resources utilization.[7]

2.1 Amendments to the Patent Law

When we talk about ABS from the utilization on genetic resources related to traditional knowledge, IPRs is an important law. It is a tool to protect it. There is a connection between the misappropriation/biopiracy on the utilization several traditional knowledge and the fact that commercialization arises from it. In many countries, the legitimacy of the biopiracy practices usually involves the Patent Law. Including in Indonesia. In Indonesia, effort to protect traditional knowledge related to genetic resources cannot be separated from the Patent Law implementation. Patent Law is very important, especially in the Medical field. Through the Patent law, the inventors protect their inventions. Contrary, through the Patent Law also often becomes the legitimacy of the bio piracy practices and unfair practices to the certain countries (mostly are poor countries and developing countries).

In the context of Indonesia, bio piracy on the genetic resources related to traditional knowledge some of it caused by several provisions in Indonesian Patent Law No.13 of 2016.

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[6] Daniel Robinson, 2007. *Exploring Components and Elements of Sui Generis Systems for Plant Variety Protection and Traditional Knowledge in Asia*. Switzerland: ICTSD. Page 21.

[7] Suhartini. May 16th, 2009. "Peran Konservasi Keanekaragaman Hayati dalam Menunjang Pembangunan yang Berkelanjutan (The Role of Biodiversity Conservation in Supporting the Sustainable Development)". Proceedings of the National Seminar on Research, Education and the Application of Mathematics and Natural Sciences, Organized by Faculty of Mathematics and Natural Sciences – Yogyakarta State University. Page 204.

Several articles in Indonesian Patent Law are suspected the possibility to protect the traditional knowledge related to genetic resources in Indonesia. The certain of those articles are:

First, Article 9 (b) states that Patent cannot give to the invention related to the methods of examination, treatment, therapy and/or surgery applied to animals and/or humans. Contrary with Article 27 paragraph (3) TRIPs Agreement states that "the members may also exclude from patentability: a) diagnostic, therapeutic and surgical methods for the treatment human or animal". The use of the word 'may' it shows that for the country who's allowed to give the Patent into that invention are legal. As a result, although in Indonesia the invention related to the methods of examination, treatment, therapy and/or surgery applied to animals and/or humans is cannot protected under Indonesian Patent Law, but it possible to register in other countries.

Second, Article 9 (e) also exclude from the object of patent is patent for all living creatures except microorganisms, and essentially biological processes for the production of plants or animals or microbiological processes. However, due to the absence of international uniformity resulted even though in Indonesia it cannot patent, but possible in other country.

Third, Article 49 Paragraph (1) states that the objection on a patent is obliged with the reason. In the relation to the provision on the Article 3 Paragraph (2) about Prior art, it is clear that traditional knowledge is excluding. It can be certain that the objection to one patent with the reason that the patent is lack of novelty due to it known since long times ago through the traditional knowledge, definitely cannot be accepted.

Ineffectiveness of Patent Law that cannot protect the traditional knowledge, after ratified the Nagoya Protocol, demanding to the Government of Indonesia to amendment the Patent Law. Moreover, in order to protect the traditional knowledge, except the amendment on several articles in Patent Law, some countries also had already been amended several regulations related to it. Those countries are India,[8] Egypt,[9] South Africa,[10] and Switzerland.[11]

The amendment of Patent Law itself, it can be done by adding new substances, improvement on the Articles, or even by doing the deletion on certain articles. In relation with the genetic resources related to traditional knowledge protection, the amendment on Patent Law at least the changes include among others:

a. Any patent application derived from the utilization of genetic resources related to traditional knowledge Indonesia by foreign parties are obliged to mention the source of origin of genetic resources that are used, if the applicant can not reveal its origin, the patent application must be rejected;
b. Any patent application derived from the utilization of genetic resources related traditional knowledge by foreign parties, mandatory the approval document from the owner of the knowledge and/or public authority who is appointed to act for and on behalf of the owner of the traditional knowledge on the basis of prior inform consent (PC);
c. In the new Patent Law, it should consider traditional knowledge as a prior inform consent;
d. Any patent application derived from the utilization of genetic resources related to traditional knowledge by foreign parties shall be accompanied by a fair and equitable benefit sharing.

In addition, according to the document of WIPO Intergovernmental committee on Intellectual Property and Genetic Resources, Traditional and Folklore that states in the context of

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[8] India protects their traditional knowledge related to genetic resources through the Patents Act 1970 as amended by Patents Act 2005, also through the sui generis law, Biological Diversity Law No. 18 of2002.

[9] Egypt protects their traditional knowledge related to genetic resources through the Law on the Protection of Intellectual Property Rights, Law No. 82 of 2002.

[10] South Africa protects their traditional knowledge related to genetic resources through the Amendment of Patents Act 2005.

[11] Switzerland protects their traditional knowledge related to genetic resources through Federal Law of June 25, 1954 on Patents for inventions (status as of January 1st, 2012).

traditional knowledge protection, it should be undertaken in a comprehensive manner, potentially using both positive and defensive forms of protection. However, defensive protection is no substitute for positive protection, it intended as a prevent tool to preventing other parties from gaining intellectual property (IP) rights[12], and learn from the successful of India through the Traditional Knowledge Digital Library (TKDL) in order to protect their traditional knowledge, thus the revision of Patent Law, it should be considered the information that source from traditional database that recognize by the Government of Indonesia as prior art. Therefore, if in the future there is a cancelation of a patent application because the knowledge does lack of novelty due to already known through traditional knowledge, it becomes acceptable and granted.

2.2 Sui Generis Law

In addition to effective the patent law to protect genetic resources related to traditional knowledge in Indonesia, another regulation that possible to consider by the government is through the establishing the sui generis law. Some CBD members are noted been used the sui generis law in order to protect their traditional knowledge. As the examples, Brazil which is using Provisional Act No.2.186-16, dated August 23rd, 2001, India through the Biological Diversity Act, 2002 18, and Philippines through the Indigenous Peoples Rights Act of 1997 (Republic Act No. 8371) to protect their traditional knowledge related to genetic resources.

The development of sui generis system as a tool to protect traditional knowledge is in line with the WIPO 3rd Intergovernmental Committee on Intellectual Property and Genetic Resources Traditional Knowledge and Folklore statement which is states that specific sui generis mechanisms have been developed within general IP law to deal with particular practical needs or policy objectives relating to specific subject matter: include specific legal provisions and practical or administrative measures. [13] In order to develop the sui generis law, it is possible for the Government refer to the Committee's formulation. It identified several important questions that the system must contain in order to be effective, are:

a) What is the (policy) objective of the protection?
b) What is the subject matter?
c) What criteria should this subject matter meet to be protected?
d) Who owns the rights?
e) What are the rights?
f) How are the rights acquired?
g) How to administer and enforce the rights?; and
h) How are the rights lost or how do they expire?[14]

In line with it, it also should be noted that, overall the most important substance to be aware from the sui generis law is the recognition of indigenous people as the owner of traditional knowledge.

In addition to the above, according to Agus Sardjono, there are another important thing that should also be considered in order to establish the sui generis law related to traditional knowledge protection, are:[15]

1. To prevent the disintegration, it should be remembered that that although the people of Indonesia consists of hundreds of tribes, the tribe is unity. It has the collective rights on the Indonesian's traditional knowledge including traditional medicine knowledge. Thus, the knowledge of particular indigenous peoples, for example, the knowledge of *Jamu* is not the

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[12]WIPO/GRTKF/IC/6/8 (2004). Available at Secretariat of WIPO.
[13]WIPO/GRTKF/IC/3/8 (June 13th to 21st, 2002). Available at Secretariat of WIPO.
[14] *Ibid*, Page 16.
[15]Agus Sardjono, 2010. *Hak Kekayaan Intelektual dan Pengetahuan Tradisional (Intellectual Property Rights and Traditional Knowledge)*. Bandung: Alumni. Page 252-253.

only Java's property but its shared heritage of the unity of the local Indonesian community. Hence, other Indonesian outside from Java also can use it.

2. In a sui generis law, it must ensure the sustainable development of the local indigenous community creativity. Thus, all Indonesian can do the utilization and development of traditional medicine. In other words, the law should not hinder the creativity development of traditional knowledge itself.

Moreover, in the level of implementing regulations, it can be used the Government Regulation No. 41 of 2006 about Licensing to Conduct Research and Development for Foreign University, Foreign Research and Development Institute, Foreign Corporations, and Foreigner in Indonesia. It puts the obligation to the foreign parties to ask the research permission from the Government before they conducting research in Indonesia, including research related to the traditional knowledge related to genetic resources.

3. Conclusion

Traditional knowledge must have a definite protection considering that traditional knowledge is one of the fundamental needed for human life. At least two kind of positive protections that we can develop in order to protect TK related to GR, are optimize the patent law and develop the sui generis law. Furthermore, it can do by some revision by adding new substances, improvement on the Articles, or even by doing the deletion on certain articles. Moreover, in order to develop the sui generis law, it identified several minimum elements that shall be contained on it, inter alia: the purposes of protection; scope of protection; criteria of protection; the beneficiaries of protection: the holder of traditional knowledge; the kind of rights to be granted; how does the rights acquired; how to enforce it; how does the rights lost or expired; and dispute resolution.

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The Model of SMEs Empowerment Through Village Rules as Efforts to Improve the Quality of Primary Product Village

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Abstract

The village as the spearhead of the economic development has crucial role in the economic development of Indonesia. Law No. 6 of 2014 on Villages provides broad autonomy of village including the management of village funds. The problem faced by Indonesia today is that the village has not been able to utilize and empower the village funds as an effort to increase the welfare of the village society. In 2017 targeted of government program "Desa Melangkah" is not only focused on the administration but also in improving the economic empowerment of small-medium enterprises (SMEs) and village-owned enterprises (BUMDes) based on the potential of the village. This research aims to form a model of enhancement and empowerment of SMEs and Bumdes that are binding and have legal certainty. Using by the empirical juridicial approach, this research becomes urgent to be lifted considering that Indonesia is currently looking for the best model to improve the village economy through village funds. This model will show that the village government a as a bridge between SMEs, Bumdes, and consumers through village regulations to improve the quality and quantity of Primary Products of Village. The products are not only a Village Primary Products but also can be upgraded to regional Primary Products that can increase exports.

Keywords: *model, village regulations, SMEs;*

The point of postindustrial attention is the approach towards development that is more "on the side of the people". Pro-people development emphasizes the importance of local initiatives and differences.
(David C. Korten, 1980)

1. Introduction

The development of villages in of Indonesia occupy a fundamental position considering the village is the smallest unit of government that has its own autonomy. Therefore, the village becomes one of the important pillars in the development of the Indonesian, especially in the case of local economic development, R. Bintarto[1] said that the village is a product of geographical manifestation caused by the physiological, social, economic, political, and cultural elements contained in an area.

[1] R. Bintaro, *Interaksi Desa–Kota dan Permasalahannya*, Jakarta: Ghalia Indonesia, 1989.

Book I Chapter IV Repelita [2] gives the understanding that the village is defined as the smallest administrative area that is entitled to regulate and manage their own households. "The village is a legal community unity that has the authority to organize and manage the interests of the community based on the origin and local customs that are recognized in the national system of government.[3] Furthermore, Suhartono views the village as a place where people live with civilizations that are considered more backward than the city.[4]

Villages have autonomy called village autonomy, in some literature the book is written that village autonomy is given by the state based on the rules governing the village, but it is denied by HAW Widjaja, where it is necessary to affirm that village autonomy is not given by the state but village autonomy comes from the village itself. [5] It is based on the constitutional history of the Republic of Indonesia where the village is much earlier formed than the Republic of Indonesia. But Indonesia's laws governing the village include the Law on local government and the Law on Villages emphasizing that it is the country that gives autonomy to the village even though the autonomy is already living in the village community rather than provided by the state. With the passing of the Village Law, it is predicted that the village will enter a new phase in the arrangement and development of its territory[6] bringing new hopes for community life and governance in the village[7].

Village Autonomy has three meanings: (a) the right of the village to own, manage or obtain economic-political resources; (b) the authority to regulate or take decisions on the management of public goods and the interests of local communities; and (c) the responsibility of the village to administer the public interest of the village through public service.[8]

Law no. 6 Year 2014 on the Village to be a new hope for the welfare, development and economy of the nation, given that this law provides a strong autonomy for the village through village funds specifically regulated in Government Regulation No. 60 of 2014 as amended by Government Regulation No. 22 of 2015 and Government Regulation Number 8 of 2016 on Village Funds from State Budget. The Village Allocation Fund must be in accordance with the characteristics of the village concerned. Villages that have a large area with many village infrastructure structures should receive a larger allocation of funds from villages with narrow territorial characteristics with little village structure.

Based on data from the Ministry of Finance of the Republic of Indonesia the amount of allocation of Village Funds in 2017 that has been established by the government in the state budget revenues plan (RAPBN) 2017 amounting to Rp. 60 trillion. The amount of funding of village has increased 3 times from the budget in 2015 and increased 28% of the village funds in 2016 is Rp.49, 96 trillion. Compared to the 2015-2019 Village Fund road map compiled by the Ministry of Finance, the 2017 village fund allocation of 60 trillion is actually lower than planned for 2017 of 81 trillion. The difference in the targets and realization is one of them due to the village's ability to use and empower village funds. The problem is the background of village and village officials in empowering village funds that are only focused on village infrastructure development. The government takes the brush

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[2] Saparin, Menurut Buku I Bab IV. Repelita, Ghalia Indonesia, 1968, p. 28-29.

[3] , HAW, Widjaja, Penyelenggaraan Otonomi Daerah di Desa. Jakarta: Rajawali Pers, p. 92.

[4] Suhartono, *Politik Lokal, Parlemen Desa: Awal Kemerdekaan Sampai Jaman Otonomi Daerah.* Yogyakarta: Lapera Pustaka Utama, 2001. And see also in Furqaini, A. *Pengelolaan Keuangan Desa dalam Mewujudkan Good Governance (Studi pada Pemerintahan Desa Kalimo'ok Kecamatan Kali-anget Kabupaten Sumenep)*. Tesis. Program S2 Universitas Pembangunan Nasional"Veteran". Surabaya.

[5] Widjaja, *Ibid*.

[6] Yansen. *Revolusi dari desa (saatnya dalam pembangunan percaya sepenuhnya kepada rakyat).* Jakarta: PT Elex Media Komputindo, 2014.

[7] Ismail, Muhammad., Widagdo, Ari Kuncara., Widodo, Agus. 2016. *Sistem Akutansi Pengelolaan Dana Desa*. *Jurnal Ekonomi dan Bisnis.* Volume XIX No. 2, Agustus 2016, p. 323-340

[8] Direktorat Pemerintahan Desa dan Kelurahan Direktorat Jenderal Pemberdayaan Masyarakat Dan Desa Departemen Dalam Negeri, 2007. *Naskah Akademik Rancangan Undang-Undang Tentang Desa*, Jakarta.

through the implementation of the program as a "desa melangkah" not only focuses on administration but also on economic improvement that emphasizes on empowering Small and Medium Enterprises (SMEs) and Village Owned Enterprises (BUMDS) based on village potential.

This research aims to establish a model of enhancement and empowerment of SMEs and Bumdes that are binding and have legal certainty through village regulations in an effort to improve the village economy. This research becomes important by Indonesia because Indonesia is currently looking for the best model to improve the village economy through village fund. This model will show that the village government acts as a bridge between SMEs, Bumdes, and consumers through village regulations to improve the quality and quantity of superior village products.

2. Materials and Method

This paper uses juridical-empirical research [9] which aims to describe the empowerment model of Small and Medium Enterprises (SMEs) through legal review related to the village and the reality of SME empowerment in Indonesia. The method of analysis used is the analysis of legislation related to the village and the empowerment of SMEs based on existing reality in the community.[10] The problem approach used to address this problem is to use a case of study approach (case study) which is to examine the regulations relating to village regulations [11] he material of the legal field from the point of its binding strength [12]

Literature study by reading, quoting, copying and analyzing that is collaborated with empirical data. Data analysis is done qualitatively, comprehensively, and completely. The data obtained will be analyzed using interpretation and legal construction. By interpreting the law, legal interpretation will be made through legal discovery (rechtsvinding). Then, the legal constructions carried out through legal arguments a contrario will address legal issues. Thus, the method of legal discovery will produce legal arguments that can address legal issues through logical and systematic legal reasoning. And at the end of this paper will be able to show that the existing village financial regulations in Indonesia based on the village positive law.

3. Results/Discussion

3.1 Village Rules in the Village Autonomy Scope

The history of village autonomy is unusual to be released from the history of the state autonomy. It should be noted, however, that the history of Indonesian shows that village autonomy is not granted by the State but the autonomy of that State has indeed lived within the village long before Indonesia was formed. Various literatures write that the journey on the regulation of Regional Autonomy started since 1945 and has made regulations about Local Government which is Law No 1 of 1945 on the position of the National Committee of the region, followed by Law No. 22 of 1948 on Local Government, then replaced by Law No. 1 of 1957 on the Principles of Local Government which was later replaced by Law No. 5 years of 1974[13], then replaced by Law No. 22 of 1999, then

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[9] next, Suratman dan H. Philips Dillah dalam *Metode Penelitian Hukum ,* Bandung: Alfabeta, 2013, p.. 54.

[10] Suratman & H. Philips Dillah, *Metode Penelitian Hukum*. Bandung: Alfabeta, 2013.

[11] Bahder Johan Nasution, *Metode Penelitian Ilmu Hukum.* Jakarta: Mandar Maju, 2008.

[12] Soerjono Soekanto & Sri Mamudji, *Penelitian Hukum Normatif Suatu Tinjauan Singkat.* Jakarta: PT Raja Grafindo Persada, 2011.

[13] Abdurrahman, Beberapa Pemikiran tentang Otonomi Daerah, PT. Media Sarana Press, Jakarta: 1987,p.8.

replaced again with Law No. 32 of 2004, changes to Law No. 12 of 2008 and changes again to Law No. 23 Year of 2014 on Local Government.

Village regulations are not only stipulated in Law No. 22 of 1999 regarding local government but also regulated in several implementing regulations such as Government Regulation No. 76 of 2001 on General Guidelines on Regulation on Village.

Year 2014 established a specific law related to the village that is regulated in Law No. 6 of 2014 about the Village. The law attempts to re-establish village-based village autonomy, depend on the cultural diversity and uniqueness of each village, within a unitary state of the Republic of Indonesia. Law No. 6 of 2014 on the Village illustrates the country's intent to automate the village, with village government independence such as elections of village leaders, village budgets, village parliaments, and village regulation self-sufficiency.

Village regulations are one form of legislation since the enactment of Law No. 22 of 1999 on local government as one of the tasks of the Village Consultative Body, which is a body formed as a democratic manifestation at the village level. As a local regulation, village regulations are established on the basis of legislation principles. Article 1 point 7 of Law No. 6 of 2014 concerning Villages that the Village Regulation is a legislation established by the headman after being discussed and agreed with the Village Consultative Board.

Prior to the enactment of Law No. 12 Year 2011 on the Establishment of Laws and Regulations, Village Regulation is one of the categories of local regulations that are included in the types of legislation regulated in Article 7 paragraph 2 point c of Law No. 10 of 2004 on Establishment of Laws and Regulations. After the enactment of Law No. 12 of 2011 on the Establishment of Laws and Regulations, Village Regulation is not explicitly mentioned as one of the laws and regulations. The recognition of the existence of village regulations and having binding legal force as long as ordered by a higher regulation or established under the authority (formal), reinforced in article 8 paragraph (2) of Law no. 12 of 2011.

Based on this, the village regulations are also classified into legislation, then the village regulations have the nature of legal norms such as legislation can be in the form:[14]

a. Government (*gebod*)
b. interdict (*verbod*)
c. Protection (*toestemming*)
d. Liberation (*vrijstelling*)

Bagir Manan explains the functions of legislation that are divided into two main groups, namely internal functions and external functions[15]:

a. Internal Function

   Internal functions is the function of legislation as a legal subsystem against the rule of law system in general. Internally, legislation runs several functions:

   1) Legislation functioning in the creation of law. As the main way of law creation, legislation also becomes the main joint of the national legal system (Indonesian legal system in the form of civil law, national law development policy which uses legislation as the main instrument)
   2) Legislation also has a function in the formation of law. In addition to being a means of updating other laws and regulations, legislation may also serve to renew

[14] Maria Farida, *Ilmu Perundang-Undangan (1): Jenis, Fungsi, Materi Muatan, Kanisius*,Yogyakarta, 2007, p. 34-35

[15] Bagir Manan, *Beberapa Masalah Hukum Tata Negara Indonesia*, Alumni, Jakarta.

jurisprudence, customary law, or customary law in order to adapt the arrangements to the evolving reality.

3) 3) Legislation also functions in the integration of pluralism in the legal system, since in Indonesia there are currently four kinds of legal system: continental law system, customary law system, religious law system and national legal system.
4) The latest legislation internally serves as the guardian of legal certainty. Legislation provides greater legal certainty beyond the legal certainty derived from customary law, customary law, or jurisprudence law.

b. External Functions

External function is the linkage of legislation with the environment in which it applies. This function can also be referred to as a legal social function. The social function of this law of statutory law may be further elaborated, ie:

1) Laws have a function of change, meaning that law as a social engineering can encourage a change in society in the economic, social, and cultural fields.
2) Legislation also has a stabilization function in order to maintain the stability of society, for example in criminal, order and security, as well as in the field of economy and culture.
3) Legislation also has the function of ease, namely as a means of arranging various facilities (ease), such as incentive provisions

Based on what is presented by Bagir Manan above, it can be deduced that as one part of the legislation, the village regulations are established in the context of the implementation of village administration. The administration of village government is divided into several parts of them:

1. government;
2. development
3. economy
4. social culture

One of the above points is the implementation of village governance in the economic field to be one of the problems for the villagers, to date the village has not been able to maximize the economic improvement of rural village allocation funds. The government is looking for a way or the best model that can be used as one way to boost the development of the village economy. One of the efforts offered is the strengthening of the village community economy through village regulations related to the empowerment of Small and Medium Enterprises and village-owned enterprises.

3.2 Micro Small and Medium Enterprises (SMEs)

The point of postindustrial attention is the approach towards development that is more "on the side of the people". Pro-people development emphasizes the importance of local initiatives and differences. This principle is applied by Indonesia to implement development in all sectors that support the people by prioritizing local initiatives and differences owned by each region. Indonesia in 1997 until its peak in 1998 experienced a tremendous economic crisis.

Indonesia's economic growth since the economic crisis of 1997 was influenced by small and medium enterprises engaged in goods or services. [16] Small and informal businesses are business sectors that have been proven to play a strategic or important role in overcoming the effects and

[16] Korten, David C., 1980, Community Organization and Rural Development: A Learning Process Approach, Public Administration Review, September/October 1980 p.480-509.

impacts of the economic crisis that once hit Indonesia in 1997. [17] SMEs contributed greatly in pulling Indonesia out of the economic crisis of 1998. For that the government is always looking for ways and the best step in an effort to increase the growth and existence of SMEs in Indonesia. These measures are the provision of briefing, coaching and assistance, lending to SMEs to the most warm is the allocation of village funds aimed at fostering the economy of the village society.

According to the Ministry of Cooperatives and Small and Medium Enterprises of Indonesia, the meaning of Small Business, including Micro Enterprises, is a business entity having a net worth of Rp 200,000,000, excluding land and buildings place of business, and has annual sales of at most Rp 1,000,000,000. Meanwhile, Medium Enterprises is a business entity owned by an Indonesian citizen who has a net worth of more than Rp 200,000,000 s.d. Rp 10,000,000,000, not excluded land and buildings.

SMEs is a group of businesses that have the greatest number and proven resistant to various kinds of economic crisis shake. Business criteria included in Small and Medium Micro Enterprises have been arranged in legal protection. Based on Law No. 20 Year of 2008 on Micro, Small and Medium Enterprises (MSMEs) there are several criteria used to define the understanding and criteria of Micro, Small and Medium Enterprises.

Characteristics of MSMEs [18], antara lain:

1. Production and production process using standard technology and simple,
2. Absorbs labor (labor-intensive) and does not require special skills,
3. Tend to grow in groups to form a center by type,
4. Grow and root from talent to hereditary skills.

The Problem of Micro, Small and Medium Enterprises (MSMEs)[19] Internal factors: a). Lack of capital and limited access to finance; b). Quality of Human Resources; c). Weak business network and market penetration ability; d). Mentality of Small and Medium Enterprises Lack of transparency. Next, external factors: a). The business climate is not yet fully conducive; b). Limited facilities and infrastructure; c). Illegal charges; d). Implications of regional autonomy; e). Implications of free trade; f). Properties of products with short durability; d). Limited market access; e). Limited access to information.

Based on the characteristics of MSMEs and the problems faced by MSMEs above, the government takes a position that is to provide empowerment to SMEs. Mahidin [20], argued that empowerment can be interpreted as an effort to improve the ability of a person or group so as to carry out their duties and authorities as the performance demands of the task. Empowerment is a process that can be done through various efforts, such as giving authority, increasing participation, giving trust so that everyone or group can understand what will be done, which will ultimately have implications for the improvement of the achievement of goals effectively and efficiently.

The empowerment concept undertaken aims at empowering the economic and social fields, with the aim of the target group managing their business, then marketing and forming a relatively stable marketing cycle and for the target group to perform its social functions again in accordance

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[17] Supriyanto, *Pemberdayaan Usaha Mikro, Kecil, dan Menengah (UMKM) Sebagai Salah Satu Upaya Penanggulangan Kemiskinan, Jurnal Ekonomi & Pendidikan*, Volume 3 Nomor 1, April 2006. p.1

[18] Djawahir Hejazziey: Pemberdayaan Koperasi, Usaha Mikro, Kecil, dan Menengah (UMKM), Al-Iqtishad:Vol. I, No. 1, Januari 2009, p. 32

[19] Bachtiar Rifa'I, *Efektivitas Pemberdayaan Usaha Mikro Kecil dan Menengah (UMKM) Krupuk Ikan dalam Program Pengembangan Labsite Pemberdayaan Masyarakat Desa Kedung Rejo Kecamatan Jabon Kabupaten Sidoarjo,* Kebijakan dan Manajemen Publik ISSN 2303-341X, Volume 1, Nomor 1, January 2013

[20] Eddy Mahidin,. *Pemberdayaan Perempuan Miskin Pada Usaha Kecil di Perdesaan Melalui Layanan Lembaga Keuangan Mikro.(Online)*.www.ugm.ac.id. Diakses pada tahun 2014, 2006.

with its social roles and tasks. Society empowerment is a basic element that enables a society to survive and in a dynamic sense of self-development and progress. The empowerment of society itself becomes the source of what in political insight is called national resilience. This means that if the society has a high economic capability, then it is part of the national economic resilience.[21]

In Chapter II article 5 of Law No. 20 of 2008 on Micro, Small and Medium Enterprises (MSMEs). The purpose of empowering Micro, Small and Medium Enterprises:

a. Realizing a balanced, developing and fair national economic structure;
b. Growing and developing the ability of Micro, Small and Medium Enterprises to be a tough and independent business;
c. Increasing the role of Micro, Small and Medium Enterprises in regional development, job creation, income distribution, economic growth and poverty alleviation from poverty

Conceptual Approach of MSMEs empowerment In the context of economic empowerment and local autonomy, there are three conceptual concepts commonly considered, namely:[22]

1. *Asset Sharing*
   Asset sharing emphasizes that growth and equal distribution of income can be achieved through joint ownership of unit assets or factors of production, stock or other property of the enterprise. This concept can create a strong sense of belonging and commitment to the company it owns, but the motivation of this ownership is to gain as much profit as possible then all will try to get the profit regardless whether the company earns profit.

2. *Opportunity Sharing*
   This concept emphasizes that equity can be achieved through equal distribution of opportunities to try and produce. This will encourage the community to play an active role in the production and create new assets because of these joint opportunities. The opportunity sharing system will give birth to a horizontal integration in which the community or UMKM is more of a role as a production unit on the basis of mutually supportive and mutually filling relationships with each other.

Combination between asset sharing and opportunity sharing This concept is to combine asset sharing and opportunity sharing. In this case, asset sharing is not meant to gain profit directly through dividend payouts, but more to directly influence company policy, either by placing a member of the board or advising in a general meeting of shareholders and directing it. From the definition of empowerment of MSMEs which has been described above, that the empowerment in question is the development of SMEs so that the business can still run well through efforts to provide motivation and empowerment of each MSMEs.

In order to empower SMEs in Indonesia, Bank Indonesia (2011) developed a five-finger philosophy, meaning that each finger has its own role and cannot stand alone and will be stronger if used simultaneously.

1. Thumb finger, representing the role of financial institutions that play a role in financial intermediation, especially to provide loans / financing to micro, small and medium customers and as agents of development.

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[21] JKMP (ISSN. 2338-445 X), Vol. 2, No. 2, September 2014, 1 03-220 p. 166

[22] Didit Welly Udjianto, *Forum Diskusi Ekonomi Putaran III Tahun 2003: Optimalisasi Peran Usaha Kecil dan Menengah (UKM) Dalam Pembangunan Daerah "Usaha Kecil Menengah Dalam Konteks Otonomi Daerah"*, (Yogyakarta, 2003), p. 4-6.

2. The index finger, representing the regulator of the government and Bank Indonesia that play a role in the real and fiscal sector regulators, Issuance of business permits, To certify the land so that it can be used by MSMEs as collateral, create a conducive climate and as a source of financing.
3. The middle finger, representing catalysts that play a role in supporting banking and UMKM, including Promoting Enterprise Access to Credit (PEAC) Units, credit guarantee company.
4. Finger, representing the facilitators who play a role in assisting SMEs, especially micro-enterprises, help SMEs to obtain bank financing, assist banks in terms of credit monitoring and development consultancy SMEs.
5. The little finger, representing SMEs that play a role in business actors, taxpayers and the opening of labor.

Empowerment through Five Finger Philosophy is expected to solve the problems faced by Micro Small and Medium Enterprises (MSMEs), need an effort to create for Micro Small and Medium Enterprises (MSMEs) continue to move to scale increased above it that is by giving birth various economic development program directed at the target Village with SMEs and BUMDES (Village Owned Enterprises) through the use of village funds in the form into village regulations. It is expected that through the establishment of this village regulation will provide legality and strengthening to MSMEs and BUMDES to continue to exist and create superior products of quality and competitiveness in accordance with the Stipulation of Village Fund Usage Fund Year 2017 Article 4 paragraph (3) the regulation of ministry of disadvantaged villages and transmigration No. 22 of 2016 on Determination Priority of Village Fund Usage in 2017 stated that the programs and activities of the Priority of the use of the Village funds are prioritized to finance the implementation of programs and activities that are cross-field, especially the field of BUMDesa or BUMDesa joint activities, embung, superior product village or rural areas and sports facilities Village.
Furthermore, in Article 9 the regulation of ministry of disadvantaged villages and transmigration No. 4 of 2017 states that the mechanism of prioritizing the use of village funds is part of village development planning that is not separate from the priorities of national development. Village funds are managed in an orderly manner, obedient to the provisions of legislation, efficient, economical, effective, transparent and accountable with due regard to the sense of justice and propriety and prioritize the interests of local communities.

Village regulations are chosen because village regulations constitute one part of legislation so as to provide strong binding power to safeguard and empower MSMEs and BUMDes. The village regulation may contain: a) The name and type of MSMEs; b) Amount of Funds; c). forms of activity; d). shape and type of production, and others. So that the empowerment of MSMEs in the midst of globalization and high competition make MSMEs must be able to face global challenge, such as improving product and service innovation, human resource development and technology, and expansion of marketing area. This needs to be done to increase the selling value of MSME itself, especially in order to compete with foreign products that are increasingly flooding the manufacturing and manufacturing centers in Indonesia, given the SMEs is the economic sector that is able to absorb the largest workforce in Indonesia.

4. Conclusion

Micro, Small and Medium Enterprises (MSMEs) have the important position in the development of the economy of Indonesia. Therefore, SMEs need serious attention from the government not only the central government but to the village government. Villages as autonomous entities have a very strategic position in the development of SMEs, therefore these two things must be collaborated with mature which will ultimately be able to contribute greatly to the economy of Indonesia and improve the welfare of villagers. One of the efforts presented is to legalize the empowerment of MSMEs and Bumdes through village regulations. Village regulations are an option

considering that villages have village allocation funds which in fact are not absorbed maximally because the village only focuses on rural infrastructure development rather than on rural community economic development. The village regulations may contain a) the names and types of MSMEs; b) Amount of Funds; c). forms of activity; d). shape and type of production, and others. So in the end this model and effort will be able to empower and improve not only the economy of the society of the village but also the economy of Indonesia.

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The Importance of Development Planning in Land Acquisition for Public Interest Based on Land Saving Model Regulation

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Abstract

Land acquisition for public interest is a process that must be done by the government and local government in realizing the development of infrastructure that will support the economic growth and competitiveness of the nation. However, in practice there is a conflict of interest between the rightful party (landowner), the community with the government and the local government due to many factors which one of them is related to the non-establishment of development planning, as in the issuance of permits for housing construction around the airport that disserve residents of the housing. By using the doctrinal method and the concept of pengayoman and progressive law and also thickest version rule of law theory from Tamanaha, this paper offers land acquisition regulation for public interest based on land saving model which is based on the establishment of development planning system. Land saving model will be a saving of land owned by the government/local government in line with the development planning document to simplify the process of land acquisition for public interest. Development planning system which includes: long and medium term development planning and institution work planning have an important role in the actualization of this land saving model, because the development planning program that has been arranged in a steady, synchronous and harmonic at the national level to the district will be the basis of land acquisition with this model. Through an established and sustainable development planning, the land acquisition process becomes easier and better directed to minimize the conflict and ultimately leads to development process that sustainable and oriented people's welfare.

Keywords: *land, acquisition, planning, development, regulation.*

1. Introduction

Development carried out by the state is basically done for the benefit of the nation with the greatest benefit to the welfare of the people. Development has a variety of forms and types, one of which is the development to meet the public good or for public interests (public purpose). [1] The development of this model is basically done to accelerate the process of economic development.

The acceleration of economic development is an important issue that is a priority policy of the governments of countries in the world. With good economic development, a country will be able to demonstrate the existence and improve position bargaining against another country. Vice versa, the unstable economic development and slow would reduce the bargaining position of a country in the world. The dynamics of the world economy in recent years shows the progress of its own for the

[1] *Tim Penyusun, Naskah Akademik Undang-Undang Nomor 2 Tahun 2012 tentang Pengadaan Tanah Bagi Pembangunan Untuk Kepentingan Umum* (Academic Manuscripts Act No. 2 of 2012 on Land acquisition for Development for Public Interest), DPR-RI, Jakarta, 2010, P 1.

region. The emergence of China and India as new countries have good economic growth, so that the starting position is calculated as an influential country in the world. China and India have managed to build the acceleration of the economy with appropriate policies related to utilization of comparative resource (natural resources) and competitive resources (human resources). Indonesia as a sovereign country should also be able to overtake China and India in the context of building a significant economic acceleration. [2]

The advantage of Indonesia's resources to accelerate the process of economic development requires adequate infrastructure as its ingredients, in this context development is done by building a specific infrastructure aimed for the public interest. Infrastructure development for the public interest requires land as a place to be used for development, so it will be related to the mechanism of land acquisition for the public interest. [3]

Public land acquisition will be related to the development of the economic sector in a broad sense which of course the private sector also contributes to the expansion of its business. The private parties have an interest in the land acquisition because in reality they are in desperate need of infrastructure development such as roads, ports, airports and so forth both in terms of investment and utilization. In addition to the interests of the government and the private sector, the wider community's interest in infrastructure development to facilitate life is also in the land acquisition process. However, other interests that should not be forgotten are the interests of those whose land is used (direct affected) and those affected (indirect affected) in infrastructure development for the public interest.

Although public land acquisition is currently designed to support economic growth and the nation's competitiveness. However, in the implementation there is a conflict of interest and conflict between the direct affected people, the community and the government and the local government, even give the negative impact to indirect affected due to many factors, one of which is related to the non-establishment of development planning documents. For example, airport expansion is linked to development planning aspects and residential development permit around it. Based on several studies conducted, the noise level of airport activity has caused various problems, ranging from decreased hearing levels to rising blood pressure of residents in the area around the airport. Some of the research that has been done and proved the problem are: [4]

1. Research in Neglasari and Selapang Jaya urban areas Tangerang, Banten, around Soekarno Hatta Airport. The number of respondents 150 people, from the results of the study known only 12 people (8%) respondents who did not experience communication disorders, the rest as many as 138 people (92%) have communication problems. [5]
2. Research conducted around Ahmad Yani Airport Semarang with the number of respondents 50 people. The result of the research shows the residential area around the Airport like Cakrawala II housing (56,58 dBA), Puspogiwang (56,77 dBA), Graha Padma I (65,87 dBA) and Graha Padma II (64,36 dBA) The quality standard threshold (55 dBA / Minister of Envoronmental Decision No. 48 of 1996 on Noise Level Standards). Respondents The population around the airport influence the noise on the health of the body is generally hard to sleep the percentage (60%), followed by

[2] Ade Arif Firmansyah et all, Land Acquisition In Accelerating And Expansion Of Indonesia's Economic Development Program: A Review Of Law, Moral And Politic Relations, South East Asia Journal of Contemporary Business, Economics and Law, Vol. 7, Issue 4 August 2015, ISSN 2289-1560, P.18.

[3] Ade Arif Firmansyah, Legal Protection Pattern of Indonesia's Land Acquisition Regulation: Towards The Thickest Version Rule Of Law, International Journal of Business, Economics and Law, Volume V Issue 4 December 2014, ISSN 2289-1552, P. 142.

[4] Ade Arif Firmansyah et all, Law Design Of Institutions Coordination As An Efforts To Harmonize Policy Housing Development Around The Airport In Indonesia, South East Asia Journal of Contemporary Business, Economics and Law, Vol. 11, Issue 4 December 2016, ISSN 2289-1560, P.52-53.

[5] Arif Maskur, *Persepsi Masyarakat Mengenai Gangguan Non Auditory Terhadap Tingkat Kebisingan Di Kawasan Pemukiman Sekitar Bandara Internasional Soekarno-Hatta Pada Tahun 2012*, (Public Perception Regarding Non Auditory Disorder to Noise Level in Settlement Area Around Soekarno-Hatta International Airport In 2012) Thesis, Faculty of Public Health, University of Indonesia, 2012. P. 94.

not able to sleep the percentage (18%), less hearing the percentage only (14%) do not use any tool percentage (100%), causing disturbed comfort. [6]

3. Research in the area around Ahmad Yani Airport Semarang, which is located in Cakrawala Housing (± 1000m) and Semarang Indah Housing (± 5000m). Total of respondents as a sample of 60 taken randomly. The noise measurements show that the Cakrawala housing has noise exposure above the noise level (NAB) level of 69 dBA (NAB 55dBA), while the Semarang Indah Housing has exposure noise below the NAB of 51 dBA. These results indicate that exposure to noise affects blood pressure (p = 0.00). The increase of respondent's blood pressure at Cakrawala Housing has higher percentage that is 83,3% for cystole blood pressure increase and 59,9% for diastole blood pressure increase compared with Semarang Indah Housing with percentage 69,9% for systole blood pressure increase and 49, 9% for increased diastolic blood pressure. Exposure to chronic noise due to flight activity has a significant effect on blood pressure. [7]

The reality of the problems that arise above is due to the absence of harmonization between the development planning aspect and the unstable model of land acquisition regulation for public interest which is currently in effect. This paper will further describe the importance of development planning document in the land saving model regulation offered as a solution in realizing the land acquisition for the public interest that is more friendly and minimize the conflict that synchronized with development planning document.

2. Research Method

This research is done by corridor of doctrinal research which only use secondary data. The legal research model is a comprehensive and analytical study of primary legal materials and secondary legal materials. The problem approach uses a statutory approach and a conceptual approach. [8] The data were analyzed qualitatively by describing the data generated from the research into the form of explanation systematically so as to obtain a clear picture of the problem under study, the results of data analysis then concluded deductively.

3. Result and Discussion

The provision of the right to control of the state based on Article 33 paragraph (3) 1945 Indonesian Constitution underlies the philosophical side of the land acquisition for the public interest, [9] as its juridical side refers to Article 18 of the UUPA whose contents "For the public interest, including the interests of the nation and the State and the common interest of the people, land rights may be revoked, Compensate appropriately and in a manner regulated by law. "

Basically Land acquisition for public use can be done in three ways; First, land acquisition for public interests can be done by applying for the revocation of land title to the president. The provisions on the revocation of land rights are regulated in Law Number 20 of 1961 concerning the Revocation of Land and Property Rights Above, Government Regulation Number 39 of 1973 concerning the Stipulation of Indemnification by the Court of Appeal in relation to the Revocation of

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[6] Mochamad Chaeran, *Kajian Kebisingan Akibat Aktifitas Di Bandara: Studi Kasus Bandara Ahmad Yani Semarang* (Assessment of Noise Due to Airport Activities: Case Study of Ahmad Yani Airport Semarang), Thesis, Magister of Environmental Science Diponegoro University, 2008, P. 69.

[7] Hani Afita, Poerwito dan Muhtarom, *Pengaruh Paparan Bising Menahun dari Aktivitas Penerbangan terhadap Tekanan Darah Studi Kasus: Kawasan Sekitar Bandar Udara Internasional Ahmad Yani Semarang* (The Influence of Noise Exposure from Flight Activities to Blood Pressure Case Study: Area Around Ahmad Yani International Airport Semarang), Journal of Medika Science, Vol. 5, No. 2, July-December 2013. P. 94.

[8] Peter Mahmud, *Penelitian Hukum* (Legal Research), Kencana Prenada, Jakarta, 2005, P xx.

[9] Since the Dutch colonial era in Indonesia, has been known the existence of public land procurement efforts that can be done by the Dutch colonial government. When it was known there was a procedure of revocation of rights and procedures for the separation of land rights separately. Moh. Mahfud MD, *Membangun Politik Hukum, Menegakkan Konstitusi* (Building Political Law, Upholding the Constitution), RajaGrafindo Persada, Jakarta, 2010, P. 252.

Land and Property Rights Objects Above, and Presidential Instruction No. 9 of 1973 on Guidelines for the Implementation of the Revocation of Land and Property Rights Above. Second, land acquisition for public interest can also be done by releasing land rights. The disposal of land rights is regulated in Law Number 2 Year 2012 on Land acquisition for Development for Public Interest whose implementation still refers to Presidential Regulation Number 36 Year 2005 on Land acquisition for Development Implementation for Public Interest and Presidential Regulation 65 Year 2006 regarding the Amendment Presidential Regulation No. 36/2005 on Land acquisition for the Implementation of Development for Public Interest, and Regulation of Head of National Land Agency 3 Year 2007 concerning Implementation of Presidential Regulation Number 36 Year 2005 concerning Land acquisition for Development Implementation for Public Interest as has been amended by Presidential Decree Number 65 Year 2006 concerning Amendment to Presidential Regulation No. 36/2005 concerning Land acquisition for the Implementation of Development for Public Interest. Third, the land acquisition for public interests can also be done by means of sale and purchase, exchange or other means agreed by both parties, provided that the required land area is not more than five hectare. [10] How to release land rights as regulated in Law no. 2 of 2012 tends to be more respectful of community's right to land than to the revocation of land rights. [11] However, public land acquisition is still a process in which there are mutually exclusive interests.

The intersection is evidenced by the large number of land cases. During the New Order period until 2001, there were 1,753 cases. Then in 2007 increased to as many as 2810 cases. [12] Data from BPN up to September 2013, the number of land cases reached 4,223 cases (land cases in general). The number of completed cases reached 2,014 cases spread across 33 provinces throughout Indonesia. This condition arises because the substantive regulation of land acquisition for the public interest is partial and the need of land acquisition is incidental so it is prone to conflict, so the character of the regulation needs to be improved to realize the legal condition which is really inherent to the needs of society.

Nonet and Selznick[13] distinguish three basic modalities or "statements" concerning law and society: (1) law as servant of repressive power; (2) law as a separate institution capable of taming repression and protecting its integrity, and (3) law as facilitator of various responses to social needs and aspirations. The position of land acquisition regulation for public interest is currently at an autonomous level (as a separate institution capable of defusing repression and protecting its integrity) so that its legal substance needs to be upgraded in a more substantive sense of direction or rule of law. One such effort is by using land saving model regulation that is close to the nuance of the rule of law or substantive rule of law.

In relation to the rule of law, Hawke & Parpworth quotes Albert Von Dicey as expressing the content of the rule of law ie equality before the law, which essentially the actions of the government must be based on the law. The Rule of Law requires the recognition of the predominance of the regular law (as opposed to arbitrary or wide discretionary powers), equality before the law and that the British constitution is the product of the ordinary law. In essence, therefore, the Rule of Law requires that there should be government according to law and an avoidance of arbitrary action.[14]

Dicey's statement above, then elaborated by Tamanaha which divides the state of law revolves around three clusters of meaning: first, that the government is limited by law; Second, the

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[10] Ade Arif Firmansyah, *Pembaharuan Substansi Hukum Pengadaan Tanah yang Berkeadilan* (Renewal of Land acquisition Substance that Bring Justice), Kanun Jurnal Ilmu Hukum, No. 63, Th. XVI, August, 2014, P 330-331.

[11] Op, Cit, Ade Arif Firmansyah, Legal Protection Pattern..... P. 148.

[12] Yanto Sufriadi, *Penyebab Sengketa Pengadaan Tanah untuk Kepentingan Umum Studi Kasus Sengketa Pengadaan Tanah untuk Kepentingan Umum di Bengkulu* (Cause of Land Acquisition Dispute for Public Interest Case Study of Land acquisition Dispute for Public Interest in Bengkulu), Jurnal Hukum No. 1 Vol. 18 Januari 2011, P 44.

[13] Philippe Nonet dan Philip Selznick, *Hukum Responsif*, translation from: Law and Society in Transition: Toward Responsive Law, Harper & Row, 1978. Translated by Raisul Muttaqien, Nusamedia, Bandung, 2008, P 18.

[14] Neil Hawke & Neil Parpworth, Introduction to Administrative Law, Cavendish Publishing (UK), London, 1998, P. 2.

legal state is legally understood; Third, rule-based arrangements, not people (rule of man). [15] Furthermore Tamanaha divides the rule of law into "the thinnest" which is a formal version of the rule of law and "the thickest" which is a substantive version of the rule of law. The thinnest formal version of the rule of law is the notion that law is the means by which the state conducts its affairs, "that whatever a government does, it should do through laws.[16] 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."[17]

In line with the concept of The thickest substantive versions of the rule of law above, the current regulation of land acquisition for the public interest must move from a view to bringing about a shelter for society and its formation must be interpreted progressively for the benefit of the people. According to Arief Sidharta, Pancasila as a legal goal to manifest pengayoman, [18] to protect people passively by preventing arbitrary acts, and actively by creating a human condition that allows human society to take place fairly so that every human being gets the opportunity broad and equal to develop the full potential of his humanity. [19]

Likewise with the idea of progressive law, according to Satjipto Rahardjo[20] the idea of progressive law starts from the basic philosophical assumption that law is for man, not vice versa. Thus the existence of law is to serve and protect human beings, not the other way around. Law is regarded as an institution aimed at bringing people to a just, prosperous and happy life. Progressive law embraces a pro-justice legal ideology and a pro-people law. [21] The progressive legal character that requires the presence of law is associated with empowerment as its social goal, causing progressive law also close to the social engineering of Roscoe Pound. [22]

One such effort is by using land saving model regulation that is close to the nuance of pengayoman or substantive rule of law. Land saving regulation model can be realized by harmonizing development planning with the regulation of land acquisition for public interest. The development planning documents must be harmonized as presented in table one below.

Table 1. Form and Kind of Development Planning Document

No	Development Planning	Legal Form
1.	Long and Medium Term National Development Planning	Act
2.	Long and Medium Term Province	Province Local Regulation

[15] Satjipto Rahardjo, *Negara Hukum Yang Membahagiakan Rakyatnya* (Rule of Law that Bring Happines to the People), Genta Publishing-cet 2, Yogyakarta, 2009, P. 87-88.

[16] Brian Z. Tamanaha, On The Rule of Law, Cambridge University Press, The Edinburgh Building, 2004, P. 92.

[17] Ibid, P. 112.

[18] The word pengayoman was first introduced in the field of law by Sahardjo. According to Daniel S. Lev, in 1960 Sahardjo was replaced the blindfolded lady with scales by a stylized Banyan tree as Indonesia's symbol of justice, that inscribed with the Javanese word Pengajoman-protection and succor. It also represented a quickening of the process of transformation of the heritage of Dutch colonial law into Indonesian law. Daniel S. Lev, The Lady and the Banyan Tree: Civil-Law Change in Indonesia, The American Journal of Comparative Law, Vol. 14. No. 2 (spring, 1965). P. 282.

[19] Bernard Arief Sidharta, *Ilmu Hukum Indonesia, Upaya Pengembangan Ilmu Hukum Sistematik Yang Responsif Terhadap Perubahan Masyarakat* (Indonesian Jurisprudence, Efforts of Systematic Jurisprudence Development Responsive towards Community Change), Genta Publishing, Yogyakarta, 2013. P. 105.

[20] The idea of progressive law first appeared in 2002 through an article written by Satjipto Rahardjo on the Kompas newspaper entitled "Indonesia Requires Progressive Law Enforcement, June 15, 2002.

[21] Satjipto Rahardjo, *Hukum Progresif sebuah Sintesa Hukum Indonesia* (Progressive Law of an Indonesian Law Synthesis), Genta Publishing, Yogyakarta, 2009. P 6.

[22] Roscoe Pound dalam dalam Bernard L. Tanya et all, *Teori Hukum Strategi Tertib Manusia Lintas Ruang dan Generasi* (The Law Theory of People's Ordered Strategy across Space and Generation), Declare that to achieve justice it is necessary to do progressive step, that is function of law to arrange change, Genta Publishing, Yogyakarta, 2010, P 155.

	Development planning	
3.	Long and Medium Term Regency/City Development Planning	Regency/City Local Regulation
4.	Institutional Work Planning	Various Form, Head of Institutions Regulation and Decision

By harmonizing these development planning documents, as a basis of land saving regulation model will make the land acquisition process for the public interest better. However, there is one more thing to be done in the context of the policy regulation by placing it in a special chapter on public acquisition arrangements with due regard to the processes and mechanisms for the establishment of good legislation as legitimate legal norms.

According to Adolf Merkl, whose opinion is referred to by Maria Farida Indrati Soeprapto and Ni'matul Huda, suggests that a legal norm always has two faces (*das doppelte Rechtsantlizt*). A legal norm upon which it originates is based on the above norms, but below it becomes the basis and becomes the source for the underlying legal norms, so that a legal norm has a relatively valid period (*rechtskracht*) due to the validity of a norm The law depends on the legal norms above it.[23]

The above opinion is made clear by Hans Kelsen, according to which the law is valid if it is made by the institution or authority authorized to form it and based on higher norms so that in this case the inferior norm can be formed by the higher norm (Superior), and the law is tiered and multi-layered to form a hierarchy, in which a lower norm applies, is sourced, and based on higher norms.[24] In addition to dwelling on the side of validity as referred to Kelsen above, the legal norms/legislation in its formation must pay attention to various aspects and principles. According to Van der Vlies, it generally distinguishes two categories of principles of formation of appropriate legislation (*algemene beginselen van behoorlijk regelgeving*), the formal and material principles.[25] Regulation Land acquisition for public interest as one type of legislation in its formation also did not escape from the formal and the material principle.

According to Jimly Asshiddiqie, [26] the establishment of a good rule must be based on the philosophical, sociological, juridical, political and administrative aspects and its validity must also be reflected philosophically, sociologically, juridically and politically. Philosophically, the formulation of Land Acquisition Regulations for public interests should refer to the ideals of Pancasila law.[27] Sociologically, the Regulation of Land acquisition for the public interest is said to have a sociological basis if its provisions are in accordance with the general belief or legal awareness of the community. This is in line with the flow of Sociological Jurisprudence which views the law as something that

[23] Maria Farida Indrati Soeprapto, *Ilmu Perundang-Undangan Jenis, Fungsi dan Materi Muatan* (Legislation: Type, Function and Content), Kanisius, Yogyakarta, 2007, P 23. Lihat juga Ni'matul Huda dan R. Nazriyah, *Teori & Pengujian Peraturan Perundang-Undangan* (Theory & Testing of Legislation), Nusa Media, Bandung, 2011, P 25-26.

[24] Hans Kelsen, General Theory of Law and State, Russel & Russel, New York, 1973, P 112-115.

[25] I.C. Van der Vlies, Handboek Wetgeving *Buku Pegangan Perancang Peraturan Perundang-Undangan* (Handbook of Legal Drafting), Dirjen Peraturan Perundang-Undangan DEPKUMHAM RI, Jakarta, 2007. P 258-303. Lihat juga Attamimi, A. Hamid S. *Peranan Keputusan Presiden Republik Indonesia Dalam Penyelenggaraan Pemerintahan Negara* (The Role of Presidential Decree of the Republic of Indonesia in the Implementation of State Administration), Postgraduate Faculty University of Indonesia, 1990, dan Maria Farida Indrati S. *Ilmu Perundang-undangan: Proses dan Teknik Pembentukannya* (Legislation: Process and Technique of Formation). Jilid 2. Yogyakarta: Kanisius, 2007.

[26] Jimly Asshiddiqie. *Perihal Undang-Undang* (About the Law), Jakarta: Konstitusi Press, 2006, P. 243-244.

[27] Arief Sidharta explains that the ideology of Pancasila, rooted in the Pancasila view of life, will in itself reflect the objectives of the basic values and values which are formally included in the preamble, especially in the five basic formulas of state philosophy, and elaborated further in the articles of the Body The 1945 Constitution. The purpose of the state is realized by the administration of government by the government to prosper the people. B. Arief Sidharta. Ilmu Hukum Indonesia (Indonesian Jurisprudence). Bandung: Fakultas Hukum Universitas Katolik Parahyangan, 2010, P. 85.

grows in the midst of its own people, which changes according to the development of time, space and nation, on this matter Mochtar Kusumaatmadja[28] puts it, as follows: "Good law is law according to The living law in society, which is either appropriate or reflective of the values prevailing in that society ".

According to Syaukani and Thohari[29], if the law is built on a foundation that is inconsistent with the spiritual structure of society, it is certain that community resistance to the law will be very strong. Hart[30] argues that the existence of a legal system is a social phenomenon that always presents two aspects, which we must note in order for our review of it to be realistic.

Based on the above description, the land saving model regulation close to the nuance of pengayoman and substantive rule of law is realized by harmonizing development planning and by integrating it in land acquisition regulation for public interests using good legislation corridor as presented in the following figure.

Figure 1. Development Planning Document Position in Land Saving Model Regulation

4. Conclusion

The Importance of Development planning in land saving model regulation based on the concept of pengayoman and progressive law and also the thickest version rule of law theory, so that its elements must consider the welfare of society in the context of its philosophy. Development planning system which includes: long and medium term development planning and Institution work planning have an important role in the actualization of this land saving model, because the development planning program that has been arranged in a steady, synchronous and harmonic at the national level to the district level will be the basis of this land acquisition model. Through an established and sustainable development planning, the land acquisition process becomes easier and better directed to minimize the conflict and ultimately leads to development process that sustainable and oriented people's welfare.

[28] Mochtar Kusumaatmadja, *Hukum, Masyarakat dan Pembinaan Hukum Nasional* (Law, Society and National Legal Development), Binacipta, Bandung, 1986, P. 5.

[29] Imam Syaukani dan Ahsin Thohari, *Dasar-Dasar Politik Hukum* (Basics of Political Law). Jakarta: Raja Grafindo Persada. 2008, P. 25.

[30] H.L.A. Hart. *Konsep Hukum* (The Concept Of Law). Bandung: Nusamedia, 2009, P. 311.

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Representation of Subject's Identity in Mixed Marriage Through Cybermedia
(Semiotic Analysis of "Nasib Saya Kawin Campur" and "Nikah Sama Lokal" Videos on Sacha Stevenson's YouTube Account)

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Abstract

Communication using text as a medium, as in cybermedia, will affect how one communicates his identity to virtual life. YouTube vlogger who is the subject of mixed marriage can represent their identity as a couple with cultural differences through their uploaded videos. This research aims to find out how the identity representation of the subject in the cybermedia through Sacha Stevenson's YouTube vlogs entitled "Nasib Saya Kawin Campur" and "Nikah Sama Lokal". This research applies Saussure's semiotics theory as its methods. This research found that in cybermedia, their identities are represented as individuals who are easily conflict due to cultural differences. However, the identity of the mixed marriage subject in cybermedia is not entirely real. Subject can reconstruct their identity and play different characters despite their original character. Representation of identity is only used as an interesting approach for commercial use.

Keywords: *Identity; Cybermedia; Mixed Marriage; Representation;*

1. Introduction

YouTube was officially launched in December 2005. It immediately attracted a huge number of users and was described as "the most popular online video community in the world" (Wasko & Erickson, 2009). With the slogan Broadcast Yourself and its success, YouTube as a video-sharing website has been built on the desire for users to express themselves within a public medium (Jarett, 2008) — to engage in what Castells (2007) calls 'mass self-communication'. This website not only allows users to share updates and to find friends, but also allows them to create original content and upload it freely. It allows users to connect, share original content, and collaborate on that content in video form which was something other website before were unable to do successfully (Head, 2015).

Along with the development of YouTube, there have been some changes on the site, such as advertising issues. At the beginning of its appearance, YouTube founders made a decision not to include advertising into the site (Wasko & Erickson, 2009). Later, after Google Inc. announced that it had reached an agreement to acquire YouTube in October 2006 (Kim, 2012), YouTube began to display ads on its website. If YouTube on pre-Google era characterized by an amateur video produced in an ad-free environment, the stage of post-Google characterized by professionally generated videos in an ad-friendly environment (Kim, 2012). Indeed, what the media industry wants is for YouTube to provide an ad-friendly media environment that links content and advertisements smoothly (Kim, 2016: 59).

Advertising on YouTube not only provides benefits to advertisers but also to content creator and consumer (Head, 2015). However, as in the old media (television, radio, newspapers), advertisers will not pay to finance a program unless they are sure it will attract viewers' attention (Farchy, 2009). Almost similar to television show that require high rating, YouTube videos need a large number of viewers to be sure that advertisers want to advertise on their videos. Thus, the creators attempt to

create the video's content in any way to attract viewers. Videos are produced through maximized planning, recording, and editing process so as to produce attractive videos.

Lately vlog (video blog) has become the most popular expression on the YouTube site. Vlog itself is blog that contains the video postings. Based on the Burgess & Green (2009) study, channels on the Most Subscribed list show that, although vlogs are based on ordinary creative practice, not all of them are amateur productions solely as a form of self-expression. Vlog which is a form of user generated content increasingly bring creative idea of its creator to attract viewer attention. In fact, well-known vloggers actually using YouTube in an entrepreneurial way (Burgess & Green, 2009). Currently, YouTube can be a profitable business if it is seriously executed. Well-known vloggers deliberately created interesting video content to get a large number of viewers. By being a vlogger, someone who originally was nobody, now made his life interesting to watch, his words interesting to be heard and trusted. Moreover, some subscribers can feel it important to know about the vlogger's updated life.

By sharing their thoughts through vlogs on YouTube, vloggers can display their identity on the viewers' gadget screens. As Jarret (2008) puts it, the key feature of YouTube that is represented by its slogan, Broadcast Yourself, is involvement in regimes of identity production and reproduction. Along with technological developments, the issue of identity has changed over time. In traditional societies, one's identity was fixed, solid, and stable where the identity was a function of predefined social roles and a traditional system of myths. In premodern societies, individuals did not undergo identity crises, or radically modify their identity. One gained his identity through his roles and functions. Then, in modernity, identity becomes more mobile, multiple, personal, self-reflexive, and subject to change and innovation. One can choose and make—and then remake—one's identity as one's life-possibilities change and expand or contract (Kellner, 2003). Then, what happens now is that someone can even form a new identity in cybermedia which completely different from the original identity without being noticed by others.

The uniqueness that cybermedia offers, like YouTube, is anyone can be whoever they want. According to Griffith & Papacharissi (2009), now cyberspace has formed a new space where individuals can reconstruct their identity and play different characters from their original character. In cyberspace, no one can ensure that the individual identity that is read in the online text is a complete identity or portrayal in real life (Nasrullah, 2016). In other words, any information in cyberspace is not completely trustworthy. Someone could manipulate an information and his identity depends on their goals and YouTube became a cybermedia that lately used to show identity.

The YouTube channels owned by Indonesian women vloggers are now dominated by fashion and beauty themed videos. Instead of showing fashion and beauty themed videos like any other vloggers, Sacha Stevenson, Indonesian vlogger who came from Canada, prefers to feature a different theme. She used YouTube as a medium to represent her identity as foreign who lived in Indonesia for years through her YouTube video series "How to act Indonesian." Then, after living her marriage with Angga who is an Indonesian man, she inspired to create a new video series, namely "Nasib Saya Nikah." It can be said that Sacha and Angga are mixed marriage subjects because they have different cultural backgrounds. What makes her newest video series unique is that unlike other vloggers who tend to share their experiences about fashion and beauty, Sacha tended to share the conflicts that exist in her marriage life as a mixed marriage subject. This "Nasib saya Nikah" series tells about the daily life of her mixed marriage with Angga where cultural differences they have often led to disputes which is illustrated by videos with a touch of comedy that she uploaded.

The uniqueness of Sacha's videos on her mixed marriage life makes author interested in conducting study that want to show how technological developments, such as the presence of YouTube, can be combined with intercultural issues, such as identity of mixed marriage subject (with a touch of comedy), and used for commercial purposes. In this paper, the author uses two videos from Sacha's YouTube channel to be researched, which are the "Nasib Saya Kawin Campur" video narrated by Angga and "Nikah Sama Lokal" video narrated by Sacha herself. Both videos are told from two different point of views and illustrate their difficulty of living their daily lives due to their different cultural backgrounds. Therefore, the author wanted to know how

the representation of the identity of mixed marriage subjects in cybermedia through both video. Representation also has a close connection with semiosis, the brain capacity to understand and produce signs (Danesi, 2012). Representation involves signs to represent an object behind it. Hence, in doing the representation, it takes knowledge of the signs and objects that want to be represented through the sign. This knowledge is needed to reduce errors in representing something. Therefore, the authors use Saussure's semiotic method which sees that language as a sign system in which each sign is composed of two parts, namely the signifier and signified.

2. Method

This study used a qualitative approach and an observation method, through semiotic analysis with cultural studies approach. The primary data source in this study were datas directly collected by author from the first source, Sacha Stevenson's YouTube channel and the author prefered to use "Nasib Saya Kawin Campur" and "Nikah Sama Lokal" videos in this study. Meanwhile, the secondary data sources are obtained from documentation and various literatures to support this research. Virtual documentation techniques and literature studies are used as data collection techniques. From the video that has been selected, the author focuses her research on the scenes that represent Sacha and Angga identities as the mixed marriage subjects. The selected scenes are then analysed using the Saussure's semiotic method which saw that language as a sign system in which each sign is composed of two parts, namely the signifier and signified. Signifier are forms of medium taken by a sign, such as a sound, image, or strokes that forms words on a page, while signified is the concept and meanings (Vera, 2014). Saussure's Semiotics is used to see the representation of the identity of mixed marriage subjects which would then be discussed in the study.

3. Result and discussion

The development of information communication technology brought a new space within the community, the cyber space that offered someone to show his identity in a different way than ever. Hence, the issue of identity had changed over time along with technological developments. Identities that were initially fixed and stable, were increasingly becoming more flexible, even able to be freely formed. As described by Kellner (2003), one could choose, make, then remake one's identity as one's life-possibilities change and expand. Indeed, the emergence of cybermedia simplified this process because anyone could freely show anything in the cybermedia, including his identity.

YouTube, as one of the popular cybermedia, allowed consumers to digitally construct and present the self beyond a regional setting to the virtual world (Chen, 2016). Participants in YouTube clearly did engage in new forms of 'publishing,' partly as a way to narrate and communicate their own cultural experiences (Burgess & Green, 2009), including those relating to identity. Vlog which had become the most popular expression on the Youtube, could be used to form identity of its creator (vlogger) in cybermedia.

The uniqueness that cybermedia offers, like Youtube, was anyone could be whoever they wanted. Every individual in the cybermedia had the unlimited ability to create who he is in the virtual space, and the results of that creation would later represent the individual in playing his role and interact on the internet (Nasrullah, 2016). Cybermedia provided the freedom for anyone, including the mixed marriage subject, to create of who they were and how they lived their marriage life with the different cultural backgrounds they had. They could freely express their relationships in cybermedia, whether their differences were portrayed as a source of conflict that broke or even strengthen their relationship, regardless of whether it was completely true or not.

3.1 Representation of mixed marriage subject's identity in cybermedia

In his book Representation: Cultural Representations and Signifying Practices, Stuart Hall (2003) said, "Representation connect meaning and language to culture… Representation is an essential part of the process by which meaning is produced and exchanged between member of culture." According to it, Ahmad (2009) elaborated that through representation, a meaning was produced and exchanged among community members. Thus, it could be said that the representation was one way to produce

meaning. Humans not only gave meaning to the object of inanimate objects or events that occur around him, but also give meaning to others. By giving meaning to others, it meant we gave existence to that person and acknowledge its existence. By doing this process, we were giving and determining the identity to that person. Therefore, the process of representation was closely related to identity and the process could be done through cybermedia, like YouTube, in vlog form. And just like any other vlogger, vlogger who was mixed marriage subject also can represent his identity through his vlog.

On the internet, basically communication and/or interaction that occured using the medium of text. This would directly affect how one communicated his or her identity to virtual life and each text became a kind of representative of every icon of self in personal appearance. (Nasrullah, 2016). Citing the research belonged to Colman et al., New Architectures for Social Networking: Bridging the Gap with freeFormed.Net, Jarrett (2008) wrote that the key principle of YouTube, both as a suite of technical affordances and as a cultural practice, was individual visibility. Each video indicated something about its creator, whether that was an affinity with a particular taste culture or information relating to his or her political orientation, religious beliefs, sense of humour or everyday leisure activities (Jarett, 2008). Every conversation, expression, and act of mixed marriage subjects on their vlog indicated themself: who they were, how they were, and how they communicated with each other.

Based on the scene that had been selected by the author, author found that the subjects of mixed marriage represented their identity as individuals who were easily conflict due to cultural differences. These conflicts were generally derived from their daily activities, related to their habits, their point of view, the way they communicate, and their resentment against the wrong stereotypes that had been developed. In his book The Presentation of Self in Everyday Life, Erving Goffman (1990) revealed that each individual was in fact doing construction on themselves by displaying self-performance. As vloggers who are the mixed marriage subjects, their also did the same thing, constructing themselves. They presented themselves as two people who often conflict because of different cultural backgrounds where it was also appropriate by the theory that had developed. As Mahendra (2013) explained that mixed marriages were vulnerable to conflict because there were relatively many differences that could easily lead to conflict, such as differences in cultural backgrounds between spouses with different ethnicities.

Cultural differences would generally affect the differences in habits as well. If it was not handled properly, it would lead to conflict among couples with the cultural differences because habits were closely related to daily life. Mixed marriage subjects were particularly vulnerable to conflicts due to these habitual issues. For example, as shown in Figure 1, there were many differences in the mixed marriage subjects. A wife, who came from America (Western), had a habit of using sandals in the house, while his partner, who came from Indonesia (Eastern), had a habit of removing sandals before entering the house. This makes the husband repeatedly reminded his wife to remove her sandals before entering the house. Another problem associated with habit was a bathroom related issues. Indonesians assumed that a good self-cleaning was by using lots of water. In contrast, Americans always kept their bathroom clean and dry.

In the “Nasib Saya Kawin Campur” video, it was shown that the Eastern husband stated that he was clean because of his bathing routine and washing his feet before going to bed, in contrast to his wife who refused to do so. The wife does not accept if her husband says she is disgusting just because she does not want to wash her feet before bed. She expressed her frustration by questioning her husband's habit of washing and rubbing his leg very strongly but washing his hands just with water in the finger bowl before eating and wipe it on his shirt.

Figure 1. Mixed marriage subject's habit differences

In a marriage at Indonesia, where the patriarchal values were strong, the husband held responsibility in educating his wife. With different backgrounds and views, it was difficult for an Eastern husband to educate his Western wife in mixed marriage, as could be seen in figure 2, the husband revealed that he felt disrespected as the head of the family. The Eastern husband expected his wife to be obedient, clean, good at cooking, and doing the shopping. But, the figure of his wife as depicted in the vlog series showed the opposite. It could be seen in Figure 2 that his wife expression depicted her frustration as her husband repeatedly reminded her of the same thing.

Figure 2. Point of view's differences

The husband who came from Indonesia has a habit of using local languages when he meet his fellow ethnic peers. Usually one use local languages to overcome the sense of homesickness and show cultural background similarity with fellow ethnic peer for better communication process. In figure 3,

the mixed marriage couple faced the situation where the husband met with his fellow ethnic peer. They both used Sundanese that the Western wife did not understand. The wife felt neglected in the conversation. She said that her husband and her friend were using a secret language.

Figure 3. The Eastern husband used Sundanese

Indonesians were known for their hospitality. This was one of the things a Western wife expected of her Eastern husband. For Sacha, Indonesians were sweet, cute, polite, and always smiling. However, in fact, after her marriage, her husband was not behaving sweetly towards her, it was different when she was talking to someone else. As shown in figure 4, er husband seemed indifferent and answered his wife's question concisely. When the wife questioned about his husband's indifference. Husband revealed that he was tired of doing small talk with everyone and he shouldn't have to do small talk at their home too. And in fact, the stereotype of Indonesian friendliness was not entirely true.

Figure 4. Husband attitude that does not fit the stereotype

The representation of daily life of mixed marriage subjects that have been described previously showed how they construct themselves and their relationship to the viewers. Nasrullah (2016) quoted Wood and Smith, “Identity is a complex construction for self, and socially related to how we think of ourselves And how do we expect the views or stigma of others towards us and how others perceive it.” A well-known vloggers usually have an established identity. The identity was formed along with how they describes themself through the videos they have uploaded. The mixed marriage subjects that uploads their video tried to construct how their marriage lives on a daily basis. Thus, subjects and viewers who watch the video will have the same perception of mixed marriage.

Goffman (1978) develops impression management to illustrate that in self-appearance, one often does something when performing his role in community to display an impression depending on “setting” and “audiences.” When someone does impression management, he will show the image that he wants consciously or not and hope that others will be impressed by what he has done (Nasrullah, 2016). Well-known vloggers knew how to choose what should they show, they usually already knew what their viewers are expected and liked. Their personal appearance

basically formed or to satisfy the desire of the audience or the social environment, not from the self, nor also created by the individual itself. So the identity that emerges is the depiction of what actually wants and to meet the needs of social recognition (Nasrullah, 2016). Therefore, they would display images that match the viewer's expectations.

3.2 Monetize identity of mixed marriage subject

The fact that changes related to advertising issues experienced by Youtube shows that, as a form of cybermedia, Youtube could offer other things which the old media did not have to advertisers. Bechmann & Lomborg (2013) said "The global reach of the internet still creates the potential of a mass audience across borders as the sum of specific targeted niche audiences or as an even larger international mass audience". Moreover, nowadays everyone is likely spending more time with his gadget than watching television and the growing number of Youtube viewers makes Youtube as a potential place to advertise." YouTube has become a platform not only for participatory culture but also for business (Head, 2015)

Currently content creator on Youtube not only could create content and upload it freely, but also could get benefit from advertisement. Head (2015) explained in order to get benefit from advertising on YouTube, creator must became a part of YouTube's Partnership Program. This program allowed creators to monetize content on YouTube through a variety of ways including advertisements, paid subscriptions, and merchandise. In addition to joining the Partner Program, Creators could take advantage of the variety of resources, features, and programs that YouTube provided to help them build their channel(s) and their audience. And because the monetization of content on YouTube was quite profitable, then more and more creators were becoming part of YouTube's Partnership Program.

Lately vlog (video blog) had become the most popular expression on the YouTube. Vlog was not just its creator's self-expression, but the content of the vlog nowadays was well-made in order to increase the number of viewers. YouTube had become a platform not only for participatory culture but also for business (Head, 2015) The opportunity to monetize the content was one of the triggers of the increasing number of vlog that was managed professionally by vlogger. In fact, well-known vloggers actually using YouTube in an entrepreneurial way (Burgess & Green, 2009). So, even though vlog was a form of user generated content, nowadays it looked very attractive because it had through maximized planning, recording, and editing process. However, even though everyone has the opportunity to create content, not all of them can monetize it. The viewer will always be interested in unique content. Therefore, creators strive the content of videos to attract viewers. Vlogger formed and showed their identity through vlogs by presenting content with an interesting theme, for example by displaying the identity as a mixed marriage subject.

Of the many Indonesian women vloggers featuring fashion and beauty themes, vlogger who displayed her life as a mixed marriage subject, such as Sacha, make her vlog became unique. The conflicts in her marriage life that were told with a touch of comedy were something that attract viewer interest. One thing to remember was that not all information that was displayed through cybermedia was completely true. According to Griffith & Papacharissi (2009), now cyberspace had formed a new space where individuals could reconstruct their identity and played different characters from their original character. In cyberspace, no one could ensure that the individual identity that was read in the online text was a complete identity or portrayal in real life (Nasrullah, 2016). In other words, someone could manipulate an information and his identity depends on their goals.

Anything expressed by the mixed marriage subject in the vlog did not fully describe their actual marriage life. What they show could be purely to entertain their viewers. As shown in figure 5, the husband declared that now he would accept his fate but if he married again, he thought he would choose someone from Garut (one of the districts in Indonesia). While his wife revealed if she get married again, she would probably still married an Indonesian but the one who couldn't talk (indicating that her husband was fussy). By watching this scene, no one could convince whether the Eastern husband would really marry someone from Garut and the Western wife would marry the one who can't talk. It could be just a comedic touch to attract viewers

Figure 5. Their opinion about their marriage

Development of internet technology provides the distinction of interaction in which individuals can hide their identity information and choose which nonverbal characteristic aspects that they want show (Nasrullah, 2016). Digital environments enable people to conceal aspects of their selves that they find undesirable (Chen, 2016). As a vloggers, mixed marriage subjects could show and hide any aspect in their marriage life, they could even act on something that had never happened before. Basically a well-known vloggers would upload the content according to the identity they have built, to meet the expectations of their viewers. For vloggers who deliberately created a vlog to monetize their identity, identity was only used as an attractive approach to trade. Thus, what the vlogger showed as the identity of a mixed marriage subject could be just to entertain the viewer and monetize it.

4. Conclusion

The identity of mixed marriage subject in the cybermedia was represented as individuals who were easily conflict due to cultural differences. Conflicts that occur were part of the subject's daily mixed marriage life. Conflict usually came from differences in habits, views, ways of communicating and the reality that didn't match his expectations. However, keep in mind that the identity of mixed marriage subjects in cybermedia may not necessarily display the actual subject's life as it was generally given other elements, such as comedy to attract viewers. In a well-known subject case, the represented identity was a result of creation to reinforce the pre-established identity and to satisfy the desire of their viewers in cybermedia. In addition, for vloggers who deliberately created a vlog to monetize their identity, the identity is only used as an attractive approach to trade.

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Legal Protection on Children's Rights from Blood Relations Marriage (Incest) in the Perspective of Constitutional Law

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Abstract

Incest is socially an illegitimate marriage, although according to the State Law and Islamic Law its remain unclear, which later became the rationale for the author to conduct this research. This research has these following subjects to be outlined : (1) The perspective of State Law on the protection of children's rights who was born within incest marriage, (2) The reasons of the society do the incest marriage, (3) Status or the position of the children who was born within incest marriage according to the Indonesian Civil Code, the Marriage Law and the Compilation of Islamic Law. This type of research is normative law research with descriptive legal research. The problem approach applied is the theoretical juridical approach where the data used is secondary data through qualitative data analyses. The results of this research show that : (1) The perspectives of State Law on the protection of the children's rights who was born within incest marriage explains that the state is obliged to protect the rights of the child as it is human rights and prevent non-discrimination in child, (2) The reasons people do the incest marriage are caused by poverty and lack of moral education and religious knowledge, and (3) The status or position of a child who was born within incest marriage under Indonesian Marriage Law is the illegitimate child as resulted from an unlawful marriage, unless the marriage is conducted due to a negligence so that the child can be considered as a legal child.

Keywords : *legal protection, children's rights, marriage incestuous, Islamic Law;*

1. Introduction

Marriage is an important event in human life because it has become the nature of every human being eager to find a partner who can be made friends in life and get affection from their partner. According to Khoiruddin Nasution[1] a marriage is done aiming to obtain the offspring (reproduction/regeneration). The marriage itself is legitimate if it is done by fulfilling all the pillars and requirements that have been established by the law of each religion and belief. This provision has also been contained in Article 2 Section 1 of Marriage Law No. 1 year 1974.

The importance of the meaning and the purpose of the marriage resulted in all things pertaining to marriage governed by State Law in detail and complete. In Article 8 of Marriage Law, Article 70 of the Compilation of Islamic Law hereinafter abbreviated as KHI and Article 30 of the Indonesian Civil Law have regulated the matters of marriage including terms, principles, objectives, restrictions, etc. However, the practice that occurs in today's society is still marriage which is done unsuitable/does not fulfill all the pillars and requirements that have been established by the law of state and religion, or in other words, the marriage was considered as an illegal marriage.

[1] Khoiruddin Nasution, 2004, Hukum Perkawinan I, Yogyakarta, ACADEMIA & TAZAFFA.

Basically, incest marriage when viewed from the process of occurrence can be distinguish into two. First, the incest is done through a marriage legally - according to the law - in the sense of marriage is performed between men and women who still have blood relations through a legal marriage because of negligence as in the real they have a marriage ban for a blood relationship. Second, incest is done illegally, in the sense that the biological relationship that occurs between the man and woman who still have the blood relation is done by violating the applicable legal provisions and done deliberately which could be in the form of coercion and threats.[2]

Incest marriages are often found in the community, as evidenced by the large number of mass media coverage such as electronic media, print media and also online news and articles. One of the cases that occurred about incest and exposed by the media in Indonesia is the case of the cancellation of incest marriage that occurred in Sidoarjo, East Java with the Verdict No. 978/Pdt.G/2011/Pa.Sda.[3] A pair of mother siblings namely Budi and Sarti (fake name) did marriage without notice by their family or their mother. This could be happened because a woman (Ms. X) as a biological mother of the husband and wife who do such incest marriage has a habit of alternating husbands. Having the habit of alternating couples as occurring in this case may bring a bad effect later on. It is possible that between the children of Ms.X, one day will meet each other and marry without knowing that they are married their own sibling. After hearing that her children get married, as the biological mother of Budi and Sarti, Ms. X appealed for the cancellation of marriage to the Religious Court of Sidoarjo and the judge gave the verdict that the incest marriage which done by Budi and Sarti was void because of the sibling relationship.

Children born from incest marriage in society are still considered as illegitimate children, resulting those children losing their rights. If a child lose his or her rights, it will cause the inconsistency with the Child Protection Act Article 1 Section 2 and 12, Article 14 Section 2 and also Article 21 Section 1 which stipulating that the right of the child must be protected as the part of the Human Rights. In addition, after the Constitutional Court Verdict No. 46/PUU/2010 which gave rise to the new provisions of Article 43 Section 1 of the Marriage Law which essentially explains that the children who was born outside the marriage (in the broad sense) are protected their rights by the state and still have the legal relationship with their father or his father's family. Thus, to avoid discrimination against children, it is very important to have the legal protection against the children who was born within the incest marriage.

The protection of the law in this case is refer to protect the legal rights of a person, especially against the rights of the children that they should get from their parents but they did not because of their status as illegitimate children in the front of law. This is the essential issue related to the life of the children in the future, both for themselves or even their families.

2. Research Methods

2.1 The Protection of Children Rights from Incest Marriage According to the State Law Post-Constitutional Court Decree No. 10/PUU/2010

Rights is the possession and there cling the individual or society interests which also recognized by *syara'*. Faced with the rights of a person, there is the obligation of others to respect it, such as the rights of the seller to have the price of the goods he sells, the wife's rights to the livelihood that is imposed on her husband, the rights of the child charged to his parents and so on.[4] Child is the mandate and the gift of the God Almighty, which we must always guard for inherent prestige, dignity and the rights as human beings that should be upheld. Children rights is the part of the human rights contained in the Constitution of the Republic of Indonesia 1945 and the United Nations Convention on the Rights of the Child. Here, parents, families and societies are responsible to maintain and to preserve these rights in accordance with the obligations imposed by law. Furthermore, in order to protect the

[2] M. Anshary, MK, 2014, Kedudukan Anak Dalam Prespektif Hukum Islam dan Hukum Nasional, Bandung, Mandar Maju.

[3] Direktorat Putusan Mahkamah Agung Republik Indonesia

[4] Ahmad Azhar Basyir, 2009, Asas-Asas Hukum Muamalat (Hukum Perdata Islam), Yogyakarta, UII Press.

children, the state and the government are responsible to provide facilities and accessibilities for children, especially in ensuring their growth and development in an optimal and directed manner. [5] Positive Law in Indonesia itself has regulated the Rights of the Child contained in the law such as Marriage Law No.1/1974, Child Protection Act, Child Walfare Act, Human Rights Law and the Ratification of the Convention on the Rights of the Child.

2.1.1 Marriage Law No.1 Year 1974

Rights and duties are two sides of a thing, such as rights and obligations between parents and children. In the Indonesian Marriage Law, there are provisions which regulate children's rights and the obligations of children to parents and vice versa. The provision contained within the Marriage Law Chapter X which regulated Parental and Children's Rights and Responsibilities on Article 45 Section 1 and 2 that states :

1) Both parents bear the responsibility for the sustenance and education of their children to the best of their ability.
2) The parental responsibility referred to in paragraph 1 of this article remains effective until the children marry or become independent, and continues being effective even though the marriage between the parents may have dissolved.

Moreover, Article 46 of Marriage Law has also regulated the obligation of the children to their parents of these following subjects :

1) Children shall honour their parents and obey their well-meant wishes.
2) On reaching adulthood, children shall to the best of their ability support their parents and relatives by consanguinity in the direct ascending line when they are in need of support.

Based on Article 45 of Marriage Law it can be concluded that the children have the right to education, to grow in accordance with their ability and talent, and also get the best care from both of their parents. Other than that, in relevance with the Article 47 of Marriage Law, before a child is 18 years of age or married, both parents are required to continue to provide guardianship for any matter, whether in legal acts or maintenance of the children, shall not be entirely negligent their obligation to their children.

2.1.2. Act No. 35/2014 Amendment to Act No.23/2002 on Child Protection

Aside from the Child Protection Act, there are already several others legislation at the national level intended to provide optimal protection for the children. In this regard, the Indonesian Child Protection Commission established under the Child Protection Act, hereinafter referred to as KPAI, is mandated to monitor all the matters related to child protection. In light of this mandate, the KPAI also has the duty and the authority to monitor the legal products circulating throughout Indonesia and provide as assessment of their conformity with the basic legal provisions on child protection and, certainly, reporting the results of such monitoring to the government, relevant parties and also to the wider communities.[6]

Children's rights under the Act No.35/2014 is a part of human rights that must be guaranteed, protected and fulfilled by parents, families, communities, state, government and local government and they are responsible for the protection of the rights of the child as mentioned in the articles in the Child Protection itself.

2.1.3. Act No.4/1979 on The Child Welfare

Children according to the Child Welfare Act Article 1 Section 2 is a person who is not yet 21 years old and unmarried /married. In society, there are children who experience barriers to spiritual, physical, social, and economic welfare because child care can not be carried out by the child himself. In an order to eliminate these obstacles, Act No. 4 of 1979 on Child Welfare has established later on. Moreover, the provisions on the Rights of the Child available in the Child Welfare Act are listed in Chapter II Article 2-8.

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[5] Abdi Koro, 2012, Perlindungan Anak di Bawah Umur dalam Perkawinan Usia Muda dan Perkawinan Sirri, Bandung, PT. Alumni.

[6] Abdi Koro, *Op. Cit*

According to the provisions of those articles, the rights of the child under the Child Welfare Act include the right of welfare, the right of care / nurture, the right of treatment to develop the capacity and social life, and shall be entitled to the maintenance and protection during / after in the womb. In principle, the provisions on the rights of children provided in act generally stated that the government, parents or local government shall be obligated to provide protection for the rights of the child, regardless of their legal status or social status (non-discrimination). Thus, children born within the incest marriage are legally entitled to their rights protected by the state.

2.1.4 Act No. 39 of 1999 on Human Rights (HAM)

Human Rights is a set of rights attached to the nature and the existence of human beings as creatures of God Almighty and is a gift that must be respected, upheld and protected by the state, law and government, and everyone for the honor and protection of human praise and dignity. In general, human rights include the right of life, the right of family and continuing the offspring, the right of self-development, the right of justice, the right of personal liberty, the right of security, the right of welfare, the right of participating in government, the right of women and the right of the child.

a) Every child has the right of protection from parents, society and the country even since womb.
b) Every child from their born to grown up has rights to live, obtain a name and citizenship status.
c) Non-discrimination in children who are physically or mentally retained receive the right of education, care, special training at the expense of the country, and to participate in society.
d) Every child shall have the right of worship according to his or her own religion, to think, to express, in accordance with intellectual level and cost under parental guardianship, be raised, be nurtured, be cared for, educated, directed, and guided by the parent or guardian's life until adulthood in accordance with the provisions of legislation.
e) Every child is entitled to legal protection from legal, immoral or child exploitation.

The rights of the child under the act on Human Rights are an integral right and must be protected by both parents, community, local government and country. It is based on the fact that children are also a part of human rights in order to be a good and growing generation of children, the rights of children need to be protected in the absence of discrimination in children.

2.1.5 Convention on the Rights of the Child

The Convention on the Rights of the Child (KHA) is an integral part of universal human rights instruments. It binds Indonesia politically and jurisdically on its participation since 1990. Therefore, although only ratified in the form of Presidential Decree No. 36 in 1990, the contents in it can not be recovered so severely, even by law or government regulation that the hierarchy really is above the presidential decree. There are temporary parties who proposed issues concerning the legal technical jurisdiction of the Indonesian legal system if it wishes to ratify some additional protocols from The Convention on the Rights of the Child which make the presidential decree on ratification can not be included in the recalling section of the "probable" of the ratification act to be made later.

The Convention on the Rights of the Child has four general principles which further illustrate the human rights of every child. These four general principles are:

a. Non-discrimination : means that all rights contained and acknowledged in The Convention on the Rights of the Child are applied to every child without distinction of any kind.
b. The best benefit for child : that all actions by the duty bearer, (all government agencies, execution, legislative or judicative, as well as the private sector and society as a whole) must be for the best beneft of the child as the main consideration.
c. Right to life, survival and development means that all parties must recognize that every child has an inherent right to life, and therefore must be ensured the maximum survival and development of the child both physically and mentally.

d. Appreciation for the child's opinion : means that the opinion of the child, especially when it concerns about things that effect his life, must be considered in any decision-making. It also means that the child is not an object that can be enforced in any will.

The Convention on the Rights of the Child should be a reference for all child's protection. Therefore, it has a very strong philosophical and juridical reasoning grounds, namely :

a. The right of the child is an integral part of human rights, so that The Convention on the Rights of the Child should be a media for the Indonesia to actively participate in international forums on broad discussion of human rights;
b. The fulfillment of the right of the child is an expression of the morality of the nation that sees the child as a human being who must be kept emancipated so that they can actively participate and become the part of the human race in determining their future as dignified human beings;
c. In facing the era of globalization, it is necessary to prepare the generation of the nation that is guaranteed its rights in order to have the ability and optimization of the development to promote the civilization of the world responsibly, through the creation of its right fulfillment standard to live, grow, participate and get the highest standard of natural protection health, education, social, economic, welfare and other matters necessary to ensure they become human.

2.1.6 Constitutional Court Verdict No. 46/PU-VIII/2010

Children's rights already adequately protected by the revision of Article 43 of the Marriage Law No.1/1974 through the verdict of the Constitutional Court No. 46/PU-VIII/2010 which states that :

"A child born out of wedlock has civil relations with its mother and the mother's relatives along with the man as its father who can be proved based on science and technology and/or other evidence which according to the law has blood relations, including civil relations with its father's family.

The revision of this Marriage Law not only guarantees the rights of the children who was born within the unregistered marriage but also guarantees the rights of the children who was born within the incest marriage.

3. The Causative Factors of The Incest Marriage in Society

There was an incest marriage case that occurred in Yogyakarta where an uncle married his nephew. This could be happened due to the fact that they were living in poverty which brought them to the lack of education and religion knowledge and furthermore lack of attention to the legal provisions apply. An uncle and his niece was originally married in the Office of Religious Affairs, hereinafter refer to KUA, of Tegalrejo, Yogyakarta. This marriage occurred because the bride's family is not aware of any prohibiton of marriage between the two and when KUA officer inquiried whether there was a connection of *mahram* between them, the two families said no. This incest marriage performed the cancellation by Yogyakarta Religious Court through the Verdict No. 216/Pdt.G/1996/PA.Yk.

4. Conclusion

To conclude, the children who was born within the incest marriage including the children from the unregistered marriage have been legally protected by the state in respect of their rights, particularly through the Marriage Law No.1/1974, the Act No. 35/2014 as the amendment of the Child Protection Act No.23/2002, Act No. 4/1979 on the Child Welfare, Act No.39/1999 on Human Rights, the Convention of the Rights of the Child and the Constituional Court Verdict No. 46/PU-VIII/2010. Factually, there is still an incest marriage conducted by the people in society which caused by poverty and lack of moral education and religious knowledge.

Unfortunately, the status or the position of the child from incest marriage according to the Indonesian Civil Code, the Marriage Law and the Compilation of Islamic Law is distinguished into two which are legitimate child and illegitimate child where the incest marriage, literally, is a marriage

that is prohibited and if it is done, then the marriage is not valid for good. So does with the status or the position of the child from that type of marriage becomes illegitimate. The relationship that occurs during that time considered as the act of adultery so that the child also considered as the adulterous child. However, the child from incest may become a legitimate child if both parents are unaware of a prohibited marriage or not knowing that they have blood relations.

Suggestion

It is important to remember that the problem of incest has occurred a lot among particular society or tribe which has been concerned by the society or state, therefore, the state should be more assertive in socializing the problem of incest by providing socialization into remote areas, especially the tribes in Indonesia who still consider that doing incest marriage is a common thing, by monitoring through institutions or agencies such as, the Ministry of Religious Affairs to explain / socialize about the prohibited in blood relations marriage and the effects that will arise when the marriage ensued.

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Representation of Speech Politeness Culture Through Social Media
(Semiotic Analysis of Hate Speech Indonesia Netizen toward President Jokowi in Cyberspace)

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Abstract

The hate speech phenomenon in social media shows the cultural identity changes in Indonesia. Politeness culture is one of Indonesian identity. The presence of social media has gradually replaced the values of politeness in speech. This research is aimed to analyze the representation of speech politeness culture through out social media accounts in Indonesia. This research method applies descriptive qualitative method, and Saussure's semiotic theory as its analytical method. The result show that the representation of changing cultural identity of the Indonesian nation is formed by the 'excessive' freedom of expression and combined with the social media, namely user generated content. This representation is expressed in hate speech through social media accounts. This hate speech contradicts the values of the Indonesian politeness culture in speech and is displayed creatively in the form of memes and writings to public figures, such as the President. These hate speech triggers a cultural conflict in the real world. Therefore cultural identity representation in social media represent not only illustrates cultural identity in cyberspace, but also cultural identity in the real world.

Keywords: *Culture Identity, Hate speech, Politeness Culture, Social Media, User Generated Content*

1. Introduction

The Act of Information and Electronic Transaction Number 11 of 2008 which has been amended with The Act Number 19 of 2016, doesn't sufficiently sense Indonesia's Network Citizens (*Netizens*) doubtful, apprehensive, and fearful dissemination of *Hate Speech* through Social Media. In fact, there were 671 cases reported regarding *hate speech* in 2015 and around 199 of them were prosecuted in 2016. According to Himawan Bayu Aji, The Chief of Sub Directorate of IT and Cyber Crime, Directorate of Criminal Investigation, Police of Republic Indonesia, aid that the most common motives of *Hate Speech* cases in cyber space, started with joke and fad, but unfortunately Indonesia's *netizens* do not realize that hate speech is one of criminal offenses, and *netizens* who produce and/or disseminate content of hate speech can be punished and arrested.

Indonesia's Government had issued The Assessment Letter of Chief of Indonesia Police Number SE/06/X/2015 concerning Hate Speech, released on 8 October 2015.This Assessment Letter is purposed to discipline people's behaviour on social media and to prosecute Hate Speech cases. In this Assessment Letter, the hate speech disseminators can be adjudicated with criminal penalty unless they cooperate with the police warning. The implementation of this assessment is adapted with Criminal Code (KUHP) amended to The Act of Number 11 of 2008 concerning on Electronic Transaction and Information, The Act of number 40 concerning on Discrimination Races and Ethnicities Rescission, The Act of Number 7 of 2012 concerning on Social Conflicts Adjudication, and the Regulation of the chief of police Indonesia Number 8 of 2013 concerning on Social Conflicts Adjudication Technic.

In this Announcement Letter, hate speech is defined as a criminal offense which is being regulated in KUHP and others., which includes defamation, unpleasant acts, provoke, instigate,

and hoax dissemination, and all of these have a purpose or impact to discriminatory acts, violence, disappearance of life, and/or social conflicts. Moreover, in the article (g) mentioned that hate speech aims to instigate, and incite hatred to individual or society groups which consist of diverse people in multiple aspects, such as ethnicities, races, religions, beliefs, genders, skin colours, people with disabilities and sexual orientations.

The social media is not only an effective and efficient channel to disseminate positive contents, but also negative contents, such as hate speech. According to the data from the Ministry of Communication and Information Technology of Indonesia, 800 thousand websites in Indonesia are considered as hoax and hate speech channels in 2016. This means that social media characteristics, especially the *user generated content*, which means that social media users have a power to produce and disseminate information to public and able to inform everything at any times, in a real time, and in their social networking, including hate speech.

These cases of hate speech through social media in Indonesia do not only represent the form of expression or structure applied when interacting or communicating in social networking, but also the culture of society. Samovar (223 – 224:2010) assumed that language represents the culture of society. Hate Speech cases represent different culture form Indonesia which is dominated by politeness culture in speech. The Indonesian's politeness culture in speech is represented by the word and language which shows respect and appreciate communication partner in accordance with the manners, civilization, ethic, and morality. This might also be influenced by one of Indonesian phylosophy, especially Solo, which says *"Ajining diri gumantong ono ing lathi"*, which means that individual's pride can be seen from their speech, therefore, Indonesians are very careful when they speak and are selective with the use of words because speech can represent who we are.

In social media, hate speech are is not only represented verbally, but also created in words and picture combinations, like memes. It is meant to emphasize the messages delivered and to attract *netizen's* attention. This research attempts to analyze the representation of politeness culture in language through memes on social media. The research case is Hate Speech Memes to the President of Indonesia, Mr. Jokowi from Indonesia's *netizen* in cyber space and to describe how social media facilitate the growth of hate speech in cyber space.

This research applies descriptive qualitative method with the semiotic theory. The subject of research is Hate Speech Memes to Mr. Jokowi as President of Indonesia through social media. The theory of semiotics, presented by Ferdinand de Saussure, is applied as the tool to analyze this case. Furthermore, this research applies dyadic models which evidence *signifier* and *signified*. This analysis model is selected to represent the meaning behind sign, such as pictures, and texts in memes. This method of research is selected because it provides extended scope to interpret the significance behind memes. This research applies syntagmatic technic to find out the signs combinations which produce the meaning. The inter-textual is applied to change impression subjectivity research. The theory of sign said that the signs refer basically to the other signs and every text refer to the other texts (Sobur, 2003:86).

2. Discussion And Conceptualitation

2. 1. The Representation of Hate Speech to The President Jokowi in Memes

The structure of Hate speech is presented and transformed into memes on social media, is analysed by signifier and signified from The Saussure's Theory of Semiotics. Because this theory can explore the meaning behind the signs in meme. Nasrullah (126:2016) divide memes into 2 (two) aspects, such as visual and texts. Therefore, this semiotic analyze focus on two element, there are visual and verbal (texts) elements.

Both of these elements are the signifiers and signified which produce the meaning. Piliang (2004) said that the meaning of elements of signs are understood through object, context, and text. Object is the object of the memes. Then the context is the elements of pictures around the object which illustrate the context in memes. While the texts are the discourse which contribute written statement to emphasize the meaning in memes. Figure 2.1.1. dan 2.1.2. are the examples of meme that are analysed in this research.

Figure 2.1.1. Meme Hate Speech to President Jokowi

Figure 2.1.1. represent hate speech which was addressed to President Jokowi. This Hate Speech are produced creatively by social media account to attract attention and comments from *netizen* in social media. These Memes are divided into 2 (two) elements of analysis, namely visual and text. The visual signifier is the Photo of President Jokowi which wear Batak Toba Samosir's traditional costume, then the textual signifiers are social media's statements and the text below photo.

The meaning of meme signified is hate speech which is harassing the President of Republic of Indonesia and disrespecting Batak's tradition. It is shown with the statement below the picture, such as :

a. "SUMPAH NGAKAK LIAT PRESIDEN YANG SATU INI *asli gak editan*" (Seriously i laugh seeing this president, for real, no editing)
b. "ORANG SETREESS" (stress man)

Furthermore, the status which were uploaded by two social media accounts emphasized hate speech that was addressed to President Jokowi, such as :

a. "Orang TOL0L dipulau samosir jadi badut malah bangga… it's real… tanpa edit" (The stupid person become clown in samosir's island, still proud, it's real, without editing).
b. "LADY GAGAAAAALLLLLLL…..MADE IN CHINA. SEMOGA GAK KE KAMPUNGKU…. ORA BUTUH….!!!!" (The failed lady made in china, hopefully he wont visit to my kampong, no need).

The Announcement of The Chief of Indonesia Police Number 8 of 2015 point (f) showed that this text is a form of hate speech, such as insult, defamation, humiliation, disrespectful acts, provoking, inciting, and wide spreading hoax because this text contain from the negative words, such as irritating, harassing, hurting, offensive, and insulting the President and Batak ethnic. Both of social media account status have violated Devito's netiquette because the statuses have used offensive language. We can see the negative words in figure 2.1.1., there are *stress man, stupid man, become a clown still proud, and failed lady*. Then, the statuses that were written in capitals are perceived as shouting. Subsequently, this hate speech contents are packed in a parable sentences that contain the meaning of contempt, such as failed lady made in China.

According to Prof. Hamdani Harap, the meaning of of batak's traditional costume which was worn by The President of Indonesia is Ulos Ragidup Sirara. Ulo Ragidup Sirara symbolizes the king because this traditional costume has a meaning as a giver of life and dominated by red colour. Consequently, this traditional costume is usually worn for respectable individuals who give life to many people, such as President. Finally, the speech that were disseminated by two social media accounts is considered as hate speech which purposed to insult The President and Batak Samosir Ethnicity.

Figure 2.1.2. Meme Hate Speech to the President Jokowi

The Figure 2.1.2. represent hate speech which was addressed to the President Jokowi. This meme was disseminated by a Facebook account to Hallo Presiden & Wakil Presiden Fanpage at 07/12/2015. The visual signifier of this meme is the face of Mr. President which was edited with a body of a monkey, whereas the textual signifier is facebook user status, such as :

> "Monyet ini sangat mahir mendustakan. dan 95 janji nya akan di bayar nya di Akhirat. 1 th kerja nya hy makan gaji buta. Pembuat hutang negara sebesar 400 triliun tapi uang nya entah kmana pergi nya. Silah kan tanya pada si cebong tentang dana 4000 triliun itu" (This monkey adept deniers and his 95 commitments will be paid by him in eternity. One year, he just got paid for doing nothing. He just raised the debt as much as 4000 trillion, but the money went somewhere. Please ask the 'tadpole' about the 4000 trillion funds).

This hate speech text on the Figure 2.1.3. has represented the utilization of language through social media which is offensive, expressive, informal '*alay*', and unstandardized. Moreover, this text represents the language utilization which do not consider the social structure aspect from the object of this meme. Because the status and meme uploaded on the user's social media account don't have any politeness value in describing and criticizing the president.

Convenience and liberty for registering social media account give an opportunity to have more than one social media account in the same and/or different social media platform, for example Farhan has 30 delusive accounts. Consequently, social media users can create different identities in cyber space, or we can say "pseudonymise identities". Wood (64 : 2005) explained that if anonymity lies at one end of the identity continuum and one's life identity lies at the other, the pseudonymity covers a good deal of the area in between. So pseudonym provides an audience with the ability to attribute

statements and action to a common source without giving out their real name but choosing their unique identities. As Farhan's hate speech case, he registered 30 identities in his social media accounts to widespread hate speech which were addressed to Mr. Jokowi and The Police of The Republic of Indonesia. Those identities were named as Ringgo, Republik Badut, Kebal Hukum, Pembenci Jokowi, Jokowi Haters, Annisa Dewi 33, Mutia Anastasya, Alif Lee, Novita Wulandari, Bekti Harahap, Ridho MCA 15, Azim Efendi, Bayu Anggoro, Sdaaaw, Danial Emran, Jokowi PKO, Ichbat Harly, and so on. He displayed different profile picture from his real face in every social media account, but the cybercrime forensic completed to find out his real identities. He is 18 years old and has recently graduated from senior high school in Medan. Then his motivation of creating and sharing hate speech because of his dissatisfaction with Indonesia's government and police, but he said that no body pushed him to do it. This case represents that new media give opportunity to users to create creatively his/her identities which will represent users in playing his/her role and interacting in cyber space (Nasrullah, 128:2012). On the other hands, this case is an evidence that new media creates its user as *creative audience*, Castells'(2009) in Picone (384:2017) explained that 'creative audience', where people in a multidirectional communication environment, become both receivers and senders of messages, not only decoding their own meaning but actively contributing to the production of shared meaning. Moreover, Lomborg and Mortensen (344:2017) assumed that user's roles may, in turn blur boundaries between lay persons and experts, amateurs and professionals, in so far as users take part in media production for digital platforms and service. Therefore, the power of social media can be used to the right way or the wrong ways, it depends on users.

On July 2017 Ministry of Communication and Information Technology's Data, show that the report of hate speech decrease about 5% than election moment about 49%. Webster (353:2017) said that using social media for self-promotion, to propagating memes, to collaborate on more elaborate productions. So that this data represents that hate speech is a new model of politic vehicle which has tendency to fight other politic candidates. Weinstein (54:1999) assumed that hate speech is one type of political satire. Liqui (125:2017) said that political satire still has strong vitality, thanks to collective action, such as the anonymous production, distribution and sharing of work on Chinese social media. Then political satire can cultivate participation in culture and civic consciousness through sharing, commenting on and discussing sensitive issues that the authorities or the cultural tradition regard as taboo (Lim, 2013 in Liqui 127:2017). Consequently, proliferation of hate speech has a contagion effect to social media users. They express their opinion or critics through social media without considering politeness value which embedded in Indonesia's culture.

Table 2.1.1. The Trust Positive Data about Hate Speech Complaints

Month	SARA	Percentage (%)
January	20	49%
February	3	7%
March	4	10%
April	7	17%
May	3	7%
June	2	5%
July	2	5%
Total	41	100%

Source : https://trustpositif.kominfo.go.id/

2. 2. Speech Politeness Culture in Cyber Space

The hate speech cases happened in Indonesia, were calculated as many as 671 reports in 2015 and this report recently completed 199 reports in March 2016. According to cultural perspective, these cases represent the difference of Indonesia's cultural values which is represented as a country with high tolerance value. The high tolerance value is adapted from the Ideology of Pancasila and Bhineka Tunggal Ika so that the nation usually notice the language utilization in communication. This was aimed to respect and appreciate communication partners

which have different characteristics, such as religions, ethnicities, local languages, and others so that Indonesia nation can protect the Indonesia national unity in the middle of culture diversity. Therefore, refer to Hall's Theory of cultural identity (393:1990) tolerance value is an identity as being to Indonesia society because this cultural identity is given since the birth of Indonesia.

The phenomenon of hate speech represents freedom of expression which is out of boundaries and violation of the ethic of speech in digital media. Ess (183:2009) said that speech etiquette through social media must have tolerance values, such as respecting somebody as communication partners. The speech etiquette of hate speech represents the utilization speech which insulting, irritating, hurting, unrespecting, not appreciate individual and/or certain group. Chaer (15:2010) explain that politeness speech refers to the elements of language, such as diction, sentence intonation, expression, and style. Therefore, Hate Speech represent un politeness speech's culture in cyber space. Mr. Jokowi (the President of Indonesia) has disappointed to contemplate the phenomenon of hate speech in social media. In Okezon.com Mr. Jokowi express his disappointment, he said that:

> "Baca komentar-komentar sedih kalau kita buka (Media Sosial), saling hujat disitu, saling memaki-maki. Saya (Pa Jokowi) yakin bukan nilai-nilai kita (etika, budi pekerti, dan sopan santun), ada nilai-nilai yang tidak sadar masuk menginfiltrasi kita dan itulah yang akan hilangkan karakter kita, identitas dan jati diri kita sebagai bangsa Indonesia
> (Reading the comments in social media, we are very sad to access (social media), every one vituperates each other. I (Mr. Jokowi) belief that there is not our values (etiquette, ethic, and politeness), I (Mr. Jokowi) think that there are values which unconsciously entering and infiltrating our values, then that's will disappear our characters, and identity, as Indonesia country)

The Hate Speech Cases show that the Indonesia politeness speech's cultural identity in cyber space has metamorphosed because Samovar (223 – 224:2010) said that the individual and/or in group speech etiquette represented the cultural identity adopted and internalized by individual and/or group. The transformation of this cultural identity happened because identity also defines as becoming, so that cultural identity is dynamic (Hall, 393:1990). Nasrullah (117:2012) explained that the cultural identity is formed by interaction which happened between self (individual/group) and his/her/their social environment, such as primary family, significant others, school, religion, and media. The transformation of cultural identity is indicated by social media because the characteristics of social media facilitate the process of producing and spreading hate speech to the public. Then, McLuhan's point of view (2001) about *technology determinism*, said that technology will indirectly determine cultures, social norms, interaction patterns in society life, such as social media. Then, Webster (354:2017) assumed that digital networks are particularly susceptible to mass behaviours that emerge from individual actions in unintended ways; these include herding behaviours, information cascades, social contagions and power law distributions so these are powerful forces that shape cultural consumption. Therefore, the spread of hate speech can shape new culture in Indonesia's speech. Because media technologies are shaped not before, but because they are used by people in their everyday lives (Silverstone, 2006 in Picone 382:2017). Furthermore, social media characteristic slowly changes interaction patterns and create the revolution of life style, norms, and cultures, such as speech etiquette. Nasrullah (11:2016) said that the type of social media characteristic is *user generated content*, where social media users have a power to freely to produce and share contents in public space in a real time, without selecting and filtering content form social media institution side.

Therefore, the phenomenon of hate speech in this meme represent speech impoliteness culture through social media. this phenomenon happened by abusing social media and human rights which was refered in 19 article United Nation's civil conference, 28 E article, 3 paragraph in Fundamental Constitution 1945, 28 F article in Fundamental Constitution 1945 concerning on expression freedom, and Fatwa Majelis Ulama Indonesia Number 24 2017 year concerning on Law and Handbook of "Bermuamalah" through social media. This phenomenon can be solved through digital media literacy to social media users. The social media users must understand 5 (five) restriction to expressing opinions through social media in 19 paragraph UN's civil conference, such as :

1. Social media users are forbidden to carelessly share children pornography content. The purpose is to protect children rights.

2. Social media users are forbidden to share hate speech in order to protect specific community rights.
3. Social media users are forbidden to share agitation and provocation to public with genocide.
4. Social media users are forbidden to produce information which contains defamation. The purpose is to protect person/groups/organizations rights and reputation from irresponsible parties attack.
5. Social media users are forbidden to dispute ethnicity, race, or religion which can trigger agitation and provocation discrimination, violence, or enmity.

In addition, Devito (113:2012) has introduced the principle of verbal messages to clarify the nature of verbal message and the meaning. But, one of the principle which relate with this case is message vary in politeness, especially politeness online. The rule of netiquette guidance for communicating politely online. These rules not only make online communication more pleasant and easier but also improve your personal efficiency. Here are some key guideline :

1. **Familiarize yourself with the site before contributing.** Before asking questions about the system, read the Frequently Asked Questions (FAQs). Your question has probably been asked before and you'll put less strain on the system. Lurk before speaking; read posted notices and conversations before you contribute anything yourself. Observe the kinds of photos posted and the language used. Lurking (which, in online communication is good) will help you learn the rules of the particular group and will help you avoid saying things you'd like to take back.
2. **Be brief.** Communicate only the information that is needed; communicate clearly, briefly, and in an organized way. Don't over-tweet. Communicate when you have something to say; not every one of your thoughts is worth a tweet or Facebook post. The same is true of photos; not everyone wants to see 27 photos of your cat.
3. **Be gentle.** Refuse a request for friendship gently or ignore it. There's no need to go into great detail about why you don't want to be friends with this person. And if you're refused, don't ask for reasons. Social networkers consider it impolite to ask for reasons why your request is refused.
4. **Don't shout.** WRITING IN CAPS IS PERCEIVED AS SHOUTING. It's okay to use caps occasionally to achieve emphasis. If you wish to give emphasis, highlight _like this_ or *like this*.
5. **Be discrete.** Don't use social networking information outside the network. It's considered inappropriate and impolite to relay information that you find on Facebook, for example, to those who are not also friends with the person talked about (and who therefore would not have access to the same information about the person that you do).
6. **Don't spam or flame.** Don't send unsolicited mail, repeatedly send the same mail, or post the same message (or irrelevant messages) to lots of newsgroups. Don't make personal attacks on other users. As in face-to-face conflict, personal attacks are best avoided on the Internet.
7. **Avoid offensive language.** Refrain from expressions that would be considered offensive to others, such as sexist or racist terms. As you may know, software is available that will scan your e-mail, alert you if you may have broken an organizational rule, and give you a chance to revise your potentially offensive e-mail. This suggestion is especially important when you write on someone's wall in, say, Facebook or post an unflattering photo for all to see.
8. **Be considerate.** Avoid asking to be friends with someone you suspect may have reason for not wanting to admit you. For example, your work associate may not want you to see her or his profile; if you ask, you put your colleague in an awkward position. In this case, you might use indirect messages; for example, you might say that you want to expand your networking to work colleagues and see how your colleague responds.
9. **Don't advertise**. Don't market a product, yourself, or your services on Twitter; it's permissible on Facebook but do it discretely.

10. **Don't plagiarize.** Give credit to others for the ideas you post and certainly any direct quotations.
11. **Don't brag.** Social networking's norm is modesty, at least as most social networkers think about it. So, don't brag, for example, about the number of followers you have or the number of friends. Although the Twitter site includes a badge that indicates your total number of followers, it's the Twitter site that is posting the number of followers rather than you.

3. Conclusion

This research's result could be concluded that this meme case represent a resemblance in Indonesia's speech politeness culture through social media (online) and non-social media (offline). Ess (183:2009) said that tolerance values is maintained as fundamental value in the digital media ethics. Then Nasrullah (129:2012) said that the fundamental element of individual power is renovated hierarchies where offline hierarchies are transformed to online hierarchies, or anti – hierarchical. So that, the cultural identity of online speech politeness is social media users communicate without social hierarchies, but users must be tolerance when communicate through social media to create a healthy communication without insulting other users.

Nasrullah (117:2012) said that the cultural identity is formed by interaction which happened between self (individual/group) and their social environment, so that the new form of cultural identity is modified continuously from "the real cultural identity" and "the others cultural identity. So that Hate Speech in meme reflects as one form of action that violates the digital media ethics because of selecting and using impolite language and contrary with tolerance values. Moreover, Hate Speech has an impact not only in the real world but also in the cyber world, so what it says in cyberspace have an impact in the real world so that shows the existence of ethical similarities that apply in the real world (offline) and cyber world (online).

The result of research discovers that the existence of social media effect to individual and/or groups communicative style. Hate Speech is expressed by applying expressive, creative, informal, proactive language and not considering communication partners' social status. Hate Speech language is contained with combination of language such as English, Indonesian, and Local language as well as acronyms. Furthermore, Hate Speech is expressed in expressive, creative, informal, and, proactive word, then selecting word without consider the social status of the communication partner.

The Phenomenon of Hate Speech is not enough with blocking the negative social media accounts because one of Farhan's social media accounts was blocked by Ministry of Communication and Information Technology, but Farhan still spread hate speech though other social media accounts. Therefore, this phenomenon can be minimized through digital media literacy to society in empowering actions about etiquette to express opinions or critics through social media. If we want to disseminate our critics toward government, institution, group, or person, we have to wrap our critics rationally with the logical evidence and communicate it politely by considering the digital media ethics applied in our country. Furthermore the government tries to discipline the users through law enforcement regarding the Hate Speech actions. Then the government must give rehabilitation which will guide *haters* to use social media in the right way. In addition, the government collaborates with social media institution to invent uploading filtering features in social media so that social media users difficult to disseminate content which is useless to the community.

This research has limitations because this research explores the Hate Speech case through Sassure's semiotics analysis and cultural perspective. Therefore, future research can analyses this case by using different research paradigms, communication theories, and perspectives, such as political economy, etc.

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The Position of Online Dispute Resolution in the Positive Law of Indonesia

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Abstract

The development of technologies brings immense change to various aspects in the life of modern society.Including the field of law that always follows the development of society, where the dynamics of the development of society help to bring modern legal reform in this case everything always using technologies. The use of technologies also penetrates up to the alternative dispute resolution pattern which begins to develop well. One of the impacts of technologies in the field of law can be seen from the creation of Online Dispute Resolution (ODR) also called as Internet Dispute Resolution (iDR), or also Electronic Dispute Resolution (eDR), Electronic ADR (sADR) till Online ADR (oADR). Basically, ODR has long been adopted by the west countries, like ICANN and European Commission. Indonesia itself is new to know the online dispute resolution or bias is called an online dispute resolution alternative. Why so, it is because there is no legal regulations that truly regulates the Online Dispute Resolution. Indonesia only has a few rules that discuss about ADR only, not with the online ADR. However the electronic or e –commerce transaction sites have long been implemented an online dispute resolution system to address disputes between the buyers/client and the sellers/dealers. Similarly PANDI uses an online dispute resolution system to resolve domain name disputes. When Indonesia has implemented an ODR system in its settlement disputes, so it's certain that every dispute can be settled in concise, light cost and not waste a lot of time. We can imagine when the proof in court can be done at home through e-mail system, the execution of the court using video conference, as well as the court fees are awarded via transfer.

Key words: Online Dispute Resolution, Positive Law, Culture

1. Background

Information Technologies has grown in line with the development of human civilization. The IT development includes the IT infrastructure development, like hardware, software, storage and communication technologies.[1] In one side, the development of IPTEK world that very athonishing indeed has brought big advantages for the development of human civilization. The type of the work that previously required big physical abilties, now already can be replaced by automatic machine tool. Similarly, the invention of new formulations of computer capacity, as if already able to replace the human brain position in various fields of science and human activities. Brief said the current technological advances have really been recognized and felt to provide a lot of conveniences and

[1]Laudon, K.C. dan Jane P. Laudon. (2004). *Management Information Systems*. 8th edition. New Jersey: Prentice- Hall, Inc. P. 174. Accessed in articles by Naniek Noviari. (2013). *Pengaruh Teknologi Informasi Terhadap Perkembangan Akuntansi*. Denpasar: Economics Faculty Udayana University. Hlm. 1.

comfort for human life.[2] On the other hand, human can't fool themselves in to the fact that technologies bring havoc and misery for modern people. Technological advancement, which was originally intended to simplify human task, when the task become more easy , then came the loneliness and new alienation, namely the dissolution of solidarity, togetherness, and hospitality.

Technological developments also affect the way of dispute resolution in general. Conventional dispute resolution is considered inadequate for the wishes of the international society. Face to face dispute settlement is considered a waste of time and costs a lot. The desire of the society to resolve the disputes practically manifested in an alternative known as Online Dispute Resolution.Until now ODR known in the world of e-commerce transaction to domain name disputes. The creation of ODR which born from the principle of prudence and the principle of trust, builds a sense of courage in international society which is indicated by the utilization of the existing information and technologies. E-commerce itself basically is a trading transaction contract between sellers/dealers and client/buyers with using internet from the ordering goods process, the transaction payment untill the goods delivery are communicated throgh internet.[3] E-commerce also can be defined as a business process with using electronic technologies that connecting companies, consumer and society in the form of electronic transaction and goods trading, services, and information electronically.[4] E-commerce isn't just consists an online-based electtronic transaction.. E-commerce also has scope or segmentation that consists of *business to business* means the business communication system between the business actors or in other words transactions via electronic between companies (business actors) that have been done routinely and in capacity or volume of a large product, *business to consumer* which is an electronic business transaction that conducted by the dealer and customer to fulfill a certain need and at particular time, and then *consumer to consumer* means an electronic business transaction that conducted between consumer to fulfill a certain need and at particular time[5]. Based on the scope that mentioned before, e-commerce can be defined as one of the methods to fix the performance and mechanism of goods, services, information, and knowledge exchange with using technology based on network of digital tools.

Besides ODR in e-commerce transaction, ODR also commonly used to resolve brand disputes. The brand is not merchendise brand, but the brand is web address or domain name. The domain name is a uniqe name which representing an organization where that name will be used by the internet user to connect to the organization.[6] The domain name that become identity of a server in internet world, must be registered legally according to the rules.The allocation of international domain name is within the authority of Internet Coorporation for Assigned Names and Numbers (ICANN), a nonprofit institution that located in California, USA.[7]

At the same time in Indonesia itself, has formed PANDI as a nonprofit organization that specially has given authorities to manage domain name of Indonesia's Internet by The Minister of Communication and Information Republic of Indonesia. Indonesia itself is still not applied much of online dispute resolution or ODR. In the fact, online shop like *Lazada, Shopee* or *Tokopedia* till now using online dispute resolution in the dispute of goods returns or cost between consumer and dealers. The same situaton with PANDI, PANDI who is given the authorities to manage the domain name of Indonesia's Internet has utilized online dispute resolution to the domain name disputes start from

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[2]Sari Widuri. Bahan Ajar Teknologi Komunikasi: *Dampak Teknologi*. Jakarta: Mercu Buana University. Pp. 2-3.

[3]Rina Aringintri Moksi. (2006). Thesis: *Perlindungan Konsumen Dalam Transasi Jual Beli Secara E-Commerce*. Semarang: Diponegero University. P. 3.

[4]Munir Fuady. (1999). *Hukum kontrak dari sudut pandang hukum bisnis*. Bandung: Citra Aditya Bakti. P. 407. Accessed in paper by Rizky Fadhilah and Partners. (2012). *Mengubah Proses Manajemen*. Malang: Brawijaya University. P. 2.

[5]Suwardi. (2015). *Hukum Dagang Suatu Pengantar*. Yoggyakarta: Deepublish. Pp. 177-179.

[6]Wahyu Hidayat. (2000). *Kamus Teknologi Komputer: Komputer-Internet*. Surabaya: Sarana ilmu. P. 125. Accessed in journal by Jordan Sebastian Meliala and Partners. *Perlindungan Nama Domain Dari Tindakan Pendaftaran Nama Domain Dengan Itikad Buruk Berdasarkan Hukum Positif Indonesia dan Uniform Domain Name Dispute Resolution Policy*. Malang: Brawijaya University. P. 2.

[7]Mada Apriandi dan Meria Utama. (2008). *Perlindungan Hukum Terhadap Hak Atas Merek Berkaitan Dengan Top Level Domain Names Serta Akibat Hukumnya Bagi Hak Atas Kekayaan Intelektual Di Indonesia dan* Internasional. Palembang: Law Faculty Sriwijaya University. P. 5.

online registration system untill online verification. So far, Indonesia still not officially applies the online dispute resolution. Indonesia also still not officially releases the rule of law that related to ODR. Untill now in Indonesia only regulate the alternative dispute resolution like in the ITE act and Arbitration act and Alternative Dispute Resolution, but in the both of the acts are not explain about ADR which online or also called ODR.

Based on this background, then the writer intrested to write a science article about The Position of Online Dispute Resoulution in The Positive Law of Indonesia

2. Act Number 36 Of 1999 Concerning Telecommunication

The Telecommunication act is not regulate the alternative or ODR. The telecommunication act only explains about the investigation and criminal justice process that conducted based on Criminal Code (KUHP) and Criminal code Procedure (KUHAP). Article 42 section (2) explains that for the need of criminal justice process, the telecommunication service providers allowed to record the information that sent and received by the telecommunication service providers and allowed to give the information required to:

a. A written request of the Attorney General and or Police Chief of the Indonesian Republic for a specific offense.
b. An investigator request for a specific offence according to The applicable law.

Article 43 also explains that the hand out of the recording information by the telecommunication service providers to the user of telecommunication service provider for the intrests of the criminal justice process. Article 44 explains that except the Investigator of the State Police Officer of the Republic of Indonesia, also The Certain Civil Servant in the Officers within the department whose scope of duties and responsibilities in telecommunications. The Investigator authorities that have been explained then implemented according to the provisions of the Criminal Code Proedure (KUHAP). Article 45 and article 46 explained about administration sanction related to the offense of provisions which has regulated in this Act. Article 47 untill article 59 regulate the criminal provisions related to the offense of the provisions which has been regulated in Telecommunication act.

3. Act Number 32 of 2002 Concerning Broadcasting

The Broadcasting Act is not regulate altenrative dispute resolution or ODR. Article 53 section (1) Broadcasting Act explains that KPI Center/Central run its function, authorities, duties, and obligations to responsible to The President and submit the report to The Parliament of Republic of Indonesia (DPR) and section (2) explains that KPI region in implements its function, authorities, duties and obligations responsible to Governor and submit the report to The Regional people's Representative Assembly in province level. Article 55 explains about administration sanction which the procedures arranged by KPI and Government. Article 56 explains that investigation to the crime which has been regulated in the Broadcasting Act conducted according to Criminal code Procedure (KUHAP). Article 57 until Article 59 explains about the criminal provisions to the crime which has been regulated in Broadcasting Act.

4. Act Number 30 of 1999 Concrning Arbitration and Alternative Dispute Resolution

Online Arbitration basically is not forbidden to do in solving the dispute between parties, this thing is in line with the provisions in Article 31 section (1) Arbitration and Alternative Dispute Resolution Act that explains "The parties in a strict and written agreement, free to determine the arbitration procedures that will be use to the investigation dispute as long as not contradictory with the provisions in this Act". The Article can be defined that the procedures process in arbitration is free regulated by the involved parties as long as has been established in an agreement expressly and in writing. Therefore the parties can choose the type of procedure in the arbitration process by theirselves, includes performing the arbitration process via online.

Furthermore, the provisions of Article 31 section (2) Arbitration and Alternative Dispute Resolution Act said that regulates, if the parties aren't choose to use the certain arbitration procedings and the arbiters or arbitral tribunals that have been formed, then the arbitration procedings will follow the provisions of Arbitration and Alternative Dispute Resolution act. From the Article can be defined that this thing is prevail if the involved parties is an Indonesian and the arbitration that been used is national arbitration. But if one of the parties is not an Indonesian and the arbitration that been used is foreign arbitration, then Arbitration and Alternative Dispute Resolution Act cannot be fully implemented. In the arbitration proceedings which regulated in Arbitration and Alternative Dispute Resolution Act said, it's not regulate about online arbitration. With this Article 4 section (3) Arbitration and Alternative Dispute Resolution Act that said "In agreed upon dispute resolution through arbitration occurs in the form of letter exchange, then the deleveries of telects, telegram, facsimile, e-mail or any other forms of communication media, obligated be accompanied with a record of reciepts by the parties".

5. Kitab Undang-Undang Hukum Pidana (KUHP)

In the Positive law of Indonesia criminal case cannot be resolved outside the court process, but in certain case the implementation is possibe. In the practice of criminal law enforcement in Indonesia, even if there isn't a formal legal foundation of criminal case that frequently resolved outside the court process through law enforcement apparatus discretion , peace mechanism, traditional institution/organization and etc.The increasingly applied existence of mediating penal as one of the alternative dispute resolution in the criminal law field through restitution in the criminal process showing that the diferences between the criminal law and civil law are not too big and those differences become non-functional.[8]

The settlement in criminal case by the police basically is a part of the criminal justice system. The alternative settlements in the criminal justice process basically a part of the criminal justice system which in the end culminating in prevention crime effort, that is in form of represive efforts.[9] According to the dogmatic opinion or "positive contol", the execution criminal justice system is centered and culminated in the court. The court seen as an institution that concretes the law in the special occassions which faced in it's decisions.

In the Criminal Code (KUHP), the settlements outside the court regulated in Article 82 Criminal Code (KUHP) which called with *Afkoop,* which states, that the authoritiy to prosecute violations that are punishable by criminal fines alone is abolished, if it is voluntarily paid the maximum fine and expenses incurred if the prosecution has begun.

6. The Act Number 11 of 2008 Concerning Information and Electronic Transaction jo. The Act Number 19 of 2016 Concerning The Amandement of The Act Number 11 of 2008 Concerning Information and Electronic Transaction.

Article 41 section (1) ITE Act explains that "societies can have a role to increasing the technologies and information use through the execution of electronic system and electronic transaction" followed by section (2) which states "The role of the society as in section (1) can be implemmented through the institutions which formed by the societies" and reinforced by section (3) which reads "The institutions as in section (2) can have consultation function and mediation. Based on Article 41 section (3) which is Indonesia very supporting the establishment of ODR as an Institution that has consultation function and mediation. ITE Act in the Article 40 section (2) mention that The Government of Indonesia protect the public interest from every kind of interuption as a result of misuses of electronic information and electronic transaction that disrupt public order, according to the provisions of the legislation

[8]Barda Nawawi Arief. (2008). *Mediasi Penal Penyelesaian Perkara Diluar Pengadilan.* Semarang: Pustaka Magister. Pp. 4-5.

[9]Sudarto. (1981). *Kapita selekta ukum Pidana*. Bandung: Alumni. P. 118. Accessed in journal humanities research by Sudaryono and Partners. (2012) *Model Penyelesian Secara Alternatif Dalam Peradilan Pidana*. Vol. 13 No. 1. Surakarta: Law Faculty Muhammadiyah Surakarta University. P. 65.

Besides Article 41 section (1)(2)(3), can we see in the Article 18 section (4) is a form of Indonesian support to the establishment of ODR which reads "The parties have authorities to set the court forum, arbitration or other institutions that authorized to handle the disputes that may appears from the international electronic transaction which they made" then followed by section (5) which reads if the parties are not choose the forum as in section (4), the establishment of court authority, arbitration or other dispute resolution institution which authorized to handle the dispute that may appear from the transaction, based on international civil law principles. It means in the section (5) it is clear that ODR can run its function as alternative dispute resolution institution which based on the international civil law.

The ODR function to be utilized by the society convinced by the Government of Indonesia through ITE Act Article 38 section (1) which reads " Everyone can filed law suit to the parties whom performing electronic system and/or using information technology which causing state losses" The society which utilize ODR facility can be protected and then restricted by ITE Act if there are things that are not desirable which causing losses to the involved parties through ODR with Article 35 which mention that "Everyone intentionally and without a right or against the law do manipulation, changing, creation, disappearance ,destruction of information technology and/or electronic document with the aim that electronic information and or the electronic document considered as authentic data".

It can be defined that the ITE Act article 35 protects the losses parties if there is a party which disputes through ODR, manipulating electronic information and/or electronic document to be considered as authentic and legal evidence. The confidentiality of the dispute and the electronic document which solved through ODR also protected with Article 32 section (2) that is "Everyone intentionally and without a right or against the law with every way allocating or transfering electronic information and/or electronic document to another person's unauthorized electronic system. The ODR service provider will be protected by ITE Act with the Artcile 33 if there are parties that try to interupting or stoping the function of ODR using technology information factility with the Article 33 which mention that "Everyone intentionally and without right or againts the law conducting every action that cause in disruption of electronic system and/or cause the electronic system is not working properly".

7. The Possibilty of the Form of ODR in Indonesia

The author's opinion, in Arbitrase and Alternative Dispute Resolution Act, the gap for online arbitration can be seen from the provisions of Article 4 section (3) that is: "In agreed upon the dispute resolution through arbitration occurs in form of letter exchange, then the deleveries of telects, telegram, facsimile, e-mail or any other forms of communication media, obligated be accompanied with a record of reciepts by the parties". Judging from the provisions, then the author's opinion is the selection of online arbitration can be occurs as long as there is an agreement between the parties. The editorial section of the Article above there is a word "e-mail" which enables the parties to use internet as a dispute resolution media either with conventional arbitration or any other way. Because e-mail or electronic mail and the recipient only can be conducted through ineternet media.

It can be admitted or not this ODR in Indonesian Law included in the Arbitration and Alternative Dispute Resolution Act and the implementation in Indonesia, can be obeserved from the conventional law arangements which states that any implementation of domestic or foreign arbitral award always require registration in the District Court, and for the foreign arbitral award the registration conducted in Central Jakarta District Court. From this context the question is, is this ODR also can be registered in District Court. In Indonesian law, in this case Arbitration and Alterntaive Dispute Resolution Act still not give an explicit regulation. So if it observed from the juridist side it is reasonable if ODR is something that questionable in the civil code procedure legal system which regulates the dispute resolution issue. Although in the reality, in Indonesia still there is no a website/site that tries to develop online dispute resolution system, but we have to remember that the existence of another countries sites that providing ODR services (like www.adronline.com) also in the

end and even now it is already entered the jurisdiction of Indonesia.[10] This thing enable the users in Indonesia utilize this internet service to resolve their disputes.

The possibilities of ODR model that applied in Indonesia like refund dispute resolution, return of goods in an online shop. Moreover The ODR model which applied in general is online negotiation or mediation which applies the registration also the provision of evidence by e-mail between parties.

8. The Shift of Internet Culture and Searching for Information

The role of technology in influencing changes in human lifestyle is not a questionable issue. Humans will not be able to live without technology. So that the more modern a society become it also bad for them and shift the existing culture. According to Talcott Parson, modern society is illustrated with the following characteristic:[11]

a. Effective neutrality is to be neutral, even can lead to the attitude of not paying attention to others or the environment.
b. Self-orientation, which is more priority self-interest.
c. Universalism, which is to accept everything objectively
d. Achievement, the people like to pursue achievement.
e. Specificity, that is to be honest in expressing everything

In addition, the cultural shift of society can be seen in the rampant use of cell phones so that the habit of solving problems or meeting face to face with relatives began to disappear because it can be solved only through a mobile phone. Even now even teenage children who are still children even have been given cell phone facilities so they can get to know earlier what is facebook, email, twitter, and etc.[12] The use of information and technologies that are more sophisticated make a shift in Indonesia's culture. The cultural shift now happening is the dispute resolution which generally has been settled conventionally but today can be settled by using world internet.

Indonesian constitutional court so far has applied an online dispute settlement system which allows an expert to attend a court without being physically present through a video conference. Besides that, PANDI that concentrate domain name dispute settlement, has benefit those cases of disputes by using a domain name dispute settlement system whereas all the phases of trial do not meet the parties and panel directly. All the phases can be done through email with the amount of time approximately three months to have an efficient settlement both time and expense.

9. Conclusion

The use of ODR in Indonesia has been widely used in the settlement of electronic transaction disputes as well as domain name disputes. However the implementation of ODR until now only based solely on the principle of prudance and principle of trust. This is due to the absence of specific regulation that regualating ODR, so that's make international society concerned about the impacts of ODR usage. Therefore The Indonesian Government needs to establish a regulatiory regulation to ensure public confidence in ODR usage.

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[10]Bambang Sutiyoso. (2008). *Hukum Arbitrase dan Alternatif Penyelesaian Sengketa*,. Yogyakarta: Gama Media. P. 222. Accessed in journal of legal renewal by Hutrin Kamil dan M. Ali Mansyur. (2014). *Hukum Online Dispute Resolution (ODR) Di Indonesia Bersadarkan Undang-Undang Nomor 30 Tahun 1999*. Vol. 1 No. 2. P. 118.

[11]Dwiningrum, S. I. A. (2012). Ilmu sosial & budaya dasar. Yogyakarta: UNY Press. Hlm. 51.

[12]Muhamad Ngafifi. (2014). *Kemajuan Teknologi Dan Pola Hidup Manusia Dalam Perspektif Social Budaya*. Jurnal Pembangunan Pendidikan Vol. 2 No. 1. Wonosobo. P. 41.

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Environmental Protection in Armed Conflict According to International Humanitarian Law

Desy Churul Aini, Desia Rakhma Banjarani

Abstract

The environment is a victim of various armed conflicts that occur in some parts of the world. Such as Congo war in 1998 that create environmental damage like deployment of the HIV-AIDS virus, the extinction of national parks, wildlife poaching and the forest burning. In addition the Rwanda civil war in 1994 affected the loss of biodiversity, natural resources and population decline in rare animals such as the African Gorillas. While the former Yugoslavia war in 1991 that impact in environmental pollution of water, air and land that threaten human survival.

The environment becomes a victim when the war was happend its caused the human, but on the other side, the environment can't be separated from human life because somehow humans need the environment to. However, when the war was happend human can't maintaining the environment even though there have been rules that regulate about the protection of the environment when the war takes place. Therefore, its necessary to analysed an environmental protection in armed conflict according to international humanitarian law.

This research is discusses about how an environmental protection in armed conflict according to international humanitarian law, which aims to explain the regulations that apply to protect the environment at the armed conflict. This research uses normative law approach (literature research).

The results of this study show that environmental protection in armed conflict is regulated in the conventions of international humanitarian law both from the Hague Law and the Geneva Law. In The Hague law the environmental protection is governed by the IV Hague Convention 1907of respecting the laws and customs of war and land Art 23 (g) and Art 55. In the Geneva Law an environmental protection is contained in the IV Geneva Convention 1949 Art 53 and Additional Protocol I in 1977 Art 35 (3), 54, 55, 56, 59, and Art 68. Basically both of Geneva and Hague Law against the use of weapons during the war that have an effected in environmental damage and the existence of precautions in the war on environmental protection life. Beside the Geneva and the Hague Law there are have other arrangements to protect the environment in the event of a war that is in ENMOD Convention Art 1 and 2.

Keywords: *Hague Law, Geneva Law, Environment, and War;*

1. Introduction

Human activity in this world was grew progressively every time, the development followed by the development of technology. The activity is also done in the environment,[1] from that has many benefits or results derived from the environment itself. The result of the environment is used by humans to fulfill their needs, as a result of wanting to get their needs then human also extends its power with war.[2] The war that created of many damage, especially for humans and also damage to the

[1] According to Otto Soemarwato, The environment is a space occupied by living things with other non-living objects, living beings are not independent, but interact with the environment, in which there is a reciprocal relationship between living beings with the environment. Hyronimus Rhiti, *Kompleksitas Permasalahan Lingkungan Hidup,* , Yogyakarta: Andy Offset, 2006, hlm.7.

[2] Broto Wardoyo, *Perkembangan, Paradigma, dan Konsep Keamanan Internasional & Relevansinya untuk Indonesia,* Klaten: Nugra Media, p. 24

environment.[3] For that we need a protection from every international community to prevent the destruction of the environment. It is necessary for the participation of international institutions, especially from the United Nations, to protect the environment from the destruction caused by the war.[4]

Armed conflicts or wars[5] are often supported by mass destructive armaments which is result in many casualties and property.[6] The use of weapons that can effect to big damage such as chemical and nuclear weapons its began to be used by advanced countries for weapon systems.[7] That wars was happened about 50 years period, mankind experienced of an armed conflict in worries number.[8] These armed conflicts occur on almost every continent. During that time, instruments for the protection of war victims continued to grow.[9] The death victim and the destruction of the city became the public's attention as a result of war, but one of the main victims of war and armed conflict is the environment.

As happened in the Congo war Since August 1998 civil wars occurred in the region which resulted in many deaths but the environment became a victim concern.[10] Only 45% of people have access to safe drinking water. In addition, another victim of war is environmental issues, such as endangered national parks due to frequent exploitation of their mineral content. Refugees are hunting wildlife for consumption or selling. The population of elephants in Africa has declined as a result of ivory hunting. Farmers burn some of the forest for use as agricultural land. [11]

Besides the Congos war, the civil war that occurred in Rwanda in 1994 also had an adverse impact on the environment. After killing 800.000 people, environmental impacts from the war such as the increased of illegal logging for housing development, and clearance of forested areas for agricultural purposes.[12] Illegal logging extensive has resulted in the damage of biodiversity and other natural resources such as rare plants and animals like the African Gorillas in Rwanda thas have drop drastic number.[13] Another civil war also occurred in the former Yugoslavia countries in 1991, whereas the war claimed the lives about 100.000 people and more than two million people displaced.[14] Yugoslavian warfare also has an impact on the environment such as the environmental pollution of water, air and land that threaten the survival of human life. [15]

A few wars are mentioned just little sample of the worst environmental impacts of war. In every war, environmental problems that often occur are polluted water, burnt agricultural, illegal logging, contaminated lands and animals are killed.[16] The environment becomes a victim caused war,

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[3] Adnan Buyung Nasution, *Instrumen Pokok Hak Asasi Manusia*, Jakarta: Yayasan Obor Indonesia, 2006, p. 241

[4] Arthur H Westing, Cultural Norm, *War and the Environment*, New York: Oxford University Press, 1988, p. 19

[5] War is a dispute, that is by using violence that often takes the form of an armed force, nevertheless war should not conflict with international law, but rather a state governed by international law. Djatikoesoemo, *Hukum Internasional Bagian Perang*, N.V. Jakarta:Pemandangan Djakarta, 1956, hlm. 2.

[6] Harry Purwanto, "Hukum Humaniter Internasional dan Hukum Hak Asasi Manusia", *Jurnal Mimbar Hukum*, Vol. 18, No.2, 2006, p.1

[7] Paul Rurherford, *Weapons of Mass Persuasion,* Toronto: University of Toronto Press, hlm. 27

[8] Jean-Marie Henckaerts, *Studi (kajian) tentang Hukum Humaniter Internasional Kebiasaan: Sebuah sumbangan bagi pemahaman dan penghormatan terhadap tertib hukum dalam konflik bersenjata*, Jakarta, Volume 87, 2005, p. 1

[9] *Ibid.*

[10] http://www.globalissues.org/article/87/the-democratic-republic-of-congo, accesed on 10 Oktober 2016, at 17:31 WIB

[11] http://www.lenntech.com/environmental-effects-war.htm, accesed on 10 Oktober 2016, at 17:35 WIB

[12] http://www.accord.org.za/ajcr-issues/%EF%BF%BCenvironmental-causes-and-impacts-of-the-genocide-in-rwanda/, accesed on 10 Oktober 2016, at17:42 WIB

[13] http://www.lenntech.com/environmental-effects-war.htm, accesed on 10 Oktober 2016, at17:35 WIB

[14] http://endgenocide.org/learn/past-genocides/the-bosnian-war-and-srebrenica-genocide/, accessed on 23 November 2016, at 19:19 WIB

[15] http://www.assembly.coe.int/nw/xml/XRef/X2H-Xref-ViewHTML.asp?FileID=9143&lang=EN, accessed on 17 Agustus 2017, at 13:34 WIB

[16] http://indonesian.irib.ir/ranah/kultur/item/102680-antisipasi-perusakan-lingkungan-hidup-akibat-perang, accessed on 10 Oktober 2016, at14:04

but on the other side the environment can not be separated from human life.[17] Due to environmental problems caused by this war is so complex and become one of the problems is quite heavy then it is regulated in International Humanitarian Law.[18] International Humanitarian Law regulates the environmental protection of war or armed conflict contained in its legal sources which are included in the source of international law.[19]

Based on the above background, the issue will be addressed in this study is how is environmental protection in armed conflict according to international humanitarian law? 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 Environmental Protection in The Hague Law

The environmental protection of armed conflict is mentioned in the international humanitarian law. Geza Herzegh provides the formulation of humanitarian law that is part of the rules of public international law that serves as the protection of individuals in times of armed conflict. According to Geza the place of humanitarian law is in addition to the norms of war it is closely related to them, but it must be clearly distinguish from these different goals and spirits.[20] The same thing also explained by Mochtar Kusumaatmadja that humanitarian law is part of the law that regulates provisions of protection of war victims, different from the laws of war that govern the war itself and everything that is about the way of doing war.[21] The purpose of humanitarian law is to provide protection to those who suffer or fall victim to war, whether real and active in combat, or those who do not participate in the dispute (civilians).[22] Humanitarian law applies only when an armed conflict happened and to identify the enforcement of humanitarian law it must be distinguished between international armed conflict and non-international armed conflict.[23]

International humanitarian law formerly known as war law or armed rule law is one chapter of the public international law. This law has the same old historical age with human civilization.[24] International humanitarian law not only regulates about the war procedures that contained in the hague law,[25] but also provides protection against victims of the war that contained in the geneva law.[26] The hague law include the 1899 hague convention (consisting of 3 covention and 3 declarations) and the hague 1907 convention (consisting of 13 conventions).[27] Whereas the geneva law includes a

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[17] http://www.berpendidikan.com/2015/06/arti-penting-lingkungan-hidup-bagi.html, accessed on 10 Oktober 2016, at14:18

[18] According by Mochtar Kusumaatmadja, International Humanitarian Law is part of the law governing the provisions of the protection of victims of war, while the laws of war govern the war itself and concerning the way of war itself. Arlina Permanasari, *Pengantar Hukum Humaniter*, Jakarta: Miamita Print, 1999, p. 9.

[19] The sources of international law consist of international treaties, general law principles, international customs, court decisions and doctrines. Article 38 of the Statute of the International Court of Justice

[20] Arlina Permanasari, *Op Cit*., p.9

[21] *Ibid.*

[22] Haryomataram, *Pengantar Hukum Humaniter,* Jakarta: Raja Grafindo, 2005, hlm 3.

[23] Roberta Arnold, *International Humanitarian Law dan Human Rights Law*, Boston: Martinus Nijhoff Publisher, 2008, p.357.

[24] Arlina Permanasari, *Op Cit*., p.1

[25] The Hague Laws are a source of written humanitarian law that has a regulatory focus on the manner of warfare and the kind of weapons that are allowed to be used during wartime. The laws of The Hague are more related to the rules of the way and means of fighting and focusing on military operations. C. De Rover, *To Serve and To Protect Acuan Universal Penegakan HAM*, jakarta: Raja Grafindo Persada, 2000, p. 100.

[26] The law of Geneva or in english is called The Geneva Laws which is the law that regulates the protection of combatants and civilians from war. Generally speaking the law of Geneva refers to a group of norms of International Humanitarian Law that focuses more on the conditions of war victims. Harry Purwanto*, Op.Cit.,* p. 189

[27] Haryomataram, *Op Cit*., p. 46.

convention of jenewa that protects the victims of war.[28] In hague law and geneva law both govern the protection of the environment in the war.

Environmental protection in the hague law is contained in the convention on the prohibition of the use of toxic or toxic weapons and in exploring the natural resources of the opposing country such as forests, this is described and detailed in the 4th hague annex and convention.[29] In addition, the hague convention also uses the international customary principle of environmental protection, including basic principles of need, proportionality, and discrimination between military and civilian targets.[30] In article 23 (g) environmental protection in the 4th hague convention of convention IV respecting the laws and customs of war and land that said, "it is especially forbidden to destroy or confiscate the property of the enemy, unless such destruction or seizure shall be prosecuted by need of war .... ". The purpose of this article is the prohibition of destruction of civilian objects in wars that affect the environment.[31] But the limit of this article is that while protecting the property from destruction, the military needs are still defended and recognized in this article.[32]

2.2 Environmental Protection in the Geneva Law

Another source of humanitarian law that regulates about environmental protection at war is contained in the geneva law. Generally the geneva law refers to a group of norms international humanitarian law that focuses more on the conditions of war victims. The development of the geneva law can not be separated from the presence of the International Committee of the Red Cross and also Henry Dunant, the founding character of the ICRC[33]and the action of the Red Cross.[34] Henry Dunant is known as the founder of the International Committee of the Red Cross (ICRC). War in Solferino Northern Italy in 1859 is the background of Henry to built ICRC.[35] In the geneva law consists of fourth conventions:[36]

1. The first geneva convention "for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field"
2. The second geneva convention "for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea"
3. The third geneva convention "relative to the Treatment of Prisoners of War"
4. The fourth geneva convention "relative to the Protection of Civilian Persons in Time of War".

From all of Geneva Conventions 1949 only two convention that contain about regulation of environmental safeguards even with exclusive agreements and the context of military occupation.[37] Article 53 of the Geneva Convention IV 1949 further extends the protection of property that previous

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[28] C. De Rover, *Op.Cit.* p. 101

[29] Art 23 (a) *Convention IV respecting the laws and customs of war and land*

[30] Alexander Kiss and Dinah Ashelton, *Guide to International Protection Law,* Boston: Library of Congress Cataloging-in-Publication Data, 2007, p. 255

[31] http://www.worldlii.org/int/journals/ISILYBIHRL/2001/13.html, accessed on 10 Oktober 2016, at 20:39 WIB

[32] Peter Richard & Michael N.Schmitt, *" Mars Meets Mother Nature: Protecting the Environment During Armed Conflict"*, *Stetson Law Review*, vol.28, 1999, p.1047-1068.

[33] The ICRC (International Committee of the Red Cross) or international red cross committee is the largest humanitarian network in the world. Its mission is to alleviate human suffering, protect life and health, and uphold human dignity especially during armed conflicts and other emergencies. The International Red Cross is present in every country and supported by millions of volunteers. The International Red Cross is dedicated to preventing and reducing human suffering in wars and in emergencies such as epidemics, floods and earthquakes, https://www.icrc.org/en/movement, accessed on 22 September 2016, at 20:12

[34] Arie Siswanto, *Hukum Pidana Internasional*, Yogyakarta: Andi, 2015, p. 156

[35] The Selferino War was a war involving the Austrian kingdom against the French-Sardinian coalition. On June 24, 1859, the alliance of France and Sardinia under Napoleon III met Austrian troops in the small village of Solferino in northern Italy. The war involving nearly 300.000 personnel took place with great force, estimated there are about 4500 people who died and tens of thousands more injured. Http://www.redcross.org.uk/About-us/Who-we-are/Museum-and-archives/Historical-factsheets/The-Battle-of-Solferino, accessed on September 26, 2016, at 19:59 WIB

[36] Haryomataram, *Loc. Cit.*

[37] http://www.worldlii.org/int/journals/ISILYBIHRL/2001/13.html, accessed on 10 Oktober 2016, at 20:39 WIB

article is contained in Hague Convention article 55, which said that: [38] Any destruction by the occupying power of individual property or personal property of an individual or collective for an individual, or for a state, or other public authority, or to any social or cooperative organization, is prohibited, unless such damage is provided absolutely necessary by military operations.

Beside the four conventions that mentioned above, the geneva law also has several additional protocols. The existence of these additional protocols is intended to improve the performance of the four conventions geneva law, without relieve the principles that contained in the Geneva Conventions 1949.[39] This additional protocol was drafted in 1977 and divided into two books:[40]

1. Protocol I, contains several rules about war or armed conflicts that are cross country (international).
2. Protocol II, contains some rules concerning war or armed conflict that occurred in the territory of one of the participants state between their arm and the rebels in their territory area. In other words, this additional protocol is regulate armed conflic non-international. This Additional Protocol II adds to the content / scope of Article 3 of the Geneva Conventions.

Although the character of additional protocol is complementary of Geneva Conventions 1949, but protocol I and II have a large explanation about the protection of war victims and enhance of legal protection for injured and dead civilians, and this additional protocol is the first detail international treaty to regulate humanity in in civil war.[41] Both Protocol I and Protocol II have been ratified by 160 countries to make complete and universal humanitarian law and to better adapt to the occurrence of modern conflicts.[42] However, in the case of environmental protection in armed conflict only Additional Protocol I that regulates it, and Additional Protocol II doesn't regulate it.

The regulation of environmental protection during the war was contained in Article 35 paragraph (3) of Additional Protocol I of 1977 which govern as follows:[43]
" *It is prohibited to employ methods or means of warfare which are intended, or may be expected, to cause widespread, long-term and severe damage to the natural environment*".

Then in article 55 Additional Protocol I 1977 regulate that:[44]

"1. Care shall be taken in warfare to protect the natural environment against widespread, long-term and severe damage. This protection includes a prohibition of the use of methods or means of werfare which are intended or may be expected to cause such damage to the natural environment and thereby to prejudice the health or survival of the population.
2. Attack against the natural environment by way of reprisals are prohibited."

In Additional Protocol I 1977 Article 35 paragraph (3) regulates the prohibition of the use of weapons that has an effect for environmental damage. While in Article 55 of Additional Protocol I of 1977 is directed against prudential warning actions concerning the protection of the environment for the survival of mankind during armed conflict. Article 35 contains the term "widespread and severe long term" but it has not been determined how long the long-term provisions are at the time of the drafting of the Protocol.[45] Basically in Additional Protocol I there is a section that explains the basic provisions of ways and device to use of warfare so isn't has impact for environmental damage, that is:[46]

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[38] Article 53 Geneva Convention IV 1949
[39] Haryomataram, *Op.Cit.,* p.49
[40] *Ibid.*
[41] https://www.icrc.org/eng/resources/documents/misc/additional-protocols-1977.htm, accessed on 10 September 2016, at 20:11 WIB
[42] *Ibid.*
[43] Article 35 (3) Additional Protocol I 1977
[44] Article 55 Additional Protocol I 1977
[45] F.Kalshoven, Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts : The Diplomatic Conference", Geneva, 1974-1977 (PartII), *Netherlands Yearbook of International Law,* vol. 9,1978, p.130.
[46] Section 3 Additional Protocol I

1. In any armed conflict, the right of the state parties in armed conflict to choose the methods and device of warfare is not unlimited.
2. It is prohibited to use weapons, projektiles, materials and methods in the warfare that result in excessive injury or unnecessary suffering.
3. It is prohibited to use methods and device of warfare aimed at or petentially has effectt in extensive, widespread and long-term damage to the natural environment of the state.

About the manner of war, the provisions of section 3 of Additional Protocol I are addition and refinement of what is contained in the Hague Convention of 1907.[47] However, has doubts in Article 36 of Section 3 of Additional Protocol I that describes of the using new weapons, which in the use of new weapons should ensure that these new weapons are not against the protocols and approved by the protocol parties state. The benefit of this article is doubtful caused of what determines whether the weapon is a forbidden weapon or not is a country which has its own weapon and no sanction if the country concerned does not meet the requirement.[48]

2.3 Environmental Protection in ENMOD Convention

Regulations about environmental protection in armed conflict beside of The Hague Conventions and Geneva Conventions, is the ENMOD Convention or Convention on the prohibition of military or any hostile use of environmental modification techniques.[49] The problem of artificial modification of the environment for military warfare was brought to the international agenda in the early 1970s. In July 1974, the United States and the Soviet Union agreed to hold bilateral talks on measures to address the dangers of using environmental modification techniques for military purposes and the next three rounds of discussions in 1974 and 1975.[50] It became the background of ENMOD Convention. This Convention was adopted by UN General Assembly Resolution 31/72 of 10 December 1976 and signed in Geneva on 18 May 1977 and entered into force on 5 October 1978. The Convention consists of ten articles and the Annex.[51]

In the first article of ENMOD Convention there are several provisions in the regulation of environmental damage such as widespread, long-lasting, and terrible.[52] Beside the provisions on environmental damage in Article I of ENMOD Convention, Article II of ENMOD Convention shall be governed by agreements between states that it shall not use environmental modification techniques for military or other similar purposes. ENMOD Convention's environmental modification technique is any technique through deliberate manipulation of natural processes to alter the dynamics, composition or structure of the earth, including its biota, lithosphere, hydrosphere or space.[53] This environmental modification technique once occurred in the world that was when the war that occurred between Vietnam and America and that war became the background of the establish of this convention.

The vietnam war has a large effect on environmental damage because during the vietnam war, the United States used a method of war called the "Environmental Modification Technique".[54] That technique was used to modify the weather deliberately and resulting an excessive rainfall at the time, which in turn exacerbated the state of forests in Vietnam that had previously been bombed with high-powered ammunition (producing giant craters called craters).[55] These action has damage to the environment by spreading Herbicides such as Agent Orange (containing harmful dioxin substances) by US troops to destroy rural trees leaving the toxic food chain and an estimated 4 million people affected by the disease, with children born without limbs and other disabilities.[56]

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[47] Haryomataram, *Op.Cit.,* p. 171
[48] *Ibid.,* p. 174
[49] http://www.globalresearch.ca/environmental-modification-techniques-enmod-and-climate-change/16413, accessed on 11 Oktober 2016, at 10:13 WIB
[50] http://www.unog.ch/enmod, accessed on 11 Oktober 2016, at 13:06 WIB
[51] https://ihl-databases.icrc.org/ihl/INTRO/460?OpenDocument, accessed on 11 Oktober 2016, at 10:13 WIB
[52] Arlina Permatasari, *Op.Cit.,* p. 260
[53] *Ibid.,* p. 261
[54] https://www.britannica.com/event/Vietnam-War, accessed on 11 Oktober 2016, at 10:32 WIB
[55] Triyana Yohanes and Hyronimus Rhiti, 2006 Research Report *"Perlindungan Lingkungan Alam Melalui Ketentuan-Ketentuan Hukum Humaniter Internasional"*, p. 3.
[56] http://www.history.com/topics/vietnam-war/vietnam-war-history, accessed on 11 Oktober 2016, at 10:28 WIB

From that case it can be seen that environmental modifications can have devastating effects when used during the war. So it becomes the background of the establishment of ENMOD Convention. ENMOD Convention has been ratified by 77 countries and signed by 48 countries.[57] The role of the ENMOD Convention in environmental protection in armed conflict is to prevent the use of mass destructive weapons in the war.[58] This is evidenced by the Sunshine project in 2000, which examines ENMOD as a possible new tool for preventing the use of weapons of mass destruction, especially biological and toxin agents that aim for environmental protection and prevent the use of chemical technology and bilogy in the war.[59]

As mentioned earlier that the environment has become an important aspect of life so that various arrangements on environmental protection in armed conflict have been established.[60] Beside Hague Law, Geneva Law, and the ENMOD Convention there are other regulations that governing about environmental protection in armed conflict, such as:[61]

1. *St. Petersburg Declaration Renouncing the Use, in Time of War, of Explosive Projectiles under 400 Grammes in Weight, St. Petersburg, Nov. 29, 1868, AM. J. INT'L L. 1 (Supp.) 95;*
2. *Hague Convention (No. IV) Respecting the Laws and Customs of War on Land (1907), The Hague, Oct. 18, 1907, 36 Stat. 2277, TS No. 539;*
3. *Geneva Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or other Gases and of Bacteriological Methods of Warfare (1925), Geneva, June 17, 1925, 26 UST 571, TIAS No. 8061, 14 ILM 49 (1975);*
4. *Convention Relative to the Protection of Civilian Persons in Time of War (Geneva, Aug. 12, 1949), 6 UST 3516, TIAS No. 3365, 75 UNTS 287 (Geneva Convention (IV)) and Additional Protocol I Relating to the Protection of Victims of International Armed Conflicts, June 8, 1977, 1125 UNTS 3, reprinted in 16 ILM 1391 (1977);*
5. *Treaty Banning Nuclear Weapon Tests in the Atmosphere, in Outer Space and Under Water (Moscow, Aug. 5, 1963), 480 UNTS 43 (1963) and Comprehensive Test Ban Treaty (Sept. 24, 1996);*
6. *Protocols II and III to the 1980 UN Convention on Certain Conventional Weapons, restricting mines and incendiary weapons;*
7. *Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction, Paris, Jan. 13, 1993, 32 ILM 800 (1993).*

Most of these regulations do not explicitly mention the environment, but they contain general principles and provisions that can be applied to promote environmental protection. This is because any action that is contrary to military objectives is against the law and endanger the environment.[62]

3. Conclusion

Environmental protection in armed conflict according to international humanitarian law is governed by hague law and geneva law. In the hague law, environmental protection is governed by the convention IV of hague law and customs of war and land. Article 23 (g) which states the prohibition of the destruction of civilian objects in wars that affect the environment. In the geneva law, environmental protection is contained in Article 53 of Geneva Convention IV 1949 and Article 35 paragraph (3) and Article 55 paragraph (1) and (2) Additional Protocol I of 1977. Beside hague law and geneva laws, there are other arrangements to protect the environment in war that is contained

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[57] http://disarmament.un.org/treaties/t/enmod, accessed on 11 Oktober 2016, at 12:46 WIB

[58] Nessia Marga Letta, Analisis Pengaturan Internasional tentang "Prinsip Maksud Damai" dan bentuk Penerapannya Dalam Kegiatan Antariksa, "*Jurnal Analisis dan Informasi Kedirgantaraan*", Vol.9, No.1, 2012, p.77

[59] *Ibid.*

[60] Alexander Kiss and Dinah Ashelton, *Op.Cit.,* p. 254

[61] *Ibid.,* p. 255

[62] Alexander Kiss and Dinah Ashelton, *Loc.Cit.*

in the ENMOD Convention which prohibits the use of environmental modification techniques as a means of warfare.

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C. Other Documents

Convention on the prohibition of military or any hostile use of environmental modification techniques 1978 (ENMOD Convention)
The Hague Convention IV
Geneva Convention IV
Additional Protocol I
Statute of the International Court of Justice

The Preference of Multiple Representation on Biological Concept : Identification and Quality Constructed Representation

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Abstract

Multiple representation is commonly used as mode of student and teacher in communicating concepts and information in teaching Biology activity. It is therefore student and teacher should have good skill in representing the concepts properly. However, many student still facing difficulty in representing and interpreting concepts due to lack of experiences to use the representations during learning process. Teacher itself does not give much attention to this skill and they assuming that the student will understand all the explanation they give. The aim of this study is to explore the multi representation preference of biology teacher training students on concept of Potential membrane. Sample was the biology student who took Human Anatomy and Physiology class of year 2013-2014 and it was taken in framework of purposively with un-equivalent post-test design. The mlti representational preference was measured using essay test and was analyzed using Kolmogorov-Smirnov one sample test. The result shows that the precentage of the preference sequently are : verbal format (78%), picture format (72%), table (58%) and graph (37%). There are differences in terms of quality of representation constructed which 72% student was categorized as best representation skill in verbal and 65% in picture, 56% student is in good of represent concept in table format, and 46% has the worst represent on graph format.

Keywords: *Multi representational preference, pictorial, graph, table*

1. Introduction

Multiple rerpepsentation espescially external representation is generally used to comunicate concept and information in biologi teaching activity. External representation mostly uesd are: diagram process complex, graph, pictorial, symbols, and biological iconic. The external representation mostly used in comunicating concepts of Human Anatomy and Physiology are pictorial repsentation which compose of diagram process complex , or dinamyc in 2-D and 3-D. The concepts of the Human Anatomy and Physiology is unique since all of the concepts is organized hierarchily that is concepts of moleculer level nested in cell whitin organ which locate whithin system organ (12). The biological concepts and penomenon of human physiology can not be observed directly or it is abstract. It is therefore to comunicate teh concepts need a representation to make the concepts "real".

Based on interview to the students who have taken the Human Anatomy and Physiology course 85% stated that the course was difficult. The reason of difficulty were : too much concepts to learn, too much Latin/ Greeck terms, the phenomenon is abstract, and too much concept to memorize. The teaching process was passive which concepts was comunicated using external representation and presented directly to the student. The student was positioned as an audial object or in the framework of teacher centered. The concepts was taught in form of multiple representations without engaging student actively to expressing their competence of representation. Student`s achievement of the course relatively low of student who got A score was 15 % , B score was 27%, C score was 42% and D score was 18%.

The use of external representation In teaching activity has pedagogical functions as stated by Ainsworth (1) that representation used by student supporting the instructional process in three ways such as: (1) when the new representation functions as complement of previous understanding through confirmation of previous knowledge, (2) when a new representation makes limitation to interpret by limiting student`s focusing only on key of concepts (3) or when different representation gives opportunity to student to identify fundamental concepts or to understand the substance through the same modes. The lattes statement is confirmed by Prain and Waldrip (8)that the student have gained a knowledge when they could represent the same concepts being represented using different representation such as : verbal, graphic (pictorial, diagram, table). Therefore by using external representation to construct other mode of representation that have the same meaning implyes that learner could construct konwledge individually. This is situation agree with construktivist learning theory that during teaching activity learner engaging learning activity by constructing knowledge individually or socially (3).

Acting of constructing knowledge engaging learner cognition to processing information actively. Inside of cognition the process of verbal and non-verbal information is processing separately channel known as Pavio`s dual coding theory (7). The processed information will soon entering working memory and then will be stored in long term memory. Not all the processed information goes to long term memory, some of unselected one will be discharged. Non –verbal information such as picture is processed effectively than do non verbal and stored in long term memory espesially for learner who has visually learning style. The product of processing information is model mental.

Each representation has own different function to express such as : pictorial and diagram format is used to express a complex phenomenon, while table is for writing data, and graph is suite for describing relationships of variables, and mathematics formula is used to represent data measurement In terms of biological concept diagram representation also functions to clarify and to integrate concepts, represent a text, and to construct of mental model of abstract phenomenon such as structure of chemical, biochemical reaction, physiological and metabolism process occurred in organism (15) and (13). To construct and to interpret a diagram need high cognitive working that could be lead to a misconception (6).

2. Method

2.1 Research Design

The study used posttes unequivalent design. The sample was 35 participants who are the teacher training biology students that enrolled in course (purpossive sampling) Human Anatomi and Physiology in academic year 2013-2014 of one of university located in Lampung Province. The primary data was student`s response to the post-test containing representational problem in the form of essay structured. The preference of representation was measured using instrument which consisted of indicator `s framework for representation format category adopted from Rezba et al., (9) . Data was analyzed using Smirnov-Kolmogorov single sample test and was described in precentage (%). The response is categorized into four which are : good, fair, not good, and no answer as seen in the Table 1.

Table 1. Indicator of representational format

Representational Format	Indicator		
	Good	fair	Not good
Verbal	The answer is correct and comprehensive and (much information) using effective sentences	The answer is almost correct, less information and sentences used not effective	The answer is not correct.
Pictorial	The answer is correct	The pictorial	The pictorial

	in the form of pictorial with proper symbols and icons	too simple contains less symbols and icons	is incorrect answer and does not have proper symbol and icons
Table	Properly placing column title (dependent and independent), data were ordered accordingly.	Improperly placing variable and title column but data were ordered accordingly	Improperly placing title column, variable, and data
Graph	Properly in labelling and determining interval scale of axes and plotting data as graphic points.	Plotting data is less properly correct as graphic points	The graphmade is not correct

2.2 Data Analysis and Findings

This study proposed H0 as : there is no difference on representation preference as expected from each of the four representations, every single differences is only coincident variation occured randomly in a population where $f_1=f_2=f_3-f_4$. The study used of level significance α= 0,01 and N= 35, receptance /rejecting hypotesis was determined using the formula as follows:

$$D = \text{maksimum} \left| F_0(X) - S_N(X) \right| \quad (10).$$

The result of analysis shows that D maksimum score is 0,54 , according to E Table for N=35 $D \geq 0{,}54$ has probability under H0 of $p \leq 0{,}01$ leading to rejecting null hypothesis (H0) meaning that the preference of student representation is statistically significant. The precentage of preference sequently are: verbal (78%), pictorial (72%), table (58%)dan graph (37%), as seen below.

Figure 1.Precentage of student`s preference on representational format on Membrane potential concepts.

Student`s showed highest preference on pictorial representation as seen on the pie chart above. Since pictorial representational format is mostly used in Biology text book to describe physiological process and phenomena which occurred inside organism, students has already familiar with this representational format. Mostly concepts of membrane transport is presented in form of pictorial representational format because it have a closed link to other pictorial concepts

such as Anatomy and Histology. Hill (4) stated that the concepts that are represented in pictorial format a lot easier to processed than verbal one whereas Matlin (7) geve the opinion that information in the form of pictorial representation is a lot easier to be processed and saved in long term memory so that it will stay long –lasting. Pictorial representations are used to represent a concept containing the unite of symbolism and icons that must be recognised by students in order to understand the concept because these biological semantic will be found in all Biology textbook. So to understand the represented concept the biology student have to be saving much of biological symbols and icons in their cognition in order to easy to be retrieved anytime needed. And also they must be internalized a new symbols and icons if they don`t have it before (prior knowledge).

Based on category of student`s representation the verbal representation was best, and the graphic was the worst as seen in Figure 2.

Figure 2. Category of student representational construction

There are differences of the quality of student representation , verbal representation was the highest this because of the habitual of the student to explain anything verbally. The finding also implicated that the usage of pictorial and verbal dominating in learning this topic. There are imbalance of using other external representation such as grapic and table , this condition relatively not good since those two other representation are also frequently used to expressing Biological concepts. Actually student had been knew the two of format representations from prior learning such as Senior High School , and other courses. But in biology class these two skills are rarely used, although these two skills are very important in learning Science. Learning Science should include teaching these two skills.

Problem number 1 and 5 asked student to write answer verbally. As much as 78 % student prefered on verbal representations which were in general using simple sentences answers with arrow icons included, as seen following :

5) Hidung mencium wangi bunga ——→ ditangkap oleh cilia di lubang hidung ~~dan~~ → diteruskan ke sel-sel saraf olfactory → terjadi potensial membran → wangi bunga diterjemahkan oleh sel kemoreseptor → diteruskan ke bulbus olfactory → diteruskan ke cerebrum → diterjemahkan oleh otak sebagai wangi bunga.

Duri bunga memberi stimulus pada sel-sel otot dikulit → diteruskan ke dendrit saraf dikulit → terjadi potensial membran pada saraf - saraf sensorik disekitar kulit yang tertusuk → diteruskan ke sistem -saraf pusat (otak) → diterjemahkan → impuls berjalan disepanjang neuron motorik yang terdapat di tangan → tangan membuang bunga tersebut

Figure 4 . The example of student's verbal answer for problem number 5

In terms of explaining the content in answering the problems the students have already had good compentence that the answer was correct and clearly undestandable . The students was used to use verbal answer for answering questions, this is because the lecture almost gives the student quizess or tests in essay form. As we know verbal representastions is generally used in explaining concepts or terms in Biology, as Gilbert et al., (3) stated the terms and definitions in Biology is an inisial foundation to understanding simply concepts or is used to complement pictorial representation or to do verbally representation (representation).

Student`s preference on pictorial rerpesentation was measured by giving problem tested as seen in number 2 and 3. Thr problem asked student to make a picture of phenomena occured inside synaps cleft at the time a person consumes drugs.

Figure 5. The answer in form of verbal representation combined with pictorial

Student`s preference on pictorial representation relatively lesser than that of verbal representation (73%). The pictorial that asked was a type of a compleks proces diagram. A diagram process complex representation should have arrow symbols which represent molecular process aspect, ionic gradient, paths, and polar movements. A Diagram process has own general plan in using code, symbols, and also have icons that all of them composing a visual grammatical of a pictorial (5). The student pictured the phenomena asked not only in the form of pictorial representastion but also complemented by verbal/text. The pictorial constructed however, lacked of any icons, or symbols that important to be an intact concepts. The representation pictorial contructed which lack of any symbols and icons implicates that students' understanding on concepts of chemical process of synaptial cleft as only superfisial. There were some pictorial representation which were unfinished yet. This condition meaning that the student run out of time to but still showed an effort to make a good pictorial representation.

Based on analizing of student`s answer of problem number 4 and 6 the precentage of student`s preference on table representation was 58 %. The problem of number 4 asked student to make a table containing data taken from a graph which depicting of depolarisation and repolarisation and was also asked to explain the relation ship of the two variable that are time and voltage. The student was able to make a table but failed to explain the relationship of the variable. Problem of number 6 asked student to make a table of activation mechanism of K gate and Na gate during three events : resting membran potensial, repolarisation and depolarisation. To make the table needs deeply understanding on molecular process of depolarisation and repolarisation concepts. The low of table representational preference indicates that the student did not have much experience in applying their concept understanding into a table format. They would have made a table if there is a condition that forced them to do so such as to answer the problem in a test (because the problem asked to do so), or to fill in the data observed during laboratory work. In terms of table competence, generally student had displacement of data of variable X and variable Y (switched) and not pay much attention in making colomn title. Placement of title colomn and varible is very important in a table in order to be easier in making conclusion.

Problem no 7 and 8 must be answered in the form of graph. The concept was about conduction process occured in membrane in initial phage of action potential which causing an enhancing of thousand times of Na+ movement through electricity gate while K+ conduction enhancing only 30 times in following action potential.

Figure 7. Student' answer using Graph representations combined with verbal

Only 37% student who made correct answer in the form of graph representations. Generally student pictured a graph of action potential in general curve formation excactly same as pictured in the book without adding another picture that showing Na+ ion changing along side membrane through electricity ion channels or conduction processes as researcher expected for answering problem number 7. Student could not integrated that the graph is representing the conductant procceses occured along membrane and these processes occured because of potential different between outer and inside membrane. The student also could not answered why that the graph must be in a curve not in linier formation. Problem no 8 asked the student to make a graph that rerpesent Na+ and K+ ion conduction process during membrane potential changing condition from resting point -90mV to +10mV as long as 2 second. Almost all the student could not answer this question correctly, espescially in graphing. They did not think correctly that the graph must have had two X axises that are Voltage score (-90 mV, +10mV, and -90mV) and time score (2 second) while the Y axis was conductivity (conductivity speed of Na+ and K+ ion). This condition implies that student does not have good prior knowledge in making a complex graph due to lacking of understanding concepts. As Prior knowledge is one of important factor as representational competence (1).

3. Conclusion

The conclusion of this study is that there is differences response of student`s preference in answering question of Potential membran concepts orderly from highest to lowest as: verbal (72%), pictorial (78%), table (58%) and graph (37%) representational. The representational constructed was categorized as : verbal and pictorial (good), table (fair) and graph (not good). Since the concepts of membrane potential mostly is communicated in multiple representational formation the student's multiple representational competence should be enhanced.

Acknowledgements

Researcher suggest to conduct a following study about ways of teaching activity which could enhancing student multiple representation competence effectively for Human Anatomy and Physiology course.

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The Capacity Development Policy for Apparatus Through New Government Partnership Cooperation in Lampung to Obtain Optimum Public Service

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Abstract

One of the problems faced by new autonomous regions is low institutional capacity and poor quality of apparatus resources, portraits of apparatus resource management performance still indicate that conditions are not yet optimal. The government apparatus is still given "label" lazy and slow in giving the service and so on (Efendi, 2011). The method used in this study was descriptive qualitative, the location of this study was in Pesawaran and Pringsewu. The daata collection techniques were conducted through interviews, documentation, obfuscation and FGD. Data analysis technique was done by reduction, data display and conclusion. The validity technique was done by negative case analysis and triangulation.

The conclusions of this study were that the efforts to improve the capacity of human resources, especially the government apparatus, through coaching and development in the form of upgrading, training and others had long been done in Pesawaran but the results could only be seen quantitatively and still difficult to see qualitatively. The efforts were done through education and training, establishing cooperation institutions in Pesawaran both in Lampung and outside Lampung.

The suggestions are: (i) The Government should be more proactive and creative in establishing cooperation with Regency/City/Province, both in Lampung and outside Lampung (ii) It is necessary to develop complete normative material on the aspects of innovative government assessment (inter-regional cooperation policy through the enhancement/capacity building of the apparatus in order to make this Regulation The legal basis for the implementation of innovative government model in New Autonomous Region (DOB).

Keywords : *Policy; Capacity Building; Apparatus Resources; New Autonomous Regions; Optimal Service;*

1. Background of the Subject

The essence of the implementation of regional autonomy is the existence of the local government's flexibility to organize self government based on initiative, creativity and active role of the community in order to develop and promote the region. Apparatus resources are a strategic element in determining the productivity of an organization's work. Capacity development of local government apparatus resources is done in order to provide maximum results in the field of public services in accordance with the objectives and targets of regional autonomy and the needs of organizational work demands in the region. One of the consequences of enactment of regional autonomy policy is the formation of new autonomous regions (DOB). DOB among others, aims to: (1) Improve service to the community (2) Shorten the range of government management and development to be more effective, (3) For community empowerment process by cultivating initiative,

creativity and innovation in development (4) Foster the democratic process of society. Successful implementation of regional autonomy depends on the competence of local government apparatus itself, in this case is knowledge and skill.

One of the problems faced by new autonomous regions is low institutional capacity and poor quality of apparatus resources, portraits of apparatus resource management performance still indicate that conditions are not yet optimal; Government apparatus is still given "label" lazy, like slow service and so on (Sofian Efendi, 2011). The team's (2013) study of Pesawaran as DOB in which the institutional capacity and capacity of the apparatus resources was still low, both in terms of education and discipline, the number of employees who had not been able to complete the task well/slowly because of the lack of Apparatus that have technical capability plus placement apparatus that was not in accordance with the background of science (the majority of employees did not know the main task and function) which ultimately impact on the delivery of public services that were not maximal. The support of high-capacity apparatus resources was crucial to the success of the regional autonomy and regional development programs.

The study conducted by Kagungan (2011) about Pringsewu showed that Government's bureaucratic reform in the field of resource management of the apparatus had been initiated by the recruitment process by involving the community participation in realizing a competent, honest and clean bureaucracy of collusion, corruption and nepotism.
Based on the description on the background, the policy choice in order to improve the low institutional capacity and the quality of apparatus resources was very low, namely through cooperation policy between regions, in this case the cooperation between Pringsewu and Pesawaran, in order to provide optimal public service in accordance with Goals and targets of regional autonomy as well as the need for organizational work demands in the regions.
The study conducted by Ekana (355: 2008) stated that the key to supporting the successful implementation of regional autonomy was the quality of human resources existing in the area, which includes Resources Human apparatus and Human Resources society. The expected quality was competent, clean, honest and independent officers who could realize excellent service for the community. An independent apparatus is an authoritative and creative apparatus that does not rely on superior guidance but relies on its ability to make decisions, see opportunities and strive for opportunities with all the capabilities it has for the development of self-competence. The capacity building of civil servant apparatus or management apparatus is the overall effort to improve efficiency, effectiveness and professionalism degree in the implementation of basic tasks, functions and employment obligations, including planning, procurement, quality development, placement, promotion, payroll, welfare and dismissal (Law of the Civil State Apparatus No. 5 of 2014) Furthermore, Faulkner and Browman (in Ekana, 356: 2008) stated that the independence of the apparatus was characterized by the following characteristics: (1) having the confidence and ability to decide or take the most profitable and quickest action in carrying out its duties independently and Subordinated by others (efficiently); (2) always developing self-awareness and the need for the importance of improving themselves in carrying out their duties, accompanied by a strong willingness to make it happen, (3) having the ability to cooperate with other parties, carrying out its duties in a partnership, profitable and sustainable (4) having a high degree of screening in the best choice of action, (5) always striving to improve the quality of expanding the horizon and always striving to advance. One of the consequences of enactment of regional autonomy policy is the formation of DOB. The formation of DOB, among others, aims to: (1) improve service to the community (2) shorten the range of government management and development controls more effectively, (3) to process community empowerment by cultivating initiative, creativity and innovation in development fostered the democratic process of society. Successful implementation of regional autonomy depends on the competence of local government apparatus itself, in this case is knowledge and skill.

Therefore it is important to do this research with a view to:

a. Improving the optimal public services in accordance with the objectives and targets of regional autonomy and the needs of organizational work demands in the region in order to improve institutional capacity and the development of apparatus resources through a network of cooperation among new autonomous regions of Pringsewu and Pesawaran.

b. Formulating a good governance policy framework based on the findings of problems in the practice of governance in Pringsewu and Pesawaran in this case is the capacity building policy of the Apparatus Resources as well as providing recommendations for the preparation of good governance in the two new autonomous regions.

2. Research Method

The type of this research was descriptive research with qualitative approach. According to Bogdan and Taylor (in Moleong, 2005: 3), qualitative research methods as a research procedure that produces descriptive data, the written or oral words of the observed persons and behaviors. Qualitative research considers the object being studied holistically. So in this case it does not isolate individuals or organizations into variables or hypotheses but views them as part of a wholeness. While the type of descriptive research, according to Nawawi (2001: 44) could be interpreted as research that seeks to tell the solution of existing problems based on existing data. So it was also presents data, analyzes, and interprets.

Through a descriptive qualitative approach, the researcher intends to perform objective representation of the symptoms contained in the research problem that was the capacity building policy of Apparatus Resources through the cooperation policy of New Autonomous Region Government in Lampung Province in order to provide optimal public service

The location of this study was in Pringsewu and Pesawaran districts as DOB in Lampung Province. The focus was about Inter-regional cooperation policy (among new autonomous regions of Pringsewu and Pesawaran) in the framework of capacity building of apatature resources, related to formal policies/legal policies on the development of apparatus resources, extraction/review of relevant articles and legislation concerning harmonization of legal principles (formal judicial review) of new autonomous regional autonomy cooperation policy (DOB) in the context of capacity building of apparatus resources through cooperation and the constraints faced both externally and internally in the implementation of interregional cooperation policies in the context of capacity building of apparatus resources.

Types and Data Sources used resource persons selected purposively based on their competence on the aspect of thinking and policy of capacity development of apparatus resources in the research location. The informants were from Pringsewu and Pesawaran, including Legislative (Regional House of Representatives) and Executive Board (Head of District Head, along with Pringsewu and Pesawaran districts along with stakeholders (academics, non-governmental organizations, Public and legal practitioners) who care about the capacity development of the apparatus in the two of new autonomous regions. The recipient communities in Pringsewu and Pesawaran were selected purposively

As secondary data used documents, laws regulations relevant to the substance of the study. Data collection technique used interview with key informant/resource person, field observation/field study documentation study and Focus Group Disscussion.

Data analysis technique used Miles and Huberman in Sugiyono (2006) argued that the activity in data analysis is done interactively and lasted continuously until thoroughly so that the data is saturated. In qualitative research, the stages of data analysis include data reduction, data presentation and verification/drawing conclusions. Data Reduction (reduction data), is data obtained at the study site (field data) is set forth in the description or complete and detailed report. The field report will be reduced, summarized, selected the main points, focused on the important things then sought the theme or pattern. Data reduction takes place continuously during the research process. During the data collection takes place the data reduction stage, then make a summary of coding, tracing the theme, creating clusters and writing memos. Data Presentation (data display), which makes it easy for researchers to see the overall picture or a particular part of the research. Basically the presentation of data is a division of the researcher's understanding of the research results. The data obtained will be presented either in the form of drawings or interview quotations and descriptions of observations. Conclusion/verification, like continuous verification continuously throughout the research process

takes place, from the beginning, entering the study site and during the data collection process. The research was trying to analyze and search for patterns, themes, relationships :

a. Data Reduction (reduction data), data obtained at the study site (field data) is set forth in the description or complete and detailed report. The field report was reduced, summarized, selected the main points, focused on the important things then sought the theme or pattern. Data reduction took place continuously during the research process. During the data collection took place the data reduction stage, then made a summary of coding, tracing the theme, creating clusters and writing memos.

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c. Conclusion/verification, continuous verification throughout the research process took place, from the beginning, entering the study site and during the data collection process. The research trying to analyze and search for patterns, themes, relationships, things that often arise, hypotheses and so on that poured in tentative conclusions. However, with increasing data through process of verification continuously, it will get the conclusion which is "grounded", in other words every conclusion is always Continued verification during the study.

To determine the validity of data in qualitative research must meet several requirements in the examination of data using 4 (four) criteria (Moleong, 2005) namely: credibility, transferability, dependability, confirmability. To examine the credibility (Moleong, 2005), the researchers conducted triangulation, and negative case analysis techniques by collecting samples and cases that were inconsistent with the patterns and trends of information that had been collected and used as a comparison (Moleong 2005).

3. Result and Concluding Discussion

Based on the theory of good governance system (good governance) there are several principles that are implemented for the implementation of good regional autonomy. Some of these principles include: (1) Participation (participation) namely: community involvement in decision making either directly or indirectly; (2) transparency, namely: the disclosure of information is primarily concerned with the public interest in order to be accessible directly to those in need; (3) Effectiveness and Efficiency, namely: the administration of the state must produce according to what is desired by using the resources. Government bureaucracy reform is very important, given the mental qualities of some bad government apparatus; The mental shift of the ruling apparatus to serve the community that still needs to be developed. Therefore, the implementation of local government should be supported by the active role of professional apparatus and good mental quality. The expected apparatus resources can be created when applying the employee procurement function in the apparatus resource management with the recruitment and selection process in it.

The employee recruitment process in Pringsewu as DOB had involved community participation in realizing a competent, honest and clean bureaucracy of collusion, corruption and nepotism. This public participation could be straight forward through representatives in the Civil Service Commission established by the central and regional governments. Public participation in the management of civil service could also be done through community monitoring mechanisms that could be channeled through mass media or through interest groups. With the public participation in the management of personnel would be realized checks and balances so as to manifest a competent bureaucracy, honest and had a high spirit in providing services to the community. Public participation in the employee recruitment process was important in the current openness era. The form of

community participation in the process was in the form of supervision from the administrative selection process to the selection process.

As a new autonomous region, apparatus resources were an essential factor in the implementation of regional autonomy. One side of the human being is a target of development and on the other hand man was the most important development resource among other resources which must be built its ability and its strength as executor and developer of development. Therefore, in creating a good development it required good apparatus resources, competence, and appropriate to the skills of each employee with the aim of being able to manage and develop existing resources. Thus, this would certainly minimize the existence of local people who will remain stagnated in poverty and underdevelopment,

Pringsewu in an effort to produce employees who suit their needs had tried to focus on the recruitment process. The foundation was:

1. Government Regulation No. 97/2000 on the Formation of Civil Servants
2. Government Regulation Number 11 Year 2000 on Procurement of Civil Affairs;
3. Government Regulation Number 48 Year 2005 concerning the Appointment of Honorary Personnel to Candidate of Civil Servant;
4. Regulation of the Head of the State Personnel Agency Number 22 of 2005 concerning Guidelines for Procurement of Prospective Candidates for Civil Affairs Year 2005;
5. Regulation of the Head of the State Personnel Agency Number 21 of 2005 on the Data Collection of Honorary Workers.

In fact, in generating the resources of the apparatus must begin with the process of position analysis and recruitment of good and clean regional apparatus resources. Thus the enactment of regional autonomy was marked with the existence of Law No. 12 of 2008 on local government and based on Government Regulation No. 48 of 2005 then the recruitment of resources of regional apparatus in the era of regional autonomy was expected to provide ease in the development and regional development because the region could see the needs from their own employment. The preparation of formation that could be determined according to the needs of regional organizations as described above which is one example of ease that occurred during the recruitment period in the era of regional autonomy. But this brings a negative impact of obesity bureaucratic structure that becomes an obstacle in increasing the apparatus resources. Too extent the structure of government sometimes leads to ineffectiveness of public services, many governmental structures that have the same tupoksi that should be merged, causing efforts to optimize and saving regional spending can not be realized, here is a picture of the problem of autonomy today, There has been no special attention to the effectiveness of functions and structures of local government.

The number of structures owned by the region, automatically has an impact on the service, the number of structures will not achieve efficiency and effective. In today's modern bureaucracy system, what Pringsewu Government needs is a government bureaucracy that can run effectively and efficiently where in the bureaucratic system it has little structure, but it has many functions. So that is more focused is the performance bureaucracy apparatus. One of the impacts of the ease of submission of application and appointment of Civil Servants above has a positive impact in supporting the implementation of regional autonomy in Pringsewu. Looking at the positive side, the ease given will certainly make the region more familiar with the needs and speed up in the process of delivering the needs of employees.

In principle, apparatus resources are one of the factors that influence the success of regional autonomy because the apparatus resources are the drivers in the running of the governance system both at the center and in the region. Similar to the existing apparatus resources in the district of Pringsewu, the implementation of regional autonomy in this regency will be indirectly affected by the condition of apparatus resources in the district. Therefore, in order to create good regional autonomy especially in the field of apparatus resources it is important to pay attention on the Management of Apparatus Resources because without any management in the field of resources apparatus reliable, it

will be ineffective, inefficient and unproductive. The same thing happened in Pringsewu. In the implementation of autonomy in this regency, the regions had tried to focus on apparatus resource management which could be seen with the concentration of regional technical teams, especially on personnel (Badan Kepegawaian Daerah) in the effort to produce Calon Pegawai Negeri Sipil Daerah (CPNSD).

4. Conclusions and Recommendations

The conclusions obtained from the results of this study were that the efforts to improve the capacity of human resources, especially the government apparatus, through coaching and development in the form of upgrading, training and others had long been done in Pesawaran but the results achieved could only be seen quantitatively (regarding the amount of human resources) and still difficult to see qualitatively concerning the quality or qualitity of human resources itself. Efforts were done through education and training, establishing cooperation institutions in Pesawaran/Regency/City/Province both in Lampung and outside Lampung, conducting training both on the job training and off the job side training.

The suggestions/recommendations that are important in relation to the results of this research are:

1. In order to implement innovative government, Pesawaran Government must be more proactive and creative in cooperation with Regency/City/Province, both in Lampung and outside Lampung in the framework of capacity development of apparatus resources.

2. That based on the description of the Academic Paper that we compile (as the product of this research) need to be prepared a complete normative material on the aspects of innovative government assessment (policy of interregional cooperation through improvement capacity building of the apparatus for the purpose of making this Regional Regulation as the foundation The law in the implementation of the innovative government model in DOB through the policy of inter-regional cooperation can be achieved that with the drafting of this academic paper which is one of the research products, the draft of this regulation is expected to be the priority of drafting the Regional Regulation in the Legislation Program Regional Provinces/Regencies of Pesawaran especially in 2017.

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The Effects of the Performance Measurement System on the Managerial Performance (An Empirical Study on BPR in Banyumas Regency, Indonesia)

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Abstract

The long term aim of this research is to contribute to the theory and taken into consideration as well as policies for the managers at Bank Perkreditan Rakyat (BPR)in Banyumas in improving the performance.

This study aims to examine empirically the effects of the performance measurement system on the managerial performance that is moderated by role clarity and psychological empowerment variables. This research is expected to contribute to the development of the theory, especially it is related to the Behavioral and Management Accounting.

Collecting data in this study was conducted by distributing questionnaires to financial managers, personnel managers, administration managers, information technology, and marketing manager at BPR (Rural Bank) in Banyumas. The sampling technique in this study used census sampling technique. As for data analysis the writer used Statistical Product and Service Solution (SPSS) and Structural Equation Modeling (SEM) with Amos.

The findings of this study are expected to provide a practical contribution to the company in designing the performance measurement system that is relevant to the condition of the company, and is expected to assist the management in evaluating the managerial performance.

Keywords : *Performance measurement system, role clarity, psychological empowerment, managerial performance;*

1. Preliminary

1.1 Background of Study

The high technology and the rapid knowledge growth of workers demand the organization or company to constantly improve its business strategy (Yuliansyah, 2017). One of the strategies to improve the organization's business strategy with the goal of improving the performance is the implementation of performance measurement system. Performance measurement system includes performance targets (the planned level of achievement) of each group of performance indicators, each indicator of the performance targets set out in the specific work plan document (Chenhall, 2003). In addition, the performance measurement system also provides information of the important aspects that differ from the company's operations with a comprehensively complete view on the performance of

the company's business units. An ideal performance measurement system should be in accordance with the organizational objectives of the company, describes the key activities of the management, the employees can understand, easily measured and evaluated and can be used by corporate organizations consistently.

The importance of the benefits of performance measurement system for the company attracts the attention of the researchers. The previous research focused on the relationship between performance measurement system and the organization results such as organizational performance and return on share price (Chenhall, 2003; Ittner et al, 2003). Another study was conducted by Henry (2006) about the influence of organizational culture or the corporate culture toward the two attributes of a performance measurement system (PMS). It is the various measurement of the measurement system usage.

The research was conducted by Malmi (2001); Chenhall (2003) and Ittner et al, (2003) attempted to define the theoretical content of the performance measurement system. Other studies that supported the role of a performance measurement system in providing the overall business performance measurement looked something very important and useful for managing the company's business. Furthermore, the manager agreed about that statement (Malina and selto, 2001).

Yuliansyah et.al (2015) rovides evidence that an effective implementation and interactive use of PMS would leverage the organization's customers-focused strategy and help it gain a competitive advantage. Overall, the previous studies showed the relationship between the performance measurement systems, organizational results and examine how performance measurement system that was used by employers in evaluating the performance of employees.

Several other researchers found evidence that the motivational and cognitive mechanisms may help to explain the relationship between management control systems and individual behavior (Ilgen et al, 1979 Hall, 2004; Bonner and Sprinkle, 2002). Jackson and Schuler (1985); Tubre and Collins (2000) found an evidence that high understanding of the purpose of a job could provide relevant information toward the job and motivation to improve the performance of a job. In addition, the performance measurement system could communicate the organizational priorities and performance information for each individual that could help improve understanding of the role and the duty of the manager (Simon, 2000).

In the Hall's research (2004) he argued that performance measurement system could increase intrinsic motivation by increasing the psychological empowerment of managers. It indicated that the performance measurement system through its function as a motivational tool could provide the feedback that resulted in the increased intrinsic motivation of the manager.

This study is a replication of the Hall's study (2004). The main reason of this study is to contribute in the research of Accounting Management and Accounting Behavioral, especially a research on the effect of the performance measurement system to the work outcomes and its influence on the behavior of individuals in it. Moreover, it is about the Role Clarity and Psychological Empowerment Manager.

Based on the previous researches, there were some hypotheses as follows:

H_1 : Performance Measurement System had positive effect on Managerial Performance.

H_2 : Performance Measurement System had positive effect on Psychological Empowerment.

H_3 : Psychological Empowerment had positive effect on Managerial Performance.

H_4 : Psychological empowerment acted as an intervening variable between the Performance Measurement System variables on Managerial Performance.

H_5 : Performance measurement system positively affected Role Clarity.

H_6 : Role Clarity had positive effect on Psychological Empowerment.

H_7 : Role Clarity had positive effect on Managerial Performance.

H_8 : Role Clarity acted as an intervening variable between the performance measurement system variables on Managerial Performance

2. Grand theory

2.1 Contingecy theory

This study aims to describe the relationship between the Contingency Theory and Management Control System. In this case, the performance measurement system is part of the management control system. Contingency theory can be used to analyze the design and accounting management system to provide information and it can be used by companies for a variety of purposes (Otley, 1995) and to face the following competitions (Mia and Clarke, 1999). According to Otley (1995) the control systems are influenced by the context in which they operate and need to be adapted to the needs and circumstances of the organization. The premise of the Contingency Theory is no control system that is universally always appropriate to be applied to the entire organization in each state. A control system will vary in each organization based on organizational factors and situational factors.

For discussing the relationship between the control system to work outcomes, Kenis (1979) suggested to involve situational variables (such as personality, the appropriate goal, reward expectancy, organizational and environmental variables) as mediating variables that affected the relationship between management control systems and work outcomes. Meanwhile, Otley (1995) said that the influential variable in determining management control system is the environment, technology, size of the organization and strategy of the company.

Starting from this reality, a contingency theory in the management control lies between the two extremes. The first extreme, based on the contingency theory of management control will be situation specific model or an appropriate controls model will be greatly influenced by the situation at hand. The second extreme is the fact that a management control system still can be generalized or customized to be applicable to different companies.

3. Research Methodology

3.1 Data Collection Technique

The population in this study is the managers who work on BPR (Bank Perkreditan Rakyat) in Banyumas Regency. The used sample is the financial manager, personnel manager, administration manager, information technology, and marketing managers. The use of managers as the sample in this study because firstly, BPR bank managers have different perceptions of role clarity, psychological empowerment and work performance and managers who lead the division in the organization also acts as a chief of the division. They are given an authority and responsibility of the policy-setting business and corporate information. The data collection techniques or patterns of sampling in the research use census sampling method.

3.2 Analysis Technique

3.2.1. Test Data Quality

Data quality test includes reliability test and validity test Solfware SPSS (Statistical Product and Service Solution). Reliability test is intended to measure a questionnaire which is an indicator of variables or constructs. Measurements are carried out with reliability test of Cronbach Alpha. A construct said to be reliable if the Cronbach Alpha value ≥ 0.60 (Nunnaly, 1967 in Ghozali 2004).

Validity test is used to measure whether or not legitimate or valid questionnaires. A questionnaire is considered valid if the questionnaire is able to express something to measure by the questionnaire. Validity test is done by doing a bivariate correlation between each score total indicator constructs. If the total correlation constructs show significant results, then each indicator question is a valid.

3.3 Data Analysis Technique

Descriptive statistical analysis is intended to provide an overview of the demographic of the respondents. It includes age, sex, latest education, positions and the number of employees at the company where the respondents work.

Hypothesis testing uses a technique of Multivariate Structure Equation Model (SEM). Modeling SEM consists of a measurement model and the structural model. Structural model is intended to examine the relationship between exogenous and endogenous constructs. Then, the measurement model is intended to examine the relationship between indicators of the constructs / latent variable Ballen (1989) in Imam Ghozali (2005).

3. Results and Discussion

3.1. Descriptive Statistics

3.1.1 Questionaires Distributions and Return

Questionnaires were distributed directly to the respondent. The total number of BPR in Banyumas regency is 31 banks. So the total questionnaires were 155 questionnaires sent. They were left then taken back in accordance with agreements between the researcher and the respondents. The time for data collection was two months, starting from June 30, 2016 until June 12, 2016. 155 questionnaires were distributed and 125 questionnaires returned. Some questionnaires were not returned because several BPR refused to be the sample and the reasons were about the audit process, the change of leadership and the BPR did not correspond to the recent address. So the total of BPR that could be sampled is 25 banks with the response rate 80.64%. 10 questionnaires could not be included in the analysis because of incomplete filling, therefore the amount of data that could be processed for analysis were 115 questionnaires.

3.2. Data Quality Test

Based on the data quality test, the data validity and reliability are valid and reliable to be submitted.

3.3 Hypothesis Testing

After being tested for normality and outliers by Amos, the data can be submitted for filing hypothesis. This is the full model of structural equation to the hypothesis:

Picture 1. Full structural equation model modification

Summary of comparison model was built with the cut of goodness of fit indices and it appears in the following table:

Table 1 Goodness of fit indicates Full model stuctural equation model after elimination

Goodness of fit index	Cut off Value	Model Results	Notes
Chi-Square		83.846	
Probabilitas	≥ 0.05	0.001	*Marginal*
CMIN/DF	≤ 2.00	1.190	*Fit*
GFI	≥ 0.90	0.890	*Fit*
AGFI	≥ 0.90	0.835	*Fit*
TLI	≥ 0.95	0.985	*Fit*
CFI	≥ 0.90	0.924	*Fit*
RMSEA	≤ 0.08	0.089	*Fit*

Source : data processed, 2016

3.4 Testing and Discussion

From the output results of the parameter coefficient explanation put forward hypotheses as follows:

3.4.1 Hypothesis 1

Hypothesis one (H1) stated that the Performance Measurement System (Performance Measurement System) had positive effect on Managerial Performance. The test results of the estimation parameters (standardized regression weight) between the Performance Measurement System on Managerial Performance showed positive effect 0.126, with the value of the critical ratio (CR) was 7.313 and p-value was 0. The value of CR was above the critical value ± 1.96 with significance level 0 (significant) that p was under significant value 0.05. Thus the first hypothesis could be accepted.

The acceptance of the hypothesis one (H1) indicates that the Performance Measurement System can provide relevant information to decision making by managers. The performance information gives managers more accurate predictions about the state of the environment manager jobs, resulting in a better decision-making alternative to the technical procedures effectively and efficiently and it has an impact on improving the performance of managers. In addition, the information of comprehensive performance of the Performance Measurement System will provide information that is more specific and relevant to the decision making process and it can improve the managerial performance. The results are consistent with previous studies that examine the performance of managers in manufacturing companies in Australia (Hall, 2004) and Rahman (2006) in manufacturing companies in Central Java.

3.4.2 Hypothesis 2

Hypothesis two argued that Performance Measurement System had positive influence on Psychological Empowerment. The data processing results showed the value S.E 0.44 and a value of the critical ratio (CR) was 2.215 and the p-value was 0.027. The CR value was above the critical value ± 1.96 with a significance level 0.027 (significant) that p was under significant value 0.05. Thus the second hypothesis was accepted.

The results of this study are different to the previous studies, Rahman (2006). This may be due to the performance measurement system that is owned manufacturing company is different to banks. In the banking world, performance measurement system is proven capable of providing comprehensive information for managers in addressing managerial duties. Performance measurement system of the company is able to increase the motivation and the competence of the manager. The results of this study support Kanter (1989). He says that an individual requires information about where these organizations exist will be running in order to estimate the ability to take measures and initiatives. More comprehensive information that is obtained from performance measurement tools includes financial and non-financial information. The information should properly describe the performance indicators so it can motivate the managers in completing the task.

3.4.3 Hypothesis 3

Hypothesis three stated Psychological Empowerment had positive effect on Managerial Performance. The data processing results showed the value of S.E 2.18 with a value of the critical ratio (CR) -0521 and p-value was 0.456. The CR value was far below the critical value ± 1.96 with a significance level of 0.602 (not significant) that p was above the significant value of 0.05. Thus the third hypothesis could not be accepted.

It is different to the research conducted by Hall (2004), Rahman (2004). The differences in these results due to the differences in characteristics of the type of companies / industries that are studied between manufacture companies and banks. In fact in the banking industry psychological empowerment manager does not act as supporting managerial performance. The psychological state of the manager is not the main thing in improving the performance. There are still many factors that actually support managerial performance. They are the factor of information (Primasari ,2013), the factor of environment (Hilendri , 2009).

3.4.4 Hypothesis 4

Hypothesis four presented the Psychological Empowerment acted as intervening variables between the Performance Measurement System on Managerial Performance. Hypothesis four (H4) in this study developed a model that connected the indirect effect constructs of Systems Performance Measurement (SPM) through Psycological Empowerment on Managerial Performance.

A way of understanding the effect of indirect Performance Measurement System on Managerial Performance, could be determined from the sum of indirect influence through Psychological Empowerment. The indirect effect was calculated from the direct influence of Performance Measurement System against Psychological Empowerment multiplied by the direct influence Psychological Empowerment on Managerial Performance. The direct effect could be seen in the output standardized direct effects and the indirect effect output AMOS briefly presented in the following table.

Table 2. *Standardized Direct Effect*

	SPM	KP	PP	KM
KP	0,922	0	0	0
PP	0,974	0,005	0	0
KM	1,161	0,592	-1,136	0

Source: data processed 2016

The direct effect was the loading factor or lambda value of each of the indicators that made up the latent analyzed variables (August, 2001). It is to determine the effect of the construct of Performance Measurement System through Psychological Empowerment variables on Managerial Performance.

Table 3 The indirect effect Performance Measurement System through Psychological Empowerment Psychology variables on Managerial Performance.

Lane	Direct Effect of SPM-PP	Direct Effect of PP-KM	Indirect Effect of SPM-PP-KM
	a	b	(a X b)
SPM-PP-KM	0.974	-1.136	-1.106

Source: data processed 2016

According to the table, the direct effect of psychological empowerment on managerial performance was -1.136. This value meant that higher psychological empowerment does not affect managerial performance. Overall It could be calculated that the indirect effect of performance measurement system on managerial performance through psychological empowerment, 0.974 (a performance measurement system to psychological empowerment) multiplied by -1.136 (psychological empowerment to managerial performance). The indirect effect of performance measurement system on managerial performance through psychological empowerment was -1.106.

The negative sign gives a meaning that psychological empowerment is not proven to mediate performance measurement system and managerial performance. So the hypothesis four (H4) which states that Psychological Empowerment acted as intervening variables between variable Performance Measurement System on Managerial Performance is rejected. It is not appropriate to the research conducted by Hall (2004) and Rahman (2006). Performance measurement system of the company is able to increase and affects the manager's psychology. However the psychological empowerment has no effect on managerial performance. The difference in these results is due to differences in the characteristics of the work environment between manufacturing companies and the banking industry. Variable of information system is the most needed thing in the banking industry. Information system is proven to influence managerial performance in the banking industry (Primasari, 2013). This negative result proves that psychological empowerment is not proven mediating the variables of performance measurement system and managerial performance.

3.4.5 Hypothesis 5

Hypothesis five stated Performance measurement system positively affected the Role Clarity. The data processing results showed the value of SE 0.126 with the value of the critical ratio (CR) was 7.313 and the p-value was 0. The CR was above the critical value was ± 1.96 with significance level 0 (significant) that p was under significant value 0.05. Thus the fifth hypothesis was accepted.

This previous research supports Hall (2004). Their performance measurement system provides various performance measurement information about the work area of the company's business unit and the managers / employees are able to understand their role in the work to be done.

3.4.6 Hypothesis 6

Hypothesis six showed the Clarity Role had positive effect on Psychological Empowerment. The data processing results showed the value of SE was 0.393 with the value of the critical ratio (CR) was 0.014 and p-value was 0. 989. The CR value was below a critical value ± 1.96 with a significance level 0.989 (not significant), p was above the significant value 0.05. Thus the sixth hypothesis was rejected. It supported research Rahman (2006).

The rejection of the hypothesis six indicates that the Clarity Role is not enough to give evidence that may affect the psychological empowerment of managers. The manager has a responsible in his duties by the authority and responsibility and the targets to be achieved by his superiors, but the excessive authority and responsibility make the managers exploited than empowered. This is

supported by Spreitzer (1996) which states that to create a clear goal (Goal Clarity), then the line of duty and responsibility must be able to increase the psychological empowerment in the workplace.

3.4.7 Hypothesis 7

Hypothesis seven stated that Clarity Role had positive effect on Managerial Performance. The test results of the estimation parameters (standardized regression weight) between Clarity Role on Managerial Performance (KM) showed positive effect 0.533, the value of the critical ratio (CR) was 1.11 and the p-value was 0.267. The CR value is far above the critical value ± 1.96 with a significance level 0.267 (not significant) that p was above the significant value 0.05. Thus the seventh hypothesis was rejected.

These results are consistent with the research conducted by Rahman (2006), The rejection of the hypothesis seven (H7) indicates that the Clarity Role does not provide sufficient evidence on Managerial Performance from the Managers. The one who knows how to complete tasks and confident of his work, is considered to have a high Clarity Role, but it may have a negative impact. Those people will feel the needed-ones so that they tend to underestimate the tasks and the responsibilities that affect their performance. It requires limits and rules that may be sufficient reward and punishment.

3.4.8 Hyphothesis 8

Hypothesis eight showed that Clarity of Roles acted as intervening variables between variable performance measurement system on Managerial Performance.

To determine the indirect effect of Performance Measurement System on Managerial Performance, can be determined from the sum of indirect influence through Clarity of Roles. The indirect effect is calculated from the direct influence of Performance Measurement System to Clarity Role multiplied with the direct influence of Clarity Role on Managerial performance. The direct effect can be seen in the output standardized direct effect and indirect effect AMOS output 5.0. They are summarized in the following table.

Table 5 The indirect effect of Performance Measurement System through the Role Clarity on Managerial Performance

Lane	Direct Effect of SPM-KP	Direct Effect of KP-KM	Indirect Effect of SPM-KP-KM
	a	b	(a X b)
SPM-KP-KM	0.922	0.592	0.545

Source: data processed 2016

The indirect effect of performance measurement system on managerial performance through clarity of roles was 0.545. That positive sign gave a meaning that the Clarity Role proved to mediate between performance measurement system and managerial performance. So the hypothesis eight states Role Clarity that acted as intervening variables between performance measurement system variables was acceptable to the Managerial Performance. The results supported the research by Hall (2004) and Rahman (2006) found evidence that the performance measurement system was related directly and indirectly to managerial performance through the Clarity Role.

The performance measurement system provides various performance measurement information about the work area of the company's business unit, so the managers / employees are able to understand their role in their work. Clear understanding of their role in their task managers will improve their performance.

4. Conclusion and Sugggestions

4.1. Conclusion

The testing of SEM (Structural Equation Modeling) used 5.0 Amos, can be concluded as follows :

1. Performance Measurement System is proven positively and has significant effect on the Managerial Performance. These results are consistent with the results of the Hall's study (2004) and Rahman (2006).
2. Performance Measurement System has positive influence on Psychological Empowerment. These results are consistent with the results of the study Hall (2004), but they do not agree with the results of Rahman (2006)
3. Psychological Empowerment is not proven positively and has significant effect on the Managerial Performance. These results do not support the Hall's research (2004).
4. Psychological Empowerment is not proven as an intervening variable between Performance Measurement System on Managerial Performance. These results do not support previous research of Hall (2004).
5. Performance Measurement System has positive influence on the Role Clarity. These results are not consistent with the results of the Hall's research (2004).
6. Role Clarity is not proven positively on Psychological Empowerment. These results are not consistent with the results of the Hall's research (2004).
7. Role Clarity is not proven positively on Managerial Performance. These results are not consistent with the results of the Rahman's research (2006).
8. Role Clarity is proven as an intervening variable between the Performance Measurement System on Managerial Performance. These results are consistent with the results of the Hall's study (2004)

4.2 Suggestions

1. Do additional data collection techniques such as interviews with the company with the aim of expanding the number of respondents. More number of samples is expected to be able to generalize the problems in the study.
2. The development of research instruments should be done. It is adjusted to the conditions and the surroundings of the examined object.
3. For further research with the same topic should use statistical tools that are based on SEM (Structural Equation Modelling) such as LISREL.

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Effect of Service Quality on Customer Satisfaction and Loyalty Sultan Iskandar Muda International Airport Aceh Indonesia as the World's Best Airport for Halal Travellers

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Abstract

Purpose - This paper aims to identify and analyze the effect of service quality on customer satisfaction and customer loyalty. This journal analyzes the influence of the quality of existing services to customer satisfaction on the quality of such services and simultaneously to test the influence of the service quality on customer loyalty.

Design methodology / approach - The tools used to collect information on this research is the survey addressed to the respondent who has been to Sultan Iskandar Muda International Airport. The analysis tool used is a simple linear regression service quality to customer satisfaction and customer loyalty.

Findings - The findings in this paper confirm that the quality of service has positive and significant influence on satisfaction and in terms of customer loyalty. Based on the theoretical view, the improvement quality of service will improve customer satisfaction and customer loyalty Sultan Iskandar Muda International Airport as the World's Best Airport for Halal Travellers

Limitation of the study - the main limitation of this study is that the sample used only of visitors who have been to Sultan Iskandar Muda International Airport as the World's Best Airport for Halal Travellers without considering variables in addition to service quality, customer satisfaction and customer loyalty.

The practical implications - From this journal can be concluded that, by improving service quality factors can increase customer satisfaction and customer loyalty. This is consistent with research that shows the quality of service has a positive and significant impact on customer satisfaction and customer loyalty.

Social Implications - In this journal, are finding that to make a product both goods and services, quality of service has a great influence in improving customer satisfaction and loyalty. The Company shall have the right strategy to meet customer needs in order to create customer satisfaction so that also create customer loyalty for repeat purchases ensued and recommend products to other customers so that marketing can be said to be effective.

Keywords: *Service Quality, Customer Satisfaction, Customer Loyalty;*

1. Theoretical Framework

1.1 Quality of Service

Stemvelt (2004: 210) states that the concept of quality of service is a perception of revolution overall quality is unthinkable and became an idea that should be formulated (formulation) so that its application (implementation) could be tested again (evaluation), to be a dynamic process, ongoing, continuous in customer satisfaction.

In comparing between Expectations and Performance created gaps (discrepancies). This gap is called the GAP. There are 5 GAPs with respect to service quality issues.

GAP 1 is a gap between customer expectations - Perception Management. Relative GAP 1, the three filed Proposition 1: "The gap between customer expectations and perceptions (performance) management on such expectations will have an impact on customer service quality assessment."

GAP 2 is the gap between Perception Management - Service Quality Specifications. GAP 2 in connection with this, the three filed Proposition 2: "Gap between management perception about customer expectations and specifications of the quality services will have an impact on the quality of service from the customer's perspective."

GAP 3 is a gap between the specification Quality Services - Implementation Services. GAP 3 in connection with this, the three filed Propositions 3: "Gap between service quality specifications and actual service delivery will have an impact on the quality of service from the customer's perspective."

GAP 4 is the gap between the Implementation Services - External Communication. In connection with this 4-GAP, the trio filed Proposition 4: "The gap between the actual service delivery and external communications ministry will have an impact on the quality of service from the customer's perspective."

GAP 5 is the gap between the performances Expected (Expected Service) - Services Received (Perceived Service). GAP 5 in connection with this, the three filed a Proposition 5: "Quality and customer in service is a function of the magnitude and direction of the gap between the expected service and the service received."

Based on GAP 1 to 5, the three filed Proposition 6 that "GAP 5 = f (GAP1, GAP2, GAP3, GAP4).

1.2 Components Service Quality

Through a series of focus group discussions they held, Parasuraman, et. al. filed 10 categories of Quality of Service. All 10 categories they call "Service Quality Determinants." All 10 categories – according to Parasuraman et.al.-- they may be overlapping because they build it through exploratory studies which incidentally uses a qualitative approach. They summarize all 10 determinants into a table, which is more as follows:

1. *Reliability*

Reliability include consistency of performance and reliability. That is, the organization showed immediate service. It can also mean the organization honor its promises. In detail include:

2. *Responsiveness*

It is the desire or readiness of employees to provide services, includes:

- Delivery slip immediate transactions;
- Addressing customer feedback quickly;
- Providing service introduction (e.g. designing an appointment quickly).

3. *Competence*

It means mastering the skills and knowledge required to perform services, including:

- Knowledge and expertise in contact personnel;
- Knowledge and expertise in operations support personnel;
- Ability to research organizations.

4. *Access*

It is easy and close contact. He means:

- Services are easily accessible by phone (path not Sibut and not telling wait);
- The wait time is not long services;
- Hours of operation are convenient;
- Location convenient service facilities.

5. *Courtesy*

It includes hospitality, respect, tolerance, and friendship in the contact personnel (including receptionists, telephone operators, etc.), include:

- Tolerance for personal belongings of customers;
- Display a clean and tidy the room service.

6. *Communication*

It means to ensure customers receive information in a language they can understand and listen to them. Also it means that the organization must adapt the language to different customers. It includes:

- Explanation of the service itself;
- Explanation of how the cost of a service
- Explanation of how the regular service and exchanged;
- Convincing customers that the problem will be addressed.

7. *Credibility*

It includes trust, confidence, honesty. It includes the appearance of the condition that the interests of customers are everything. Contributor's credibility is:

- The name of the organization;
- The reputation of the organization;
- Personal characteristics of the personnel who come into contact;

8. *Security*

It is freedom from danger, risk, or doubt include:

- Physical security;
- Financial Security;
- Confidentiality.

9. *Understanding / Knowing the Customer*

It includes make an effort to understand the needs of customers, including:

- Learning to understand the special needs of customers;
- Provide personal attention;
- Recognize regular customers.

10. *Tangibles*

Its services include physical appearance;

- The physical facilities;
- Appearance of workers;
- Tools or equipment used to carry out the service;
- Physical representative of the service, such as a plastic credit card or bank statement;
- Another customer in a care facility.

1.2 Customer Satisfaction

The concept of customer satisfaction by Umar (2007: 65) is the level of consumers' feelings after comparing between what is received and hoped. A customer, if satisfied with the value that is given by the product or service, it is very likely to become a customer for a long time.

According Tjiptono (2008: 169), many developing definitions for customer satisfaction five is among others

a. The feeling after evaluating the product user experience.
b. Customers response to the evaluation of the perception on the difference between the initial expectations before purchase (other performance standards) and the actual performance of the product as well as the perception after using or consuming the products concerned.
c. After-purchase evaluation that compares the overall perception of the performance of the product with a pre-purchase expectations.
d. The size of the total product performance compare an organization in a series of customer needs.
e. The level of one's feelings after comparing the performance of which he perceived to his expectations.

According to Kotler (In johanes, 2009: 47) defines satisfaction as feeling happy or disappointed that comes from the comparison between the perceptions of a product results with expectations. If the performance of the product from consuming experience under his hopes, this condition shows it is not satisfied (Dissatisfied), if both satisfied (Satisfied), and if the above is very satisfied (Higly Satisfied). The consequence of this definition is based on the measurement of the satisfaction gap between expectation and experience, without question the first dimension and the indicators used as a measure of customer satisfaction. Implicitly, this concept must meet the assumption that the respondents had already had hopes of goods and services to be consumed, and this assumption is not always met.

According to Zeithaml (in Erida, 2009: 1), the consumer satisfaction will be influenced by specific features of the product or service and the perception of the quality. Quality of services basically describes the extent to which services are perceived customers can meet their expectations. Quality is the dominant element in the evaluation of customers. In cases where the service offered is a combination of the physical product, quality of service is important in determining customer satisfaction.

From the definitions above, it can be concluded that customer satisfaction is the result of a perceived on the products and services of equal or exceed the desired expectations.

1.2.1 Customer Satisfaction Indicators

Hawkins and Lonney cited in Tjiptono (2008: 101) attributes forming the satisfaction consist of:

1. Compliance Expectations

Is the degree of correspondence between the performance customers expect products with perceived by the customer, include:

- The products obtained meet or exceed expected.
- Services by employees obtained match or exceed expected.
- Supporting facilities obtained meet or exceed expected.

2. Interests visit again

Is the willingness of customers to visit again or re-purchase of the related products include:

- Keen to come back because the services provided by the employees satisfying.
- Keen to come back because of the value and benefits gained after consuming the product.
- Interested to visit again because adequate support facilities are provided.

3. Willingness Recommendation

Is the willingness of customers to recommend products that have been felt to friends or family, includes:

- Advice for friends or relatives to buy the products offered for outstanding service.
- Advice for friends or relatives to buy the products offered for adequate support facilities are provided.
- Advice for friends or relatives to buy the product because the value or benefit is obtained after taking a service product.

1.3 Customer Loyalty

Loyalty or faithfulness is defined as a strongly held commitment for purchase or subscribe to a particular product or service again in the future even though there is the influence of the situation and the potential marketing effort that causes changes in behavior (Kotler and Keller, 2007: 175).

According Shert and Mittal in Tjiptono (2008: 387), customer loyalty is customer commitment to a brand, stores and suppliers, based on behavior which are very positive and reflected the positive repeat purchases.

Griffin (2005: 4) stated the proposed definition of customer loyalty. Another concept on customer loyalty to mention that the concept of loyalty is more directed to the behavior compared with an attitude and a loyal customer because it shows purchasing behavior can be interpreted as a regular purchasing patterns and in a long time, which cab be done by unit makers or decision makers.

Loyal customer is an invaluable asset for the company, because of the characteristics of a loyal customer according to Griffin (2005: 33), among others:

1. To purchase a regularly repeating Customers who are satisfied with the products or services are bought and will buy back.
2. Purchase between products and services. In addition to the purchase of the main product or service and the service also purchase the product beyond the wishes of the most anyway.
3. Refer to other people. Provide recommendations to others regarding the purchase of products and services of the company.

4. Shows immunity against competitors pull Customers do not easily switch to other companies that offer similar products or services.
5. Customer demonstrated their loyalty to a company or brand to buy repeatedly, purchase additional products such companies, and recommend it to others.

Table 1. Operasional Variabel

Variabel	Indikator
Service Quality	*1. Reliability* *2. Responsiveness* *3. Competence* *4. Access* *5. Courtesy* *6. Communication* *7. Credibility* *8. Security* *9. Understanding/knowing the customer* *10. Tangibles* **Parasuraman, et. al. (2001:162)**
Customer Satisfaction	1. The suitability of expectation 2. Interest in re-visitation 3. Willingness to recommend ***Tjiptono (2004:101***
Customer Loyalty	1. Purchasing goods repeatedly 2. Purchasing between product and service 3. Share references to other people 4. Showing immunity to the pull of competitors 5. Customers showing their loyalty ***Griffin (2005:33)***

Figure 1. Research Paradigm

3. Hypothesis:

• H1: Quality of Service and Significant Positive Effect on Customer Satisfaction

• H2: Quality Service and Significant Positive Effect on Customer Satisfaction

4. Research result

4.1 Validity test

Test the validity of using factor analysis in order to determine the validity of the questions for each variable or to determine the construct validity (Chenhall and Morris, 1986). Test equipment used to measure the level of inter-correlation is the Kaiser-Meyer-Olkin Measure of Sampling Adequacy (KMO MSA). The instrument must have a value of KMO MSA (Measure of sampling adequacy) more than 0:50 so that the collected data is said to be appropriate for factor analysis (Hair et al., 2006).

Table 2. Validity of Test Results Table

Variables	Item	*Anti-image Correlation*	*KMO Measure of Sampling Adequacy*	Details
Service Quality (X1)	1	0,814	0,793	valid
	2	0,717		Valid
	3	0,797		Valid
	4	0,895		Valid
	5	0,717		Valid
	6	0,755		Valid
	7	0,811		Valid
	8	0,872		valid
	9	0,775		Valid
	10	0,771		Valid
Satisfaction (Y1)	1	0,864	0,747	Valid
	2	0,841		Valid
	3	0,739		Valid
	4	0,744		Valid
	5	0,886		Valid
	6	0,730		Valid
	7	0,627		Valid
	8	0,704		Valid
	9	0,669		Valid
	10	0,736		Valid
Loyalty (Y2)	1	0,697	0,758	Valid
	2	0,833		Valid
	3	0,870		Valid
	4	0,705		Valid
	5	0,697		valid
	6	0,714		Valid
	7	0,750		Valid
	8	0,730		Valid
	9	0,876		Valid
	10	0,712		Valid

The above table shows all the items Variable Quality of Service, Customer Satisfaction and Loyalty Consumers are demonstrating the value of the instruments is not less than 0.5 so declared valid and can be processed to the next step.

4.2 Test Reliability

Reliability testing using the coefficient Croanbach's Alpa with SPSS 20.0. Reliability testing is done by looking at the reliability test results with Croanbach's Alpa value> 0.6 = Reliable.

Table 3. Test Reliability

Variables	Cronbach's Alpha	Details
Service Quality (x1)	0,896	Reliable
Customers Satisfaction (Y1)	0,889	Reliable
Customers Loyalty (Y2)	0,893	Reliable

The above table shows the value Croanbach Alpha variables of service quality, customer satisfaction, and customer loyalty is greater than 0.6. Based on these results in this study Reliable instrument so as to continue the process of further

1. Characteristics of Respondents

a. Gender

Based on the above table, it shows the number of visitors to the male by 38% and female by 62%. The entire diagram shows that most sex of visitors who come to Sultan Iskandar Muda International Airport is female.

b. Work

Based on the results of the study, the number of visitors who is still a student reach around 26%, visitors who work privately reach around 33%, visitors who work of State employees by 30%, and entrepreneurs as much as 6.7%. This means most visitors of Sultan Iskandar Muda International Airport work as private employees.

c. Age

The results of the above table shows respondents aged 15-20 years at 10%, of respondents aged 20-25 years by 28%, of respondents aged 25-30 years by 36%, and respondents over the age of 30-40 years by 26 %. It shows most of the respondents who visited the Sultan Iskandar Muda International Airport aged 25-30 years.

d. Outcome

The results showed that the respondents have less than 2 million expenditure by 2%, respondents who had 2-5 million expenditure by 17%, respondents who had 5-10 million expenditure by 47%, and the outgoings> 10 million by 34%. It shows most of the respondents who visited the Sultan Iskandar Muda International Airport has the expenditure of 5-10 million per month.

e. Intensity

The above data indicates respondent who had visited the airport two times is equal to 12%, of respondents who had been for 3 times is at 42%, of respondents who had visited 4 times by 41%, and respondents who have been for more than 4 times by 5%. The diagrams show the most respondents that had ever visited the airport is around 3 times.

4.3 Results Respondents answer
a. The Tabulation of Answers on Quality of Service

Service Quality

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	TS	18	1.8	1.8	1.8
	N	129	12.9	12.9	14.7
	S	442	44.2	44.2	58.9
	SS	411	41.1	41.1	100.0
	Total	1000	100.0	100.0	

The above data shows that respondents answered Disagree is 1.8%, respondents who answered Neutral is 12.9%, respondents who answered Agree is around 44.2%, and respondents who answered

Strongly Agree is 41.1%. It showed that most respondents responded well to the revelation of Quality of Service.

b. Tabulation Answers to Customer Satisfaction

Customer Satisfaction

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	STS	7	.7	.7	.7
	TS	32	3.2	3.2	3.9
	N	145	14.5	14.5	18.4
	S	443	44.3	44.3	62.7
	SS	373	37.3	37.3	100.0
	Total	1000	100.0	100.0	

The above data show respondents who answered Strongly Disagree is around 0.7%, the answer Disagree is around 3.2%, respondents who answered Neutral is around 14.5%, respondents who answered Agree is around 44.3%, and respondents who answered Very agree is around 41.1%. It showed most respondents responded well to the revelation of Customer Satisfaction.

c. Tabulation answers Customer Loyalty

Customer Loyalty

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	STS	6	.6	.6	.6
	TS	33	3.3	3.3	3.9
	N	157	15.7	15.7	19.6
	S	547	54.7	54.7	74.3
	SS	257	25.7	25.7	100.0
	Total	1000	100.0	100.0	

The above data show respondents who answered Strongly Disagree is around 0.6%, the answer to Disagree is around 3.3%, respondents who answered Neutral is 15,7%, respondents who answered Agree is 54.7%, and respondents who answered Very agree is 25.7%. It showed most respondents responded well to the revelation of Customer Loyalty.

Regression Results Effect of Service Quality on Customer Satisfaction

Model Summary

Model	R	R Square	Adjusted R Square	Std. Error of the Estimate
1	.738[a]	.544	.539	2.75112

a. Predictors: (Constant), Service Quality

The above data shows the variable quality of the service is worth 0,544. This means the quality of service to give effect to Customer Satisfaction by 54.4%, while the remaining 45.6% is influenced by other factors not examined in this study.

Coefficients

Model		Unstandardized Coefficients		Standardized Coefficients	t	Sig.
		B	Std. Error	Beta		
1	(Constant)	11.090	2.820		3.933	.000
	Service Quality	.715	.066	.738	10.812	.000

a. Dependent Variable: Customer Satisfaction

The results showed the effect of quality of service is equal to 10.812> 1.984 t table. Significance value of 0.00 is lower than 0.05 so it was significant. It contained positive and significant impact on customer satisfaction Quality of Service Sultan Iskandar Muda International Airport.

The regression results influence the Service Quality of Customer Loyalty

Model Summary

Model	R	R Square	Adjusted R Square	Std. Error of the Estimate
1	.701[a]	.491	.486	2.72925

a. Predictors: (Constant), Service Quality

The above data shows the variable quality of the service is worth 0.491. This means the quality of service to give effect to Customer Loyalty of 49.1%, while the remaining 50.9% is influenced by other factors not examined in this study.

Coefficients

Model		Unstandardized Coefficients		Standardized Coefficients	T	Sig.
		B	Std. Error	Beta		
1	(Constant)	13.068	2.797		4.672	.000
	Service Quality	.638	.066	.701	9.732	.000

a. Dependent Variable: Customer Loyalty

The results of the research shows the value t Quality of service is equal to 9.732> 1.984 t. This means positive. Significant value of 0.000 is less than 0.05. This means that there is a positive influence on the Service Quality of Customer Loyalty of the Sultan Iskandar Muda International Airport. So the hypothesis is accepted.

5. Conclusion

Based on the results of the study, it showed:

1. Quality of Service has a positive and significant impact on the Customer Satisfaction Sultan Iskandar Muda International Airport.
2. There is no positive effect on the Quality of Service Customer Loyalty Sultan Iskandar Muda International Airport.

Implications

Some things that can be done by the manager of Sultan Iskandar Muda International Airport are:

1. The manager of Sultan Iskandar Muda International Airport should further improve matters related to improving the quality of the overall service. This is because of the overall quality was still needs to be improved by efforts such as improving airport capacity, increase the number of information centers, availability of support facilities such as prayer rooms, a canteen, and souvenir shopping. Hopefully, by the increase of this sort will also improve the overall service quality of Sultan Iskandar Muda International Airport.
2. The manager of Sultan Iskandar Muda International Airport should further improve matters related to customer satisfaction on the intensity of a visit to the Sultan Iskandar Muda International Airport because the view presented is very interesting. This means the overall lay-out interior indoors airports need to be repaired. Repairs done for example with the repair facility must comply with standard international airport, ranging from services, facilities, and friendliness. Expected by these improvements will enhance customer satisfaction.
3. The manager of Sultan Iskandar Muda International Airport should further improve matters related to invite others to come and see the beauty of the Sultan Iskandar Muda International Airport. In this regard, of course, closely related to the improvement of the quality of existing services, meaning that when these services are satisfying, will also increase customer satisfaction and loyalty. An effort in order to attract customers to encourage other customers to come for example leave a promo for customers who recommend and bring new customers to visit the Sultan Iskandar Muda International Airport.

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The Criminal Law Enforcement Against Criminal Acts *Begal* by Child Offenders

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Abstract

The study examines the enforcement of criminal penal law by child offenders. The method of research is juridical approach of normative and empirical juridical with qualitative analysis from primary and secondary data. The results showed that the enforcement of criminal law against criminal offenses against offenders involved the stages of "*in abstracto*" and "*in concreto*". *In abstracto* at the formulation stage is set out in articles 362, 363 and 365 of the Criminal Code. The provisions regulate the crime of theft, theft with the weighting, theft with violence, and the theft of motor vehicles and the provisions of Law Number 11 Year 2012 on the Criminal Justice System of the Child. The "*in concreto*" at the application stage and execution phase must be based on an integral approach and scientific approach in the field of law.

Keywords: Criminal *law enforcement, begal, child offender.*

1. Introduction

The crime of violent theft is one of the most common crimes in society. The crime ranks at the top among other crimes. The crime of theft is set out in Book II of the Criminal Code (KUHP) which is qualified into several types of theft crimes, of common theft crimes (Article 362 of the Criminal Code), petty theft crimes (Article 364 KUHP), theft of crime by objections (Article 363 (Article 365), crime of theft within the family (Article 367 of the Criminal Code). Among the perpetrators of criminal acts of theft are children aged children.

Normatively, the rules for prohibiting the act of stealing another person's property are known as criminal acts-theft (common) crime, theft by force (*curas*), or the theft of a motor vehicle (*curanmor*) or better known With the term C3 (*curas, curat and curanmor*). Violation of crime of theft to the perpetrator is threatened with 5 years imprisonment; or sentenced to life; even sentenced to death.

The third criminal act of theft (C3) is a prominent crime on the Crime Lampung Index[1]. All three are the three largest criminal acts committed in Lampung. The terms of the three criminal acts of theft are sociologically recognized as 'crime of begal', including crime *begal* with the perpetrators of children.

Children as perpetrators of criminal underage in the discourse of Indonesian criminal law must still be accountable for his actions. Treated the same as adult offenders. What distinguishes it is that the process of criminal law enforcement and criminal prosecution applied to children is carried out in a special way, considering their age is in the category of under age which should be given special legal protection to children in conflict with the law[2].

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[1] Badan Pusat Statistik (BPS) Provinsi Lampung Tahun 2014, *Lampung dalam Angka 2013*, Bandar Lampung: Badan Pusat Statistik Kota Bandar Lampung.

[2] Arif Gosita, *Masalah Perlindungan Anak*, Mandar Maju, Bandung, 2009, p. 43.

Children need special protection and care including legal protection different from adults. It is based on physical and mental reasons for immature and mature children. Children need to obtain a protection that is contained in a legislation. Each child will be able to assume the responsibility, then he needs to get the widest opportunity to grow and develop optimally both physically, mentally, socially, and noble character. Therefore it is necessary to do safeguard efforts to realize the welfare of children by providing guarantees of the fulfillment of their rights and the existence of the treatment without being discriminatory.

The Crime Lampung Index rating indicates a problem in criminal law enforcement against criminal theft or crime *begal.* The threat of severe criminal sanctions at this stage in *abstracto* does not frighten or discourage perpetrators of the crime. Even during the last 6 (six) months shows the number of criminal acts or crimes of sharpen against the types of *curas, curat* and *curanmor* increasing, including the form of modus operandi crime of the hijacking is done. Therefore, it is necessary to establish law enforcement policy through police policy towards crime of law enforcement. Police's policy in the effort to eliminate the crime of hijacking, especially that happened in Lampung area.

Given the very dangerous, harmful and disruptive nature of crime of harmony, the eradication of the crime of brutality necessitates a commitment within the framework of effective, systemic and holistic treatment of, Law enforcement should not be partial and do not implement shortcuts, which eventually fail. Therefore, law enforcement cs necessary Carried out integrally and qualified in the face of crime of brutality, both in the present and in the future.

Child protection is basically developed with the spirit of protecting children is to protect humans and build a whole person. The essence of National Development is the development of a fully Indonesian human being who is virtuous. Ignoring the issue of child protection means not to consolidate national development. Due to the absence of child protection will cause various social problems that can interfere with law enforcement, order, security, and the development of the law itself.[3]

Changes and developments within the framework of legal development, especially in Law Number 11 Year 2012 on the Criminal Justice System of Children compared with Law No. 3 of 1997 on Juvenile Court. These changes and developments include the diversion of children as perpetrators of criminal acts. According to Article 1 Paragraph (7) of Law Number 11 Year 2012 on the Criminal Justice System of the Child, it is stated that the diversion is the transfer of the settlement of a child case from the criminal justice process to proceedings outside the criminal court.

The purpose of diversion in the criminal justice system is to increase the effectiveness of child protection in the judicial system for the establishment of an integrated criminal justice system or it may also be a setback to pre-existing values. The enactment of both laws is an attempt to fulfill the rights of children with legal problems.

Government Efforts R.I. It should be appreciated that the government has instituted legal reform in the field of reforming laws or legal substance. Renewal of criminal law is part of the policy of criminal law. The urgency of reform of criminal law can be reviewed from various aspects of policy (especially social policy, criminal policy, and law enforcement policy). Thus the renewal of the criminal law in essence implies, an attempt to reorient and reform the criminal law in accordance with socio-political, socio-philosophical and socio-cultural values of Indonesian society that underlies social policy, criminal policy and law enforcement policy in Indonesia, especially to children.[4]

The renewal of the criminal law must be done with a policy approach, because in fact it is only part of a policy move. Within each policy is also a consideration of value, therefore reform of the criminal law should also be oriented towards a value approach. Renewal of criminal law is seen from the point of view for policy as part of social policy, meaning part of the effort to address social problems (including humanitarian issues) in order to achieve the national goal of community welfare, as well as part of the criminal policy, meaning part of the protection effort of the community crime

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[3] Maulana Hasan Wadong, *Pengantar Advokasi dan Hukum Perlindungan Anak*, Gramedia Widiaksara Indonesia, Jakarta, 2006, p. 32.

[4] Erni Dwita Silambi dan Andi Sofyan, *Penanganan Anak yang Berkonflik dengan Hukum*, http://www.hukumonline.com/artikelperlidungananak_html.

prevention efforts), especially crimes or crimes committed by minors. Legal protection of children in the judicial process begins since the level of investigation, investigation, prosecution, examination in court until the implementation of the court decision. During the judicial process, the rights of the child shall be protected by law.

The Child Criminal Justice System in Indonesia gives special attention to children who are in conflict with the law. This is reinforced by the enactment of Law No. 23 of 2002 jo Law No. 35 of 2014 on Child Protection and Law No. 11 of 2012 on the Criminal Justice System of Children. The consideration of the enactment of this law is that children are seen as part of the young generation as one of the human resources which is the potential and successor of the ideals of the nation's struggle, which has strategic roles and possesses special features and traits, requires guidance and protection in order to ensure growth and Physical, mental and social development in a balanced way. In order to enforce child protection, there is a need for support, both in terms of institutional and legal instruments which are more stable and adequate, therefore the provision of court for children needs to be done in a special way.

Legal gaps in the implementation of the protection of children who commit criminal acts include the implementation is not maximal, because the lack of professional law enforcement officers in the handling of children in conflict with the law. There is still the same treatment as an adult to a child who commits a crime, either in the process of investigation or placement in a penitentiary. This is certainly contrary to the spirit of the enactment of Law No. 11 of 2012 on the Criminal Justice System of Children. The problem in this research is how is the enforcement of criminal law against criminal offense with child abuser

2. Methodology

The research method uses a research approach with normative juridical approach and empirical juridical approach. Source of data obtained from field data and library data. Types of data viewed from the source can be reported between data obtained directly from the public and data obtained from library materials. The selected resource is Criminal Law Academician at Faculty of Law Unila as much as 3 (three) people because his expertise in criminal law field which stated competent and feasible.

Data collection was done by literature study procedure and field study. Data processing is done by stages of data selection, data classification, and data preparation. Data analysis using qualitative analysis, which describes the data in the form of sentences are arranged in a systematic, clear and detailed which then interpreted to obtain a conclusion. Data analysis used in this research is qualitative analysis and withdrawal conclusion is done by inductive method, that is describing things that are special then draw conclusion which is general in accordance with problem which discussed in research.

3. Result and Discussion

Prevention and prevention of criminal acts of penalization by means of penal is a penal policy or penal law enforcement policy which operationalization through several stages:

A. Formulation stage (legislative policy), ie law enforcement stage in abstracto by lawmaking body. This stage can also be called the legislative policy stage.

B. Application phase (judicial policy), namely the stage of application of criminal law by law enforcement officers ranging from the Police to the Court. This second stage can also be called the stage of judicial policy.

C. The execution stage (executive policy), which is the stage of the implementation of criminal law in concrete by the criminal apparatus. This stage can be called the executive policy stage.

The existence of the formulation stage, then the effort of prevention and handling of crime is not only the duty of law enforcement officers, but also the task of law-making apparatus (legislative apparatus). Even the legislative policy is the most strategic stage of the prevention and prevention of

crime through penal policy. Therefore, the errors or weaknesses of the legislative policy are strategic mistakes that can hinder prevention and crime prevention at the application and execution stage.[5]

As a systemic process, criminal law enforcement manifests itself as a criminal law application involving various structural sub-systems of police, prosecutors, courts, and correctional institutions. Includes the legal advisory body. The application of criminal law should be viewed from three dimensions.

The first dimension, the application of criminal law is seen as a normative system, namely the application of the whole rule of law that describes the social values supported by criminal sanctions. In the second dimension, the application of criminal law is seen as an administrative system that encompasses interaction among various law enforcement apparatuses that constitute the sub-system of justice above. The third dimension, the application of criminal law is a social system in the sense that in defining and reacting criminal acts must also be taken into account various perspectives of thought that exist within the community. Various dimensions can be stated that the actual results of the application of criminal law should describe the overall outcome of interaction between the rule of law, administrative practice and social behavior.

Understanding the term of handling and criminal prosecution is another language of criminal law enforcement. Law enforcement can be interpreted as: (a) a whole series of activities of maintenance of the balance of rights and obligations of citizens in accordance with human dignity and respective responsibilities in accordance with its functions fairly and equally with the rule of law, law and legislation constituting The embodiment of Pancasila and the 1945 Constitution; (b) the overall activities of law enforcement officers towards the upholding of law, justice and protection of human dignity, orderliness, security and legal certainty in accordance with the 1945 Constitution.[6] In particular, the definition of criminal law enforcement in relation to legislation, Invitation in the field of criminal law.

Criminal law enforcement consists of two core stages. The first stage, law enforcement in abstracto is the stage of formulating the law by the legislature. This stage can be called legislative stage. Law enforcement in abstracto is law making or law reform. Law enforcement in abstracto (the process of producing legislation products) through the process of drafting of legislation, is essentially a process of law enforcement in abstracto. This legislation process is a very strategic beginning stage of law enforcement process in concreto. Therefore, weaknesses in the policy stage of legislation is a strategic mistake that can hamper law enforcement efforts in concreto. Law enforcement done at the application policy stage and execution policy. The second stage, law enforcement in concreto (law enforcement). Both law enforcement is within the framework of supporting the achievement of the goals, vision and mission of national development and support the establishment of national criminal law enforcement system.

3.1 Criminal Law Enforcement Against Criminal Acts Begal on Stage or "In Abstracto"

Criminal law enforcement at the "in abstracto" stage is the stage of formulation of legislation by the legislature can be called the legislative / formulation stage. The legislation phase is over when a legislation is passed. Stage of legislation continued application stage and execution phase.

The enforcement of criminal law against criminal offense at the stage or in "*abstracto*", according to the researcher Nikmah Rosidah stated that the enforcement of criminal law at "*in abstracto*" stage is done by applying special law, that is Law Number 11 Year 2012 On the Child Criminal Justice System and a number of articles set forth in Article 362 up to Article 365 of the Criminal Code. Erna Dewi stated that the applicable special law relating to the criminal justice system of children which has been regulated in Law Number 11 Year 2012 on Child Criminal Justice System. Criminal law regulation related to Criminal Law Materiel refers to the Criminal Code (WvS), but the term "begal" is expeditiously and implicitly not regulated in the Criminal Code. Maroni stated that the

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[5] Barda Nawawi Arief, *Masalah Penegakan Hukum dan Kebijakan Penanggulangan Kejahatan*, Citra Aditya Bakti, Bandung, 2001, p. 73.

[6] Ibid., hlm. 25.

enforcement of criminal law in abstracto does not distinguish between child and adult actors, both in the field of material criminal law, formal criminal law and criminal law.

Thus, the enforcement of criminal law against criminal offenses at the stage or in "*abstracto*" is the first, the enforcement of criminal law against criminal offenses is based on the provisions set out in Book II of Crimes in Articles 362, 363 and 365 of the Criminal Code As the provisions of general criminal law legislation. The provisions are stipulated prohibiting the act of stealing goods owned by others, either in the form of criminal acts-theft crime (ordinary), theft with the weight (curat), theft with violence (*curas*), or the theft of a motor vehicle (*curanmor*) or better known With the term C3 (*curas, curat* and *curanmor*). Violation of the prohibition of crime / crime of theft to the perpetrator / its maker is threatened with 5 years imprisonment; Or sentenced to life; Even sentenced to death. Secondly, the enforcement of criminal law against criminal offenses at the "*in abstracto*" stage is based on the provisions of specific criminal law legislation, namely Law Number 11 Year 2012 on the Criminal Justice System of the Child.

Particularly in relation to the Criminal Law Material of criminal acts of crime involves three matters in criminal law, covering the issue of criminal acts (crimes), criminal or criminal liability (concerning the person) and criminal and criminal matters relating to Articles 362, 363 and 365 of the Criminal Code are:

Article 362
Anyone who takes anything, wholly or partly belongs to another person, with the intent to possess unlawfully, is liable for theft, with a maximum imprisonment of five years or a maximum fine of nine hundred Rupiah.

Article 363
(1) Threatened with a maximum imprisonment of seven years:
1. Cattle theft;
2. Theft in times of fire, explosion, earthquake flood, or sea quake, volcano eruption, shipwreck, stranded ship, train accident, riot, rebellion or war hazard;
3. The theft of a night in a home or the enclosed yard of his house, carried out by the person present there is unknown or unwanted by the rightful;
4. Theft by two or more persons:
5. theft to enter the place of committing a crime, or to arrive at the goods taken, done by damaging, cutting or climbing, or by using false keys, false orders or false positions.
(2) If the theft described in clause 3 is accompanied by any of the items in items 4 and 5, it shall be subject to a maximum imprisonment of nine years imprisonment.

Article 365
(1) Threatened with imprisonment for a maximum of nine years of theft preceded, accompanied or followed by violence or threat of violence, against persons with a view to preparing or facilitating theft, or in the event of being caught, to enable escape or other participants; To keep the stuff stolen.
(2) Threatened with a maximum imprisonment of twelve years:
1. if the act is committed at night in a closed house or yard of his existing house, on public roads, or in a train or on-going tram;
2. if the deed is committed by two or more persons with an alliance;
3. if entering into the place of committing a crime by damaging or climbing or by using false keys, false pernisah or false office clothing.
4. if deeds result in severe injuries.
(3) If the act of causing death is threatened with a maximum imprisonment of fifteen years.
(4) Threatened with death penalty or life imprisonment or for a specified period of at most twenty years, if the act of causing serious injury or death and committed by two or more persons by alliance, accompanied by one of the things described in no. 1 and 3.

The enforcement of criminal law against criminal offenses at the "in abstracto" stage is based on the provisions of specific criminal law legislation, namely Law Number 11 Year 2012 on Child Criminal Justice System, Articles 3,5,6,7,8 and 9 as follows:

Article 3
Every Child in the criminal justice process shall have the right:
A. Be treated humanely with due regard to needs in accordance with their age;
B. Separated from adults;
C. Obtain legal and other assistance effectively;
D. Perform recreational activities;
E. Free from torture, punishment or other cruel, inhuman, and degrading treatment;
F. Not sentenced to capital punishment or life imprisonment;
G. Not arrested, detained or imprisoned, except as a last resort and in the shortest possible time;
H. Obtaining justice in the face of an objective, impartial, and closed court trial of the public;
I. Unpublished identity;
J. Obtain parent / guardian's guidance and a person trusted by the Child;
K. Obtain social advocacy;
L. Gain personal life;
M. Gaining accessibility, especially for disabled children;
N. Obtain education;
O. Obtain health services; and
P. Obtain other rights in accordance with the provisions of the laws and regulations.

Article 5
(1) The Criminal Justice System of the Child shall prioritize the approach of Restorative Justice.
(2) The Child Criminal Justice System as referred to in paragraph (1) includes:
A. Child criminal investigation and prosecution conducted in accordance with the provisions of laws and regulations, unless otherwise provided in this Law;
B. Court proceedings of the Child conducted by a court within the public court; and
C. Coaching, guidance, supervision and / or counseling during the criminal proceedings or actions and after undergoing a crime or action.
(3) In the Child Criminal Justice System as referred to in paragraph (2) letter a and letter b shall be strived Diversi.

Article 6
Diversi aims:
A.Achieve peace between the victim and the Child;
B.Resolve cases of Children outside the judicial process;
C.Prevent the Child from deprivation of liberty;
D.Encourage people to participate; and
E. Instilling a sense of responsibility to the Child.

Article 7
(1) At the level of investigation, prosecution, and examination of the case of a Child in a district court, a Diversity shall be pursued.
(2) Diversi referred to in paragraph (1) shall be implemented in the case of criminal acts committed:
A. Threatened with imprisonment under 7 (seven) years; and
B. Is not a repeat of a crime.

Article 8
(1) The Diversity process shall be conducted through consultation with the involvement of the Child and its parents, the victim and / or his / her parent / ward, the Community Counselor, and the Professional Social Worker based on the Restorative Justice approach.
(2) Where necessary, the deliberations referred to in paragraph (1) may involve Social Welfare Workers, and / or the community.
(3) The Diversity Process shall pay attention to:
A. The interests of victims;
B. Welfare and responsibility of the Child;
C. Avoidance of negative stigma;

D. Avoidance of retaliation;
E. Community harmony; and
F. Propriety, decency, and public order.

Article 9
(1) Investigators, Public Prosecutors, and Judges in conducting Diversi should consider:
A. Category of crime;
B. Age of the Child;
C. Results of community research from Breath; and
D. Support the family and community environment.
(2) The Diversi Agreement shall obtain the consent of the victim and / or the victim's family and the willingness of the Child and his family, except for:
A. Offenses in the form of offenses;
B. Minor crime;
C. A criminal offense without a victim; or
D. The value of the victim's loss is no more than the minimum wage value of the province.

Every child who is involved in the criminal justice process is entitled to be fulfilled a number of rights that have been determined in the law; The Criminal Justice System of the Child shall prioritize the approach of Restorative Justice; In the Criminal Justice System of Child at the level of investigation, prosecution and examination of the case of the Child in the trial of the district court in the general judicial environment in accordance with the provisions of legislation shall be strived Diversi.

Diversi carried out in the event that a criminal act committed is threatened with imprisonment under 7 (seven) years and not a repeat of a crime. The Diversity process is conducted through deliberations involving the child and parents, victims and parents, social counselors and professional social workers based on the approach of restorative justice. Where necessary, deliberations may involve Social Welfare Workers, and the community.

Diversi process must pay attention to the victim's interest; Welfare and responsibility of the Child; Avoidance of negative stigma; Avoidance of retaliation; Community harmony; And propriety, decency, and public order. Investigators, Public Prosecutors, and Judges in conducting Diversi should consider the category of criminal offenses; Age of the Child; Results of community research from Breath; And support the family and community environment.

The Diversi Agreement shall obtain the consent of the victim and / or the victim's family and the willingness of the Child and his family, except for offenses in the form of an offense; Minor crime; A criminal offense without a victim; Or the value of the victim's loss is not more than the minimum wage value of the province.

The Criminal Justice System of the Child shall prioritize the approach of Restorative Justice. The approach to restorative justice is a paradigm that can be used as a framework of criminal case management strategies aimed at answering dissatisfaction with the workings of the existing criminal justice system. Restorative justice is regulated in Article 1 Number 6 of 2012 on the Criminal Justice System of the Child stating that restorative justice is the settlement of criminal cases involving perpetrators, victims, families of perpetrators / victims, and other related parties to jointly Seeking a fair settlement by emphasizing restoration back to the original state, rather than retaliation.

Restorative justice as a concept of thought that responds to the development of the criminal justice system by focusing on the need for community involvement and the perceived victim with the mechanisms that work on the existing criminal justice system. Restorative justice is also a new framework of thought that can be used in responding to a criminal offense for law enforcers and workers.

The view of restorative justice emphasizes the perpetrators' responsibility as an attempt to restore the suffering of victims without prejudice to the interests of rehabilitation of the perpetrators and to create and maintain public order. The approach of restorative justice is a paradigm that aims to answer the dissatisfaction with the work of the existing criminal justice system. This approach is used as a framework of criminal case management strategies.

In general, the principles of restorative justice are to make offenders accountable for the harm inflicted upon their actions. Giving an opportunity to the offender to prove his or her quality. Involve

victims and related parties within the forum in connection with problem solving. Establish a direct and tangible relationship between error and a formal social reaction. With the existence of restorative justice, it is possible that the occurrence of collisions with the principle of legality and the purpose of legal certainty. The clash will resolve itself when the interpretation of legal certainty is just legal certainty.

3.2 Criminal Law Enforcement Against Criminal Acts Begal at Stage or "In Concreto"

Criminal law enforcement in concreto consists of the application stage and the stage of enforcement of the law by law enforcement officers, which can be called the judicial stage and the execution stage. The enforcement of criminal law in concreto is essentially a process of criminal imposition or criminal proceedings. The prosecution process itself is a criminal law enforcement process in order to uphold truth and justice.

Criminal law enforcement of criminal offenses at the stage or in concreto includes criminal law enforcement at application / implementation stage and execution / execution stage. Law enforcement "in concreto" at the stage of application of criminal offense against child offenders according to informant Nikmah Rosidah declares that law enforcers (in this case Police Investigator) as guardian and guidance community in settling child perpetrators who are not treated the same as adults. The actions of law enforcement officers are nature frameworks of respecting and protecting human dignity.

According to Erna Dewi point of view that at the application stage already used Law Number 11 Year 2012 about Child Criminal Justice System, but most Judges in deciding case with child actor, Judge decision is very less than standard ½ of adult threat, 3.5 years only disconnected 3-6 months (less than 1 year). While Maroni stated that the enforcement of criminal law in concreto has been implemented in accordance with the applicable law, although in certain cases get special treatment, such as shot his foot because escape or other reason.

Law enforcement "*in concreto*" at the execution stage of a criminal offense against child offenders, according to Nikmah Rosidah, states that the provision of an independent and independent judicial power must be realized in the whole process of the special criminal justice system. The provision refers to SEMA No. 1 of 2014 which leads to a diversioned verdict. Erna Dewi stated that in the execution phase, the placement of the convicted child (the perpetrator) is in place, namely in Lapas Anak Pesawaran District, Lampung, but in the guidance is not maximal (the process of socialization etc.) because the criminal sanction is very short as a result of the verdict Judge who is often less than 1 year of his sentence. Maroni stated that at the stage of execution is the same as law enforcement against other criminal cases.

The implementation of "*in concreto*" law enforcement at the application stage and execution stage must be based on an integral approach and a scientific approach in the field of law. An integral approach should be implemented in a tightly integrated system from various sub-systems of the legal system comprising legal substance, legal structure and legal culture in the field criminal law.

Implementation of law enforcement based on the criminal law system is closely linked to the workings of all three components, including normative components (legislation), structural /components and their procedural mechanisms (structures of law enforcement agencies), and Cultural components (cultural values of law) that must be held integrally and qualified.

Integral shall be realized in the interwoven of various sub-systems related to the criminal law system including material criminal law, formal criminal law and criminal law. More specifically related to the three main / issues in the criminal law of material include criminal act (criminal act / actus reus), criminal errors or liability (schuld / guilt / mens rea), as well as criminal and punishment .

Criminal law enforcement is viewed integrally as a close integrity of the various subsystems of the criminal law system consisting of components of "legal substance", "legal structure" And "legal culture"

Law enforcement as a process is closely related to the three components, namely legal norms (normative components), law enforcement structures (structural components and procedural mechanisms), and values Legal culture (cultural component) which is more focused on the values of legal philosophy, the values of the law that lives in society and the attitude of social behavior, and jurisprudence.

Starting from an integral system understanding, the definition of criminal law enforcement system or criminal justice system can be seen from various aspects;

A. The substance of the criminal law (legal substance): in essence the criminal law enforcement system is a system of law enforcement substance in the field of criminal law covering material criminal law, formal criminal law, and criminal law.
B. Structural of the criminal law (legal structure): criminal law enforcement system is basically a system of work in carrying out their respective authority in the field of PHP consists of 4 (four) sub -systems, namely:

1) "investigation" authority (by the investigating body);
2) "prosecution" power (by the public prosecutor agency);
3) the power of "judging and bringing judgment" (by the judiciary); and
4) the power of "execution of judgment" (by the execution / execution agency / agency). The four stages / subsystems are an integral system of criminal enforcement (SPHP) which is often referred to as the term "integrated criminal justice system" (integrated criminal justice system).

C. Legal culture: the criminal law enforcement system is basically a manifestation of a system of "legal cultural values" that can include legal philosophy, legal principles, legal theory, legal science and legal behavioral awareness .

Scientific approach (law) can be interpreted as a method of approaching or understanding something (phenomenon) based on logic of construction of thought, framework (view) particular. Because the point of view of thinking about the law can vary, it is common to find the term of various scientific approaches (law). These are called normative approaches, empirical (functional) approach, historical approach, comparative approach, philosophical approach (critical), policy oriented approach, value oriented approach, , Oriented approaches to national insight, global approach, partial approach, integral approach, and so on.

The construction of the division of the scientific approach (law) from the point of distribution of the types of studies of Criminal Law Sciences viewed from the point of Criminal Law Criminal Law, Criminal Law Science is not only positive Criminal Law Science but also there is knowledge about Policies of Penal Policy. And the science of Comparative Criminal Law. If the scientific approach contains in it a conceptual approach, then there can be three approaches of legal thinking that need to be developed in law enforcement in Indonesia through three scientific approaches integrally, namely:

A. Juridical-scientific-religious approach: a scientific approach oriented to the substance of positive criminal law (can be called a juridical-scientific);
B. B. A juridical-contextual approach: a legal-thinking approach oriented to policy of the Penal Code (juridical oriented approaches to national policy of Criminal Law);
C. A comparative juridical approach: a comparative-oriented approach to legal thinking (a comparative-oriented juridical approach), especially from the traditional and religious law system of legal families) to the aspect of basic values of the three areas Substance of criminal law (material criminal law, formal criminal law, and criminal law).

Enforcement of existing laws is still inferior quality are in concreto as a matter of law enforcement, because of a culture of culture "blinders" which certainly does not fit the culture of science, which can inhibit the quality of law enforcement .

If law enforcement will really improve the quality and regain the trust and high appreciation of the community, then one of the fundamental efforts is to improve the quality of science in the process of making and enforcing it. The quality of science, is not only intended solely to improve the quality of education and the development of law science itself, but also to improve the quality of value and products of law enforcement processes (in abstracto and in concreto). Similarly, legal products, both legislative products, and judicial products will be more qualified by using science / scientific approach.

Implementation of law enforcement is now considered not qualified for law enforcement at the stage in abstracto and in concreto third have yet to implement the approaches, namely: (1) a scientific approach to the juridical-religious; (2) a juridical-contextual approach; And (3) a juridical approach with a comparative perspective. These three scientific approaches have not been applied integrally in the three basic material issues of material criminal law described above.

Law enforcement at the stage in concreto (application phase) is still influenced by the habits dirty game and shortcuts committed by law enforcement officers are corrupt and collusive with the offender. The person exchanges the power of the law with certain rewards for fabricating or mocking the law in accordance with the agreed transaction. This dirty game culture affects the quality of law of enforcement to realize truth and substantive justice[7].

Law enforcement in the face of a criminal offense at this time related to the three areas of the substance of criminal law related to criminal law materiel (Materielle Strafrecht), criminal law formal (*Strafprozessrecht*), and law enforcement criminal (*Strafvollstreckungsrecht*) that is based on a number of law General Criminal Law and Special Criminal Law[8].

The three criminal laws are scattered in several criminal law legislation that are either separated or not yet compiled in an integral legislative policy. The current condition of criminal law substance is actually quite complete since all three already exist, but still contain various problems that must be addressed or reformed, especially in relation to the substance of the material criminal law.

Both stages in abstracto and in concreto are crucial aspects or points of handling and action of a bribery case because criminal law enforcement will be colored as follows:

1. The problem of dirty play (the act of bribes and other disgraceful acts);
2. The problem of optimizing the scientific approach (scientific approach) in law enforcement.

Apparently, the two problems are a phenomenon that many people get the spotlight. Indicators of the declining quality of scientific approaches[9] with other approaches in law enforcement, are seen in various phenomena including:1. There is a reality that is often denied by the general public, that there is a culture of bribery, material culture, or a dirty game culture known commonly to the term mafia culture of justice in the practice of law enforcement. Various terms appear, among others, the term transaction of law case, brokers case, markus (broker case), extortion, buying and selling demands and so forth. The development of a culture of bribery (dirty games) is an indicator of the weakness of the scientific culture.

2. Often bring in expert witnesses from legal experts. This phenomenon gives the impression of declining quality of science (law) among the law enforcement agencies, because that asked about jurisprudence that should be well known to law enforcement (which is actually a legal expert as well). At the very least, the phenomenon even this indicates a pragmatic approach in understanding the legal / law, namely just want fast can extract-only (from the expert witness / expert), without having bothered to dig own.

3. In law enforcement practice it is seen that there are partial legal tendencies and only see criminal laws with "horse spectacles", for example separating:

A. Between the norms of the law and the principles, objectives of punishment, and the basic values that exist and are acknowledged in unlawful theory;
B. Between legal certainty / against the formal law with legal against the law of material;
C. Between law (law) and law;
D. Between law and divinity (moral / religion);

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[7] Barda Nawawi Arief, Pembaharuan Sistem Penegakan Hukum dengan Pendekatan Religius dalam Konteks Siskumnas dan Bangkumnas, paper Seminar *Menembus Kebuntuan Legalitas Formal Menuju Pembangunan Hukum dengan Pendekatan Hukum Kritis*, FH UNDIP, 19 Desember 2009, p. 2.

[8] Barda Nawawi Arief, Optimalisasi Kinerja Aparat Hukum Dalam Penegakan Hukum Indonesia Melalui Pemanfaatan Pendekatan Keilmuan, paper Seminar *Strategi Peningkatan Kinerja Kejaksaan RI*, di Gedung Program Pasca Sarjana Undip, Semarang tanggal 29 Nopember 2008, p. 14.

[9] *Ibid*., hlm. 10.

E. Many know very well the guidance of the law, but are very ignorant of the meaning of justice based on (the direction of) Belief in the One Supreme;
F. Separating the three main issues of criminal law (criminal, criminal) with the whole system of punishment; Separate criminal law enforcement (legislation) with national enforcement (system) enforcement systems; or
G. Separating the criminal law system with Siskumnas. Law enforcement at the stage in concreto (application phase) is still influenced by the habits dirty game and shortcuts committed by law enforcement officers are corrupt and collusive with the offender. Law enforcement officials exchange (transactional) legal powers with certain rewards to fabricate or mime the law in accordance with the agreed transaction. This dirty game culture affects the quality of law enforcement to to realize the truth and substantive justice[10].

Law enforcement interfered with bribery culture, material culture, or dirty game culture acts. The general public knows a number of terms such as judicial mafia culture in law enforcement practice. Various terms appear, among other terms:
A. Legal case transactions;
B. Calo case;
C. Markus (case broker);
D. Extortion;
E. The sale of an Order of Termination of Inquiry (SP3) or suspension of detention;
F. Ease of suspec in and out of the detention room;
G. Engineering of legal judgments;
H. The choice of the jail chamber;
I. The ease of convicted in and out of criminal space, and so on.

The development of a culture of bribery, dirty play, or disgraceful acts is an indicator of a legal approach to law. Enforcement of criminal law against economic crime must be oriented to realize the basic values of law enforcement in society. According to Gustav Radbruch includes justice (*gerechtigheit*); Usefulness (*zweckmäszigkeit*) or usefulness (*rechtmatigekeit*); And legal certainty (*rechtssichterkeit*). Although, among these three basic values there is a condition of Spannungsverhältnis, which is a tension of value to each other because all three contain different demands. The value of each other has the potential to be contradictory in its enforceability in society.

4. Conclusion and Suggestion

4.1 Conclusion

Criminal law enforcement against criminal offenses with child offenders includes "*in abstracto*" and "*in concreto*" stages. Law enforcement in abstracto at the stage of formulation is regulated in Articles 362, 363 and 365 of the Criminal Code as the provisions of general criminal law legislation. The stipulation regulates criminal offenses-theft, theft, theft, theft or theft of motor vehicles (*curanmor*) or better known by the term C3 and the provisions of specific criminal law legislation, namely Law Number 11 Year 2012 on the Criminal Justice System of the Child. Law enforcement "in concreto" at the application stage and execution phase should be based on an integral approach and a scientific approach in the field of law.

4.2Suggestions

The enforcement of criminal law against criminal offense with child offender in the criminal justice system (SPPA) of child shall be entitled to fulfill its right. SPPA shall prioritize the approach of Restorative Justice at the level of investigation, prosecution and examination of the case of the Child in the trial of the district court shall strive. Diversity shall be based on an integral approach and scientific approach in the field of law.

[10] *Ibid*., hlm. 10.

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Chemical Castrated Sanction on Sexual Crime in Children Reviewed from Law and Health Aspect

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Abstract

The current crime of sexual violence in children is considered to be very disturbing and unsettled the community, especially for parents who have under-age children, so that a government policy made in the form of Perpu no. 1 tahun 2016, one of which regulates the criminal sanctions in the form of chemical castration against perpetrators of sexual misconduct in children, so the problems that arise in this paper, among others; A. Why does the government consider the chemical castration needs to be applied to the perpetrators of sexual misconduct in children?, b. How does health aspect outlook the criminal sanctions in the form of chemical castration ?. The writing method used is through a normative juridical approach with qualitative analysis. The conclusion of this paper is the necessity for chemical castration sanction imposed on the perpetrators of sexual misconduct in children to provide a deterrent effect for the perpetrators of crime and at the same time to prevent crime by other perpetrators later on. On the other hand, the doctor as a potential executioner against chemical castration sanction considers it to be contrary to human rights and against the principles and ethics of the medical profession, so that the provision is rejected by Ikatan Dokter Indonesia (IDI). Suggestions on this paper are the government proposed to reconsider the policy by replacing chemical castration sanction with a heavy penalty of imprisonment so as not to conflict with human rights.

Keywords: *Chemical Castration, Health, Sanction*

1. Background

Children as the next generation who have the right to grow up and determine their own future, the child is entitled to the maintenance and protection both when in maternal womb and after birth until they reach the adulthood. The parent is the person who is firstly responsible for the realization of the child welfare. The child welfare consists of an obligation to nurture and educate the child in such a way that the child can grow and develop into a healthy, intelligent, virtuous personality, devoted to parents, devoted to the Almighty God and capable of continuing the ideals of the nation[1]. But in social life, there are always social deviations either the perpetrators of children or adults with the victim are children. Social deviation among others is a sexual crime.

Nowadays it happens frequently a sexual crime that the victims are a child, for example Yuyun's case as a victim of sexual crimes in Bengkulu, the perpetrators amounted to 14 people who conducted cruelly, and this case is the worst of the many cases about sexual crimes that the victims and perpetrators mostly are children.

Related to the protection of children, the rule of law in Indonesia aside from the Criminal Code (Penal Code) has been regulated, also the Child Protection Act, namely the Act no. 23 of 2001 which has been amended and enhanced by the Act No. 35 of 2014 which in Article 81-Article 82 of a special minimum criminal law of 5 years and maximum of 15 years. But after the Yuyun's case, the government issued the Government Regulation In Lieu of Law no. 1 of 2016 about Chemical

[1] SholehaSoeaidy dan Zolkhair, 2001.*Dasar Hukum Perlindungan Anak*, CV. Novindo Pustaka Mandiri, Jakarta, hlm 19

Castration for the perpetrators of sexual crimes to children. With the birth of the provisions of castration sanctions, it occur pros and cons especially against chemical sanction that get rejected from the Indonesian Medical Association.

Based on the background above, the authors try to submit this paper with the title is Chemical Castration on Sexual Crime In Children Review from Law And Health Aspect

2. Problems

The problems in this paper are: 1. Why the government considers a chemical castration needs to be applied to the perpetrators of sexual crime in children cases?, 2. . How does health aspect outlook the criminal sanctions in the form of chemical castration against the perpetrators of sexual crimes in children cases?

3. Writing method

The writing method used is through a normative juridical approach with qualitative analysis consisting of the Child Protection Act, Health Act and Government Ordinance on Castration Sanctions, which then analyzed qualitatively, that is by describing the data in the description of the sentence to answer the problem, to be drawn the conclusions.

4. Discussion

The Reason of the Government to see the need for Chemical Castration applied to the perpetrators of Sexual Criminal Acts in Children:

Learnt from the related cases about sexual offending toward children include, among others, the case of "Yuyun" in Bengkulu where the perpetrators are 14 people who done it cruel and vicious, as in the chronological case as follows:

Yuyun, a junior high school student of 5 Satu Atap in Padang Ulak Tanding, Rejanglebong Regency, Bengkulu is a victim of rape and murderous murder. Currently, Yuyun's case is still in the judicial process. The vile action was committed by 14 people on April, 2nd 2016. This case got criticism immediately from various parties, including President JokoWidodo[2].

Similarly to the case of sexual crimes with other child victims, Yuyun's case is just one of many cases about rape that finally reached the trial. Based on Commission on the Protection of Human Rights' record, during the last five years until 2015 there were 2,898 cases of violence against children, 59.3% were sexual crimes. Only 179 cases were reported. The rest, which are much larger in number, are not reported with due consideration.

Based on these data, it indicates that the sexual crimes against children is already an emergency situation in Indonesia, so the government issued a Government Regulation in lieu of Law no. 1 Year 2016 concerning child protection in the form of Castration Sanction against the perpetrators of sexual acts against children, this can be seen in Article 81 and Article 81A which regulates:

Article 81

(1) Any person who violates the provisions of Article 76D shall be punished with imprisonment of minimum five (5) years and a maximum of 15 (fifteen) years and a maximum fine of Rp 5,000,000,000.00 (five billion rupiah).

(2) The penal provisions referred to in paragraph (1) shall also apply to any person who deliberately commits a ruse, a series of lies, or persuading Children intercourse with her or with other people.

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[2] https://www.google.co.id/amp/s/m.liputan6.com/amp/2499720/kronologi-kasus-kematian-yuyun-di-tangan-14-abg-bengkulu

(3) In the case of a criminal act referred to in paragraph (1) shall be done by parents, guardians, people who have family relationships, nannies, educators, staff, officials who deal with child protection, or carried out by more than one person together, the punishment of 1/3 (one third) of the criminal sanctions referred to in paragraph (1).

4) In addition to the actors referred to in paragraph (3), the addition of 1/3 (one third) of the criminal sanctions are also imposed on the perpetrators have ever been convicted of criminal offenses as referred to in Article 76D.

(5) In the case of criminal offenses referred to in Article 76D cause loss of more than 1 (one) person, resulting in serious injuries, mental disorders, infectious diseases, impaired or loss of reproductive function, and / or the victim dies, the offender shall be sentenced to death, life life, or imprisonment of at least 10 (ten) years and a maximum of 20 (twenty) years.

(6) In addition to the criminal subject as referred to in paragraph (1), paragraph (3), (4) and (5), the offender may be subject to additional criminal announcements identity of the perpetrator.

(7) The offender referred to in paragraph (4) and (5) can be subjected to chemical castration and the mounting chips.

(8) The act referred to in paragraph (7) decided together with the principal criminal by loading period of implementation of the action.

(9) Criminal additional actors and actions exempted for Children.

Article 81A

(1) Measures referred to in Article 81 paragraph (7) shall be imposed for a maximum period of 2 (two) years and implemented after the convict to undergo basic criminal.

(2) Implementation of the actions referred to in paragraph (1) under the supervision periodically by the ministry which held government affairs in the field of legal, social, and health.

(3) The implementation of chemical castration accompanied by rehabilitation.

(4) Further provisions on procedures for the implementation of rehabilitation measures and regulated by Government Regulation

Based on the implementation of the provisions above, especially related to the execution of chemical sanction gets constrained, because if as the executor is a doctor, this is contrary to the Ethical Principles of Medical Professions

The Point of View from the Law Aspect towards Criminal Sanction in the form of Chemical Castration:

Criminal sanction in the form of chemical curiosity is a new type of criminal sanction and is specifically threatened against the perpetrators of sexual crimes against children which is a refinement of sanction which contained in the Child Protection Act. The enforcement of the sanctions is based on the principle of the *Lex specialist Derogat Legeneralis* as the provisions of Article 103 of the Criminal Code which is the liaison between the general rules which contained in the Book I of the Criminal Code with specific rules that both contained in Book II and III of the Criminal Code and laws outside the Criminal Code in this Act -The Child Protection Act and Government Regulation In Lieu of Law number 1 of 2016.

The Chemical Castration sanction if it is associated with criminal purposes, have two purposes: General Prevention (*preventie general)* and Special Prevention (*preventie special*). General prevention, hopefully with the regulation of chemical sanction will cause fear of the community or prospective perpetrators not to imitate the act, while special prevention addressed to the perpetrators (assisted citizens) not to repeat the same action. Whereas if chemical sanction is connected to the punishment theory which consist of retaliation theory, objective theory and combined or integrative theory, then the sanction is closer to the theory of retaliation. While the positive law of

Indonesia at this time more emphasis on the aim of improving the perpetrator by not disregarding the values of Pancasila especially the value of humanity.[3]

However, in Florida, Belgium and some other jurisdictions for any perpetrator who fulfills the sexual elements of a child are enforced to Double Track System whereby the offender may choose a criminal sanction or chemical act, while in Poland for any sexual offender must be done the chemical acts at the end of their detention period. [4,5]

The Point of View from the Health Aspect towards Criminal Sanctions in the form of Chemical Castration

Sexual acts in children are not entirely sexual offenses, we must be able to sort out sexual offenses with psychological disorders such as pedophilia, exhibitionism, voyeurism and all the diseases included in paraphilia. The legal sanction given in each case as mentioned above should involve a psychiatrist in order to determine the perpetrator's sexual orientation and whether the case is a sexual offense in a child or a condition of paraphilia disorder. [6]

If in a case it can be proven that the case is a sexual crime towards children then the person can fulfill the element of crime based on Government Regulation In Lieu Of Law Number 1 of 2016, so that it can be charged with chemical sanction, but if the psychiatric examination result is a mental illness / paraphilia it should be treated medically not by being given criminal sanction or action in the form of chemical castration. If it is related to the case of "yuyun" it is necessary to sort out whether all the perpetrators fulfill the criminal element and are not suffering from a mental disorder (paraphilia) so that sanctions may be given to the offender.

castration is a medical treatment that aims to cut off the reproductive system function of man and woman . There are two techniques of castration, with surgical or non-surgical (chemical).[7]

Government Regulation In Lieu of Law Number 1 of 2016, one of which regulates the criminal sanction in the form of chemical castration against the sexual crime in children , while chemical castration is a hormonal manipulation to reduce pathological sexual behavior. The Use of anti-libido drugs such as medroxyprogesterone acetate, cyproterone acetate, and LHRH agonists (Lutenezing Hormone - Releasing Hormone) can be given as a catration teraphy. LHRH Agonists are considered as the most effective one because it's capable to decrease the production of testosterone, the hormone that plays the most role in man's sexual activity to the low level so the libido will not appear. [8]

Chemical castration may have serious side effects, when medroxyprogesterone acetate, cyproterone acetate, and LHRH Agonists teraphy administered for chemical castration, it can induce a significant reduction not only in serum testosterone but also in estradiol. Estrogen plays an important physiological role even in men's body because of less beneficial effect such as inhibiting growth and bone maturation, brain function and cardiovascular disease along with impaired glucose, lipid

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[8] *Ibid*

metabolism, depression, infertility, and anemia. Therefore chemical castration can only be given continuously for 3-5 years. [9]

Chemical castration is not a permanent treatment, the libido could return to normal if the treatment is discontinued. It also costs a lot as it does in Korea, it requires USD 4,560 per person a year to perform chemical castration. [10]

Doctors as prospective executioner to performed chemistry castration considered that the action is contrary to the Human Rights, ethical principles of the medical professions especially in Indonesia where doctors are prohibited to use medical science for something that is contrary to the humanity, respect every human life from the time of conception and give priority to human health. [9]

Chemical castration must be perfomed voluntary without being coercion in accordance with the principle of autonomy, whereby every individual has the right to determine the therapy and medical treatment, every doctor as the executor must instill a doctorin of Inform Consent by informing the mechanism of the treatment and the long-term side effects if it chemical castration still has to be perfomed for child sex offender. [11]

5. Conclusion

The reason why the government considers the need for chemical castration applied to child sex offender is in order to provide a deterrent effect for the offenders and at the same time to prevent sexual crime in children by the other actors in the future.Sexual crimes against children should still be sanctioned but still need to look at the existing of humanitarian and social factors in the community, moreover to determine whether the law enforcer should also coorporate with psychiatrist to determine the sexual orientarion of the offender or not. Chemical Castration is considered less effective because it may cause adverse effects and also requires a lot of cost and some of the doctors consider this treatment is against human rights, Ethical Principles of Medical Profession, so Ikatan Dokter Indonesia (IDI) rejects the provison.

Suggestion

As for suggestions and recommendation in this paper, the government is expected to reconsider its policy by eliminating the castration sanction and sufficient with the long prison sentence as not to contradic with human rights.

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Perpu No. 1 Tahun 2016 tentang Sanksi Kebiri

Undang-Undang No. 23 Tahun 2002 Jo. Undang-Undang No. 35 Tahun 2014 tentang Perlindungan Anak.

Chaos of Forest Resource Access Regulation: Study on Moro-Moro Farmers at Register 45 Lampung

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Abstract

One of the problems of farmers in Indonresia is the limited availability of agricultural land. Through various regulations, the government gives farmers hope for the availability of agricultural land, through the land levy, land use permits or partnerships with forest management right holders. For decades the Moro-Moro farmers have struggled to gain access to forest resources (farmland) legally, in Register 45 Sungai Buaya Mesuji Lampung. This study will examine forest resource access regulations and their implementation in Register 45 Sungai Buaya Mesuji Lampung.

The approach that used in this research is socio-legal. Socio-legal is a study that combines the study of doctrinal law with social studies. Legislation can be categorized properly and well if the substance is able to accommodate as much as possible the aspirations, interests and needs of the community. So the analysis is not only based on normative rules but also the social context.

The result of the research shows that the regulation of forest resource access model in register 45 Lampung to farmer of Moro-Moro is partnership. Partnerships offered by forest management right holders are considered have not been able to providewelfare to farmers, considering that the types of plants have been determined and in the process of the partnership, the dialogical space is still very poorly done by forest managers. In addition, the area of farmland is getting narrower, because it must be planted with hard plants. However, it is necessary to trials the forest resource access model by means of the partnership, even though it is possible to use another access model.

Keywords: *Regulation, Implementation, Access of Forest Resources, Moro-Moro;*

1. Preface and Problems

The obligation to protect the forests is the responsibility of the government and all the people of Indonesia, considering the function of the forest concerning the livelihood of the people. On the one side people need agricultural land in the forest area, on the other side the forest should be protected, but on the other hand, forest exploitation is given to entrepreneurs with an area that exceeds their capacity. Meanwhile on the policy side, the government is less involved the community in the planning, designation and determination of state forests. As a result there is often conflict occur of forest utilization with the community, both within the forest area and around the forest area[1].

Unilateral appointment of forest areas by the government in the past has been one of the factors which is triggers the conflict[2] in forest areas[3], besides to licensing of forest exploitationto the private

[1] Salim, 2013, *Dasar Dasar Hukum Kehutanaan*, Jakarta: Sinar Grafika, p.123

[2] The 2011 KPA report mentions 163 agrarian conflicts throughout 2011, details of 97 cases in plantation sector, 36 forestry cases, 21 cases of infrastructure sector, eight cases in mining sector and one case in coastal and

sector. Period of economic crisis[4]in the late 1990s became an important period in the history of forestry in Indonesiaespecially at Register 45 Sungai Buaya Mesuji Lampung (hereafter referred to as Register 45 Lampung). Conflict develops when on 17 February 1997 the Minister of Forestry issuesSK No.93 / Kpts-II / 1997 on the granting of HTI concession rights over forest area which originally 33,500 ha up to ± 43,100 ha to PT Silva Inhutani Lampung(PT SIL) for 45 years. PT SIL is considered to take a forced community land area of ± 10,000 ha.In fact, PT SIL is actually only able to cultivate the land about 12,000 ha. People struggle to get land claimed by PT SIL, to be able to continue their livelihood.Land cultivation by the community still continues, considering that on one side of the land is abandoned by PT SIL and on the other side there are quite a lot of poor people who need land to be able to extend their life.

The number of poor people in Lampung based on the results of the National Socioeconomic Survey (Susenas) September 2016 reached 1.14 million people (13.86 percent).This number is reduced compared to March 2016 reached 1.17 million people (14.29 percent).[5]In general, the poor are landless farming families, who seek to earn their livelihoods from farming.For example, Moro-Moro citizens based on the results of the 2010 census, consisting of 1,300 heads of households (3359 inhabitants),[6]spread over five districts. In 2006, they formed a peasant mass organization under the name of the Persekutuan Petani Miskin Moro-Moro Way Serdang (PPMWS). Currently, each sub-village level consists of 12 groups (so there are 60 groups). Each group consists of 16-20 people. Moro-Moro region with an area of ± 2,444 ha.[7]is part of the forest Register 45 Lampung, as well as entry in HTI PT HTI Concession Rights.Based on the above description, the parties related to the Moro-Moro community's land are composed of three elements: first, the Ministry of Forestry and the Environment; second, PT SIL; and third, Moro-Moro citizens. The Ministry of Forestry is a party that has the authority to control Register 45 Lampung, PT SIL as the holder of HPH-HTI, and the Moro-Moro community as a party who needs access to forest resources to carry on their life.During this time, the cultivation of land by Moro-Moro residents is considered illegal, both by the Government (Minister of Forestry and Environment) and by PT SIL.Citizens need legal certainty related to the cultivation of the land.For the purpose of guaranteeing legal certainty on access to forest resources, the government has issued various policies to facilitate such access to the community.One of the offers is through partnerships between community members and HPH-HTI holders, but people are rejected for various reasons. Based on the above explanation, this research would like to examine how the arrangement of forest resource access and its implementation in Register 45 Lampung?

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coastal areas. Throughout the year 2015 land conflicts tends to increase, the data collected by Indonesian Peasant Union (SPI) during 2015, the number of agrarian landfalls that occurred in Indonesia reached 231 cases. This figure is 60% compared to agrarian conflict that occurred in 2014 amounted to 143 cases with conflict land area in Indonesia with total area of agrarian conflict covering 770.341 ha.

[3] The Court through Decision Number 45 / PUU-IX / 2011 gave a judicial review on five Regents of Central Kalimantan against the Forestry Law. The Constitutional Court abolished the phrase "appointment and or". In its legal considerations, the Constitutional Court is convinced of the article, the government may be misinterpreted and arbitrarily in granting territory status in the applicant's territory. The reason, in the determination of the area as a forest area enough with the phrase "appointed and or".

[4] In mid 1997 the ASEAN countries were hit hard by the regional economic crisis caused by the depreciation of their currency against the US dollar. Indonesia is the worst of all countries in Asia. Various researches say the rupiah exchange rate is depreciating considerably against US $, which is in real terms around 71.6 percent in 1998. The rate of inflation in the year reached 77.8 percent. This led to an increase in interest rates to reach the highest level of 61.8 percent in September 1998. The economic crisis is bad enough to affect the financial health of entrepreneurs, increasing the number of unemployed, and including economic pressure for farmers / farmers.

[5] Lampung Poverty Rate, September 2016, quoted from Statistics Agency of Lampung Province, January 3, 2017, https://lampung.bps.go.id/Brs/view/id/487, accessed 23 Agutus 2017 At 14.00 wib.

[6] Ridwan Hardiansyah, 2013, Kami Bukan Superman, Bandar Lampung: Indepth Publishing, p. 28.

[7] *Ibid.*

2. Research Method

This study uses socio-legal approach. Socio-legal is a study that combines the study of doctrinal law with social studies. The study materials are legislation and community behavior. Legislation can be categorized properly and well if the substance is able to accommodate many aspirations as possible, interests and needs of the community. So the analysis is not only based on normative rules but also pay attention to social context.

3. Discussion

Article 28A of the 1945 Constitution of the Republic of Indonesia has provided assurance that every person shall have the right to live and have the right to maintain his life and life. For farmers to sustain life and life can not be separated from farmland.This means that the government should have made the land available for agricultural business for the people. considering the very limited agricultural land, while that appears in front of the forest is a forest area that has been burdened HPH-HTI but abandoned, it will certainly be utilized by farmers in meeting the needs for the sustainability of life.Of course such a condition equally should not happen, employers should not neglect their land, while citizens / farmers are prohibited from utilizing the land of others without permission, even though the land abandoned though.

In order to meet the need for access to natural resources (forests / land) for citizens in order to maintain life and life, the government has issued various policies. Apart from the advantages and disadvantages of the form of policy issued by the government, it all depends on the good intentions of the implementers in the field. Also considering, the need for land / land is day by day is increasing, while the amount of land / land area is relatively fixed. So throughout human history, the seizure of land resources never endsThus, it takes the wisdom of all parties to overcome the problem of limited agricultural land by utilizing forest resources without reducing the function of the forest itself. One of forest resource access policy is forestry partnership.

Forestry Partnership is a collaboration between local communities and forest utilization holders or forest managers, holders of forest primary industry business permits,and / or forest management units in capacity building and access granting, on the principle of equality and mutual benefit. This policy was changed into social forestry with the Regulation of the Minister of Environment and Forestry of the Republic of Indonesia Number P.83 / Menlhk / Setjen / Kum.1 / 10/2016 on Social Forestry. This Regulation affirmsSocial forestry is a system of sustainable forest management conducted within state forest areas or forest rights / customary forests implemented by local communitiesor customary law community as the main actors to improve their welfare,environmental balance, and socio-cultural dynamics in the form of village forests, community forests, community plantations, community forests, customary forests, and forestry partnerships.

Through social forestry policies, the Government wants to: (a) create and accelerate equitable access and distribution of forest resource assets; (b) resolve tenurial conflicts in forest areas; and (c) reducing poverty and improving the welfare of people living in and around forest areas.Based on the available data, the entire territory of Indonesia can be divided into two based on the management authority. The first party, the Ministry of Forestry and Environment claimed 2/3 of Indonesia's land territory (67.74%) was forest, which became its authority.Its legal policy adheres to the forestry law regime. Meanwhile, the second party is the Ministry of Agrarian Affairs and Spatial which get the rest (1/3 or 32.26%) to manage its management, and subject to the land law regime (agrarian law in the narrow sense).

Although 2/3 of Indonesia is claimed as a forest area, the reality is that not all of them are cover forests. That is, quite a lot of forest areas, which in fact is no longer forest, because it has become a settlement or grassland or forest without stand. So that the regulation of access to forest resources, both for forested and non-forested areas, obedient with the forestry law regime and can not be confused with

the land law regime. Although politically legal and legal system may actually be collaboration of legal regime, so there is no chaos chaos, for example related to result of partnership.

Political law in access to forest resources, obtaining constitutional basis in Article 33 Paragraph (3) of the 1945 Constitution-NRI, that: the earth and water and natural resources contained therein are controlled by the State and used for the greatest prosperity of the people.As long as forest resources are used for the welfare of the people, although the regulatory regime is different, but by referring to the national legal system, everything gets its way out.Just as Sudikno Mertokusumo puts it, the legal system is an essential unity and fragmented in sections, in which each issue or problem finds its answer or its solution. The answer lies within the system or the legal system itself.[8]

Sudikno's opinion is based on a legal notion of a seemingly jumbled set of rules, a chaos.Legislation is spelled out a lot and growing every year. That is, for law science is not really a chaos, but as a stuctured whole or system.The law is not just a collection or sum of rules, each of which stands alone.[9]

Law as a system is a order or a unified whole consisting of parts or elements that are closely related to each other. In other words, the legal system is a unity consisting of elements that have interaction with each other and work together to achieve the purpose of the unity, if there is a problem or trouble will find its own answer or solving.[10]

Role 1: Map of land tenure and land conflict map in Indonesia[11]

Table 1. Area of Forest Area Based on Function[12]

Area	Large (± ha)	%
CONSERVATION FOREST (LAND AND PARK RUSH)	21.780.626,14	11,44
PROTECTED FOREST (HL)	30.539.822,36	16,03
LIMITED PRODUCTION FOREST (HPT)	27.967.604,50	14,68
PRODUCTION FORESTS (HP)	30.810.790,34	16,18
PRODUCTION FORESTS CAN BE CONVERTED (HPK)	17.924.534,81	9,41
LARGE OF FOREST AREA	**129.023.378,15**	**67,74**

[8] Sudikno Mertokusumo, *Mengenal Hukum Suatu Pengantar, edisi II, Cet.keempat*, Yogyakarta: Liberty, 2006, p. 103.
[9] *Ibid....,* hlm. 102.
[10] *Ibid.*
[11] BPN-RI, International Conference on "Regulatory Reform on Indonesia Land Laws for People's Welfare", FH UI-BPN RI, Grand Sahid Hotel Jakarta, December 11, 2012
[12] Director General of Forestry Planning at the Ministry of Forestry, Paper: Forest Area Use Solution for Non Forestry Activities, in the International Conference on "Regulatory Reform on Indonesia Land Laws for People's Welfare", FH UI-BPN RI, Grand Sahid Hotel Jakarta, December 11,

AREAL THE OTHER USES (APL)	61.433.521,85	32,26
TOTAL AREA REGIONS OF NKRI	**190.456.900,00**	**100,00**

Source: Directorate General of Forestry Planning of the Ministry of Forestry, in 2012.

All this time, forest resource access policies are regulated in various regulations and schemes. Forest resource access schemes are divided into two: forest rights schemes and forest permit / partnership schemes.Forest rights schemes include individual / legal entity rights, and customary forests. For this scheme the forest area is removed from the forest area, then becomes state land.After becoming a state land, land rights can be submitted to the National Land Agency, and the function of the forest remains unchanged.Forestry licensing / partnership schemes include: village forests, community forests, community plantations, and forestry partnerships.

In general, access to forest resources is regulated in various regulations, namely:

1. Law Number 41 of 1999 regarding Forestry, as amended by Act Number 19 of 2004;
2. Government Regulation Number 6 Of 2007 regarding Forest Management and Preparation of Forest Management and Forest Utilization Plan, as amended by Government Regulation Number 3 Of 2008;
3. Regulation of the Minister of Forestry Number: P.01 / Menhut-II / 2004 regarding Local Community Empowerment In and Or Around Forest For Social Forestry;
4. Regulation of the Minister of Forestry of the Republic of Indonesia Number P.49 / Menhut-II / 2008 on Village Forests;
5. Permenhut No P.55 / Menhut-II / 2011 regarding Procedure of IUPHHK-HTR Application in Plantation Forest;
6. Regulation of the Minister of Forestry of the Republic of Indonesia Number: P.88 / Menhut-II / 2014 regarding Community Forests;
7. Regulation of the Minister of Forestry Number P.89 / Menhut-II / 2014 regarding Village Forest;
8. Regulation of the Minister of Environment and Forestry of the Republic of Indonesia No. P.83 / Menlhk / Setjen / Kum.1 / 10/2016 regarding Social Forestry.

In particular, the forest resource access policy with the rights forest scheme is regulated in the Minister of Environment and Forestry Regulation of the Republic of Indonesia no. P.32 / Menlhk-Secretariat / 2015 on Right Forests.While forestry permits / partnerships are regulated in the Minister of Environment and Forestry Regulation of the Republic of Indonesia no. P.83 / Menlhk / Setjen / Kum.1 / 10/2016 About Social Forestry.

The Moro-Moro community's struggle for legally accessing forest resources in Rigester 45 Lampung gets a bright spot with the issuance of Forestry Minister's Regulation No .: P.39 / Menhut-II

/ 2013 on Local Community Empowerment through Forestry Partnership.During the socialization of the forestry partnership between the Moro-Moro community and PT SIL, facilitated by the Ministry of Forestry in early 2017, Permenhut 39/2013 has been revoked by the Minister of Environment and Forestry Regulation of the Republic of Indonesia no. P.83 / Menlhk / Setjen / Kum.1 / 10/2016 on Social Forestry. Meanwhile, the socialization substance is still using the old Permenhut.

There is an important regulation difference for the Moro-Moro community, namely in Permenhut 39/2013 partnership with PT SIL maximum 2 hectare, while in the new regulation, the area of arable land can reach 5 hectare.So for the people who have been working on the land more than 2 hectares refused the offer of partnership agreement with PT SIL, considering that in the draft of partnership agreement, the public is only allowed to work on forest land of maximum 2 hectares.In line with the legal doctrine of *lex posterior derogat legi priori*,[13]then the applicable law shall be the provision regulating the area of 5 hectares of land.

In addition to the extent of land which is claimed to be a problem in the partnership offered to Moro-Moro farmers is a profit-sharing system and financing. Two ministerial regulations concerning forestry partnership as a whole, the system for results is determined on the basis of consensus deliberation, but in the draft partnership agreement has been determined unilaterally by PT SIL.In other words using the standard agreement scheme.[14] Sharing system; 1) for timber plants, 25% farmers and 75% PT SIL; 2) for food crops / seasonal 50% farmers and 50% PT SIL, and no more bargaining.

Balance-sharing offerings mentioned above, can be interpreted if it does not agree with the amount of profit sharing, the community there is no other choice, other than accept or reject.If it refuses, PT SIL has prepared a blank / letter of statement refusing the partnership to be signed. If they accept a partnership, have also prepared a letter of partnership agreement to be signed.Whereas in relation to the results of the cultivation of land, in Permenhut on forestry partnership is determined on the basis of deliberation to consensus. Even if a consensus agreement can not be reached, there are rules as a reference.

Regulations that can be used as a reference or guidance are Law no. 2 Of 1960 on Profit Sharing jo. Presidential Instruction no. 13 of 1980.[15]Elucidation of Article 7 of the Production Sharing Law states that the balance of profit sharing between the tenants with the land owner or the owner of the land is: 1) for rice crops in paddy fields, 50% farmers, and 50% landowners; 2) for polowijo plant crops and for dryland crops, 2/3 farmers and 1/3 landowners.The profit sharing balance after deducting the production cost. Each region can be set differently about the share of the revenue share by the regent / mayor.This means that in a regency / city for each region can differ the amount of profit sharing, adjusted with economic factors in each region. In principle, the revenue-sharing ratio should not harm the farmer.

The above thought is in line with the doctrine, that the legal structure in Indonesia is like a cobwebs.[16] Regularity can be created with many laws and regulations. Between regulation one with the other rules are intertwined and forming a legal system such as cobwebs.Every legal system will face the question of contradictions, legal vacuum, and vague norms.Conflicting legal rules (contradictions) need

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[13] B. Arief Sidharta, Asas Hukum, Kaidah Hukum, Sistem Hukum dan Penemuan Hukum", dalam Susi Dwi Harjanti (ed.), *Negara Hukum yang Berkeadilan, kumpulan pemikiran dalam rangka purnabakti Prof. Dr. H. Bagir Manan, S.H., M.CL.* Bandung: PSKN FH UNPAD, 2011, hlm. 9.

[14] The standard agreement is a written contract made solely by one of the parties to the contract, often the contract has been printed in the form of certain forms by one of the parties, in which case when the contract is signed generally the parties only fill in the informative data certain with little or no change in its clauses, in which the other party in the contract has no opportunity or little chance to negotiate or amend the clauses already made by either party.

[15] Presidential Instruction No. 13 of 1980 on Guidelines for the Implementation of Law no. 2 of 1960 concerning Production Sharing Agreement.

[16] Whitehead, using the term "law as a network", interpreted a holistic process consisting of actual units, see HR Otje Salman S and Anthon F. Susanto, *Teori Hukum, Mengingat, Mengumpulkan, dan Membuka Kembali*, Bandung: PT Refika Aditama, 2009, p. 10-11.

consistency effort (synchronization and harmonization), legal vacuum need formation, and vague norms need legal discovery / interpretation.

The problem of balance of forestry partnership results there is obscurity / obscurity of the rule of law. Therefore, legal discovery is required. The law that can be used as a reference guide for the results of forestry partnership is Law no. 2 Of 1960 on Profit Sharing.

At the level of forestry partnership practices between PT SIL and Moro-Moro farmers, it turns out far from the existing regulations and very detrimental to the cultivators. This can be seen clearly in table 2 below:

Table 2. Comparison of Profit Sharing Among Forestry Partnership with Production Sharing Law

Types of Plants	PT SIL Partnership Offer with Moro-Moro Farmers	Law No. 2 Of 1960
Food/ Seasonal	PT SIL (which controls the land): 50% Peasant Moro-Moro (tiller) : 50%	Landlord / owner : 25% Cultivators : 75%
Timber	PT SIL (which controls the land): 75% Peasant Moro-Moro (tiller) : 25%	Landlord / owner : 25% Cultivators : 75%

The condition above is very apprehensive, considering the spirit of forest resource access rules issued by the government did not materialize in people's lives, especially Moro-Moro farmers.In accordance with the spirit of forest resource access policy by the community in the forest area or around the forest area, the balance should be equal to: 75% of Moro-Moro farmers and 25% PT SIL, both for food / seasonal and timber.Actually not only that, the reason for the rejection of forestry partnership by the Moro-Moro, for example transparency of financing partnership for profit sharing provided by PT SIL.

4. Conclusion

Based on the discussion, it can be concluded:

1. Regulations on access to forest resources for Moro-Moro residents that can be done is to use a forestry partnership scheme in accordance with Minister of Environment and Forestry Regulation of the Republic of Indonesia no. P.83 / Menlhk / Setjen / Kum.1 / 10/2016 on Social Forestry.
2. Access to Moro-Moro peasant forest resources has been legally illegal, considering they have not agreed on the partnership system offered by PT SIL. The reasons for the rejection proposed by the residents are related to the area of cultivated land and the balance for the result is not in accordance with the wishes of the citizens.

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The Implementation of Focus on Form and Focus on Meaning Instructions in English Language Teaching at the University of Lampung

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Abstract

This research was aimed at investigating the English ability of students of Physics Department of the Faculty of Teacher Training and Education at the University of Lampung before and after the implementation of Focus on Form and Focus on Meaning instructions, and at finding out the effectiveness of the two English language teaching instructions in increasing their English ability. This study applied a quantitative method through static-group comparison by using two instruments, a multiple-choice test and a speaking test. This study was conducted in two classes at the Department of Physics Education, Faculty of Teacher Training and Education, the University of Lampung. They were students of the first semester 2014/2015 Academic Year studying English as a foreign language at the intermediate level for one semester. A total of 69 students were chosen as participants of this study with an average age of 18. The results show that it is better to apply Focus on Meaning instruction for teaching English speaking that that of Focus on Form. In terms of accuracy and mastery of linguistic forms, however, it is slightly better to use the Focus on Form instruction than that of Focus on Meaning. The Focus on Form instruction is proved to be effective enough to improve students' grammatical ability. This gives an indication that this pedagogical technique is effective for diverting students' attention to the grammatical aspects as they engage in activities that prioritize the understanding and delivery of written messages. While the Focus on Meaning instruction is proved to be effective to improve students' speaking ability. Students who are taught using the Focus on meaning instruction are accustomed to conveying ideas without fear of making mistakes because through this instruction, grammatical errors are not particularly noticed, however, they are not entirely ignored either, yet the conditions are slightly tolerable.

Keywords: *Instructions, Focus on Form, Focus on Meaning, Linguistic Form, Speaking;*

1. Introduction

In Indonesia, a student will never be able to avoid English even though it is still considered as a foreign language. Therefore, learning the language is a must. This lesson of English language is learned by elementary school to university students through interactions between English teacher and/or lecturer and students, which play an important role in foreign language learning.

There has been, in second language learning process, a long debate on whether a focus of form(s) (FonF) or focus on meaning (FonM) method works better, though many teachers and researchers agree that communicative language teaching (CLT), message is more important than the form, focusing on meaningful interaction is a prerequisite to be engaged in the process of second language learning. Long (1991) states that there are three types of instruction in language learning which include Focus on Forms (FonFS) – a traditional way of learning a language putting great emphasis on linguistic forms, Focus on

Form (FonF) – an approach based on Communicative Language Teaching (CLT) principles putting emphasis on communicative aspects of the language through explicit or implicit focus on form, Focus on Meaning (FonM) – also a CLT inspired approach placing great emphasis on meaning rather than on linguistic forms. This study looks at the last two types of instruction, Focus on Form (FonF) and Focus on Meaning (FonM).

This research was aimed at investigating the English ability of students of Physics Department of the Faculty of Teacher Training and Education at the University of Lampung before and after the implementation of Focus on Form and Focus on Meaning instructions, and at finding out the effectiveness of the two English language teaching instructions in increasing their English ability.

2. Focus on Form (FonF)

In teaching English, the emphasis on linguistic forms, grammar, still occupies a major place – this results in grammatically-competent students, not communicatively-competent. Learning a language is closely related to mouth that a communicative skill on how to communicate in a meaningful way in speech is more essential. The term *form* here is often used to refer to linguistic form that is grammar. Ellis et al. (2001a) state that FonF can be directed at phonology, vocabulary, grammar, discourse, and even spelling.

According to Long (1991:45-46), FonF refers to drawing students' attention to linguistic elements as they arise incidentally in lessons whose overriding focus is on meaning or communication. It means that this instruction allows the teacher to instruct students to look carefully at two things, accuracy and fluency, the former refers to the linguistic forms, while the latter refers to the meaningful and understandable communication. Long states further that learners attend to language as object during a generally meaning-oriented activity – learners need to attend to a task if acquisition is to occur, but their orientation can best be to both form and meaning, not to either form or meaning alone (Long, 1996:429).

Poole states that focus on form instruction is a type of instruction which:
On one hand holds up the importance of communicative language teaching principles such as authentic communication and student-centeredness, and on the other, maintains the value of the occasional and overt study of problematic L2 grammatical forms (Poole, 2005:13).

In meaning-focused activities, linguistic items can arise spontaneously. When students pay careful attention to them, then focus on form also takes place. As stated by Loewen (2004) that focus on form can be either student-initiated which allows students to seek information about linguistic items as the need arises during meaning-focused activities, or teacher-initiated.

Ellis et al. (2001a:411-412) state, based on Long's definition, that FonF has several characteristics which include: (1) it occurs in meaning-centered discourse; (2) it is observable, i.e. it occurs in an interactional way; (3) it is incidental, i.e. it is not preplanned; (4) it is transitory; (5) it is extensive, i.e. it attends several forms in the context of a single lesson.

In addition, Ellis et al. (2001b:285) also classify FonF into two kinds, Reactive FonF and Preemptive FonF. Reactive FonF is when a learner has said something erroneous, and then the teacher or other learners react by telling her or him that she or he has made an error and make it right. Preemptive FonF refers to teacher or learner's attempt to initiate explicit attention to a linguistic form to prevent an erroneous form. In brief, Reactive FonF addresses errors which have emerged in the context on meaningful communication, while that of Preemptive deals with problems which are predicted to occur and thus block communication.

3. Focus on Meaning (FonM)

Focus on Meaning (FonM) is student-centered. Students shift their attention from focus on linguistic forms or grammar to focus on meaning. From this FonM point of view, a language is

considered as a communication tool. Students can experience sufficient exposure to the second or foreign language learned. They are involved in classroom activities that they can improve and develop their ability to use the language for communication. In the active second or foreign language learning process, the teacher just provides some guidance, supervises, facilitates, and encourages them to think about and experiment with the language. The essential point of communication is that the hearer (reader) understands the message conveyed by the speaker (writer), and vice versa.

Howatt (1984) states that learners can acquire a foreign language best when their attention is focused on meaning rather than on language forms. The FonM instruction, based on studies conducted by Harley and Swain (1984); Genesee, (1987), can be more effective on general language proficiency skills such as fluency, yet learners continuously show weaknesses in linguistic forms or grammar.

Williams (1995:12) states that meaning-focused instructions have several characteristics which include: (1) they emphasize using authentic language; (2) they emphasize tasks that encourage the negotiation of meaning between students, and between students and teacher; (3) they emphasize successful communication, especially that which involves risk taking; (4) they emphasize minimal focus on form, including (a) lack of emphasis on error correction, and (b) little explicit instruction on language rules; (5) they emphasize learner autonomy.

4. Methodology

This study applied a quantitative method through static-group comparison by using two instruments. Static-group comparison, according to Setiyadi (2006:135), is a study that is closer to the experimental criteria because there two different groups or classes in this study that have two different treatments.

This study was conducted in two classes at the Department of Physics Education, Faculty of Teacher Training and Education, the University of Lampung. They were students of the first semester 2014/2015 Academic Year studying English as a foreign language at the intermediate level for one semester. English language was a compulsory subject. A total of 69 students were chosen as participants of this study with an average age of 18. Class A consisted of 7 male and 28 female students, while that of B consisted of 6 male and 28 female students. They had studied English as a foreign language since they were in elementary schools. The research design applied in this research was as follows.

Table 1. Research Design

Before treatment	treatment	After treatment
K1	X1	T1
K2	X2	T1

Notes:
K1 : Class A, the experimental group
K2 : Class B, the control group
X1 : FonM instruction
X2 : FonF instruction
T1 : English ability after treatments

The research instruments used were in the forms of multiple-choice test with five options (A, B, C, D, and E) consisting of 50 questions and a speaking test which was used to observe students' speaking or communicative ability in terms of: (1) pronunciation; (2) word choice; (3) verb tense; (4) word order; (5) singular nouns; (6) plural nouns; (7) fluency; (8) accuracy; and (9) comprehensibility.

Each class/group got a different treatment, Class A was taught through FonM instruction in which English grammatical aspects were taught implicitly and the main focus was on enabling learners to communicate in a meaningful way, the emphasis was on meaning, not the form. While that of B was

taught through FonF instruction in which the lecturer taught English grammatical aspects explicitly and the main focus was on enabling learners to produce correct sentences.

Class A was divided into eight groups and asked to find a topic closely related to natural sciences, they presented the topics in eight meetings. Class B was taught based on a textbook which contained reading passages and a number of English grammatical items.

The main tools of data collection in this study were through tests and participatory observation since the researcher was also the English lecturer of the classes. There were 16 meetings for one semester including 1 meeting for pretest, 1 meeting for quiz, 1 meeting for midterm exam, and 1 meeting for final. Each meeting lasted for 150 minutes. 16 meetings of each class were observed and eight meetings of Class A were audio-video recorded by the researcher. The linguistic items in each meeting in Class B were on spelling, word choice, verb tense, word order, and singular nouns, plural nouns.

5. Results and Discussions

5.1 Multiple-Choice Test

After giving treatments, the research asked the students of Class A and Class B to work on multiple-choice questions. Here are the results of the test.

Table 2. Results of Multiple-choice Test

Score Range	Class A (FonM)	Class B (FonF)
80-100	2	7
60-80	24	15
40-60	5	10
<40	4	2
Total	35	34

The Table 2 above explains that, overall, the ability of students from each class is relatively the same after treatments. Class B that was taught through FonF instruction gets higher scores than Class A taught through FonM. There were seven students who scored between 80-100 in Class A, while in Class B there were only two students who got almost perfect grades.

5.2 Speaking Test

Students of Class A. taught through FonM instruction, were asked to deliver a presentation to measure their speaking or communicative ability. The result of their speaking test is as follows.

Table 3. Result of Speaking Test of Class A

No	**Score**	**Frequency**	**Percentage**
1	32– 40	12	34.28 %
2	24 – 31	15	42.85 %
3	16 – 23	6	17.6 %
4	8 – 15	2	5.7 %
Total		34	100

From the table above, it can be seen that 12 students (34.28%) got scores between 32-40. They achieved good scores when they could deliver their presentation well in terms of *pronunciation, word choice, verb tense, word order, singular nouns, plural nouns, fluency, and comprehensibility.* There were 15 students who obtained scores between 24-31. The students falling into this category could deliver their presentation well although it was not as good as those who got scores between 32-40. There were 6

students (17.6%) who achieved scores between 16-23. They had troubles in delivering their presentation in terms of *pronunciation, word choice, verb tense word order, singular nouns, plural nouns, fluency and comprehensibility.* However, their presentation was still understandable. There were 2 students who got scores between 8-15 (11.8%). They had difficulties in terms of *pronunciation, word choice, verb tense word order, singular nouns, plural nouns, fluency and comprehensibility.* It could be said that there was almost no interaction between students presenting their topic and the audience because the presenters could not convey their ideas and messages in an acceptable way. The table below shows the scores of each speaking component.

Table 4. Students' Score Frequency for Each Speaking Component (Class A)

No	Score	5		4		3		2		1		Total	
	Component	*f*	%	*f*	%	*f*%]	%	*f*	%	*f*	%	*f*	%
1	Pronunciation	2	5.7	14	40	12	34.2	5	14.7	2	5.7	35	100
2	Word choice	8	22.8	13	37.1	12	34.28	2	5.7	0	0	35	100
3	Verb tense	7	20	10	28.5	9	25.7	8	22.8	1	2.8	35	100
4	Word order	4	11.42	12	34.2	11	31.4	6	17.1	2	5.7	35	100
5	Singular nouns	9	11.6	10	35.2	7	23.5	7	23.5	2	5.7	35	100
6	Plural nouns	6	17.1	8	11.7	9	35.2	10	29.4	2	5.7	35	100
7	Fluency	5	14.2	9	25.7	11	31.4	6	17.1	4	11.4	35	100
8	Comprehensibility	6	17.1	12	34.2	9	25.7	5	14.7	3	14.7	35	100

In *Pronunciation*, there were 2 students (5.7%) who got score 5. It means that there were 2 students who pronounced English words or sentences perfectly (without any mistakes). In terms of *Word Choice*, there were 8 students (11.7%) who got score 5.

In terms of *Verb Tense* there were only 7 students (20%) who got score 5. In addition, there were 4 students (11.4%) who achieved score 5 perfectly. In Singular and Plural Noun Component, there were only 4 students (11.4%) who achieved score 5. In *Fluency* Component, there were 5 students (14.2%) who obtained score 5. Finally, in terms of *Comprehensibility*, there were 6 students (17.1%) who did it perfectly and achieved score 5.

Students of Class B, taught through FonF instruction, were also asked to deliver a presentation to measure their speaking/communicative ability. To find out more, please have a look at the following table.

Table 5. Result of Speaking Test of Class B

No	**Score Interval**	**Frequency**	**Percentage**
1	32– 40	7	20.5 %
2	24 – 31	10	29.4 %
3	16 – 23	13	38.3 %
4	8 – 15	4	11.8 %
Total		34	100 %

Table 5 above explains that there were 7 students (20.5%0 who obtained scores between 32-40, it means that they could deliver their ideas when delivering their presentation well in terms of *pronunciation, word choice, verb tense, word order, singular nouns, plural nouns, fluency and comprehensibility.* Meanwhile, there were 10 students (29.4%) who got scores between 24-31. The students falling into this category could deliver their ideas well although it was not as good as the group who got scores between 32-40. There were 13 students (38.3%) who got scores between 16-23, they still faced difficulties in terms of *pronunciation, word choice, verb tense, word order, singular nouns, plural*

nouns, fluency and comprehensibility. Finally, there were 4 students (11.8%) who got scores between 8-15, they still faced difficulties when conveying their opinions in English in terms of *pronunciation, word choice, verb tense, word order, singular nouns, plural nouns, fluency and comprehensibility.* . It could be said that there was almost no interaction between students presenting their topic and the audience because the presenters could not convey their ideas and messages in an acceptable way. The table below shows the scores of each speaking component.

Table 6 Students' Score Frequency for Each Speaking Component (Class B)

No	Score	5		4		3		2		1		Total	
	Component	*f*	%	*f*	%	*f* %	%	*f*	%	*f*	%	*f*	%
1	Pronunciation	0	0	5	14.7	13	38.3	12	35.2	4	11.7	34	100
2	Word choice	4	11.7	9	26.4	10	29.4	5	14.7	6	17.6	34	100
3	Verb tense	3	8.9	13	38.2	9	26.4	6	17.6	3	8.9	34	100
4	Word order	2	5.9	9	26.4	8	23.5	12	35.3	3	8.8	34	100
5	Singular nouns	4	11.6	12	35.2	8	23.5	8	23.5	2	5.9	34	100
6	Plural nouns	1	2.9	4	11.7	12	35.2	10	29.4	7	20.5	34	100
7	Fluency	2	5.9	9	26.4	15	44.11	5	14.7	3	8.8	34	100
8	Comprehensibility	6	17.6	4	11.7	10	29.4	9	26.4	5	14.7	34	100

In *Pronunciation*, there was no student who got score 5. It means that there was no student who could pronounce well. In terms of *Word Choice*, only 4 students (11.7%) who could get score 5. In terms of *Verb Tense,* there were only 3 students (8.9%) who got the highest score. In terms of *Word Order*, there were only 4 students (11.7%) who could get score 5. In *Singular and Plural Noun* Component, there were only 4 students (11.7%) who could get score 5. In *Fluency* Component, there were only 4 students (11.7%) who could get the highest score 5. Finally, in terms of Comprehensibility, there were 6 students (17.6%) who got the highest score.

Focus on Meaning and Focus on Form Instructions have their respective advantages and disadvantages. From the results above, it could be seen that FonM instruction is best applied for teaching English speaking compared to that of FonF. On the contrary, if viewed from the accuracy and mastery of linguistic forms, FonF instruction is slightly better than that of FonM. In addition, from the results of speaking test, it can be assumed that the implementation of FonM instruction to improve students' speaking/communicative ability is better than that of FonF.

6. Conclusion

The Focus on Form instruction is proved to be effective enough to improve students' grammatical ability. This gives an indication that this pedagogical technique is effective for diverting students' attention to the grammatical aspects as they engage in activities that prioritize the understanding and delivery of written messages. While the Focus on Meaning instruction is proved to be effective to improve students' speaking ability. Students who are taught using the Focus on meaning instruction are

accustomed to conveying ideas without fear of making mistakes because through this instruction, grammatical errors are not particularly noticed, however, they are not entirely ignored either, yet the conditions are slightly tolerable.

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Strengthening Model Criminal Law Enforcement Crime Spoliation by the Application of Integral and Scientific Approaches

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Abstract

Crime spoliation covering crime theft with ballast; theft with violence; and theft with motor vehicle (abbreviated, curanmor) or C3 or called in Indonesian term kejahatan pembegalan. Until now crime spoliation still live highest ranking index crime Lampung has spread terror scary for the Lampung and surrounding areas.

Model criminal law enforcement (CLE) of crime spoliation is held in partial and applying a shortcut. This approach is less optimize scientific culture approach, so CLE tinged cultural matters foul play, what bribes and behavior other reprehensible. CLE intervented what transactional that was conducted by unscrupulous apparatus by guilty spoliation.

To prevent and handle crime spoliation effectively, then CLE model is needs to be strengthened/optimization policy through police apply integral and scientific approaches. Both the approach blends various sub-sistem law consisting of three components legal substance, legal structure, and legal culture in the field of criminal law. While, scientific culture approach done through approaches by legal juridical-scientific-religius, juridical-contextual and a global juridical insightful/comparative. Through the application of both the approach set the restructuring model CLE crime spoliation the most suitable/relevant/accordance with typologies/characteristic/local wisdom of Lampung society and consider capacity of Lampung Regional Police.

Keywords: *Model, Criminal Law Enforcement (CLE), Integral, Quality.*

1. Background of Problem

Crime has spread spoliation terror, rampant, and being very scary for community in the Lampung, Jakarta, Bogor, Depok, Tangerang, Bekasi and several other areas. Crime spoliation has spread in most areas of Indonesia that raises the losses of life, human body hurt and property the total nominal and the charges are slightly. Hence, crime spoliation responded immediately to by issuing police policy, as part of criminal policy evil spoliation in the investigation phase.

The investigation by the police is the frontline in criminal law enforcement (CLE). Hence, CLE model evil spoliation at the application/the policy needs to be police suppressed, eradicate, prevent and handle crime spoliation effectively.

Model CLE spoliation against crime on the stage in concreto (applications stage) more chosen and executed with model repressive through special Team Antibandit (TEKAB) 308, although still pay attention to preventive and pre-emtif efforts. Model repressive chosen in the eradication of crime, who also recognizable by C3 appellation, namely a criminal act robbery (curat), the criminal act of theft with violence (curas), and the criminal act of motor vehicle theft (Curanmor).

Normatively, violation of crime ban theft or criminal these thefts to an offender/maker punishable by criminal sanctions prison maximum 5 years prisons (Article 362 Criminal Law); 7 until 9 years (Article 363 Criminal Law); 9, 12 to 15 years; a lifetime; even condemnation die (Article 365 Criminal Law). But, the heavy of pronouncement of sentence at the CLE in abstracto (formulations of law) and action repressive law enforcement apparatus of shoot investors in place and pronouncement of sentence maximum, not scared to impede spoliation guts players. For 6 (six) months, the data show that the number of crime spoliation increasing, including the criminal methods to act crime spoliation.

This needs to be investigation in the jurisdiction of Lampung Police Department, especially in five Police District Departement a highest number of crime C3 highest among 15 the other according Index Crime Lampung.[1] Those five urban is Police Department Bandar Lampung; Police Department North Lampung; Police Department Central Lampung; Police Department South Lampung; Police Department East Lampung. Research called "Strengthening Model Criminal Law Enforcement Crime Spoliation by The Application of Integral and Scientific Approaches."

To search and discover: (1) the existing model criminal law enforcement to evil spoliation in the Lampung Province; and (2) design strengthening model criminal law enforcement of quality against crime spoliation in the future.

According to background above, so the formulation of the problems would check the research is:

1. How conditions existing model criminal law enforcement to evil spoliation in the Lampung Province?
2. How design strengthening model criminal law enforcement based an integral and scientific approach of quality against to crime spoliation investigation in the future?

2. The Conditions Existing Model Criminal Law Enforcement to Evil Spoliation in The Lampung Province

Team research consisted of some lectures and students begin research by interviewing a number of speakers research among which are Ketut Seregig, Devi Sujana, Charles Simanjuntak, etc. A series of questions submitted to speakers, namely enforcement model criminal law enforcement (CLE) applied on the stage of case investigation against crime spoliation. According to the opinion speakers research is putting forward a model repressive with new-model flanking preventive and pre-emtif. The application of this model was preceded by doing the formation of a special Team Antibandit (TEKAB) 308.

The work of TEKAB 308 to combat C3 based on the provisions of regulation arranged in Articles 362, 363, and 365 Crimial Law and Articless 4 and 5 of Procedural Criminal Law. Then, conducted mapping against prone to C3; hunting on the target/the operation in the list; hunting search of motor vehicles the theft; and back up of areas to C3.

Excess/excellence/the power of model CLE are currently is a pre-emtif done with approach to leaders of the potential and anti-criminality in the local community; preventive measures done by strengthening patrol in the supervision prone to C3, especially conducted by a team Bhabinkamtibmas police personnel; repressive acts done with the scene as soon as possible process while there are reports C3 of the victims, or society observe the gesture of person, or law enforcement apparatus witnessing the C3 crimes. Repressive acts done with quick action after conduct through ways of action investigation.

Deficient/weakness of model CLE crime spoliation are currently speakers according to opinion research, namely lack of the participation of society or careless the community to help and unwilling to cooperate to eradicate and enforce legal crime spoliation C3; pattern think of evil doer derived from community marginally who want to improve family economy through rapid road or character of the community a harsh civilize in his life to a criminal offense C3 to get income quickly; absence of the minimum standards of criminal provision or still lack of support of law enforcement court to drop criminal who able to give the effect of dissuading offender C3.

CLE case spoliation indicated crime has happened foul play or transactional/exchange between shady with the police spoliation or family or his friends. According to the speakers research that never happen foul play or transactional (exchange) conducted by police officers who has not active work. What foul play or transactional rarely or perhaps no done by police officers who are still active. If there is any, namely the policeman as they have motor vehicle that stolen by investors C3. Others who do foul play will be given sanctions in accordance with the regulation.

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[1] Data presented by Badan Pusat Statistik (BPS) Lampung Province 2014, *Lampung in Number 2013*, Bandar Lampung: Badan Pusat Statistik, Bandar Lampung City.

CLE models are currently being base/source/reference in combating crime spoliation. According to the research is speakers could become the foundation/ source/reference in combating crime spoliation because model repressive applied investigation has been give expression of network crime C3 and many investors crime C3 already repent and stop criminal C3. Model repressive can also give a deterrent effect because it was given heavy punishment and training at correctional institution aims to promote back the crime spoliation crimes.

CLE model that exists when this can be used effectively in to eradicate evil spoliation. According to the opinion research is speakers can be used effectively in to eradicate evil spoliation if the community does not have the potential against resources against criminal. CLE model that there is now this is quite effective to eradicate crime C3. If there is aid and the role of community figures can work together in eradicate C3. Besides must think the pattern of the community resources terhadapat tangkal potential criminal.

CLE models are currently to waive/deprive foul play (bribes, reprehensible act, etc.) between shady police by guilty spoliation. According to the opinion of the speakers, if the persons in a certain capacity who performs foul play was received a deterrent effect of penalties for what he was doing, because of the law enforcement apparatus itself has rules to face foul play the sanctions a threat.

CLE models are currently can provide/primary source/reference in combating crime spoliation in an integral manner involving apparatus as prosecution, court and advocate. According to the opinion of the speakers is relevant to help or expedite the investigation and to be made litigation and criminal pelaksaan to an offender C3.

CLE models are currently to combat crime spoliation based on scientific approach quality legal. According to the research that model speakers CLE it is based on scientific approach criminal law and sociology law with the forms of pre-emtif, preventive and repressive. The application of scientific approach to find causation the crime done C3.

CLE evil spoliation are currently still held with a shortcut not optimize scientific approach law. According to the research speakers are no longer because the police investigation has management shaped PERKAP that determines sop to be done by the police. PERKAP means The Regulation of General Chief of Police Departement State and SOP that is approach scientific optimitazion by police. If there is still a shortcut done by persons of police, they will pay the others like police punish the offender C3 crimes.

CLE is currently against evil spoliation on stages of investigation are still tinged cultural matters reprehensible behavior (game dirty) by police as law enforcement apparatus. According to the opinion speakers research on stages of investigation are no longer tinged cultural matters reprehensible behavior (game dirty) by police because of the vision of the owned police is to provide service in an optimum manner and professional to the community, and if there is or unscrupulous apparatus who like that there will be criminal sanctions until with the dismissal.

CLE current problems still tinged low optimization/culture orientation/ approach scientific (scientific culture/approach). According to the research speakers that the police had optimize scientific approach by efforts pre-emtif, preventive and repressive. Forms of this effort will not help and defense if there are still mafia in judiciary and community mindset not imparting flavor anti-criminality.

3. Design Strengthening Model Criminal Law Enforcement Based An Integral and Scientific Approach of Quality Against Crime Spoliation Investigation in The Future

Not the quality of law enforcement cannot be released from a goal improve the quality of the community and the quality of sustainable development/ sustainable society). The culture judicial mafia, that is one form of law enforcement without “jurisprudence” can damage sustainable development/ sustainable society for resources development not only natural resources/physical, but also non-fisik resources.

Criminal justice systems (CJS) good/healthy, which ensuring justice, the savety of citizens, a fair, responsible, ethical and efficient, and can grow public trust and respect,[2] is basically non-fisik resources to be maintained continuance to the generation following.[3]

Considering crime spoliation very dangerous, adverse, and concern is that, so the eradication of crime spoliation there should be a commitment within the framework of handling enforcement and spoliation effectively, systemic and thorough. CLE held must not a partial and not to apply a shortcut, which eventually will meet failure CLE. Therefore, it is necessary strengthening top model CLE crime spoliation current.

Strengthening or "optimization" connote the need for law enforcement apparatus police harness and improve/optimize "approach scientific" in law enforcement corruption in Indonesia. According to Barda Nawawi Arief,[4] optimization submit to double or phenomenon. On the one hand yourselves, that in law enforcement so far have taken scientific approach, but still needs to be improved; and on the other containing a phenomenon that trend in law enforcement so far, culture/orientation/scientific culture/approach) has been weakened/drift/ignored/shiftinged because it is optimize "other approach/ orientation" or "approach partial".

CLE "in concreto" (law enforcement), namely CLE done at the application policy and the execution.[5] CLE current quality still low in concreto as a matter of law enforcement, because the culture bribes/culture a shortcut/culture "glasses a horses" which is certainly not based on scientific culture, which could deny/lower/ destroy the quality of CLE.[6] CLE not yet to built/formed in an integral manner of the system norm/substance criminal law that are integral according to scientific approach and ideas balance.

Cultural matters behavior reprehensible (foul play) and the cultural optimization/orientation/scientific culture/approach in law enforcement seems is a received a lot of attention community. CLE at the in concreto (the application) are also affected by culture of foul play and a shortcut that was conducted by unscrupulous law enforcement apparatus who corrupt and kolutif with the crimes. Hundreds of interchanging (transactional) legal power eradication of criminal acts of spoliation in return for certain to engineer or bullies law conforming to deal agreed. Culture of foul play this affects the quality of CLE become abortive/ weak/broken to embody righteousness and justice substantive.

Prevent and combat crime spoliation by means is penal policy or penal law enforcement policy that held through many different phases:

a. execution (executive policy), in the implementation of criminal law in concrete by the formulation (legislative policy), in the rule of law in abstracto by the agency of draft regulations maker. This stage can also called the legislative policy.
b. the application (yudicial policy) judiciary, in the application of criminal law by aparat-aparat laws beginning of police as of a court. The second phase it can also called the judiciary policy.
c. the implementing the apparatus criminal law. This stage can be called the executie policy.

At the formulation, but efforts to prevent and combat crime spoliation not just a job law enforcement apparatus, but also a duty the lawmakers (legislative apparatus). The policy even legislature is the most strategic of efforts to prevent and combat crime through penal policy.[7] Hence, fault or weakness legislative policy was misstated strategic can also be a barrier efforts to prevent and combat crime spoliation at the application and execution.

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[2] Dokumen dan Resolusi Kongres PBB ke-9/1995 mengenai mengenai "*Prevention of Crime and the Treatment of Offenders"*.

[3] Barda Nawawi Arief, Optimalisasi Kinerja Aparat Hukum Dalam Penegakan Hukum Indonesia Melalui Pemanfaatan Pendekatan Keilmuan, Makalah disajikan dalam Seminar Nasional *Strategi Peningkatan Kinerja Kejaksaan RI*, di Gedung Program Pasca Sarjana UNDIP, 29 Nopember 2008, hlm. 5.

[4] *Ibid*., hlm. 3.

[5] Barda Nawawi Arief, *Masalah Penegakan Hukum dan Kebijakan Hukum Pidana dalam Penanggulangan Kejahatan*, Kencana, Jakarta, 2008, hlm. 25.

[6] Barda Nawawi Arief, *Reformasi Sistem Peradilan (Sistem Penegakan Hukum) Di Indonesia*, Universitas Diponegoro, Semarang, 2011, hlm. 26.

[7] *Ibid*., 2011: 73.

As a process a systemic, then criminal law enforcement make himself as criminal law application that involves many sub-system structural apparatus of police, prosecutors, court, and correctional. Included the legal adviser. The application of criminal law must be viewed from three dimensions.

The first, the application of criminal law viewed as normative system, namely the whole the rule of law describing values social supported by criminal sanctions. Second dimension, the application of criminal law viewed as administrative system which includes interaction of law enforcement apparatus who was sub-system judicial above. The third dimension, the application of criminal law is a social system in the sense that in defining and reaction crime must be reckoned different perspectives thought in society. Various dimension in fact that the application of criminal law to describe the whole the interaction between the rule of law, practices administrative and social behavior.

In the holding of CLE in concreto on the stage the application and execution phase should be based upon an integral and scientific approaches in the legal field. An integral approach should have been held in integralitas one whole of various/sub-sistem/components aspects of the legal system consisting of the legal substance, legal structure, and legal culture in the field of criminal law.

The CLE crime spoliation based on a system criminal law closely related to an undeveloped three components, covering the substantive/normative (norm law/regulation, structural component institutional/procedural mechanism/ administrative structures (institutions/law enforcement apparatus), and components culturally (legal culture values)[8] must be held in an integral manner and better.

Integral approach to be in integralitas of various aspects/sub-system/ component of system criminal law covering criminal law materiel, criminal law formal and the legal implementation of the criminal. More specifically about three aspects/problems goods in criminal law materiel covering the offence (strafbaarfeit/criminal act/actus reus), fault or criminal accountability (schuld/ guilt/mens rea), and crime and pemidanaan (straf/punishment/poena).[9]

CLE viewed as a integral is closely/ integration/integralitas/one piece of various aspects of the components of system criminal law a consisting of components legal substance, legal structure, and legal culture.

Contrary to have an integral system, but understanding system or criminal law enforcement criminal justice systems can be seen from various aspects/ components:

1) substance criminal law (legal substance): not criminal justice systems/ criminal law enforcement system is a system substance law enforcement in the field of criminal law covering criminal law materiel, criminal law formal, and the legal implementation of the criminal.
2) structural criminal law (legal structure): criminal justice systems/criminal law enforcement system is basically system is an undeveloped/institutions/law enforcement apparatus in respective function/authority in the field of CLE consisting of 4 (four) sub-systems, namely:
   a) The power of investigation (by the investigators institutions);
   b) The power of prosecution (by the prosecutors institution);
   c) The power of judge and dropped decisions/criminal (by the agency court); and
   d) The power of enforcement of the award/criminal (by the agency/ implementing apparatus/execution).

   The fourth of stage was a whole criminal law enforcement system that are integral often called the integrated criminal justice system.

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[8] Barda Nawawi Arief, Pembaharuan Sistem Penegakan Hukum dengan Pendekatan Religius dalam Konteks Siskumnas dan Bangkumnas, makalah Seminar *Menembus Kebuntuan Legalitas Formal Menuju Pembangunan Hukum dengan Pendekatan Hukum Kritis*, FH UNDIP, 19 Desember 2009, hlm. 2.

[9] Sauer menyebutnya sebagai trias hukum pidana (berupa sifat melawan hukum, kesalahan, dan pidana) dan H.L. Packer (1968: 17) menyebutnya sebagai *the three concept* atau *the three basic problems* (berupa *offence, guilt*, dan *punishment*) dalam Barda Nawawi Arief, Optimalisasi Kinerja Aparat Hukum Dalam Penegakan Hukum Indonesia Melalui Pemanfaatan Pendekatan Keilmuan, Makalah disajikan dalam Seminar Nasional *Strategi Peningkatan Kinerja Kejaksaan RI*, di Gedung Program Pasca Sarjana Undip, Semarang tanggal 29 Nopember 2008, hlm. 14.

3) culture of law (legal culture): criminal justice systems/criminal law enforcement system is basically embodiment of the system values of culture of law, it can include philosophy of law, principles of law, legal theories, the science of law and awareness/behavior of the law.

According to Barda Nawawi Arief[10] that scientific (criminal law) approach that need to be developed in CLE in Indonesia through three approaches science in an integral manner. In which it is contained conceptual approach/thought law, thus it can be said there are three scientific approach/thought legal/need to be developed in CLE in Indonesia through three approaches science in an integral manner,[11] namely:

a. The approach of juridical-scientific-religious: approach scientific thought oriented law on a substance criminal law positive approach;
b. The approach of juridical-contextual: approach thought law oriented/policy renewal criminal law (approach/orientation juridical insightful national policy/political criminal law);
c. The approach of juridical global insightful/comparative thought: approach legal comparison oriented, especially of the legal system traditional and religious law system to aspects of the substance value the sectors in substance criminal law (criminal law materiel, criminal law formal, and the legal implementation of the criminal).

According to Barda Nawawi Arief,[12] when CLE genuinely will be increased its quality and regain trust and higher than the award, so one of the effort is: fundamental improve the quality of science in the process of making and enforcement be classified as fundamental, because (1) the quality of science, not only intended to increase the education quality and development of jurisprudence itself, but also to improve the quality of values and the products of the process law enforcement (in abstracto and in concreto phases). (2) laws are made by science, hence its use (the application) must also by science of law; not with the science bribes or other facilities.

4. Conclusion

1. The existing model criminal law enforcement (CLE) evil spoliation based on the model repressive. This model applied to the investigation spoliation case on curat, curas and curanmor (C3). CLE model applied by special Team Antibandit (TEKAB) 308 formed by Lampung Police Departement rested on the provisions of Articles 362, 363, and 365 Criminal Law and Articles 4 and 5 Procedural Criminal Law. Excess model CLE current CLE repressive is same, but can still behave in pre-emtif and preventive with his character act quickly after the criminal investigation spoliation through action and investigation. The weakness of model CLE is the lack of public participation in eradicating C3, so effort to eliminate become less systematic and massive, so poor give deterrent effect. In addition, it should be received support from dropped criminal court in the suspect of a crime C3.

2. Exposure to the model based on criminal law enforcement (CLE) that there was a moment is deemed necessary based strengthening the integral and high-quality approaches against crime spoliation investigation on stage in the future. The application of the second approach in an effort to CLE crimes spoliation are the activities blends various sub-system law consisting of components legal substance, legal structure, and legal culture in the field of criminal law. In addition, scientific approach quality legal CLE crime in spoliation done through approaches of juridical-scientific-religious, juridical-contextual and juridical-global/comparative insightful, so to formulate a model CLE crime spoliation seen most suitable/relevant/in accordance with typologies/characteristic/local wisdom of Lampung society and Lampung Police Department conditions.

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[10] Barda Nawawi Arief, *Pembaharuan…, op.cit.*, hlm. 11.
[11] *Ibid*., hlm. 10.
[12] Barda Nawawi Arief, Optimalisasi..... *op.cit*., hlm. 4.

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----------, *Reformasi Sistem Peradilan (Sistem Penegakan Hukum) di Indonesia*, Universitas Diponegoro, Semarang, 2011.

Data dari Badan Pusat Statistik (BPS) Provinsi Lampung Tahun 2014, *Lampung dalam Angka 2013*, Bandar Lampung: Badan Pusat Statistik Kota Bandar Lampung.

Dokumen dan Resolusi Kongres PBB ke-9/1995 mengenai mengenai "*Prevention of Crime and the Treatment of Offenders"*.

Legal Aspect of the Cooperation on Triple Helix Models in Mitigation Anak Krakatau Mountain

Heryandi

Abstract

Mount Anak Krakatau (GAK) is an active volcano, potentially big for the occurrence of disaster. Therefore, geological mitigation efforts are required. Implementation of mitigation, as well as necessary; technology, policy, community participation, also require substantial funds. The solution to this is through cooperation between government, business and universities. However, it takes a legal umbrella to build mutually synergic and profitable cooperation, namely through a triple helix approach. This approach is considered appropriate to serve as a model to overcome the problems in mitigation. This study answers how the law regulates mitigation cooperation through a triple helix model.

Keywords: *Triple Helix, Mitigation, Mount Anak Krakatau*

1. Preface

1.1 Background Issues

The paradigm shift of disaster provides a new view of disaster management in Indonesia, from responsive to risk management, so this understanding will be a benchmark in recognizing what disaster risks are.[1]

Disaster in Law No. 24 of 2007 on Disaster Management, is defined as an event or series of events that threaten and disrupt the life and livelihoods of the community caused by both natural and / or non-natural factors and human factors resulting in the occurrence of human casualties , environmental damage, property loss, and psychological impact. Meanwhile, danger is an event of threatening events that can affect human life, livelihood assets and the environment, the dangers are always associated with disaster risk.[2]

In Lampung Province, there is a source of disaster, namely GAK which is an active volcano and at times can cause catastrophic disaster, as ever happened Krakatoa volcano eruption. Around GAK there are several islands, including Sebesi Island, Sebuku and Tiga Island are inhabited, in addition to the coastal community on the tip of Sumatra Island. The danger of a threatening disaster needs to be mitigated to reduce losses and casualties from disasters.

Mitigation according to C. Emdad Haque, is "... *as the wide array of actions that can be taken to reduce vulnerability*".[3] Mitigation is often not getting too much attention than preparedness, response, or recovery. [4] Mitigation of GAK form of physical structure should be done immediately in the form of installation of early detection tool to monitor the development of geological influence of the earth plate shift, so as soon as possible can be known and carried out efforts to save and reduce lava melt by making channels lava. The purpose of mitigation, is reducing of possible risks, reducing

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[1]Petrasawacana, *Kajian Teoritis Tentang Penanggulangan Bencana*, June 26, 2011, in http://petrasawacana.wordpress.com/2011/06/26/kajian-teoritis-tentang-penanggulangan bencana, page. 1.

[2]Tim Penyusun, *Kajian Ilmiah Mitigasi Bencana Erupsi G. Anak Krakatau,* South Lampung Region, 2013.

[3]C. Emdad Haque, *Adaptation Options Strategies for Hazards And Vulnerability Mitigation: An International Perspective*, in Journal *Mitigation and Adaptation Strategies for Global Change* Volume 10: 3, July 2005), Netherlands: Springer, page. 3

[4]*Loc.Cit,* page. 175

of risk consequences, risk avoidance, risk acceptance, and transfer, distribution, or dissemination of risk.[5]

A problem with this mitigation activity is the installation of detection equipment and trenching for lava channels need big cost and feels heavy if only charged to the financing available in the local government. In addition, non-physical mitigation efforts, including education, extension, and community awareness, conducted through training, rehearsals, simulations, workshops and improving community preparedness on disaster risk reduction. Therefore, GAK disaster mitigation financing needs to be considered of all participation, especially the private sector in a mutually beneficial cooperation. Efforts to involve private parties are possible. only the private sector often see the activity from the point of profit to be gained, so that if the financing is done without providing a profitable economic effect, rarely the private sector will involve themselves from the activity.

One alternative that can be assessed in the involvement of private parties is the utilization and management of mineral resources in the form of sea sand or other marine resource utilization, such as tourist destinations, home-based industries and coastal marine and many more containing economic potential that can be utilized. This utilization is juridically possible under Article 14 of Law Number 32 Year 2014 on Marine, namely:

(1) The Government and the Regional Government in accordance with their authority to carry out Marine Management for the greatest prosperity of the people through the utilization and exploitation of Marine Resources using the blue economic principles.

(2) Utilization of Marine Resources as referred to in paragraph (1) may include:
   a. fishery;
   b. energy and Mineral Resources;
   c. coastal resources and small islands; and
   d. nonconventional resources.

The result of marine sand management by private parties with local government is not only related to the financing of mitigation but also for the improvement of education and welfare of the community around the mitigation site which of course to be able to run safely, orderly and still sustainable, it is necessary to use technology and research integrated from universities. In addition, community involvement to monitor mitigation cooperation activities and a strict legal framework needs to be established with the local government as a ledding sector.

Such mitigation cooperation efforts have been done by the local government of South Lampung in 2009 and 2013. But it has been stopped because of many people who do not agree with the reasons; first, mitigation cooperation activities involving universities and private parties is only a cover to mine sand and will benefit the private sector and local government only. Second, this activity is either mitigation or mining. Third, mitigation activities like this will damage the environment around the mitigation site. Fourth, the mitigation site is a sanctuary of Krakatau that needs to be protected due to research place for the community (national and international).

In addition to mineral resources, many other economic resources can be utilized by involving the private sector to finance mitigation, but this has not yet been developed. Through universities, with science and technology, mitigation efforts and improving the welfare of coastal communities can be done.

Regardless of the pros and cons of the GAK mitigation cooperation activities mentioned above, it is necessary to examine whether the model of cooperation in mitigation can be done and whether mitigation efforts in the form of involving private parties and universities can cause negative impacts both to the environment and the interests of society, and whether it is not necessary to mitigate the GAK will provide assurance that the disaster will not happen and will not cause greater casualties. All these questions need comprehensive assessment and analysis. In this context, it will focus on the legal and policy aspects of mitigation cooperation involving the three main parties in the process of activities.

1.2 Problems

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[5] Kusumasari, *Manajemen Bencana dan Kapabilitas Pemerintah Lokal*. Gava Media Yogyakarta, 2014, page. 22.

Based on the background, it can be formulated as follows:

a. What is the urgency of GAK disaster mitigation?
b. How are the basic principles of cooperation and law governing GAK disaster mitigation ?
c. Whether through the implementation of Triple Helix model in GAK disaster mitigation cooperation is the right model?

1.3 Research Methods

The problem approach used in this paper is the doctrinal approach. This approach is carried out by examining the structure and content of documents related to GAK mitigation, starting from material collection, problem-specific classification and sorting of relevant issues and findings.

The data is used secondary data, ie data obtained not directly from human activities, but data obtained from literature materials.[6] The data in this paper, comprised of primary legal material in the form of international provisions, secondary legal materials in the form of doctrine or expert opinion in the literature. Preparation is done by arranging and placing the material systematically on each subject in order to facilitate the analysis.

The analysis method is used content analysis and qualitative analysis. Content analysis, which examines the contents of existing documents, through the interpretation of constructions, reasoning and rational argumentation. The qualitative analysis, which describes the document in the form of sentences are arranged in detail and systematic.

2. Research Result and Discussion

2.1 Urgency of GAK Disaster Mitigation

South Lampung is one of the districts in Lampung Province, located at the tip of Sumatra directly opposite the island of Java which is connected with the Sunda Strait. In the middle of the Sunda Strait there is a volcano that legendary, namely Mount Krakatau which until now still active even has appeared to GAK that at any time can cause geological disasters. In addition, among the small islands in the vicinity of Mount Krakatau also entered the fault region which at one time can cause disaster that threatens human life.

Based on the research results, geographically South Lampung Regency is located at 5o15 'LS - 6o LS and 105o00' BT - 105o45'BT covering a total area of 3,406 km3, with 52 (fifty two) small islands, 237 km. South Lampung Regency administratively consists of 20 (twenty) sub-districts, covering 337 villages and 5 urban villages, with a population of 1,272,129 people, and a density of 315 people / km2. The total population living in coastal areas is more than 80%.[7]

Considering that most of South Lampung Regency is coastal area, Regional Spatial Plan (RTRW) of this regency is based on coastal area development, so every development planning of area is always adjusted with characteristic attached to coastal resources. Such planning is planning the development of growth centers and development centers.

A series of studies is known that South Lampung Regency is one of the most vulnerable areas of natural disasters, both due to tectonic earthquakes (due to faults in Sumatra) and eruption / volcanic eruption of GAK. The existence of this potential threat, then in 2005 the Government of South Lampung District set Environmental Hazard Areas of South Lampung District, which includes the Marine Reserve Area Krakatau Islands, and do Tsunami Hazard Mapping.[8]

The significance of mitigation from GAK disaster threats, because it is very meaningful not only for the life of the people of South Lampung in particular, but also for the people of Lampung and

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[6] Helmi Kasim, Syukri Asy'ari, Meyrinda R. Hilipito, Rio Tri Juli Putranto, *Kompitabilitas Metode pembuktian Penafsiran Hakim Konstitusi dalam Putusan Pemilukada*, Jurnal Konstitusi, Volume 9 Nomor 4 December 2012, Jakarta, Kepaniteraan dan Sekretariat Jenderal Mahkamah Konstitusi Republik Indonesia, page. 715.

[7] Drafting team, *Kajian Ilmiah Mitigasi Bencana Erupsi G. Anak Krakatau,* South Lampung Regency, 2013

[8] Bronto, S., 2013. *Kajian Ilmiah Mitigasi Bencana Gunung Api Anak Krakatau Lampung South (Model Pengelolaan Cagar Alam Secara Kalaboratif), South Lampung Regency, page. ,12.*

Banten in general. It can even be said that GAK disaster mitigation is a condition of sine quanon (an absolute condition) for the existence of people living in coastal areas of Lampung and Banten. In addition, based on the results of volcanic geological studies in the area Kalianda and surrounding areas, South Lampung regency there are four groups of volcanoes, both active volcanoes, old volcanoes and ancient volcanoes are:[9]

a. Groups of volcanoes Sebesi, Sebuku, and Tiga
b. Groups of volcanoes Sangiang, Kandangbalak and Harimaubalak
c. Groups of ancient volcanoes in the mainland of South Lampung, and
d. The Rajabasa volcano group

The first group forms a straight line north-south-east direction. It stands southwest in line with G. Krakatau and P. Panaitan in Ujung Kulon, West Java. While to the northeast of the series of volcanoes that continue to G. Rajabasa near the capital of South Lampung regency, Kalianda. The continuation of the second group of volcanoes to the southeast toward the Dano volcano complex in Banten province, while to the northwest continuously to G. Rajabasa, and even to the Tanjungbasurung Purba volcano on the coast of Marina. The third group of volcanoes, in the eastern part there are ancient volcanoes Taman and Ruguk, and in the middle of G. Kepayang. On the west coast there is a series of ancient volcanoes ranging from G. Tanjung Tua-Malang on the southern to North end of G. Lumbung and G. Mangkudu. The emergence of volcanoes is very closely related to tectonic activity that is still ongoing until today.[10]

Figure 1. Map of Disaster Prone South Lampung District

Source: Bappeda South Lampung, 2012

Various forms of hazard threat from tectonic activities in the Sunda Strait, mitigation efforts that can be done is outside of the GAK reserve area, because the reserve area is the authority of the central government, the Ministry of Forestry. The location of the mitigation activity is carried out between the three islands which is the fault line, that is. Sebuku Island, Sebesi Island and Pulau Tiga.

Quantitatively, the strategic value of GAK mitigation for South Lampung Regency is:[11]

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[9] *Ibid*
[10] *Ibid*
[11] Academic Paper, *Rancangan Peraturan Daerah Kabupaten Lampung South Tentang Pelaksanaan Mitigasi Regional Bencana Gelogi Di Wilayah Kabupaten Lampung South*, South Lampung, 2014. hlm.

(1) Soul salvation for 920,000 inhabitants who inhabit the coast of South Lampung.
(2) The rescue of other public utilities, facilities and utilities as well as the houses inhabited by coastal areas.
(3) Rescue coastal resource resources, such as community ponds, intensive ponds, coral reefs, floating charts, seaweed cultivation and other resources.

Other activities that are also important are the creation of evacuation routes with completeness, construction of evacuation sites, planting of beach plants, including other activities, such as economic empowerment of coastal communities (fishermen, farmers, farmers), research, training and extension. Many activities that need to be done require cooperation, especially cooperation of sector or region, like area of Banten and Lampung. Therefore, the urgency of GAK mitigation in the form of cooperation through the triple helix model, make a real contribution for the community in improving their welfare. The existence of the three parties in synergy and mutual benefit results, in addition to improving local revenue in the form of revenue sharing and taxes, also can to grow the incomes of coastal communities trying in the form of home-based industries of coastal resources.

2.2 Basic Principles and Legal Arrangements of Mutigation and Mineral Utilization Cooperation of GAK

Mitigation of geological disasters on Sebesi Island, Sebuku and Tiga Island includes the installation activities of the tool is selected along the break line of Krakatau Mountain which aims to monitor the geological condition that can cause the Tsunami and the dredging of the lava slope that threatens the coastal area of South Lampung Regency. Based on the discussion with geologists that the installation of the instrument should be placed on the seabed and can not be buried in sand. Therefore, as long as the mounting area of the instrument is in safe state and the sand of the sea covering the surface of the instrument is removed.[12]

Besides the installation of detection equipment, based on the recommendation from the study, the reduction of Mount Anak Krakatau growth rate is done through solid particle taking, within safe limits, while maintaining the sustainability of the Krakatau Islands and Marine Reserve around it, and beneficial to improve the welfare of the community, especially in Regency of South Lampung. The solid particle taking activity that is making the lava melt channel to be in line with the conservation activities, it should be mentioned in the Five Year Work Plan and Annual Work Plan as the follow up of the Plan of Management of the Krakatau Islands Nature Reserve.[13]

In general, mitigation programs can be divided into sections, based on various things. (1) based on the time of achievement, mitigation can be divided into short-term programs and long-term programs. (2) the extent of the area of achievement, mitigation can be divided into local mitigation and regional mitigation programs.

Based on the method of mitigation approach can be done scientifically-physical and non-physical mitigation related to social-society aspect. Regional and long-term mitigation programs (10 years or more) are translated into local and short-term (annual) mitigation action plans.

In scientific-physical mitigation, physical mitigation activities must align and sustain scientific mitigation activities. Both should be based on the results of scientific research and development of monitoring technology for various types of disasters. Broadly speaking, scientifically mitigation, among others, through approaches in geology, geophysics, geochemistry, geospasial, and biology. In addition, these activities should all be based on a clear legal umbrella, since the law in principle aims to create certainty, benefit and justice.

2.2.1 Basic Principles and Arrangement of Mitigation Cooperation

Based on the results of the review of laws and regulations, there are basic principles and legal arrangements for mitigation, such as mitigation activities conducted on the basis of three principles, namely safe, useful and sustainable. Safe means to avoid the catastrophic disaster. Useful is intended morally and materially beneficial or beneficial to the general public and local government, while

[12]Discussion on Regional Disaster Mitigation, 23 September 2015.
[13]*ibid*

sustainable means that mitigation activities do not damage the environment or keep the balance of nature on an ongoing basis.

Cooperation in maritime territories, including mitigation under international law, particularly in the *United Nations Convention on the Law of the Sea 1982* (UNCLOS 1982), whether related to marine scientific research, the transfer of technology, the use and protection of decisive marine resources can be undertaken with foreign parties (other countries and international organizations).

The basis of cooperation between these countries shall not be contrary to the meaning of Article 242 of UNCLOS 1982 establish that: cooperation shall respect sovereignty and jurisdiction and mutual benefit, scientific research cooperation for peaceful purposes. In addition, it is necessary to prevent and control damage to the health and safety of people to the marine environment.

Based on the results of the study of mitigation legislation, there is arrangement of cooperation. Article 30 of Law Number 24 Year 2007 Disaster Relief, cooperation with Foreign parties is also regulated. International agencies and non-governmental foreign agencies may participate in disaster management activities and be guaranteed protection from the Government against their workers. International agencies and non-governmental foreign agencies in conducting disaster management activities may engage independently, jointly, and / or with Indonesian counterparts with due regard for local social, cultural and religious backgrounds.

Activities in the region shall be done in accordance with a formal written work plan, through licensing mechanisms by the authorities and carried out by work units in accordance with their respective areas of authority and realized in the form of joint contracts, both in the form of Memorandums of Understanding (MoU) financing agreement. Such contracts may establish joint arrangements and local governments shall oversee activities in the Area in accordance with agreed contracts and work plans. The contract must provide certainty of work. The contract should not be reviewed, suspended or terminated except under mutual agreement. Implementation of international cooperation agreements in the management of international seabed areas must be synergized between the interests of coastal countries and international interests.[14]

Cooperation undertaken, regionally or globally shall be subject to the general principles of marine natural resource management, as provided in Article 197 of UNCLOS 1982, to formulate and explain internationally recommended provisions, standards and practices and procedures consistent for the purpose of protecting and preserving the marine environment, taking into account the distinctive regional features.

Technically the arrangement of cooperation in the form of an agreed contract should be carried out with the principle of *Pacta sun servanda*, the binding promise as the law for which it is made and should be carried out in good faith.[15] Other principles of agreement that also need to be considered, such as the *Courtecy Principle*, are mutual respect and respect for the sovereignty of other countries and the principle of *Egality rights*, ie each country has the same position. Another principle that is not less important is the principle of *pacta tertiis nec nocent nec prosunt*, non retroactive principle, and the principle of *ius cogens*.[16]

The basis of mitigation cooperation in marine territory shall not be contrary to the meaning of Article 242 paragraph (1) of UNCLOS 1982 establish that: States and competent international organizations, in accordance with respect for sovereignty and jurisdiction and on the basis of mutual benefit, shall promote international co- marine scientific research for peaceful purposes.

Particularly for cooperation between countries with or fellow international organizations, it shall be based on Article 273 of UNCLOS 1982 which provides that states should cooperate actively

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[14]In American Dictionary *Websters Dictionary*, the meaning of Synergy is *"cooperative interaction among group especially among the acquired subsidiary or merged parts of a corporation that creates an enhanced combined effect"* "which implies only with cooperative interaction that maximum results can be achieved.

[15]Harry Purwanto, 2009, *Keberadaan Asas Hukum Pacta Sunt Servanda Dalam Perjanjian Internasional*, Jurnal Mimbar Hukum Volume 12 No. 1 February 2009, Law Faculty Yogyakarta, *www.mimbar.hukum.ugm.ac.id/index.php/.../201* , page. 157, downloaded 6 March 2013

[16]Heryandi, *Kerjasama Internasional Pengelolaan Sea Bed Area dan Implikasinya Bagi Negara Pantai*, Jurnal Dinamika Hukum, Law Faculty Universitas Jenderal Soedirman Purwokerto Centra Java, ISSN 1410-0797, Volume 13 No. 3 accredited Dikti Number 58/DIKTI/Kep/2013. 2015, page 14.

with competent international organizations and the Authority, to encourage and facilitate the transfer of related marine skills and technologies with activities in the region, to developing countries of their nationals and companies.

The form of cooperation shall be based on the principle of cooperation as set forth in Article 278 UNCLOS 1982, namely the competent international organizations referred to in this Chapter and in Chapter XIII UNCLOS 1982 shall take all necessary measures to ensure, either directly or in close cooperation between them, effective implementation, functions and responsibilities.

Implementation of international cooperation agreements in the management of international seabed areas must be synergized between the interests of coastal countries and international interests.[17] According to Doctoroff (1977) states, the main requirements for an ideal synergy system are trust, effective communication, fast feedback, and creativity. In other words, synergy is a powerful source of organizational power, often used to show the difference between success and failure.[18] In terms of management, synergy means competing better than expected to achieve a standard competitive advantage. [19]

Cooperation stipulated in international law can be handed down to cooperation conducted in Lampung area. Business entities that will distribute financing and financing are not sufficient to be limited only to alleviate the suffering of disaster victims or displaced persons, but also to be expanded, including for mitigation activities, since the principles of disaster management include: (1) humanitarian; (2) justice; (3) equal status in law and government; (4) balance, harmony, and harmony; (5) law and order of law; (6) togetherness; (7) environmental sustainability; and (8) science and technology.

The principles mentioned above, became the foothold of all activities including the principles in disaster management, namely: (1) fast and precise; (2) priority; (3) coordination of coordination and integration; (4) efficient and effective; (5) transparency and accountability; (6) partnership; (7) empowerment; (8) non-discriminatory; and (9) nonprofits.

Principles and principles in disaster management should be a foundation for cooperating between local governments and business entities. Therefore, if a business entity engages in a large mitigation mitigation activity, if such mitigation activities based on science and technology can be utilized, the provision of utilization opportunities by business entities should also be provided on the basis of partnership principles, efficient and effective.

This provision can mean that the utilization of natural resources and other resources by local governments should still refer to the applicable sectoral laws on natural resources. Law Number 32 Year 2004 regarding Regional Government as umbrella rules in the implementation of regional government that is generalist regulate only the outline of local government authority in terms of natural resource management and quite anticipatory avoidance of conflict with the law other in the field of natural resources.

The State shall ensure the right of the environment, which implies that the state is also obliged to manage resources in the form of energy and mineral resources in a planned manner. All of this needs to be followed up with a Regional Regulation that aims to:

a. estimating and anticipating the threat of geological disasters;
b. ensure the implementation of regional geological disaster mitigation in a planned, integrated, coordinated, comprehensive and sustainable manner;
c. building public and private participation and partnerships;
d. minimize the impact of disasters;
e. reducing vulnerability and improving the community's ability to cope with disasters.
f. Optimizing the utilization of geological science and technology and the utilization of capacities and resources owned by the region.

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[17]In American Dictionary *Websters Dictionary*, the meaning of Synergy is *"cooperative interaction among group especially among the acquired subsidiary or merged parts of a corporation that creates an enhanced combined effect"* "which implies only with cooperative interaction that maximum results can be achieved.

[18]Subaktian Lubis, *Sinergi Pengelolaan Sumber Kekayaan Alam Di Laut Yang Diharapkan,* Pusat Penelitian dan Pengembangan Geologi Kelautan, http://www. mgi.esdm.go.id.

[19]*Ibid*

A mitigation cooperation involving a business entity, in the laws and regulations stipulated in Article 28, stipulates that the Business Entity shall have the opportunity to administer disaster management, either individually or collectively with other parties. Furthermore, in Article 29 is regulated:

(1) The business entity shall adjust its activities with the policy of disaster management.
(2) Business entities are obliged to submit reports to the government and / or agencies assigned to undertake disaster management and to inform the public transparently.
(3) Business entities are obliged to heed the principle of humanity in carrying out its economic functions in disaster management.

The involvement of business entities, in Disaster Management Law, is followed up by Government Regulation Number 21 of 2008 on Disaster Management Implementation, Article 8 paragraph (5) stipulates that the regional disaster risk reduction action plan is prepared thoroughly and integrated in a forum covering elements of local government, non-governmental organizations, communities, and businesses in the respective regions coordinated by BPBD.

Particularly related to the repatriation in the coastal and marine areas, cooperation with involving the business sector is set in Article 87 paragraph (2) of Government Regulation of the Republic of Indonesia Number 21 Year 2008 on Disaster Management Implementation. The structuring of disaster prone areas is done through the efforts of:

a. conduct disaster-caring campaigns;
b. encouraging the growth of caring and loyal
c. comrades to institutions, civic organizations,
d. and business world; and
e. encourage participation in financing
f. and disaster preparedness activities.
g. Implementation of participation and participation of institutions and community organizations, business and community is carried out by related institutions / institutions in coordination with BNPB.

2.2.2 Basic Principles and Regulations on the Cooperation of Resource Use

Mitigation activities often lead to follow-up, such as river dredging due to silting that causes floods, the follow-up material needs to be removed and used for hoarding in the lowlands. Similarly with the installation of early detection tools and dredging lava ducts, need to be removed so as not to become a material buildup so it will clog up and will cause negative effects. Minerals that can be utilized in mitigation is quite a lot and can be for financing activities as well as to increase local incomes and community welfare. Sutawidjaja (2006) noted that the amount of sedimentation material of MOUNT Anak Krakatau eruption from 1992 to 2001 (9 years) was 24,871,225 m3 consisting of 15,127,895 m3 of lava and 9.743.330 m3 of loose material; or the average body growth of Mount Anak Krakatau is about 2,763,469 m3 / year. For operational technical reasons for making lava ducts, the material excavated and displaced by 2,763,469 m3 / year is likely to be more realistic.[20]

Utilization of the follow-up material from mitigation, of course, becomes a separate issue, because on the one hand the material can be said to be waste but on the other hand is a mining material, so the arrangements are subject to two regimes, namely the mitigation regime and the mining regime. The fundamental difference between mitigation and mining activities lies in the source of the disaster. Activities undertaken related to the existence of disaster sources can not be subordinated to the mining regime. The follow-up material of mitigation activities remains subject to the regulation of the mitigation regime, unless it is at the place of activity solely the utilization of resources that there is no source of disaster, then subject to mining arrangements. Therefore, the utilization of resources due to mitigation activities needs to be regulated in particular permits related to mitigation.

Article 31 of the Disaster Management Law stipulates that the implementation of disaster management is carried out based on 4 (four) aspects including: (a) social, economic, and cultural

[20] Sutawidjaja, I.S, *Proses Terjadinya Gunung Anak Krakatau dan Rencana Mitigasinya*. Seminar Sehari "Mitigasi dan Penataan Kawasan Cagar Alam Kepulauan Krakatau", Jakarta May 29, 2006

societies; (b) environmental sustainability; (c) expediency and effectiveness; and (d) the scope of the territory.

These four aspects are a unity that must be a reference, but the fourth aspect of which is the basis for the utilization of resources in mitigation activities. If this article is linked to mitigation funding, not only the responsibility of the government and local government, but also sourced from the community as stipulated in Article 60 paragraph (2) stipulating that: The Government and regional governments encourage community participation in the provision of funds sourced from the community. Furthermore, specifically on the aspects of exploitation and effectiveness of disaster mitigation in coastal areas and small islands regulated in Government Regulation No. 64 of 2010 on Disaster Mitigation in Coastal Areas and Small Islands, Article 13 paragraph (4) which is essentially the same. However, specifically referred to as the aspect of usefulness and effectiveness, in the Elucidation of Article 13 Paragraph (4) Letter c is a disaster mitigation activity reducing the risk of human casualties, loss of property, and increasing the productivity of resources and the economy of the people. Under these arrangements, disaster mitigation should also be utilized for community productivity and economic resources. Through what efforts to improve it, of course through the utilization of existing resources.

2.3 Cooperation of GAK Disaster Mitigation Through the Triple Helix Approach

2.3.1 Authority to Establish Regional Regulations and Cooperation Policies

The Triple Helix concept was first introduced by Henry Etzkowitz and leydesdorff (1995) in analyzing the relationship between university, industry and government. This concept adopts the biological concept of the Triple Helix DNA model that centers on the integration and synergy of each element's role to develop knowledge-based products, expansion of industry and services as the foundation of regional and national innovation systems. Further developed by Gibbon, at.al (1995) in The New Product of Knowledge and Nowotny at. Al (2001) in Re-Thingking Science. This concept is in addition used to describe the three elements, this model also provides an overview of the coordinates of the symbiosis of each element. In Triple helix each element is a stand-alone entity, has its own role, but they synergize and support one another.[21]

In relation to the concept of triple helix, in Mitigation Activities which is a series of efforts to reduce disaster risk, both through physical development and awareness and enhancement of the ability to face disaster threats, it is certainly necessary to model the right approach, one of them through triple helix model. Based on the study area, it is known that the three islands that will be used as a mitigation area are small islands that enter the administrative area of South Lampung regency, but based on the authority of the government in the sea territory, in accordance with the Law of the Regional Government and the Maritime Act, the area of mitigation activity at present the authority is in Lampung Province.

Article 5 of Law Number 24 Year 2007 on Disaster Management, it is stipulated that the Government and regional governments shall be responsible for the implementation of disaster management. The authority of local government is regulated in Article 9 of Law no. 24/2007, covering:

(1) the establishment of disaster management policies in its territory in line with regional development policies;
(2) development planning that incorporates elements of disaster management policy;
(3) implementation of cooperation policy in disaster management with other provinces and / or districts / cities;
(4) regulation of potential use of technology as a source of threat or disaster hazard to its territory;
(5) the formulation of prevention policy of natural resources control and dissipation that exceeds the natural ability of the region; and
(6) control of collection and distribution of money or goods at provincial, district / city scale.

Based on the authority in the above legislation, the implementation of disaster mitigation remains at the jurisdiction of the provincial government. Therefore, in the context of the cooperation

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[21] Hasan Sitorus, *Peranan Perguruan Tinggi Dalam Penerapan Triple Helix*, Asia Journal, in https://www.jurnalasia.com/opini/peranan-perguruan-tinggi-dalam-penerapan-triple-helix/, Posted April 13, 2016.

undertaken, the main control of the contract is on the government. The principle of authority to control this activity, of course, must be done in accordance with the principle of good government.

2.3.2 Shape and Responsibility of the Parties

Integration in mitigation efforts at least there are three related parties, namely local government, business entities and universities that became the main party in mitigation efforts. This model of mutually beneficial cooperation between the three parties can be done through the Triple Helix approach, which is the synergy and unification of three groups consisting of academics, business or employers and government. These three circles have the motivation to improve the dynamics and power of economic sustainability. According to Wishnu (in APEC CEO Summit 2013 Indonesia), Academician, business and government serve as a production house while government sources of contractual relationships ensure stable interaction and exchange and college as a source of new knowledge and technology. The synergy of these three sectors is a generative principle in build the economy based on knowledge that enable the achievement of closer economic integration in the region.[22]

A mutually beneficial cooperation between the three parties above, should be based on a clear legal umbrella of cooperation and provide certainty, benefit and justice for the parties in contractual relations, as well as for the community. Build the umbrella of contractual law is defined in the local regulations. Each side will cooperate and monitor each other, so that things that will hamper can be overcome to run the principles of cooperation.

Based on the results of the report from the executor of the geological mitigation of Sebesi Island, Sebuku, and Pulau Tiga, it can be seen that the activity, not only consists of physical but non-physical in a form of GAK mitigation cooperation contract. Participating parties, that are Lampung local government, private and university signatories of Memorandum of Understanding (MOU) are conducted by authorized officers at the organizational leadership level (Governor, Rector and Director). Subsequently each party establishes a technical agreement on the implementation and cooperation program, carried out at the implementing level:

1. Entity / Company: Managers and technicians related field required
2. Connectivity Government elements, consisting of: BPBD, Mining Agency, Bappeda, Department of Marine and Fisheries, Environment
3. Higher Education: Institute of Research and Service, Geologist of Disaster, Marine Biologist, Environmentalist, Marine Law Expert, Sociologist, Economist

   Business and individual responsibilities in the triple helix model are illustrated in the following scenes.

[1] Apec CEO Summit 2013, Indonesia 2013, *Konsep ABG (Akademic, Business, Government*, http//www. apec2013ceosummit.com/pres/Kuliah-umum-abac-di-unair-konsep abg-academic-business-government prinsip-generatif-untuk-pembangunan-ekonomi-yang berbasis-pengetahuan.html, Agustus 2014, (20:35)

Local government, as coordinator of activities, and responsible duty to carry out mitigas activities and utilization of its follow-up resources. Plan activities together and conduct monitoring and evaluation of activities undertaken. The most appropriate legal basis prior to the signing of a memorandum of understanding, the Provincial Government needs to establish regional regulations on mitigation, so it has a clear and strong policy base. The regulation should also regulate the involvement of private parties in the implementation of mitigation and utilization of minerals that must be eliminated for the manufacture of lava lanes, transport and manage into useful materials.

Sharing of the utilization of this material must consider the environmental carrying capacity, including living creatures and underwater life. Through the concept of blue economy and formulated in a clear policy mitigation efforts and resource utilization can be synergized by not damaging the marine environment.

The material utilization as a result of mitigation activity is aimed solely for the financing of mitigation and the improvement of the welfare of the surrounding community in the form of financing of home industry economy based on coastal and marine resources. The calculation of the amount of material that can be utilized and the financing of mitigation must be balanced through the planning mechanisms undertaken by the team.

In the Decree of the Minister of Home Affairs Number 131 of 2003 on Guidelines for Disaster Management and Refugee Management in the Region, it is mentioned that: Costs incurred in the implementation of National Disaster Prevention and / or Handling are charged to APBN, Provincial Budgets and Regency / City Budgets and depend on the territorial authority of the disaster. In addition, governments, provincial and district governments may receive assistance from non-governmental organizations, foreign aid, as well as other legal and non-binding sources of funds.

In addition to the above regulations, in relation to the source of disasters in the marine areas regulated in special regulations, namely Government Regulation Number 64 of 2010 on Disaster Mitigation in Coastal Areas and Small Islands, Article 18 paragraph (3) stipulated that the Government district / city conducting disaster mitigation in coastal areas and small islands within the district / city authorities. Article 19 PP. 64/2010 also establishes the responsibility of the community, including:

(1) preserving the environment, maintaining balance, harmony, conformity, and sustainability of environmental functions;
(2) conduct disaster mitigation activities for its activities and other uses; and
(3) provide information on hazards and / or environmental damage in coastal areas and small islands.

Based on the legislation that has been studied, it can be concluded that the form of geological mitigation activities GAK located in the Sunda Strait conducted in Sebesi Island, Sebuku and Pulau Tiga. In its implementation it is the responsibility of the provincial government Article 10 paragraph (3 and 4) stipulated that : paragraph (3) The disaster mitigation plan as referred to in paragraph (2) shall be part of the Regional Disaster Management Plan established by the regional government, and paragraph (4) stipulates that the disaster mitigation plan as referred to in paragraph (2) shall at least include the choice of structural / physical and / or non-structural / non-physical disaster management actions and disaster management actors. In the event that the Regional Disaster Management Plan as referred to in Article 10 paragraph (3) has not been determined, in accordance with the provisions of Article 12 paragraph (1) the regional apparatus unit in charge of marine and fisheries shall prepare disaster mitigation plans for inclusion in RPWP-3-K and in the case of the Regional Action Plan for Disaster Risk Reduction as referred to in Article 11 paragraph (4) has not been established, the regional apparatus unit in charge of marine and fisheries shall prepare disaster mitigation activities to be incorporated into the RAPWP-3-K.

Table 1. Duties and Responsibilities of the Parties in Mitigation

No.	Parties	Duties	Responsible
1	Government	- Formulate plans and evaluation of policies and programs on: mitigation, cooperation, technology use, funding, engagement, business entities and communities. - Coordinate the preparation of cooperation agreements and their implementation	- Making Plan, implementation, monitoring and evaluation activities. - Formulate and Execute agreements. - Do supervision of the implementation of mitigation and utilization of resources.
2	Academia	- Develop research plans, research mapping, research personnel, and technology preparation in research. - Conducting research, use of technology and research results for mitigation. -Mail monitoring of application of mitigation technology.	- Arrange and prepare a research plan and use of the technology to be applied. -Making a survey, research and consequently mapping survey -Provision of research personnel and technological innovation. - Implement the agreement. -Reported results of the use of research funds and purchases of technology.
3	Entrepreneur	- Making a business plan in the use of technology. - Calculate mitigation financing and utilization of mitigation follow-up results. - Do fund sharing and preparation of mitigation funds. - Implementing funding activities. - Monitoring the use of funds. - Provide reports on the use of funds and utilization proceeds.	-Provision of research and technology funding. - Implement agreement -Reporting results from beneficiaries of mitigation activities. -Fill legal obligations in mitigation implementation.

Based on the model and division of tasks of each of the above parties, there are two interpretations of the triple helix model in the implementation that are neo-corporation interpretation and triple helix evolutionary interpretation. The neo corporation's interpretation focuses on achieving a consensus of activities between academia, industry and government representatives with the involvement of innovation coordinators. This coordinator then plays an important role in the innovation process and becomes the main pillar in planning the integration process of the three elements of triple helix. Nevertheless, the experience of several European countries shows that the neo-corporate model is not satisfactory in terms of integration between the three elements of the university, the business world and the government. The second interpretation of the triple helix model is an evolutionary model in which the role of government is limited but more crucial. In reality, the government is instrumental in formulating an appropriate normative framework for encouraging university and business orientation in achieving a high degree of integration. The evolutionary approach of the triple helix model assumes that in a specific local context; universities, governments and businesses seek to stimulate economic growth through a development called mutually beneficial relationships.[23]

[23] Heryandi, dkk, 2018, *Kajian Pengembangan Pengaturan Untuk Peningkatan Kapasitas Lembaga Penelitian dan Pengembangan Daerah (Pendekatan Triple Helix),* Office of the Ministry of Research and Technology, Jakarta, page. 43.

From the two interpretations models above, the evolution model is suitable for mitigation cooperation, because as local governments should play a role while others support the role, in accordance with the National Disaster Management and Regional Disaster Management program.

3. Conclusions and Recommendations

3.1 Conclusions

Based on the results of research and discussion, it can be summarized as follows:

(1) GAK mitigation is an important effort to protect people from disasters that can happen anytime, so early anticipation can be done, because the potential of GAK as a source of disaster is increasing.

(2) The basic principle of cooperation on geological disaster mitigation of GAK, has been regulated in national and international provisions stipulating that the principle of disaster management is safe, beneficial and sustainable under the principle of cooperation, such as: Principle of Courtecy, Egality rights, pacta tertiis nec nocent nec prosunt principle, non retroactive principle, and ius cogens principle.

(3) The application of Triple Helix model in cooperation of geological disaster mitigation GAK is the right approach, mitigation requires an integrated and systematic policy framework conducted by the government (central / regional) in accordance with its authority, require large financing so it is necessary to involve the business entity, and requires technology that can be sourced from universities.

3.2 Recommendations

Based on the results of the conclusions can be recommended as follows:

(1) The Provincial Government of Lampung needs to formulate a Regional \ Regulation on Mitigation, to serve as a triple helix legal umbrella for mitigation efforts.

(2) Formulate the GAK mitigation program, formulate the steps of cooperation between the local government, business budgets and universities.

(3) Conduct mitigation efforts through triple helix model, consistently and consequently to avoid misunderstanding of resource use as an economic potential that can be used as one of mitigation financing solution.

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Waste Bank: The Strategy and Community-Based Environmental Governance

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Abstract

Waste bank program as community-based environmental government empower community and emerges their awareness to sort, recycle and utilize waste wisely in order to reduce the waste in landfill area. This paper intends to describe and analyze the strategy of waste bank program conducted in Bandar Lampung City through the coordination between local government, and public especially in neighborhood area. This study is descriptive-qualitative analytics research based on interview, observation, and desk study. This paper show that the strategy of waste bank program influence most by the factors of project management and organizational performance. Lack of facilities and infrastructures also become the main obstacle in the implementation of this strategy in Bandar Lampung.

Keywords: *Waste bank, Community, Environmental Governance, Bandar Lampung;*

1. Introduction

In our daily life, waste is defined as the residual daily activities of human and / or natural processes in the form of solids. Specific waste, which is due to its nature, concentration, or volume, requires special management. A waste producer is any person or a result of natural processes that generate waste generation.[1] Waste or rubbish, trash, junk, garbage, its depending on the type of the material or the regional terminology (in Indonesia simply said as *sampah*), is unwanted or undesired material or substance that no longer has a use or purpose and needs to be disposed. The Bank is the deposit place, typically for economic capital. In this research, waste bank is new waste management concepts in community level by teach the community to segregate their garbage and giving more economic value to the garbage. At waste banks, the waste created by the household is divided into two categories – organic and non-organic. Organic waste gets turned into compost, while non-organic waste is divided further into three categories: plastic, paper, plus bottles and metal. Waste classification is based on several criteria, which are origin, composition, shape, location, process of occurrence, nature, and type [2]. According Bahar source of waste can be classified into three groups, the garbage comes from domestic activities, (domestic refuse), from commercial activities (commercial refuse) and from industrial activities (industrial refuse). The impact of waste generates environmental aesthetic values, causes diseases, decreases resource values, pollutes, and clogs

[1] Undang-Undang Republik Indonesia Nomor 18 Tahun 2008
[2] Hadiwiyoto, Soewedo. 1983. *Penanganan dan Pemanfaatan Sampah*. Jakarta: Yayasan Idayu. Hal : 12

waterways[3].

Nowadays, most people still think waste as an useless item, not as a resource that needs to be utilized. Community managing solid waste is still at the point of end-of-pipe, such as; garbage collected, transported, and disposed of to landfill. The waste management paradigm based on final disposal should be changed and the lifestyle of people who think of waste as something to be discarded and do not have any economic value should be replaced with new paradigm. The new paradigm that views waste as a resource that has economic value and can be utilized. The selection of waste is the first step that should be taken from the source, such as neighbourhood, schools, offices, hospitals, markets, terminals and anyother place for community activities. One of the strategies of applying segregation in the effort of garbage restriction, which is an important part in waste management at community level with incentive pattern, is Waste Bank.

Based on the Regulation of the State Minister of Environment Number 13 year 2012 on Guidelines for the Implementation of Reduce, Reuse and Recycle with Waste Banks strategy, Waste Bank is one of the central government programs aimed at reducing the volume of waste transported to landfills (*Tempat Pembuangan Akhir* or TPA) in order to require comprehensive and integrated waste management from upstream to downstream to provide economic benefits, healthy for the community and safe for the environment and can change people's behavior. Reduce means lowering the amount of waste produced; reuse means as using material repeatedly, and recycle means using materials to make new products.

The Bandarlampung City has serious waste management problems. Therefore, community support is needed to solve this problem. The problem in Bandarlampung City is that not all garbage is transported to landfill. Its come from lack of public awareness in waste disposing that does not match the place and time of garbage disposal. In addition, the limited number of garbage disposal officer is not proportional to the size of the city area. The difficulty of getting land to be used as landfills in some urban villages with high population density and occupancy. The low model of community involvement that the government strives to manage solid waste because the waste is still considered the responsibility of the government, while the community is only obliged to pay for waste that is discarded. Bandarlampung City Government has made Regional Regulation No. 05 of 2015 on Waste Management In Bandarlampung City Area. In Article 20 Paragraph 1, which contains waste reduction with waste reduction (reduce), recycling waste (waste), recycle (waste) recycle. Based the city government regulations Bandarlampung it is expected that people can manage the waste so as to reduce the pile of waste in the landfill.

Bandarlampung Municipal Government through Sanitary and Cleanliness agency in cooperation with Mitra Bentala (NGOs) has made efforts to cultivate public awareness, that the problem of waste is not the responsibility of government alone but the responsibility of the community as well. This conducted by making waste bank in some community neighborhood. The implementation of Waste Bank in Bandarlampung City is fully done by Agent of change (AOC) team. The AOC team consists of 10 people confirmed by the Mayor of Bandarlampung on September 26, 2014. The AOC team is tasked to develop the Garbage Bank in 3 locations and 3 Municipal Municipal Garbage Bank Bandarlampung.

The implementation of Waste Bank in Bandarlampung City can be seen from the development of existing Waste Bank in Municipality there are only 3 (three) from 126 (one hundred and twenty six) district implementing Bank Sampah. Trash Bank is located in South Panjang district, established in February 2014, this Waste Bank is called the Green Village Waste Bank. Another Waste Bank is located in the Kota Karang district, and last in the North Panjang district.

This paper focussing on how the strategy implementation of waste bank and haow this top-down policy not only foccusing on goverment as the main actor but also involved community in order to created communiy based environmental governance for Bandar Lampung city. Waste bank program as community-based environmental government empower community and emerges their awareness to sort, recycle and utilize waste wisely in order to reduce the waste in landfill area. Data

[3] Bahar, Yul H. 1986. *Teknologi Penanganan dan Pemanfaatan Sampah*. Jakarta: PT Waca Utama Pramesti. Hal : 5

collection is done through observation, interview and documentation. Data analysis through three stages is data reduction, data presentation, and conclusion.

2. The Strategy of Waste Bank

In this paper, the strategy of waste bank in Bandar Lampung city describe as the implementation of 3R Program (Reduce, Reuse, and Recycle) Through Waste Bank in order to create Community Based Waste Management. It is show that the objectives of the strategy that accurately reflect the intent of the 3R program through the Waste Bank. Strategic management planning that described the performance standards in the 3R program have already fully understands by the implementing organization. The performance measurement of the implementing organization assessed with the objectives to be achieved from the 3R program through the Waste Bank strategy. Management control system and social sanction in the implementation of 3R program through Waste Bank will maintain executor accountability.

Community participation is the most important thing in waste management. In the future, the community's active role is a major factor in the waste management's susceptibility. Waste management based Law No. 18 year 2008 on Waste Management, is a systematic, comprehensive, and continuous activity which includes waste reduction and handling. Each household is advised to manage its own waste through 3R (reduse, reuse, and recycle). Reduce which is to minimize the goods or materials that we use, the more we use the material the more waste is generated. Reuse means as sorting goods that can be used again, avoid items that are disposable, discard. This can extend the usage time of the goods before it becomes waste. The last is recycle, but not all goods can be recycled. However nowadays, many sectors of households start to use waste into other goods.

The purpose of the establishment of Waste Bank is to solve the problem of garbage that until now has not been well resolved properly, that is to familiarize people not to throw garbage carelessly, awaken the people to want to sort the garbage so that the environment clean, maximize the utilization of used goods, traces can be useful, and reduce the amount of waste that is wasted. The first think to be done in Waste Management is Waste segregation by the community.

Waste Bank is one of the alternatives to invite people to care about waste. The Waste Bank management system is household-based, providing cash rewards to those who succeed in sorting and depositing a certain amount of waste. The garbage that is deposited to garbage bank is divided into several types such as organic and non-organic waste, for example: plastic, iron, vegetable pieces and others. Garbage Bank in its implementation can reduce the high number of garbage in the community and in TPAkarena community segregate their own garbage, exchange their garbage to the bank and dispose of garbage in Waste Bank. Thus the volume of waste in the community and in the TPA can be reduced or commonly called the volume reduction. Thus, the Waste Bank can not stand alone but must be integrated with the 3R movement.

Benefits of Waste Banks is to reduce the amount of waste in the community, increase income for the community, create a clean and healthy environment and foster self-awareness of the community about the importance of maintaining and respecting the environment.

In the Regulation of the State Minister of the Environment of the Republic of Indonesia Number 13 of 2012 article 5 on Guidelines for the Implementation of Reduce, Reuse and Recycle through Waste Banks, there are some procedure to be done:

1) Sorting garbage. The customer must sort the garbage before depositing to the Waste Bank, where the waste is sorted according to the type of materials: plastic, paper, iron, glass and others.
2) Delivery of garbage to Waste Bank. The time of deposit is done according to the agreed schedule.
3) Weighing. The garbage that has been deposited into the Waste Bank is then weighed according to the type of garbage.
4) Recording. The officer records the type and weight of the waste after weighing. The result of the scales is then converted into money (Rupiah value) which is then written in a savings book.
5) The proceeds from the sale of the submitted waste shall be included in the passbook; and profit sharing of waste sales between savers and executors.

Based on the results of research implementation of the division of tasks in the Waste Bank strategy is running well despite the lack of marketing positions that have no human resources. Because during this process of Waste Bank product marketing is done by all parties involved in Bank Trash. There is no specific responsibility for this task. The system of control management and social sanction in Waste Bank program also has been implemented. It is just the intensity of the implementation of monitoring in the field is still not maximal, which is done only once a month. For sanctions in case of violation in the implementation of the Waste Bank strategy in Bandar Lampung City there is no written sanction but only social sanction obtained if there is a violation in the implementation of the program.

The next supporting factor is adequate infrastructure facilities in every Waste Bank in Bandarlampung City. Adequate infrastructure facilities can facilitate the implementation of Waste Bank to achieve the desired goals. Some facilities and infrastructure in the Waste Bank include large scales, savings books for customers, administrative books, plastic chopper machines and composting machines. Based on the research that the facilities provided by the Environmental Agency to the Waste Bank in Bandarlampung City does not operate because of there is no human resources at South Panjang, North Panjang and Kota karang district Waste Bank that capable in operating the facility. No further operation of the facility is due to the need for funds to run the machine that use diesel fuel. For the Northern Panjang there is no waste recycling activities become the cause of non-operation of such facilities.

2.1 Trash to Cash

Based on the workshop *"Trash To Cash"* that in reducing the amount of waste in Bandarlampung City resulted in efforts to reduce garbage in Bandarlampung city with the development of Waste Bank in three urban villages namely South Panjang, North Panjang and Kota Karang district. The Waste Bank strategy is in cooperation with the Municipal Government of Bandar Lampung, PT.Indofood, Mercy Corps, and Bentala Partners. Implementation of the program is fully undertaken by the agent of Change (AOC) team.

The unstable price of garbage is one of the inhibiting factors from the implementation of Waste Bank. Such price changes are often unknown to the management of the Waste Bank due to the lack of information provided by the collectors who have cooperated with the Waste Bank. This ignorance can cause losses in the Waste Bank because the price of waste offered is lower than the price set by the collectors. For the price of garbage in every Waste Bank in Bandarlampung City is the same because in every Waste Bank in Bandar Lampung City has cooperated with the same collectors. However pricing is fluctuating and must adjust to the price given by the collectors.

In addition, there are no fixed facilities in the marketing of products provided by the government. All this time the product is only marketed through exhibitions there is no fixed place in marketing the recycled products. It is known that there is no fixed place in the marketing of recycled Bank Waste products because marketing is only done through certain events. Recycled product results are stored in the house of each board of the Waste Bank because there is no place in the Waste Bank because it is full of waste deposits of customers.

3. COMMUNITY BASED ENVIRONMENTAL GOVERNANCE

The consistency of strategy implementers can be seen with the objectives to be achieved by several indicators used to measure the performance of the Waste Bank organization in Bandar Lampung City are as follows; time of Waste Bank Strategy implementation, 3R program, and operational procedures of each Waste Bank. The results show the timing of the execution that occurred in the field not only on Saturday and Sunday but the manager of the Waste Bank received in addition almost everyday. The timing of the Waste Bank in South Panjang and North Panjang is flexible although there is already a set time on Saturdays and Sundays, but in the Waste Bank district receives outside the day if there are customers who want to deposit. For in the Kota Karang already implement in accordance with the schedule set that is on Saturday to received a waste deposit.

On the field and observation researchers, only small part of the community who do the sorting before taken to the Waste Bank. In order to increase the community participation to sort out the waste

generated, the Waste Bank in Bandar Lampung City sets a different price between the sorted and unsorted garbage. Because if the community conducts the election in advance the community can utilize reusable or recyclable waste, and will impact on the disposed waste will be a little with this purpose of the Waste Bank to reduce waste in the landfill is reached. The achievement of the operational activities in each of the different Waste Banks is due to various factors that affect as well as the environment around the Bank. Deposit each week is fluctuating because every week not all customers deposit their garbage. Every week the number of customers who deposit only 2-4 people. So that earnings deposits each week can not be predicted.

3.1 Agent of Change

Future planning for AOC (Agent of Change) team together with Mercy Corps Jakarta as partners in the implementation of Waste Bank held a meeting to discuss what activities should be done by AOC / LBH through the formulation of AOC team work plan. The meeting was attended by members of AOC / LBH and representatives of Mercy Corps Indonesia. Meetings are held in the form of open discussions. The meeting resulted in AOC / LBH Team Activity Plan with 9 activities; meetings with city teams, junk bank launches, evaluation of follow-up plans of friendship programs / sustainability plans, dissemination, publications, monthly reports, quarterly reports, AOC legalization, preparation and consolidation of AOC teams, and AOC capacity building.

3.2 Street Level Bureaucracy

Lack of support from street level bureaucracy, such as district and neighbourhood heads leader in Waste Bank location will affects the participation of the community. People see if the lower level government does not participate in the program they are reluctant to get involved as well. The inclusion of bureaucracy in the kelurahan and kecamatan affects the level of participation in the garbage bank program so that the implementation process of the Waste Bank strategy becomes obstructed. Inhibiting factors in the implementation of the Waste Bank strategy in Bandar Lampung City, such as the absence of support from Street Level Bureauracy, human resources have not been able to operate the existing facilities, the absence of a fixed place in the marketing of the recycling products from waste bank, and unstable waste prices. The city government of Bandar Lampung should pay more attention to the Waste Bank program by issuing a warrant to the street level bureaucracy in Bandar Lampung city to foster and participate in the Garbage Bank program.

4. The Effectiveness of Waste Bank

The Waste Bank strategy implementation has been done effectively. It shown from the clear assignments and objectives that accurately reflects the intent of this policy. In relation to the duties and objectives of the 3R program Through Waste Bank, the implementers have understood the duties and objectives of the Waste Bank program and have implemented in accordance with the Regulation of the State Minister for the Environment of Indonesia Number 10 of 2012 Ministry of Environment About the Implementation Guidelines of Reduce, Reuse and Recycle through Waste Bank.

Strategic management planning that allocated tasks and performance standards in order to implementer's organizations have been done. In relation to the plan management at Waste Bank, it has implemented effective planning management to allocate tasks and performance standards through workshops and meetings conducted by Waste Bank facilitators. Performance measurement of executing organizations already assessed with goals to be achieved. It means the strategy implementers are good enough to be able to adjust the performance of the implementers with changes in the existing environment to achieve the goals to be achieved. That is by implementing the Waste Bank in accordance with the established time, then implementing Waste Bank by applying the 3R system. The management control system and social sanction done to make subordinates to stay accountable. It can be seen from the point of view of the management system of control and social sanction, to keep the subordinates accountable, the implementation of monitoring of the Garbage

Bank program in Bandar Lampung City has not been maximized. This is from the absence of any sanctions in the event of a violation in the execution.

The city government of Bandar Lampung must provide a marketing site for recycling products of Waste Banks in the city center, to facilitate marketing. The city government of Bandar Lampung can cooperate with the tourism department for marketing, so that the recycle waste product can attract local and foreign tourists. The main purpose of this stratefy is not only to create Lampung as Clean and Green City but also to create the new modest way in empower the community, which is the Economic Creative for Community that can be seen in the cycle bellow.

Picture 1. The cycle of Waste Bank as Community Based Environmental Governance.

Source: field research observation 2017.

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The Influence of Information System on Managerial Performance : Task Uncertainty Uncertainy Task as Moderating Variable

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Abstract

This research is based on the importance of information system technology to the officers performance evaluation, which is moderated with task uncertainty. It was used the population of Officer goverment in Metro Bandar Lampung. The influence of nformation system technology to the officers performance evaluation was analyzed by using original least square regression, and the influence of the moderated variable (task uncertainty) to officers performance were analyzed by using Moderated Regression Analysis (MRA). The result receives both of the hypothesis.

Keywords : *information system technology, the officers performance evaluation*, *environment,task uncertainty;*

I. Introduction

Currently the development of information technology (IT) or the usual. Also referred to as information and communications technology (ICT) experienced tremendous acceleration accompanied by the development of information systems based on technology. This development has a powerful influence not only on information technology itself but also on the totality of life. The rapid development of information technology brings such an enormous impact on patterns of relationships between individuals, between communities, even between countries or nations (Syahrul and Saleh, 2004).

The use of information technology (TI) as a measuring tool to evaluate performance has invited a series of debates that then encourage researchers to conduct research in this field. This study examines the contingency variable as a moderating variable that is task uncertainty with information technology (IT) in influencing employee performance.

2. Theory Study

The contingency theory approach to management accounting is based on the premise that no universal management accounting system is always appropriate to apply to the entire organization in every circumstance, but the management system depends also on the situational factors that exist within the organization. Based on the contingency approach, it is possible that there are other determinant variables that interact with each other, in harmony with the particular conditions encountered.

The main problem facing managers in the contingency theory approach is to determine the fit of the organization's design with environmental conditions (Mardiyah and Gundono, 2002). Sahrul and Saleh (2004) define technology as a tool used by individuals to help accomplish their tasks. The technology used in information technology systems is computer technology, communication technology, and any technology that can provide added value to the organization. In general, technology is defined as a collection of production techniques, knowledge, and skills to convert input into ouput (Salman Jumaili 2005).

Information technology is something that is needed by businessmen in carrying out management functions in determining strategic steps to achieve goals. In its implementation, management always faced on condition full of uncertainty (uncertainty) hence required information technology that can give added value (value added) to carry out management function. The added value can be obtained if the information has the following criteria: 1) about uncertainty, 2) providing certainty about the choice of action considered by the decision maker, and 3) revealing the extent of planned action and the achievement of expected results.

Hickson and Fazli (2000) define task uncertainty as lacking information about future events so that the alternative actions and outcomes to be generated are difficult to predict. The research of Kim (1998) and David (2001) divides the task uncertainty in two dimensions: 1) the dimension of task variability ie a number of extraordinary or unexpected cases or unresolved events, 2) dimensions of task analyzability ie knowledge or concrete understanding an activity and the level of complexity of the task execution process.

Associated with task uncertainty, Hirts (1981) divides into three high task uncertainties, medium task uncertainty, and low task uncertainty. High task uncertainty can be interpreted as a condition of tasks that employees can not understand well. From the lack of understanding of the task, the employee does not have sufficient knowledge about what to do. While the uncertainty of low duty is a condition where employees understand well to the task.

Performance (performance) is the work that can be achieved by a person or group of people within an organization, in accordance with the authority and responsibility of each, in an effort to achieve the objectives of the organization legally, not violating the law and in accordance with the moral and ethical. The research model that describes a conceptual framework as a guide as well as flow of thinking can be seen in Figure 2.1

Research model

The hypothesis proposed is as follows:

H1: Information Technology affects officer performance

H2: Uncertainty Tasks Moderate The Influence Of Information Technology To officer performance

3. Research Methods

3.1. Types of research

The type of research used in this study is hypothesis testing research (hypotheses testing) is a study that explains the phenomenon in the form of relationships between variables. The type of relationship between variables in this study is a causal relationship or often called a causality relationship

3.2. Data Type

The type of data used is the subject data ie research data in the form of opinion, attitude, experience or characteristics of a person or group of people who become the subject of research (respondents) (Indriantoro and Supomo, 1999). Sources of data used in research is primary data in the form of respondent perception (subject) research and the instrument used is questionnaire or questionnaire.

3.3. Population and Sample

The population in this study is the employees of the regional government which are covered in the City City's Office of Work Unit. The study sample consisted of: head of department, chief of staff, financial staff, administration staff and staffing. The sampling technique is done by sampling census, the technique of determining the sample by taking all the samples.

3.4. Anallisa data technique

3.4.1. Data Quality Test

Hair et al (1995) data quality resulting from the use of research instruments can be evaluated through reliability and validity tests.

1. Internal consistency test (reliability) is determined by coefficient of cronbach alpha. A construct or instrument is said to be reliable if it gives a cronbach alpha value above 0.60 (Nunnally, 1967 in Priest, 2005).
2. Test the homogeneity of data (validity) with the test of person correlation. If the correlation of each factor is positive and the magnitude of 0.3 and above then the instrument has a strong construction validity (Sugiyono 2008).

3.4.2 Normality Test

The normality test aims to test whether in the regression model, the intruder or residual variable has a normal distribution. As it is well known that t and F test assume that the residual values follow the normal distribution. If this assumption is violated then the statistical test becomes invalid for a small sample size. With SPSS Ver.17 software the normality test in the regression model is arranged by looking at the Histogram and Normal probability plot.

3.4.3. Test Classic Assumptions

In relation to the use of multiple regression method, it is necessary to test the classical assumption contained in multiple regression as follows:

A. Test Multicolonierity

Multiple colicity test or multiple collinier test aims to test whether there is correlation between independent variables in the regression model (Imam, 2002). The guideline used for a multicolonierity-free regression model is the VIF value of all independent variables below 10 and tolerance values above 0.1.

B. Test Autocorrelation

One of the basic assumptions of applying regression method with least squares is the absence of correlation between interference or autocorrelation. The existence of this autocorrelation problem will result in consistent and unbiased estimates of coefficients but with large variants, or so the results of

interpretation are inefficient. This inefficient parameter variance estimates the t value tends to be small and the test results tend to accept the null hypothesis (H0).

The most commonly used method for detecting autocorrelation is by Durbin Watson test. The test is performed by comparing the calculated DW statistic value with the upper limit value (DWu) and the lower limit value (DWl) of the Durbin Watson table, taking into account the number of observations and the number of independent variables plus one.

C. Heteroscedasticity Test
Heterocedasticity test is performed to test whether in the regression model there is a variant inequality of the residual in the sense of increasing or decreasing from one observation to another. If the variant of the other residual observations is constant or constant, then it is called homocedasticity. A good regression model is homocedasticity or does not occur heterokedastisitas (Imam, 2002). Detection of whether or not heterokedastisitas done by looking at the presence or absence of certain patterns (wavy, widen and then brake later narrowed) on the plot graph (scatterplot) between the predictive value of variables associated with residualnya.

3.5. Hypothesis testing

Statistical analysis used is simple and multiple regression analysis as a model that predicts the causal relationship between the dependent variable with some independent variables. Simple linear regression to test the relationship between information systems technology and employee performance and to test the correlation of variable moderating task uncertainty with employee performance. Moderated regression analysis (MRA) is used to determine the interaction relationship between dependent and independent variables by one variable as a moderating variable (Nunnally, 1994). The statistical equation used is as follows:

1. $KP = a + b_1 TI + e$ ..... (1)
2. $KP = a + b_1 TI + b_2 KT + + e$ ..... (2)

KP = officer performance

IT = Information systems technology

KT = task uncertainty

A = intercept

E = error

4. Analysis and Discussion

4.1 Questionnaire and Time of Study

The data collection of this research use questionnaire as collecting instrument, primary data. Primary data in question is the answer of the respondents. Questionnaires used in this study are submitted directly to the respondents by way of coming to the respondent. The timing of the dissemination and return of this questionnaire was conducted from April 8, 2012 until May 5, 2012. The total questionnaires distributed were 57 questionnaires to 57 Kota Lampung Urban Employee Working Unit. Of the 57 questionnaires distributed, 7 were not returned due to busyness in work and 2 pieces are not complete. Thus, at the end of the study the number of questionnaires collected was 48 questionnaires.

4.2. Testing of Research Instruments
4.2.1. Test Validity and Reability

The results of reliability and validity of the test data indicate the level of consistency and good accuracy. In the reliability test, the internal consistency of Cronbach's Alpha coefficient shows no coefficient less than the minimum value of 0.60. While the validity test with homogeneity test data and correlational test between the score of each grain with the total score (Pearson Correlation) showed a positive correlation and significant level at the level of 0.01 and 0.05. From these results can be interpreted that the questions that measure the variables of information technology, employee performance, and task uncertainty can be used and valid. Reliability test results and validity are presented in Table 4.4 and Table 4.5 below

Table 4.1.Reliability Test Results

No.	Variabel	Nilai *Cronbach Alpha*	Keterangan
1	*information system technology*	0,812	Reliabel
2	officer performance	0,733	Reliabel
3	*task uncertainty*	0,723	Reliabel

Source: primary data processed

Table 4.2.Validity Test Results

No	Variabel	Kisaran Korelasi	Signifikansi	Keterangan
1	*information system technology*	0,312**-0,813**	0,001	Valid
2	officer performance	0,425**-0,762**	0,001	Valid
3	*task uncertainty*	0,379**-0,651**	0,001	Valid

** Significant at α 0.001

* Significant at α 0.005

Source: primary data processed

4.2.2. Normality test

Based on the results of data analysis with the help of software SPSS for Windows. The variables are said to be normally spread if the collarized standpipe kolmogorov smirnov test results show if the assympatic significant (2-tailed)> alpha (0,05) values. In table 4.3., It can be seen that the value Kolmogorov Smirnov test of 1.182, while the asymp value. sig. (2-tailed) for an unstandardized variable of 0.113 greater than a value of 0.05, so it can be concluded that the data used is normally distributed.

One-Sample Kolmogorov-Smirnov Test

		JV7	JV13
N		48	48
Normal Parameters[a]	Mean	20.54	20.07
	Std. Deviation	2.478	2.171
Most Extreme Differences	Absolute	.167	.128
	Positive	.140	.113

Negative	-.167	-.128
Kolmogorov-Smirnov Z	1.182	.941
Asymp. Sig. (2-tailed)	.113	.338

a. Test distribution is Normal.

4.3. Classic assumption test

A. Multicollinearity Test

From the Variance Inflation Factor (VIF) test with the help of SPSS for Windows software, it is known that VIF value of information technology variables is 1,569 and VIF variable of task uncertainty is 1,173, each smaller than 5, so it can be concluded that there is no multicollinearity among variables Free in the regression model.

Table.4.4. Multicollinearity test results

Model		Collinearity Statistics	
		Tolerance	VIF
1	(Constant)		
	Teknologi	,873	1,569
	Ktdkpstian tugas	,530	1,173

B. Test Autocorrelation

Based on the Durbin-Watson test results with the help of SPSS for Windows software that has been done, obtained Durbin-Watson value of 1.809. The value is compared with Durbin Watson table value for n = 48 and k = 4 with (α) 0.05 or 5%, then the value dU = 1.72 and dL = 1.41. So the Durbin Watson test score is between dU and 4 - dU. This is evidence of no positive or negative autocorrelation. The image of Durbin-Watson statistic test curve can be seen in Figure 4.1.

C. Heteroscedasticity Test

Based on Park test on, that is by making regression model showing relation between residual absolute value (e) as dependent variable with its independent variable, obtained significant value t arithmetic variable significance value t arithmetic variable X1 equal to 0,689 and significance value t arithmetic variable X2 Of 0.348 each more Of a value of 0.05. Based on the evidence, it can be concluded that there is no heteroscedasticity in the regression model.

Table 4.5.Heteroscedasticity test results

Model		Unstandardized Coefficients		Standardized Coefficients	t	Sig.
		B	Std. Error	Beta		
1	(Constant)	2.884	2.128		1.510	.187
	information system technology	.383	.096	.459	3.975	,689
	Task uncertainty	.482	.101	.554	4.792	,348

a. Dependent Variable: officer performance

4.4. Hypothesis testing

Based on the results of data processing using MRA model can be presented a summary of the regression equation as follows:

Table 4.6.Summary of Regression Equations

Hipotesis	**R Square**	**Adjusted R Square**	**Uji Signifikansi**		**Uji Signifikasi Parameter**		**Keterangan**
			F	**Sig**	**t**	**Sig**	
H_1 TI – KP	0,618	0,521	73,762	0,000	8,322	0,000	Signifikan
H_2 TI, KT, TI*KT - KP	0,443	0,377	15,455	0,000			Signifikan
TI					-0,623	0,498	Tidak Signifikan
KP					-2,175	0,033	Signifikan
TI*KT					1,976	0,051	Signifikan

A. Influential Information Technology on Employee Performance (H1)

Testing of hypothesis 1 is done by looking at the interaction between the variables of Information Technology with Employee Performance (equation 1), indicating the magnitude of adjusted R2 is 0.521, this means 52.1% variation of employee performance can be explained by variation of information technology variables, while the rest is explained by - because the others are outside the model. From regression model visible influence of variable of Information Technology significant at α 0,05, this mean that variable of Employee Performance influenced by Information Technology.

B. Uncertainty of Task Moderating the Influence of Information Technology on Employee Performance (H2).

The result of hypothesis testing 2 can be seen shows the amount of adjusted R2 is 0,377, this means 37,7% variation of Employee Performance can be explained by variation of independent variable of Information Technology, Uncertainty of Duty, and MDTIKT (TI * KT), while the rest is explained by other causes Outside the model. From the statistical test F arithmetic is obtained at 15.455 at α 0.05, so the regression model can be used to predict Employee Performance or can be said that Information Technology, Uncertainty Task, and MDTIKT (TI * KT) together influence on Employee Performance. While the individual parameter test obtained the results of information technology variables have no effect on employee Performance on α 0.05 and MDTIKT variable which is the interaction between information technology and Task Uncertainty significantly affect Employee Performance. So that can be interpreted that variable Uncertainty Tigas is moderating variable or moderate influence between Information Technology and Employee Performance.

4.5. Discussion

4.5.1. Influential Information Technology on Employee Performance (H1)

Information technology proved to affect the performance of employees. It indicates that with the management of information technology resources undertaken by the organization in this case infrastructure, strategy, human resources will improve the understanding of the company / organization to the job description and operational activities of the organization daily, so that with the understanding, the company can increase Employee performance. The use of information technology can have a positive impact on subordinates either as a judgment of one's achievement.

4.5.2. Uncertainty of Task Moderating the Influence of Information Technology on Employee Performance (H2

The research findings show that task uncertainty is evident as a variable that moderates information technology and employee performance. This is in accordance with the theory put forward that high task uncertainty can be interpreted as a condition of tasks that can not be understood well by employees. From the lack of understanding of the task, the employee does not have sufficient knowledge about what to do. While the uncertainty of low duty is a condition where employees understand well to the task. The existence of adequate information technology will reduce the lack of tughas to the work of employees so that will improve their performance.

5. Conclusion and Suggestion

5.1. Conclusion

This study provides an indication of the importance of information technology in performing management functions and assessing one's achievement. The results of this study reinforce and support the findings of Hirst (1981) which explains that information technology can be used by management for the planning process, coordination and evaluation evaluation that will be used as guidance in the future. The use of information technology can have a positive impact on subordinates and information technology either as a judgment of one's achievement. The results of this study also confirm that there is a significant simultaneous influence between task uncertainty, and information technology on employee

performance so that the variables proposed as moderating variables moderate the influence of information technology on employee performance as hypothesized.

5.2. Suggestion

1. Future research may consider other resources owned by organizations that can improve employee performance
2. Subsequent research can use contingency variables proposed not as moderating variables because some researchers stated that these variables directly affect the performance. In addition, other contingent variables can be used, such as decentralization and commitment.

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Cultural Hybridization of Korean Beauty Trend with Halal-Certified Local Cosmetics (Analysis of "Korean Makeup Looks" Tutorial Videos on Youtube)

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Abstract

Nowadays, Korean beauty trends has become more popular in Indonesia. But suprisingly, in the middle of Korean beauty (K-beauty) trend right now, halal-certified local cosmetics still become the market leader and can be used to create the Korean makeup looks. As we can see, most of Indonesian beauty vloggers have created the tutorial videos to create "Korean Makeup Looks" using halal-certified cosmetics and upload it to Youtube. This phenomenon is one of the hybrid culture that happened in Indonesia. This paper aims to analyze the hybrid cultures between the Korean Beauty trend and halal-certified cosmetics in the tutorial video "Korean Makeup Looks" which were created by Indonesian beauty vloggers. This paper applies semiotic analysis method, with "Korean Makeup Looks" tutorial videos on Youtube as the unit of analysis. The result shows that cultural globalization of Korean pop culture has affected the beauty concept and beauty industry in Indonesia. This phenomenon has caused the beauty industry in Indonesia to adopt the trend. So that the local cosmetics, including the halal-certified local cosmetics, can be used to create the "Korean Makeup Looks". It certainly shows the occurrence of cultural hybridization between halal-certified local cosmetics with K-beauty trend.

Keywords: *Globalization, Glocalization, Hybridity, Hybrid Culture, K-beauty*

1. Introduction

Korean wave (or also called *hallyu*) is one of cultural globalization which has made Korean pop culture spread and known globally. This phenomenon occurred since the mid-1990s, driven by the spread of K-drama and K-pop. KCIS (2011) mentioned that the popularity of K-dramas, music, and films have a positive impacts on Korean local products, such as electronic devices, mobile phones, fashion, cosmetics, food and Korean lifestyle (K-lifestyle). This *hallyu* phenomenon has succeeded in increasing global interest of Korean pop culture products (KCIS, 2011).

In the digital era and the development of new media, especially the internet and social media, the globalization of Korean pop culture become easier to spread. This could be causes by an increasing number of social media users and fans of Korean cultural products. In addition, one of the characteristics of social media is user generated content which enables users to produce and distribute their own content, including content which is related to Korean pop culture. The distribution of content related to Korean waves through social media is also called "The Neo-Korean Wave", which is characterized by the fans's involvement in the distribution of Korean wave content. This surely makes the wave of Korean Wave become bigger and Korean pop culture become more popular (KCIS, 2011).

Nugroho in Anderson et al (2014) mentioned that the popularity of Korean pop culture began in Indonesia since 2000. One of the Korean pop culture which has entered into Indonesia is Korean beauty (K-beauty) trend. Burhanuddin (2016) said that the K-beauty trend can not be separated from the success of K-drama and K-pop, because it has made fans interested to the beauty of Korean idol or Korean women.Other than that, fans also intend to use the beauty

products which is used by their idols. Tjoe and Kim (2016) point out that the influence of Korean pop cultures to Indonesians lifestyle can be seen on the increased number of imported Korean products to Indonesia since 2010, including the Korean beauty products. Furthermore, there are a lot of online shops on social media and e-commerce sites that spesifically sell Korean beauty products, it signified that Koreanbeauty products have a great demand by Indonesians.

As mentioned earlier, one of The Neo-Korean Wave characteristic is the abundance of Korean wave-related contents which is disseminated through social media and had fans involvement in spreading the contents. Youtube is one of the social media that becomes the distribution channel of Korean pop culture related contents, including the content which is related to K-beauty trend. K-beauty related content can be watched on the "Korean Makeup Looks" video tutorial on Youtube. These kind of videos are widely produced and published by the Indonesian beauty vloggers.

Korean beauty, or known as K-beauty, is a term that commonly used to describes the beauty trend of Korean women. K-beauty trend is often associated with the use of skincare, cosmetic products, and also plastic surgery trends. One of K-beauty trend which has become global trend is Korean makeup looks. Korean makeup looks showed a makeup which has a simple, fresh, natural, innocent, and youthful looking. Some of the Korean makeup looks that become popular such as puppy eye and dolly eye makeup, low-arch natural eyebrows, ombre or gradient lips, glowing and dewy skin, and many more. These kind of makeup can be achieved by using the cosmetic products which have natural and fresh colors, such as nude, brown, peach, and baby pink. In addition, cosmetic product which has shimmery effect also can be used to add some glowing and dewy effects on the makeup.

Nowadays, Korean beautymarket become a concern for global beauty market. K-beauty trend and Korean beauty products are identic with the sophisticated beauty innovations. They use natural ingredients which is safe for health and skin, and also they have cute and catchy packaging. K-beauty trend and Korean beauty products began to enter the global market as brought by the popularity of Korean wave (ITA, 2016).

In the midst of the K-beauty trend and the abundance of Korean beauty products that began to enter Indonesian market, halal-certified local cosmetics actually become the market leader. Halal certification can be given to cosmetic products which contain no alcohol, no animal-based ingredients, and didn't use animal testing in the production processes. ITA (2016) mentioned that one of the local brands that already have halal certificate is Wardah, which is manufactured by PT. Paragon Technology and Innovation.

Based on MarkPlus Insight Women Survey in 2015, Wardah is the favorite cosmetics brand in Indonesia (Figure 1). Wardah existence as one of the halal-certified local cosmetics has the ability to change consumer preferences and make the halal-certified local cosmetics something important. Furthermore, the success of halal-certified local cosmetics in local market can not be separated from the fact that Indonesia is one of the countries with Muslims as majority. There is a common value between the dominant Muslim community with the halal-certified local cosmetics.

Figure 1. MarkPlus Women Insight 2015

Barker (2004) describes globalization as a concept that refers to the narrow-world, the increasing of global connections, and understanding the world globally. Globalization is not only about economics, but also about culture. Culture was no longer something limited and bound to some place, but talks only about the process of learning translocal.The processes of globalization can lead someone to mixture culture, mixing of global and local culture.

Globalization is one of the complex process. It is beacause there are social changes and invloves various dimensions, such as economic, socio-political, communication and socio-cultural dimensions. In the process, globalization demonstrates the existence of capitalist which can lead to the loss of cultural diversity (Siswowiharjo, 2015).

Globalization process which made the mixture of different cultures can cause the local and global culture well blend. Hybrid culture can be occured because of the effects of globalization. Hybrid culture did not eliminate the local culture, but mix it well with the global culture. In the process, hybrid culture did not show off the local identity, but merge it well with the global cultur (Siswowiharjo, 2015).

Based on the introduction above, this paper aims to know how "Korean Makeup Looks" tutorial videos with the halal-certified local cosmetics represent the hybrid culture between the local and global culture. Local culture refers to the halal-certified local cosmetics which is produced locally, while global culture refers to "Korean Makeup Looks".

2. Method

This paper used the descriptive qualitative method, with the "Korean Makeup Looks" tutorial videos on Youtube as the subject of study. Afterwards, the data which have been collected from those videos were analyzed by semiotic analysis which is one of the Saussure's notion. This semiotic analysis can be used to point out the meaning on those signs that shown on the "Korean Makeup Looks" tutorial videos.

Sobur (2013) mentioned that the main thing in the Saussure's notion which is related to semiotic analysis, is the concept of signifier and signified. Sobur (2013) also added Saussure's ideas that said there is a sign system which is formed by signified and signifier. Signifiers are the material aspects of the language, such as what has been said, heard, written or read. While the signified is an idea or meaning that is within a sign. To make it simple, Nasrullah (2014) described the signifier as an elements that can be reached by the human sense, while the signified described as an element or concept which can explains the meaning that within the sign. These two elements, signifier and signified, are inseparable one another. Because, according to Sobur (2013), these two elements complement each other in receiving and conveying meaning.

This paper only focused on K-beauty trend that relate to Korean makeup looks, exclude the plastic surgery trends. Tutorial videos which have been analyzed were only videos that used halal-certified local cosmetics. Other than that, those tutorial videos were created and published by Indonesian beauty vloggers.

3. Result and Discussion

3.1. The Hybrid Culture between the Korean Beauty Trends with the Halal-Certified Local Products in "Korean Makeup Looks" tutorial videos on Youtube.

As mentioned earlier, Saussure's notion about semiotic analysis points out the signifier and signified concept. The semiotic analysis on this paper focused only to the part of the "Korean Makeup Looks" tutorial videos that showed the use of halal-certified local cosmetics in tutorial process. Signs that showed up in the videos were analyzed by the signifier and signified concept in order to point out the meanings that relayed through those signs. Those signs emerged on the visual and verbal elements in the video.

Figure 2, is a collage pictures from one of the tutorial video which created and uploaded by Indonesian beauty vlogger (@lindakayhz) on her Youtube channel. Beauty vlogger in that video used halal-certified local cosmetics to created eye makeup looks. On the visual elements, signifier in that

tutorial video can be seen from scenes that show the use of eye makeup products from halal-certified local cosmetics to create the Korean eye makeup. Those products such as eyeshadow, which has the natural colour (nude brown, dark brown, baby pink), and also a shimery white eyeliner. While on the verbal elements, signifier can be heard when the beauty vlogger talked about the eye makeup.

> *"....I create the eye makeup only on the eyelid, to make it as if my eyes were small. That's because Korean has small eyes. Despite they have small eyes, they like the dolly looks on their eye makeup... (applied the light brown eyeshadow to create the dolly looks)"*
>
> *"....Now, I want to make aegyo sal[1] makeup under my eyes, like a made-up eye bags. Actually, I don't get why Korean likes to make this aegyo sal makeup, but they said it made them look younger (applied white eyeliner and shimmery eyeshadow to create the aegyo sal makeup)"*

Figure 2. Video *"Dandan Korea / Dolly Pakai Produk Lokal dan Drugstore | Linda Kayhz"* on @lindakayhz Youtube channel

The signified in the tutorial video above (Figure 2) can be interpreted as a women's preference in Korea, who like natural makeup looks and the makeup which can make them look younger. As Sobur mentioned (2013) that Saussure explained the signifier can not be separated from the signified, because these two sign concepts can form an entity of meaning. This can be seen in Figure 1, how the use of halal-certified local cosmetics with natural colours were intended to create eye makeup that fits with the K-beauty trend.

In Figure 3, there is a collage pictures from the "Korean Makeup Looks" tutorial video which created and uploaded by Abel Cantika (Indonesian beauty vlogger) on Youtube. She use the halal-certified local cosmetics to create the ombre or gradient lips, which is known as the famous Korean lips makeup looks. She also use the halal-certified local cosmetics to added some glowing and fresh effects on her Korean makeup looks.

Signifier on the visual elements in Abel Cantika's tutorial video (Figure 3) can be seen on two scenes. *First*, scene that show how she create the ombre lips with nude lipstick from halal-certified

[1]*Aegyo sal* is a term that usually Korean use, it refers to the little fatty under the eyes. Korean people believe it can make them look more youthful and innocent. (Source: https://www.kpopsurgery.com/what-is-aegyo-sal/)

local cosmetics. In this scene, she mentioned that Korean ombre lips is one of the method in Korean makeup which can make the natural and fresh looks. She also mentioned that she prefer using lipstick than liptint (one of the korean beauty products) in order to create ombre lips. *Second*, scene that show how she use face mist from halal-certified local cosmetics in order to added some fresh and glowing effects to her Korean makeup looks. The way how she mentioned natural, fresh, and glowing as the characteristics of Korean Makeup Looks can be interpreted as the signifier on the verbal elements. Moreover, the signified aspect in the Abel Cantika's tutorial video can be interpreted as a natural, fresh, and glowing makeup looks which are related to K-beauty trend. Nude lipstick and face mist that used on the tutorial video were choose because she believe these two products have the same function as the Korean beauty products, in order to create the natural, fresh and glowing makeup looks.

Figure 3. Tutorial Video *"Dewy Look (Korean Makeup) Tutorial – Abel Cantika"* on Abel Cantika Youtube Channel

The last tutorial video that has been analyzed on this paper is on Figure 4. There is a collage picture from one brand tutorial to create the Korean inspired makeup, which means beauty vlogger in that video only use one brand (halal-certified) in order to create the whole Korean makeup looks. There are not much different between tutorial video on Figure 4 with the tutorial videos on Figure 2 and Figure 3. The signifier on visual elements in Figure 3 can be seen from the use of the halal-certified local cosmetics in order to create the Korean makeup looks. Starting from serum as the preparation step on Korean makeup until red lip cream to create ombre lips as the final touch for the Korean makeup looks.

In the tutorial video on Figure 4, signifier from the verbal elements can be seen from scenes when Kiara Leswara (beauty vlogger) mentioned that Korean makeup have characteristics such as simple, fresh, natural, wet glowing looks, youthful and innocent looks. She also mentioned that in order to get that Korean makeup, she has to apply the cosmetics carefully and build the makeup as a thin layer.

As mentioned earlier, signifier and signified can not be separated because both of them can form an entity of meaning. From the tutorial videos which has been analyzed, it can be seen that meanings relayed in the tutorial video mostly describe about the values of Korean pop culture, especially K-beauty trend, while Islamic values that relayed on the halal-certified local

cosmetics rarely shown on the tutorial videos. However, the use of halal-certified local cosmetics in the “Korean Makeup Looks” tutorial videos is a form of hybrid culture. This is because, in those videos the mixture between global and local culture can be seen when the halal-certified local cosmetics well blended with the style and characteristics on K-beauty trend.

Figure 4. Tutorial Video *“Korean Inspired Makeup | Wardah One Brand Tutorial 3.0 | Kiara Leswara”* on Kira Leswara Youtube Channel

Through the above explanations, the halal-certified local cosmetics can be used to create Korean Makeup Looks and compete with non-local cosmetics, either Korean cosmetics or western cosmetics. The halal-certified local cosmetics have to prepare their brand and create some strategies so that they can withstand with the beauty trend. As Kraidy (2002) said that hybridity needs to be understood as a communication practice which constitued by a socio-political and economy systems.

3.2. Hybrid Culture in the Social Media Era

The presence of social media makes the process of globalization become easier. Social media, as a part of the new media, has a borderless characteristic which enables netizen (individually) exposed by the global culture easily. The Neo-Korean Wave phenomenon is one form of globalization that occurs because of social media presences. The Neo-Korean Wave that discussed in this paper is a "Korean Makeup Looks" tutorial video. This kind of video was created and uploaded by Indonesian beauty vloggers. It points out that this activity has audience's involvement in create and publish the content which related to Korean pop culture.

Kraidy (2015) mentioned that hybridity is part of our era. It is a form of cultural diversity celebration, also the inevitability of economic exchange and cultural transformation. K-beauty trend in Indonesia has influenced Indonesian beauty market and beauty industry. As a dominant global culture, K-Beauty trend indirectly made the locality values adapt into Korean pop culture.

Brands, which have the halal-certified local cosmetics, adopt the global culture of K-beauty trend. The use of halal-certified local cosmetics in the "Korean Makeup Looks" tutorial videos is a form of glocalization. The concept of glocalization, as Kraidy (2005) mentioned, doesn't see the local and global cultures as an opposites but rather as a mutually constitutive. Barker (2004) also mentioned that local and global cultures are mutually constructive. Halal-certified local cosmetics are part of the

local culture and can be used to shape the global culture. The term of glocalization, as Barker (2004) said, can not be separated from economic activity. The presence of halal-certified local cosmetics that fit the K-beauty trend can be seen as one of the marekting strategy. In order to survive at the beauty market competition. This glocalization is also a form of hybrid culture, because the identitiy of the local culture is merged with a global culture identitiy.

4. Conclusion

The hybrid culture that occurs in the "Korean Makeup Looks" tutorial videos can be chategorized by the glocalization concepts, where hala-certified local cosmetics, as a part of the local culture, can be used to create a K-beauty global culture trend. This can be seen as a form of marketing strategy of halal-certified local cosmetics brand. This strategy was applied in order to surviving in the beauty market and beauty indusry of Indonesia. In the other hand, although the Islamic values which is in halal-certified local cosmetics are rarely menitoned in the video, the use of those cosmetics to create the "Korean Makeup Looks" can be mentioned as a form of hybrid culture.

The halal-certified local cosmetics which used in "Korean Makeup Looks" tutorial videos were produced locally in Indonesia. Then, those cosmetics can be used to make the global beauty trend, such Korean makeup looks. This can be an evidence, that in those "Korean Makeup Looks" tutorial videos there was a hybrid culture happened. When there were a scenes that show how Korean makeup looks can blended well with the halal-certified local cosmetics. As mentioned before, the use of halal-certified local cosmetics in "Korean Makeup Looks" tutorial videos is one of glocalization phenomenon which can represented the hybrid culture.

as a closing statement, in the current era of social media, hybrid culture is not something that can be avoided. The presence of new media and social media make the mixture of local and global culture easier. The socio-political and economic system involvement van make hybrid culture as one of the strategies to survive from cultural imperialism and standardized cultural homogenization.

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The Use of Imported Input and Manufacturing Industry Productivity

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Abstract

Use of imported intermediate input can improve manufacturing industry productivity through the learning, variation, and quality effect (Amiti, 2007) Productivity can increase due to the foreign technology within their input. This research aim to see the influences of use of imported intermediate input to manufacturing industry productivity in Indonesia by using panel data from survey collected in manufacturing industry at Badan Pusat Statistik 2000 – 2012 period based on 3-digit KBLI.

The influence of use of imported intermediate input to manufacturing industry production is positive and significant. Imported intermediate Input is considered to have a better quality. With a good quality and technology in imported intermediate input will improve the production efficiency which can improve the industry productivity. MnC currently controls most of the trade chain either as a supplier of input or marketing of production. So that, it needs government policy to improve national industry structure both in terms of market usage concentration and in terms of the depth of the supply chain of raw materials and supporting materials.

Keywords: *Manufacturing Industry, Input-among import, Productivity.*

1. Introduction

1.1 Background

Technology transfer process has spillovers effect where knowledge can occur when the domestic industry buys intermediate input from foreign suppliers. Learning and the use of raw materials / intermediate input is vertical spillovers because the foreign technology in the raw materials / intermediate input can enhance the production of domestic industry. (Girma, 2000)

In Indonesia, the use of imported intermediate input in manufacturing industry has increased. The average use of imported intermediate input in manufacturing industry based on 3-digit KBLI for 2000 – 2012 period has increased by 14.124 percent annually.

The transfer of technology relates to activity that is deliberately planned and has a purpose of transferring the technology from one country to others. A vertical spillover is an effect brought by PMA on companies in other sectors that relates on a business with foreign company. Vertical spillovers can occur from technology transfer through the use of equipment and imported intermediate input that is expected to bring a positive impact on the productivity of Indonesia's manufacturing industry. This includes companies that supply or provide services to foreign companies and company provided by foreign companies.

It is very likely that foreign company needs a higher standard from their supplier. The higher standard of raw materials provided by foreign company is also used by domestic company, which can increase the efficiency and the performance of domestic company. On the other side, it is expected that technology transfer can be absorbed by domestic industry, so that domestic company can become a

supplier of intermediate input with the same quality. Besides, Mnc will increase the demand of intermediate input, which allow domestic supplier to reap the benefits of economic scale (Javorcik, 2004).

1.2 Problem Formulation

Contact between domestic intermediate input supplier with MnC is through the directly technology transfer from foreign affiliation to the domestic supplier in complementary sector by forcing the requirements of product quality and management or a higher technology. On the other side, MnC will increase the demand of intermediate input production, which allow from domestic supplier (Javorcik, 2004).

The transfer of technology relates to activity that is deliberately planned and has a purpose of transferring the technology from one country to others. Vertical spillovers that occur from the technology transfer through the use of equipment and imported intermediate input is expected to bring a positive impact to the productivity of Indonesia's manufacturing industry. Due to the high use of imported intermediate input on Indonesia's manufacturing industry, the transfer of technology occurred is expected can be absorbed by domestic industry, so that domestic industry can become a supplier of intermediate input with the same quality.

1.3 Research Purposes

This research aims to analyze the influence of vertical spillovers from the use of imported intermediate input to the productivity of Indonesia's manufacturing industry.

2. Literature Review

The theory of economic growth is the most initial theory that relates to Neo Classic theory. Neo Classic theory is developed based on premise (1) perfect competition, (2) rational economic behavior, (3) no externalities on economic. Solow develops a growth model by adopting Neo Classic production function with constant result scale assumption, the law of diminishing return, and the substitution elasticity of positive intermediate input. The simple production function states that output depends on capital and labor.

Solow model presents a constant relation between inputs of capital and labor and outputs of goods and services, which can be modified by using the advanced technology as an exogenous variable. Solow develops the growth model by adapting Neo Classic production function form with constant result assumption, the law of diminishing return, and substitution elasticity between positive intermediate inputs. Some weakness of Neo classic growth theory (Barro and Sala-0- Martin, 1995; Romer, 1996), are the assumption of constant saving and technology transfer is considered endogenous.

Endogenous growth model appears due to the weakness with the same structure form as Neo Classic model but has a different assumption. The different assumption on both models relates to the decreasing return on capital good investments and the increasing return of aggregate production. Endogenous growth model often focus on the externalities in order to measure the return from capital goods investment. Endogenous growth model incorporates elements of private investment. By using the premise (1) externalities, (2) imperfect market on intermediate input production. According to this theory, by the transfer of technology then the economic will be continued. Business unit or region will get benefit from the increasing of return scale such as learning spillovers among companies and positive externality from human natural resources.

Based on MAR economic externality (Arrow 1962, Lucas 1988, Romer 1986) spillover is company approach in industry that will influence learning process among companies to facilitate innovation and growth. Their view are, (1) more closer a company to one another, more bigger the spillover will occur, (2) more closer a company facilitates the idea transfer among labor then will give a new way to produce goods. (3) The chance to transfer idea will lead to the innovation for new goods and a better production mthod (Kao, 2005). Labor productivity and technology transfer become a part of

growth process. Learning process of supplier can increase the productivity of other supplier through the spillovers effect among industry (Hamzah, L.M, 2015).

3. Research Method

3.1 Data

This research use primary data from Indonesia's manufacturing industry which is collected from survey in largeand medium industry from Badan Pusat Statistik (BPS) Indonesia in 2000 – 2012 period. Data of large and medium manufacturing industry used is based on industry type with 3-digit KBLI consisted of 66 types of industry. Some types can't be used in this research because some data is not fulfill the research period required. From 66 types of industry based on 3-digit KBLI, only 55 types of industry based on 3-digit KBLI that is used in this research.

The data used in this research include the value of capital output, the number of labor, and imported raw material that is used in industry production process. The value of output is the real added-value based on constant price on 2000 that is measured by rupiah. Number of workers work per working day used by industry and measured by people. Imported raw material is the amount of raw materials and auxiliary materials used in industry production process and measured by percentage.

3.2 The Specification of Model

The equations used follow the Olley and Pakes estimation model (1996) in Amiti and Konings (2007), by using Cobb-Douglas production function,

$$Y_{it} = A_{it}(\iota) L_{it}^{\beta^l} K_{it}^{\beta^k} M_{it}^{\beta^m}$$

Information:

Y_{it}= output value for industry i on period t
L_{it}= the number of labor for industyi on period t
K_{it} = capital for industry i on period t
M_{it}= intermediate input for industry i on period t

The equations of Cobb-Douglas production function in natural log equation:

$$y_{it} = \beta_0 + \beta_l l_{it} + \beta_k k_{it} + \beta_m m_{it} + \eta_{it}$$

Information:

y_{it}	= Output value for industry i on period t (in rupiah)
l_{it}	= The number of labor for industry I on period t (people)
k_{it}	= Capital for industry i on period t(in rupiah)
m_{it}	= Imported intermediate input for industryi on period t (percentage)
β_l, β_k, β_m	= The explanation of capital productivity parameter, labor, and imported intermediate input
η_{it}	= *errorterm*

3.3 Stationery Data Test

Unit root test is a tool to test stationary data so the relation among variables will be valid. Unit root test used in this research based on some statistic test such as level and first difference. Unit root test is used to output value variable (*Y*), company capital (*K*), labor used in production process (*L*) and imported intermediate input on industry (*M*), all variables is stated on natural log form. Unit root test used in this research is Levin, Lin & Chu test on level with individual intercept and trend.

The result of Unit root test on the research variables showed that statistically all of the variables were significant at a real level α of one percent that could be seen in table 1.

Table 1. Panel Unit Root Test

Metode	Prob.**			
	Ln_Y	Ln_L	Ln_K	Ln M
ADF-Fisher Chi-Square	0,0188	0,0000	0,9995	0,0005
PP-FisherChisquare	0,0000	0,0000	0,0000	0,0000

Source: Estimation output using *Eviews 6*

3.4 The Selection of the Best Model Approach

Chow Test was used as the selection facility for deciding the best method approach either PLS or FEM. The result of Chow Test showed the statistic value with a probability was 0,0000< 0,05 if H_0: intercept as same which mean H_0 was rejected. This showed that FEM approach was better than PLS approach so it could be stated that the best approach to estimate model on this research was FEM with White Test.

The significant test for Random Effect used LM test that based on chi-squares distribution with degree of freedom is the number of independent variable. The result of LM with degree of freedom was 1084,422 which higher than statistic critic value with confidence level is one percent, H_0 was rejected which mean that the proper estimation was REM.

There was a different result between FEM estimation model and REM model, so we must decide the better model. To decide the best estimation model betweem FEM and REM, we use Hausman Test. Hausman test will show whether the combined error term between the individual error term and time series error term correlates with the explanatory variables. The result from Hausman test was 33,1730 with χ^2 at df = 3 which significant at a real level of one percent, H_0 was rejected which mean FEM was better than REM. The result of Chow and Hausman Test could be seen on table 2.

Table 2 Model Selection Test

Effect Test	**Chow Test**	**Hausman Test**
Estimation Result	0,0000	0,0000

Source: Estimation Result *Eviews 6*

The estimation for production function equation model of company was used FEM method with White Test. The estimation result got R^2 0.97 with *prob (F-statistic)* was 0.0000 which was lower than confidence level of one percent. The estimation result of PLS, FEM, and REM model could be seen on Table 3.

Table. 3 Estimation Result

Variabel	PLS	FEM	REM
Ln_L	0,4766***	0,5336***	0,5564***
Ln_K	0,0674***	-0,0046	-0,0009
Ln M	0,4684***	0,5953***	0,5151***
C	6,6324***	4,9272***	6,2691***
R^2	0,8354	0,9764	0,7534
F-statistik	923,9506	350,7842	555,9286
D-W Stat	0,3740	1,4445	1,0667

Source: Estimation Result *Eviews 6*

Keterangan:

L = Company Labor (measured by People)

K = Company Capital (measured by Rupiah)

M = Imported intermediate input of company (measured by percentage)

C = Constanta
*** Significant at α = 1 persen
** Significant at α = 5 persen

3.5 Model Evaluation

The classical assumption test was performed so that the model can generate an estimator that meets the Best Linear Unbiased Estimator (BLUE) criteria. The classical assumption test includes normality test, multicollinearity test, heteroscedasticity test and autocorrelation test. Normality test with Jarque Bera test obtained p-value of 1.479. It showed that the p-value value was lower than the value of chi-square 7,81 on the confidence level α 5 percent and df = 3. Thus H_0 is not rejected and the residual is normally distributed. So it could be concluded that normality criteria for estimation model has been fulfilled.

Multicollinearity indicates that there is a linear relationship among independent variables. The multicollinearity test was done by looking at the VIF value, where the VIF value should not be greater than 10. From the calculation of correlation coefficient value produces VIF value of labor variable, capital equal to and PMA are less than 10 so it could be concluded that there was no violation of multicoliniearity assumption in model.

Heteroscedasticity can cause the estimator to be no longer BLUE since it no longer has a minimum variance, standard error calculations are no longer reliable because the result of regression estimation are inefficient and hypothesis testing based on F-statistic and t-statistic tests is not reliable.

Autocorrelation is the correlation between members of observations series sorted by time or sorted by space. Autocorrelation will cause the model to be inefficient although still unbiased and consistent. The test to detect autocorrelation problems can be done by looking at the Durbin-Watson Statistic on the model and comparing it with the D-W table value. From the estimation results obtained D-W value 1.428094 lower than the value of dL = 1.542 and dU = 681 means there was autocorrelation in the equation. However, since the model had been estimated with FEM of White Test then the problem can be corrected (Gujarati, 2009).

3.6 Model Specification Test

Model specification test based on statistical criteria through partial significantly test (t test), simultaneously (F test) and test of the determination coefficient (goodness of fit). Partial significance test or t test was conducted to find out whether the independent variables partially significant affect the dependent variable. F statistic test was performed to find out whether the independent variables together influence the dependent variable.

From the result of statistical test of F and statistical test of t test partially with the real level of α equal to 1 percent, it showed that all independent variable and each variable of labor and imported input have significant effect to production. The statistical t test result of capital gives insignificant results statistically.

Determination coefficient test is to see the percentage of total variation of independent variables that can be explained by the regression model. Testing was done by looking at Adjusted R-Squared from regression result. From the model estimation result, the R2 value of 0.9764 showed that the variable of labor, capital and import input was able to explain the variation of the company's production of 97.64 percent and the rest of 2.36 percent variation in the company's production was explained by other variables outside the model.

4. Research Results

From the estimation result, the coefficients of all variables were statistically significant and influential positive to the production. From regression result obtained the labor coefficient was 0.5336. This means that the numbers of workers positively affected production, an increase in labor by 1 percent, will increase production by 0.5336 percent with cateris paribus assumption. The result of the imported

intermediate input coefficient was 0.5972 means that the imported intermediate input has positive effect on the production. The increasing of imported intermediate input by one percent will increase production by 0.5336 percent with the cateris paribus assumption.

Griliches (1979, 1992) identified two types of technological spillovers concepts. The first concept was often called vertical form of money or rent spillover. This type of spillovers is focused on transaction-based relationships and usually occurs along the buyer-supplier chain. The importance of the type of intersectoral flow of technology as a source of spillovers was originally suggested by Schmookler (1966). Vertical spillovers that come with diffusion effects at inter-industry levels, such as inter-input usage from foreign suppliers or customers in the production chain. Vertical spillovers can occur through the backward linkages and the future linkages. Backward linkage is the linkage of domestic firms as suppliers of foreign-owned industries and the future linkage is the linkage of domestic industries as customers of foreign suppliers. Currently, almost all Indonesian manufacturing industries in the 3-digit KBLI still use imported intermediate inputs, although in a different percentages. The composition of expenditures for imported intermediate input in industry raw material expenditure is > 50 percent. The inputs used by the manufacturing industry consists of, raw materials, fuel, electricity and gas, other goods, industrial services, building leases, machinery and equipment, and non-industrial services. In this case, intermediate input is the largest component input used in the production process of the manufacturing industry which averages 8 .5 percent of each year in the period 12.

The influence of imported intermediate input usage to manufacturing production is positive and very significant. The use of imported intermediate inputs in some industries was still quite high indicating the use of imported intermediate inputs still more efficient than local intermediate inputs. The use of intermediate inputs in the manufacturing industry in Indonesia still uses imported intermediate input that are considered to have better quality. With the quality and technology embodied in a better imported intermediate input will increase the efficiency of the use of production inputs that will ultimately increase industry productivity. This indicates that the technological content contained in the intermediate inputs is increasingly associated in the production process of the manufacturing industry. This supports the opinion of Bwalya (2006) and (Wang, 2010) who found the influence of positive vertical spillovers from MnC on suppliers and buyers of their products in the Zambian industry. To date, the food and beverage industry (KBLI 15) and the motor vehicle sector (KBLI 34) still use imported intermediate inputs by > 87 percent (Hamzah, L.M, 2015). The use of imported intermediate inputs of the manufacturing industry in 2013 increased by 8.68% compared to 2012 (BPS, 2014).

Verspagen (1997a), states the importance of cross-sectoral spillover to explain that the magnitude of the spillover between industries was not always related to their technological similarity. Proximity technology was a better proxy for enterprise absorption capacity rather than a spillover between industries especially whether deliberate technology transfer or technological collaboration was complementary. In fact, what occurs often was complementary. Partnership may be better compared to technology competition.

MnC can establish linkage with local customers, that is, domestic industries buy goods as intermediate or service inputs from foreign-owned industries that can positively affect the efficiency and quality of output of domestic industries. In fact in Indonesia the agricultural input industry was currently supplied only by ten multinational corporations (MnC), the five giant corporations include Sygenta, Monsanto, Bayer Crop, BASF AG, and Dow Agro. The use of imported intermediate inputs in some manufacturing industries is still sufficient high. It indicates the use of imported intermediate input was still more efficient than the local intermediate inputs of the same kind. Currently MnC controls most of the trade chain both as input suppliers to marketing of products.

5. Conclusion

The vertical spillovers that occur through the use of imported equipment and raw materials brought a positive impact on the production of Indonesia's manufacturing industry. The effect of the use

of imported intermediate input to the production was highly significant on manufacturing industries. In some types of industries that were still high enough indicates the use of imported intermediated input was more efficient than local intermediate input. In addition, MnC control in Indonesia covers the entire chain of trade from input suppliers to marketing of products. The output quantity of intermediate input in each industry was strongly influenced by mergers and acquisitions. The merger of industries can change what once was the flow of goods between industries into the flow between industries. On the other hand, farmers rely on processed industry and food traders controlled by the top ten MnCs. Indonesia was also included in the grip of MNC network, especially Nestle which controls the world's cocoa trade, Cargill controls animal feed trade, and Unilever controls processed food. The world food retail is also controlled by MNC, including Wal Mart, Metro Group, Tesco, Seven & I Holdings, and Carrefour.

Liberalization in trade and industry sector gives opportunity to foreign to increase its market in Indonesia. They were not only entering trade but also ensuring their supply of goods. When viewed from the ownership, processed industry and food trade in Indonesia has been mastered by MnC. This was showed when they attempt to meet input needs through the backwards linkages of their industry. Spillovers technology from MnC occurs in the food industry through linkages of raw materials, labor mobility, competition and demonstration (training). Several types of industries such as food and beverage industry (KBLI 15), and motor vehicle sector (KBLI 34) were still used imported raw materials which high enough. Expected the technological spillovers from MnC will give positive impact to local companies that use imported intermediate inputs.

6. Suggestion

Government policies create programs with the aim of improving the structure of national industry both in terms of concentration of market domination and in terms of the depth of the network of raw material suppliers and supporting materials, components, and semi-finished goods for the downstream industry. Until now, the national industry concentration is very high. Another condition faced by the national industry was the high uncertainty of the relationship between business units. This condition encourages the industry to grow in a highly vertically integrated pattern.

To improve the industry concentration, the government will make efforts to uphold the principles of good corporate governance (GCG) systematically and consistently, and reduce the barriers to entry of new business units to monopolistic markets. It is also necessary to improve the healthy competition climate to encourage companies to compete due to the increasingly tight global competition.

Therefore, it needs policies;
1. Develop local supporting industries that make machines, production equipment, ready-to-use raw materials, which have quality in accordance with standard production requirements set by PMA.
2. Conditioning the quality of better industrial relations.
3. Establish a policy on MnC cooperation rules with small and medium-sized industries so that not only be a supplier, but also to provide technology transfer.

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The Legal Politics of Recall Right of Political Parties Relevance with the System of Popular Sovereignty in Dynamics of the Constitution of Indonesia

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Abstract

The existence of regulation of recall rights of political parties as regulated in Law No. 17 of 2014 and Law No. 2 of 2008 bring a great influence on the position of legislative members. Based on these rules, legislators may be dismissed from their positions if proposed by Political Party. This certainly brings a polemic for the people as the sovereign owner, who have chosen their representatives through the electoral process, but when chosen representatives of the people can be dismissed from his position by a political parties through the mechanism of the right of recall. This research was done by doctrinal method approach as well as the use of the statute, historical, and conceptual approach. This results showed that the legal politics of recall right of political parties is actually only used as an instrument of the political parties in controlling its members in parliament in order to always adhere to the party's policy direction. This makes the recall right political party is legal products that characterized conservative or orthodox. The existence of a political party's recall rights order gives a great authority to the political parties to negate the result of the people's choice as the holder of sovereignty for the sake of the political party. The function of political parties as a means of political recruitment in the process of filling political office in this case as members of the legislature, should have been completed after the people chose their representatives through electoral mechanisms. Therefore, it is necessary for the reconstruction of the ideal and relevant recall rights arrangement to the people's sovereignty.

Keywords: *Legal Politics, Recall, Sovereignty of the People, Political Party.*

1. Introduction

Indonesia is a democratic country. In this understanding, the people have a very important position, because sovereignty is in the hands of the people. Article 1 Paragraph (2) of the 1945 Constitution of the State of the Republic of Indonesia (the 1945 Constitution) states that "Sovereignty is in the hands of the people and carried out according to the Constitution". The provision of Article 1 paragraph (2) is a legal political corridor[1] in manifesting the meaning of people's sovereignty in the regulation of representative institutions of the people.

[1] Etymologically, the legal term of law comes from the Dutch term, rechtspolitiek. From this term there are two syllables namely rechts which means law, and the law itself comes from the Arabic word hukm plural of ahkam, which means decree, decrees, command, government, power, punishment and so on. In the Dutch language dictionary the word politiek contains beleid meaning. The word beleid itself in Indonesian means policy. From this etymological understanding it can be said that legal politics is a legal policy. The policy itself

Kusnardi and Harmaily Ibrahim argued that it is the people who are regarded as owners and holders of supreme authority in a country.[2] As the owner and the holder of power, the people determine the style and manner of governance organized, and determine the goals to be achieved state.[3] In the 1945 Constitution, people's sovereignty is exercised through a representation system. Jimly Asshidiqie states that the sovereignty of the people with a system of representative or common democracy is also called a representative democracy system (representative democracy) or indirect democracy (indirect democracy).[4]

In the practice of state administration, the filling of representative institutions is carried out through General Election (Election). Election is one of the instruments to realize the sovereignty of the people who intend to form a legitimate government and a means of articulating the aspirations and interests of the people.[5] Therefore, in the development of the modern state, elections are a milestone for democracy.

The realization of the people's sovereignty through direct election as a means for the people to elect their representatives has been affirmed in Article 22E of the 1945 Constitution namely "Elections are held to elect members of the People's Legislative Assembly, Regional Representative Council, President and Vice President and House of Representatives Area". The more complete regulation is regulated in Law Number 7 Year 2017 on General Election.

The recruitment process for membership of the people's representative is based on political parties, so that no single member of the council is not bound by a political party. As stated in Article 22E Paragraph (3) of the 1945 Constitution that "the participants of the general election to elect members of the People's Legislative Assembly and members of the Regional People's Legislative Assembly shall be political parties."

Members of House of Representatives (DPR) and Regional People's Representative Assembly (DPRD) besides can be selected, may also be dismissed from office. The provisions concerning the reasons for the termination of time between members of the representative body are stipulated in Article 239 paragraphs (1) and (2), Article 355 paragraphs (1) and (2), and Article 405 paragraph (1) and (2) of Law Number 17 2014 on the People's Consultative Assembly, the House of Representatives, the Regional Representative Council and the Regional People's Legislative Assembly (MD3 Law). Article 239 paragraph (1) states that members of the DPR shall terminate from time to time because:

1. died;
2. resign; or
3. dismissed.

Article 239 paragraph (2) of the MD3 Law further explains that members of the DPR shall be dismissed from time to time if:

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in the Great Indonesian dictionary is a set of concepts and principles that outline and plan the basis for implementing a leadership hire, and how to act. When it is associated with this understanding then legal politics is a series of concepts and principles that outline and basic plan in the implementation of a job, leadership and how to act in the field of law.Yasir, Armen. (2010). *Makalah Bahan Kuliah Politik Hukum*. Lampung: Universitas Lampung, p. 1.

[2]Kusnardi, Moh. and Ibrahim, Harmaily. (1983). *Pengantar Hukum Tata Negara Indonesia*. Jakarta: PSHTN FHUI, p. 328.

[3]Asshidiqie, Jimly. (2006). *Pengantar Ilmu Hukum Tata Negara Indonesia*. Jakarta: Sekretariat Jenderal dan Kepaniteraan Mahkamah konstitusi, p. 168.

[4]*Ibid*, p. 328. According to Jimly, the relationship between the people and the daily power of the State usually develops on the basis of two theories, namely the theory of direct democracy (direct democracy) in which the sovereignty of the people can be done directly in the sense of the people themselves who exercise the highest authority it has, and indirect theory of democracy (representative democracy). In modern times today with the complexity of the problems encountered, the teachings of indirect democracy, or often called representative democracy, are becoming more popular today. Usually the implementation of this sovereignty is called a representative institution. Asshiddiqie, Jimly. (1994). Gagasan Kedaulatan Rakyat *Dalam Konstitusi dan Pelaksanaannya Di Indonesia*. Jakarta: PT Ichtiar Baru Van Hoeve, p. 70.

[5]Tricahyo, Ibnu. (2009). *Reformasi Pemilu Menuju Pemisahan Pemilu Nasional dan Lokal*. Malang: In-Trans Publishing, p. 6.

1. unable to carry out their duties continuously or remain as members of the People's Legislative Assembly for 3 (three) consecutive months without any explanation;
2. violating the oath / pledge of office and the code of ethics of the People's Legislative Assembly;
3. be found guilty on the basis of a court decision that has obtained permanent legal force for committing a crime under penalty of 5 (five) years or more;
4. not attend plenary and / or meeting meetings of DPR parliament which become its duties and obligations as much as 6 (six) times in a row without valid reason;
5. proposed by its political party in accordance with the provisions of legislation;
6. no longer qualify as a candidate for member of the People's Legislative Assembly in accordance with the provisions of legislation regarding elections;
7. to violate the prohibition provisions as regulated in this Law;
8. to be dismissed as a member of a political party in accordance with the provisions of laws and regulations; or
9. become a member of another political party.

Provisions concerning interim termination of members of the DPR as referred to in Article 239 paragraphs (1) and (2) shall apply mutatis mutandis to the interim termination of members of the DPRD.

There is an interesting point in the provision of interim termination of members of the DPR and DPRD, namely the reason for the dismissal of members of DPR and / or DPRD from their positions when proposed by their political parties and dismissed as members of political parties in accordance with the provisions of legislation. More clearly in Article 16 paragraph (1) of Law Number 2 Year 2008 regarding Political Parties as amended by Law Number 2 Year 2011 on Amendment to Law Number 2 Year 2008 regarding Political Party (Political Party Law) Members of Political Parties shall be dismissed from Political Parties if:

1. died;
2. to resign in writing;
3. being a member of another Political Party; or
4. violate AD and ART.[6]

Arrangements for dismissal of members of political parties that have been regulated in the law, indirectly have an influence on the existence of existing members in parliament. Article 16 paragraph (3) of the Political Party Law further explains that "In the event that a member of a dismissed Political Party is a member of a representative body of the people, the dismissal from membership of a Political Party shall be followed by the dismissal of membership in a representative body in accordance with the law."

Arrangements on the recall of political parties have actually experienced dynamics from time to time. The regulation of political party recall has existed since Soekarno's reign, but never disappeared from the legislation at the beginning of the reformation period with Law Number 2 Year 1999 (on Political Parties) and Law Number 4 Year 1999 (regarding Arrangement and Status The People's Consultative Assembly, the People's Legislative Assembly, and the Regional People's Legislative Assembly), the recall is excluded, recall except for the inevitable reasons of dying, resigning, or being sentenced with certain qualifications.

However, subsequent to the amendment of the 1945 Constitution which contains the provisions of Article 22B[7] (Second Amendment, Year 2000), the regulation on the right of recall of political parties is stated again in Law Number 22 Year 2003 regarding the Composition and Position of the People's Consultative Assembly, The People's Legislative Assembly, the Regional Representatives Council and the Regional People's Legislative Assembly and Law Number 31 Year 2002 on Political Parties.

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[6] AD refer to articles of association, and ART refer to bylaws.

[7] Article 22B of the 1945 Constitution state that Members of the People's Legislative Assembly may be dismissed from office, whose terms and ordinances are governed by law.

The existence of the regulation on the right of recall of political parties, has led to a polemic in the constitutional process. It is seen by the process of judicial review to the Constitutional Court in 2006 with the Decision of the Constitutional Court of the Republic of Indonesia no. 008 / PUU-IV / 2006 concerning the Judicial Review of Law Number 22 Year 2003 regarding the Composition and Status of MPR, DPR, DPD and DPRD and Law Number 31 Year 2002 on Political Parties Against the 1945 Constitution, and in 2010 by Court Decision Constitution of the Republic of Indonesia No.38 / PUU-VIII / 2010 concerning the Judicial Review of Law Number 27 Year 2009 concerning the People's Consultative Assembly, the People's Legislative Assembly, the Regional Representative Council and the Regional People's Legislative Assembly.

The other side, in the implementation of the use of recall rights of political parties is also causing much controversy. The latest case of the use of recall rights of political parties is in the dismissal of deputy chairman of the House of Representatives Fahri Hamzah who came from the Prosperous Justice Party (PKS). Fahri Hamzah has been sacked by his party in March 2016. This inter-time stoppage or recall of Fahri Hamzah is based on the grounds of having been in the statutes and by-laws of the party.[8]

Based on the above description, the authors are interested to examine the politics of political rights recall political party relevance to the sovereignty system of the people in the dynamics of state administration of Indonesia through the study of legal doctrines, principles of law and the provisions of legislation regulating the rights recall political parties.

4. Method

This research is conducted by corridor of doctrinal research which only use secondary data. The legal research model is a comprehensive and analytical study of primary legal materials and secondary legal materials. The problem approach uses statute approach and conceptual approach.[9] The data were analyzed qualitatively by describing the data generated from the research into the form of explanation systematically so as to obtain a clear picture of the problem under study, the results of data analysis deductive concluded.

5. Discussion

5.1 Arrangement of the Recall Right of Political Parties in the Legislation

Harun Al Rashid points out that the Inter-Time Dismissal or so-called Recall is the right of a political party to withdraw the elected parliamentarian through the list of candidates it submits.[10] In line with the opinion of Harun Al Rashid, long before Indonesia entered the reform era, Muhammad Hatta stated that the recall rights of undisputed political parties were only known in the communist countries, with the view that the party is everything and as if sovereign parties.[11]

Denny Indrayana reveals that the recall is a mechanism to dismiss a lawmaker before his term expires.[12] The same thing, J.J.A. Thamassen also stated that *Recall Recht: het recht van een politieke partij om een via haar kandidaten lijst gekozen parlementslid terug te reopen.* Thus, the recall is the

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[8] http://pks.id/content/penjelasan-pks-tentang-pelanggaran-disiplin-partai-yang-dilakukan-saudara-fahri-hamzah accessed on August 29, 2017 at 20:00 pm

[9] Mahmud, Peter. (2005). *Penelitian Hukum.* Jakarta: Kencana Prenada, p. xx.

[10] Decision of the Constitutional Court of the Republic of Indonesia No. 008 / PUUIV / 2006 on Tests of Law Number 22 Year 2003 on the Composition and Position of MPR, DPR, DPD, and DPRD and Law Number 31 Year 2002 on Political Parties Against the 1945 Constitution.

[11] Mahendra, Yusril Ihza. (1996). *Dinamika Tatanegara Indonesia: Kompilasi Aktual Masalah Konstitusi, DPR dan Sistem Kepartaian*. Jakarta: Gema Insani Press, p. 171.

[12] Decision of the Constitutional Court of the Republic of Indonesia in Case No.008 / PUU-IV / 2006…, *Op.Cit.*

right of a political party to withdraw the elected parliamentarian through the list of candidates it submits.[13] Recall in the MD3 Law is referred to as a stop interchange of time.

Arrangement of members of the DPR in the context of history in Indonesia has experienced dynamics. During the reign of President Soekarno, recall of MPs was possible and even the implementation was very authoritarian. Because of the permissive use of recall rights at that time, no less than a Muhammad Hatta criticized the recall. When the period of the recall arrangement is regulated in Article 13 of Law Number 10 Year 1966 regarding the Position of the Provisional People's Consultative Assembly and the People's Representative Council of Gotong Royong Approaching the General Election, stating that "The appointment and dismissal of members of the MPRS and DPR-GR shall be stipulated by such agency article 4 or by such party / organization / agency in article 15 for further through the leadership of MPRS / DPR-GR authorized by the President. "

The setting and practice of recall also continued during the Soeharto regime during the New Order era. The regulation of recalls in the New Order era is explicitly construed in the legislation on the basis of juridical Article 4 of Law Number 16 Year 1969 on the Composition and Position of the People's Consultative Assembly, the People's Legislative Assembly, and the Regional People's Legislative Assembly (Dewan Perwakilan Rakyat). Recall at the time was used as a weapon to silence politicians who did not follow the rhythm of the strains of the president. Bung Hatta once criticized the right of recall and requested that the House revoke it. He also deplored the jurists who were silent when the recall right was processed in the DPR.[14]

Conditions changed in 1998 when Suharto resigned,[15] demands to remove recall agencies (stopping half way) against members of Parliament / DPRD has been raised in the New Order era. The existence of recall system caused many people's representatives to become uncritical, even afraid to voice the aspirations of the people. In the reform era, recall was successfully abandoned, recall except for the inevitable reason of death, resignation, or sentence of criminal with certain qualification. [16] This can be seen in Law Number 4 Year 1999 on the Composition and Position of the People's Consultative Assembly, the People's Legislative Assembly, and the Regional People's Legislative Assembly (Dewan Perwakilan Rakyat).

In the period following the amendment of the 1945 Constitution which contains the provisions of Article 22B (Second Amendment, Year 2000), the replacement of members of Parliament is again mentioned in Article 85 of Law Number 22 Year 2003 on the Composition and Position of the People's Consultative Assembly, the House of Representatives, and the Regional People's Legislative Assembly, as well as in Law Number 31 Year 2002 on Political Parties. According to Mahfud MD, the reason for the return of recall arrangements because the leadership of political parties is expected to supervise and hinder members of Parliament / DPRD who commit disgraceful acts such as selling votes against the head of the region.[17] However, once the recall setting is revived, the party's management can threaten (and already proven to be) recalling its members for reasons that are still controversial.[18] Re-enactment of recall rights by granting the authority of political parties to dismiss their members in the DPR shows that the existence of political parties is retreating back to authoritarian times.[19] In the history of Indonesia the right of recall was revived in the regime of

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[13]J.J.A. Thamassen (red). (1981). *Democratie, Theorie en Praktijk*, Alphen aan den Rijn, Brussel, Samson Uitgeverij, p. 156, cited from Decision of the Constitutional Court of the Republic of Indonesia in Case No.008 / PUU-IV / 2006…, *ibid*.

[14]Refer to Harian Kompas, March 1, 1973. Cited from Harun Al-Rasyid inside Decision of the Constitutional Court of the Republic of Indonesia in Case No.008 / PUU-IV / 2006.., *Op.Cit.*

[15]Yulius P. Hermawan inside Sugeng, Bob dan Schuck, Christoph. (2010). *Demokrasi di Indonesia: Teori dan Praktik*. Yogyakarta: Graha Ilmu, p. 99.

[16]Mahfud MD, Moh. (2010) *Perdebatan Hukum Tata Negara (Pasca Amandemen Konstitusi*). Jakarta: PT Raja Grafindo Persada, p. 165.

[17] The existence of the rule that the regional head is elected by the DPRD in Law Number 22 of 1999 on Regional Government.

[18]Mahfud MD, *Perdebatan Hukum Tata Negara ... Op.Cit.*

[19]Arbi Sanit, inside Decision of the Constitutional Court of the Republic of Indonesia in Case No.008 / PUU-IV / 2006..., *Op.Cit.*

President Soeharto, and therefore on the spirit of recall rights reform was eliminated for the 1999 elections.

The next arrangement as regulated in Law Number 27 Year 2009 is still the same that impose the right of recall of political parties. The arrangement of the recall of members of the People's Legislative Assembly provided in the law provides that the recall of members of Parliament conducted by political parties is not required to investigate and verify by the Honor Board and the absence of any legal remedy that can be done by the members of the Council if they object. This gives an enormous amount of authority to political parties to dismiss members who are members of the DPR who can only be based on their likes or dislikes or against party policies.

Further development, the existence of a change of law that is with Law No. 17 of 2014. In this arrangement is basically the same that is the right of recall given to political parties. However, the difference in this latest arrangement, there is room in providing opportunities for board members to take legal action if they object. The clause is stated in Article 241 paragraph (1) stating that "In the event that a member of a political party is dismissed by its political party as referred to in Article 239 paragraph (2) letter d and concerned appeals by court, its dismissal is valid after a court decision has been obtaining a permanent legal force. "

Based on the analysis of the dynamics of the regulation of recall rights of political parties above, the authors conclude that the beginning of the existence of recall rights of political parties is used as a tool for political parties in controlling the existing members in parliament. This is an attempt by political parties to maintain their power in parliament. Recall is used as an institution to silence critical council members and not in accordance with the policies of political parties. So in the early days of reform, when the spirit of change to restore sovereignty into the hands of the people, the recall is eliminated.

5.2 The Relationship Between a Political Party, a Representative Body of People, and an Electoral System

Political parties are a necessity in democratic modern political life. As an organization, political parties are ideally meant to activate and mobilize the people, to represent a particular interest, to provide a compromise way for competing opinions, and to maximize legitimate and peaceful political leadership.[20] It can be argued that the political party in essence has a status (position) and a role (role) is central and important in every democratic system. Political parties are commonly referred to as pillars of democracy, because they play an important role as a link between the state government and its citizen.[21]

Political Parties as stipulated in Article 11 of the Political Party Law, have the function of one of them is as a means of political recruitment in the process of filling political office through democratic mechanisms by taking into account gender equality and justice. The function of political recruitment inherent in the political party is one of them as the process of filling members of the House.

Parliament as part of the representative body of the people who are present in the Indonesian state administration system is a manifestation of the implementation of the mandate of the 1945 Constitution. To be eligible for membership of the People's Legislative Assembly, a person shall be elected through a general election held once every five years as provided in Article 19 paragraph 1) juncto Article 22E Paragraph (1) and (2) of the 1945 Constitution. [22]

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[20]Fadjar, Abdul Mukthie. (2012). *Partai Politik dalam Perkembangan Ketatanegaraan Indonesia*, Malang: Setara Press, p. 13.

[21]Asshiddiqie, Jimly. (2008). *Pokok-Pokok Hukum Tata Negara Indonesia Pasca Reformasi*. Jakarta: PT Bhuana Ilmu Populer, p. 710. Sigmund Neumann argues that political parties are: "An articulate organization composed of active political actors in society, those who focus on the control of governmental power and those competing for popular support, with some other groups having different views - different." Abdul Mukthie Fadjar, *Ibid.,*p. 14

[22]Article 19 Paragraph (1) of the 1945 Constitution reads "Members of the Council of Representatives of Rayat are elected by general election." Article 22E Paragraph (1) reads "Elections shall be conducted in a direct, public, free, secret, honest and fair manner every five years." Furthermore, paragraph (2) reads, "General

Political parties are placed as participants in an election to elect members of Parliament. This proposition is expressly stated in Article 22E Paragraph (3) of the 1945 Constitution states that "election participants to elect members of the People's Legislative Assembly and members of the Regional People's Legislative Assembly shall be political parties."

The election to elect members of DPR, Provincial DPRD, and Regency / Municipal DPRD shall be implemented with an open proportional system. [23] It is stipulated in Article 168 paragraph (2) of Law Number 7 Year 2017 on General Election. Through an open proportional system the people no longer only choose the party's signals but are directly drawn against the candidates to be elected to sit in parliament. In an open proportional system, who gets the most votes he chooses without questioning the serial number.

The electoral system in Indonesia has in fact changed over time. The 1999 elections adopted a proportional representation system with a closed list. [24] So that the closed list system of proportional representation gives the party authority to determine the elected MPs and councils. The consequence of this system is that the people's representatives must first represent the party rather than their constituents. This is based on the fact that the people (voters) give their votes to the Party, not directly to the people's representatives. [25]

The 2004 elections adopted an open list system to select members of the DPR, Provincial and Regency / Municipal DPRDs.[26] Through this system, voters choose both parties and candidates. However only the candidate who gets the vote reaches the "Voter Sharing Voters" which can be declared elected. If the election participants do not reach the "Voter Shares", then the subsequent determination is based on the serial number.

In its development, initially the electoral system in 2009 also used a proportional system with open lists. [27] However, through the Constitutional Court Decision Number 22-24 / PUU-VI / 2008, has changed the electoral system into an open proportional system with the application of the most votes. Based on the Constitutional Court's decision, the placement of sequential numbers is considered as a form of political party oligarchy that negates the will of the people in determining their representatives.

Regarding the electoral system, it can be observed that the more the electoral system provides more and more space for the people to decide for themselves, the system will be closer to the nature of popular sovereignty. The more the system narrows the space for the people to make their choice, the system will further away from the sovereignty of the 1945 Constitution.[28] This is in accordance with the opinion of Valina Singka Subekti, that the electoral system is political engineering, political engineering tool, so the choice of one system the election is related to the ultimate goal to be achieved. [29]

Elections shall be held to elect members of the People's Legislative Assembly, Regional Representatives Council, President and Vice President and Regional People's Representative Council".

[23]The Electoral System is a method or method for transferring electoral votes to a representative body. Through a particular electoral system, the transformation of the people's sovereignty is manifested in the voting process to achieve certain political positions. se

[24] Pasal 1 ayat (7) Undang-Undang Nomor 3 Tahun 1999 tentang Pemilihan Umum, bahwa “Pemilihan Umum dilaksanakan dengan menggunakan sistem proporsional berdasarkan stelsel daftar.” Article 1 paragraph (7) of Law Number 3 Year 1999 regarding General Election, that "General Election is conducted by using proportional system based on list stelsel."

[25]Yulius P. Hermawan, Op.Cit., p. 135.

[26] This is stipulated in Article 6 paragraph (1) of Law Number 12 Year 2003 regarding General Election of members of the People's Legislative Assembly, Regional Representatives Council, and Regional House of Representatives, stating that "General Election to elect members of DPR, Provincial DPRD and Regency DPRD / The city is implemented by a proportional system with an open list of candidates. "

[27] Article 5 Paragraph (1) of Law Number 10 Year 2008 regarding General Election of Members of the People's Legislative Assembly, Regional Representative Council, and Regional House of Representatives, which states that "Elections to elect members of DPR, Provincial DPRD and Regency / Municipal DPRD shall be implemented with an open proportional system. "

[28]Fahmi, Khairul. (2011). *Pemilihan Umum dan Kedaulatan Rakyat.* Jakarta: PT RajaGrafindo, p. 6.

[29]Ibid., p. 215

According to Miriam Budiardjo, members of political parties elected based on a proportional system with an open list of candidates constitutionally can not be recalled by his party.[30] Recalling the concerned member of the council means denying or negating the results of popular elections as the holder of sovereignty. Elections with the highest number of votes indicate that the choice depends on the people, no longer based on the authority of the political party by placing the serial number. Members of the People's Legislative Assembly representing the people, in the name of the Members of the People's Legislative Assembly, are essentially statesmen. He can not simply extend his party's hand.

Thus, the function of political parties as a means of political recruitment should be completed with the election of legislative candidates which are the result of the people's choice. Therefore, political parties should not be eligible to replace elected candidates unless they have the consent of the people who have elected them.

Based on the above description, the authors draw the conclusion that through certain electoral system will reflect the realization of people's sovereignty. Electoral system with the most votes means placing the people as the holder of sovereignty, no longer the dominance of political parties in the placement of representatives of the people through the smallest serial number. However, with the regulation of the right of recall, the political party made the political party more dominant against the dismissal of the people's representative. Supposedly, when the people as the holder of sovereignty are entitled to vote, then the political party should not have the right to dismiss it.

5.3 The Legal Politics of the Recall Rights of Political Parties as Instruments of Leadership of Political Parties in Controlling Their Existing Members in Parliament

Experts differ on the legal definition of law; Padmo Wahjono said that legal politics is the basic policy that determines the direction, shape, and content of the law to be formed.[31] Satjipto Rahardjo defines the politics of law as the activity of choosing and the means to be used to achieve a social goal with certain laws in society. [32] As for Mahfud MD argues that legal politics is a legal policy or an official (policy) line of law that will be enforced either by the creation of a new law or with the replacement of the old law, in order to achieve the objectives of the State. [33]

The concept of legal politics to be used is the concept of Mahfud MD which gives the following proposition: in the context of law as a political product, democratic political configuration will produce responsive law, whereas authoritarian political configuration will lead to orthodox or conservative law. [34]

Responsive or populistic legal products are legal products that reflect a sense of justice and meet community expectations. In the process of making it gives a big role and full participation of social groups or individuals in society. While conservative or orthodox legal products are legal products whose content more reflects the social vision of the political elite, more reflective of the wishes of the government, is positivist-instrumentalist, namely being a tool of state ideology and program implementation. [35] Using this concept will be seen the political law of recall rights arrangements in the Indonesian state administration system.

The regulation of recall of political parties as stipulated in the Law on MD3 provides no clear restriction on the reasons for the dismissal between members of the legislature when proposed by their political parties. In contrast, in the provisions of Article 240, it contains only administrative rules in the dismissal of such legislative members. Article 240:

(1) Dismissal of members of the People's Legislative Assembly as referred to in Article 239 paragraph (1) a and b as well as in paragraph (2) letter c, letter d, letter g, and letter h is

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[30]Decision of the Constitutional Court of the Republic of Indonesia in Case No.008 / PUU-IV / 2006..., *Op.Cit*.

[31] Wahjono, Padmo. (1986). *Indonesia Negara Berdasarkan Atas Hukum*. Jakarta: Ghalia Indonesia, p. 160. inside Mahfud MD, Moh. (2012). *Politik Hukum di Indonesia*. Jakarta: RajaGrafindo Persada, p.1.

[32] Rahardjo, Satjipto. (1991). *Ilmu Hukum*. Bandung: Citra Aditya Bakti, p. 352-353.

[33] Mahfud MD, Moh., *Politik Hukum di Indonesia*, … Op.Cit., p. 2.

[34] *Ibid*., p. 7.

[35] Ibid., p. 31-32

proposed by the leadership of a political party to the leadership of the DPR with copies to the President .

(2) The maximum of 7 (seven) Days from the receipt of the proposed dismissal as referred to in paragraph (1), the leadership of the People's Legislative Assembly shall submit a proposal for dismissal of members of the People's Legislative Assembly to the President to obtain the inauguration of the dismissal.

(3) The President shall inaugurate the dismissal as referred to in paragraph (2) no later than 14 (fourteen) days after the receipt of the proposed dismissal of DPR members from the DPR leadership.

Based on these provisions, according to the authors in this case the role of leaders of the House and the President is limited to only authorization, the authority remains in the leadership of political parties. In addition, in the Political Party Law also does not regulate in detail the dismissal of membership of political parties, in Article 16 paragraph (1) only provides that Members of Political Parties are dismissed from Political Party if:

1. died;
2. to resign in writing;
3. being a member of another Political Party; or
4. violate AD and ART.

The political party's domination of its members sitting in representative institutions is very big. Political parties may use the instrument of recall of political parties constitutionally to enforce its members in parliament to follow what the party instructs.

Legal policy on recall rights is strongly influenced by the political will (political will) supra political structure (government and parliament) and political infrastructure (political party) itself which is not always in accordance with the nature of people's sovereignty and the fact that members of the People's Legislative Assembly as representative of the people, party. Recalling by a political party of its members sitting in a representative institution for the reason of violation of the ART does not guarantee the due process of law which is one of the principles of the rule of law, as it may be a subjective leader of a political party that is difficult to control by the public.[36] Harun Al Rashid quoted Manual Luis Quezon, a former Philippine President who said, when a person is elected to parliament, he says "my loyalty to my party ends when my loyalty to my country begins" which means my loyalty to the party ends when my loyalty to the homeland and the nation began.[37]

The provision of this recall is a redundant provision and is excluded from the domain of the Political Party's power, since the terms of the criteria for the reasons for dismissal of a member of a political party that is a member of the People's Legislative Assembly have been accommodated and become the authority of the Council of Honor Board. The mechanism of recall should be avoided by the people should be avoided because it will lead to party oligarchy. [38]

Muhammad Hatta stated that the recall rights of an inviolable political party are known only in the communist countries with the view that the party is everything and as if it is a sovereign party.[39] Robert Michels also specifically rejects the presumption of representation leadhership, since most of the policies of mass organizations do not reflect the will and interests of the masses, but reflect the will and interests of the leader.[40] Organizations and also political party organizations sometimes act out loud for and on behalf of the interests of the people, but in reality on the ground it is fighting for the benefit of its own board.[41]

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[36] Dissenting Opinion inside Decision of the Constitutional Court of the Republic of Indonesia in Case No.008 / PUU-IV / 2006 Putusan Mahkamah Konstitusi Republik Indonesia dalam Perkara No.008/PUU-IV/2006..., Op.Cit.

[37]Putusan Mahkamah Konstitusi Republik Indonesia dalam Perkara No.008/PUU-IV/2006 Decision of the Constitutional Court of the Republic of Indonesia in Case No.008 / PUU-IV / 2006..., *Op. Cit*.

[38]Denny Indrayana, *Ibid*.

[39]Muhammad Hatta, inside Yusril Ihza Mahendra,...*Op.Cit.,*p. 171.

[40]Seymour Martin Lipset, *Pengantar* untuk edisi bahasa Inggris, inside Michels, Robert. (1984). *Partai Politik Kecenderungan Oligharki dalam Birokrasi*. Jakarata: Rajawali, p. Xxvii.

[41]Assiddiqie, Jimly. (2006). *Kemerdekaan Berserikat Pembubaran Partai Politik dan Mahkamah Konstitusi*. Jakarta: Konstitusi Press, p. 68.

This is illustrated by the fact that the political parties make the recall as a tool to control the members of the council so that the members of the council are subject to the policies made by political parties. So indirectly, the parliamentarians in the parliament are fighting for the interests of the political parties that overshadowed him and this has led to the fact that members of the DPR are no longer representative of the people, but are representative of a group of people within the Political Party. Therefore, according to the authors of the right of recall owned by political parties to their members in parliament does not reflect the principle of people's sovereignty, the recall will only serve as a pre-requisite for political parties to channel the interests of political parties. Arbi sanit also revealed that viewed from the perspective of political science and government shows irrelevansi rights recall with the process of democracy is carried out reformatively.[42]

Meanwhile, the 1945 Constitution also does not expressly give recall rights to political parties in order to recall members of their elected party as members of DPR. The right of recall is not initiated by the founding fathers in BPUPKI / PPKI meetings during the constitutional review. It is also not proposed in the sessions of the MPR at the time of the amendments of the 1945 Constitution. The right of recall does not include constitutional given for political parties.[43]

When listening to the history of the Indonesian constitution, the framers of the constitution, embracing the theory of the representative as a trustee means that the people's representatives have the freedom to act and be given full trust.[44] This is reflected in Article 90 of the 1949 Constitution of the Republic of Indonesia which states that, "Members of the People's Legislative Assembly shall issue their votes as free men, in their feelings and inner honor, not on the orders and obligations of consultation with the person appointing them as members."

Thus, according to the authors, the rule of law on recall rights of political parties today has a more conservative or orthodox character.

6. Conclusion

Based on the previous section, it can be concluded that Political law of recall rights of political parties is basically an instrument of leadership of political parties in controlling its members in parliament. The existence of the party's recall rights order becomes a legitimacy for the party leadership to control its members to always follow the direction of party policy. The consequences that arise, the dismissal of legislative members by political parties has caused much controversy because the reasons for dismissal are often based on subjective reasons. This makes board members more loyal to political parties than the people they are supposed to represent.

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[42]Putusan Mahkamah Konstitusi Republik Indonesia dalam Perkara No.008/PUU-IV/2006 Decision of the Constitutional Court of the Republic of Indonesia in Case No.008 / PUU-IV / 2006..., *Op. Cit*.

[43]HM.Laica Marzuki, *ibid*.

[44] Surbakti, Ramlan. (1992). *Memahami Ilmu Politik*. Jakarta: Gramedia Widyasarana, p.174.

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Strengthening the Integrity of Local Leadership and its Relevance to the Effort to Run a Democratic Government

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Abstract

Even though many aspects that shows how to run a democratic government, but the most important aspect is related to the leadership of integrity. The leadership of integrity put the perspective of power in the orientation of partisanship on the people. In addition, democratic governance at the local level can be run effectively and constructively if in his leadership held with integrity. In other words the leadership of integrity is a requirement to run a democratic government. Therefore, the integrity of local leadership should be encouraged. Strengthening the integrity of local leadership includes two main things, namely giving a great opportunity for people participation and is committed to clean government and accountable. Our conception of the strengthening local leadership integrity and relevance of a democratic government to explain the importance of aspects of leadership in maintaining the continuity of a government. For success or failure of a reign of depending on how to achieve democratisation in government can be achieved and get the highest appreciation from the community. Therefore, the purpose of the writing of this article is to explain the significance between the leadership of integrity with democratic governance and elaborating how to strengthen the integrity of the leadership in the efforts to achieve a democratic government.

Keywords*: leadership, leadership integrity, democracy, local government, democratic governance.*

1. Introduction

The needs of a democratic governance is a reality which is currently. Why? For in the democratic governance within the meaning of the importance of the presence of the community as the subject of power. The presence of the community in this not only when will conduct the election or elections, but more participate in a government that is running.

To implement a democratic governance, required strong leadership and have integrity. The leadership of integrity will be able to navigate the steps and policies taken by the government under his leadership to the direction that can give something useful for the community. Therefore, between leadership and governance are two subject that is intertwined with each other, especially in the condition of how a government can be run well and democratic.

Basically, leadership and government are two different theoretical concept. The leadership is often interpreted as an Engineering, how, styles and strategy a leader in influencing others in the process of achieving. Government is the container or the institution of the place of the ruler (government) with people (ruled) do the interaction. Muslim and Hayati (2012) stated that leadership of the government is the ability or skill a leader in influenced others in the achievement of the purpose of the rule of (Nas, 2015: 1-7).

Even though the concept of theoretically different, leadership and government have mutual contact with one another. One of them is to create a clean government and accountable and to be able to invite the participation of society to participate in the government. A leader who does not have the capability to lead the government will tend to ignore the problems faced by the community. So also the leader who conceive themselves rulers tend to be run by authoritarian governments and badly mistreated.

Therefore, the needs of the leadership of the future is the leadership of integrity. The leadership of integrity absolutely needed to get a democratic government. For all this there should be efforts to strengthening the leadership of integrity can be carried out with the best possible.

The era of regional head elections directly when this is basically the business community to obtain a leader who not only considered able to lead the government, but also to be able to give the answer to all the problems faced by the community. For it is important to know what will be done by the leader to run the mandate that has been given the community.

Based on explanation is explained that the importance of the leader and leadership. That is why the discourse about the leadership enough to be reviewed by the experts. However, the study of leadership is still interesting for discussion. Many among the experts who put the question of the leadership of the position of the crucial enough, such as Mullins at & Linehan (Mullins at & Linehan, 2005) stated that the leadership is the more important factor compared with the other factors in the success of an organization (Mullins at & Linehan, 2005; Muijs, 2011). While starch (2002) stated that the quality and benefits of the organization became the responsibility of the leader. The leadership plays an important role in the achievement of the purpose of the organization. In addition, Kangis & Kelley (2000) stated that the leader role gives motivation and harmonize the member's organization to achieve the goal.

Various definitions of leadership integrates has also revealed that is basically the leadership integrates includes on the attitude, nature, the behavior and the force directs on the construction of lead as a leader in those who progressed including with the community.

Huxman & Vangen (2000), for example, define integrative leadership as a collaboration between the individual, the process and the structure. The leadership of the integration also considered as the ability of the leadership qualities and behaviour, styles and variables situational answer, in a single theoretical model to explain the effectiveness of the leader (Yulk, 2002). Is defined as the attitude of integrative from the behaviour of the leadership of the task, relationships and changes (Yulk, Gordon & Taber, 2002), and also defined as leadership that integrate elements of the transaction transformation and situation variables inherent in the various community context (Van warts, 2003).

Integrative leadership also can be considered as the process of coordination from conditions at the beginning of the process of the structure and stakeholders and problems as well as the results and accountability (Bryson, Crosby, & Stone, 2006) and solidarity between leadership roles that oriented on the task, relationship, changes, the diversity and the integrity of the (Fernadez et al. 2010). In the model of the cycle of the actions of his leadership, leadership treated as linier chain between causal factors related to the optimal leadership style options and depending on the conditions in the internal and external organization (Van Warts, 2003).

The integrity of more than just the ethics (Dugar, 2011). The integrity is a unity of the individual character. The integrity of the causes of the individual trust is a characteristic of individuals who consistently considerateness compassion, attitudes, transparent, honest and ethical. Characteristics of the trust vest connected with integrity. We considered individuals who have integrity is the individual who do according to the rights and the truth by leaders who deserve to get consistent. In the research, Dugar stated that individuals who have integrity in the conduct and act is the individual that can be trusted and they are the defenders of the protection and fair and can be

received where only. Without integrity, no leader who will be success (Linda Aryani, et al, 2013: 31-39).

The integrity is understood as the completeness, wholeness, unified and entirety, all refers on the integrity. The integrity of what is meant is the integrity of all aspects of life especially between words and deeds (Sendjaya, 2004). The Turknett Leadership Group explained that individuals who have integrity will not distort the facts for personal interests. They will stand up to defend the truth, still running his promises and can be expected to reveal the truth. For them, integrity is the foundation of leadership and is a prudent balance between honour and responsibility.

The integrity is the basis for the individual and without integrity, there is no leader who can success. Turknett (2010) stated that individuals who have integrity will not deny the fact for personal gain. They will stand up and defend what is right. Integrity is the foundation for the conduct and it involves the respect and responsibility toward the work.

As conveyed McKnight and Chervany (2001) which stated that the characteristics is an important thing to cause other people believe it. The integrity is a part of the characteristics of the individual (Scheiders, 1965). Speaking with the, Robbins (2006) stated that the integrity of the dimension of the "key" from the belief of the leader, means among the four other dimensions namely competencies, consistency, loyalty, and openness, integrity is the most important dimension.

So it is obvious that the leaders of the integrity needed to run the best possible government. The taste of the trust of the community against the leader will vary depending on how the leader is able to show the attitude, nature and behaviour that was considered that he is indeed worthy to be leaders. Especially in the era of democracy today, where the largest demands of society toward the leader is able to run in a transparent government, open, accountable, avoid corruption and widely sided with the interests of the community.

2. Research Method

This research use qualitative research methods with an approach that is both naturalistic and descriptive, so that the emphasis is not on a base measurement (statistics), but more on describing the actual, factual, natural, holistic, and about how leadership integrity in local and its relevance to run democratic governance. The data collected through the study of literature by reviewing various information comes from documents, mass media, journals, etc. Then data analysis is done through a review of the data, interpreting and make conclusion.

3. Result and Discussion

3.1 The role of the leader in creating a democratic governance

The importance of a leader cause an organization such as government would never be able to walk better and optimum without a leader. So even though already have a leader, but if the leader does not have the integrity and the administration also will not progress good. Because of that there are five main role leader in government, among others:

First, the role of the decision-making a leader especially as the leader of the bureaucracy have large enough authority in making decisions. Decision making is a managerial work that means decide what must be done or not done, how do it, who do it and when to be done. In this case specify the Subject, priority, strategies, formal structure, and allocation of the resources, performances of responsibility and setting activities.

The purpose is to ensure the organizing work unit efficient, coordination activities, and use of the resources to change. The most important aspect of most forms of decision making is decided various activities in accordance with the interests of relatively unsophisticated (resource allocation), including planning still under construction procedures to avoid problems (potential problem analysis

and the development of procedures to perform quick and effective response to the issues of the scope of crises cannot be avoided (contingency planning).

Second, the role of influence. A leader of the bureaucracy must be able to give effect to his subordinates, so willing to cooperate in realizing a work program. The leader of the bureaucracy can develop various techniques affect the subordinate and is actually easy for the leader of the public bureaucracy because the authority of the supervisor is very high. But if only rely on the authority merely, also will not give the effect that means against the subordinate. The leader of the bureaucracy can modify the authority and the advantages of the nature of which is owned by a leader of the bureaucracy.

There are a few things that need to be noted that the role of the influence of the subordinate that effective, namely:

a) Made a leader of the bureaucracy that honest, fair, against all subordinate without select love;
b) Attempting to give an example in the work and act;
c) Be prudent and wise to subordinate that transgression;
d) Always involves the subordinate in various activities;
e) Grow a sense of confidence in the subordinate, that they have the ability and work ethic is high; and
f) Earn subordinate still felt valued, with to them as a partner or team work.

Third, the role of motivation. A leader must be able to provide a boost to the employees to work more productively. The influence of the relationship and the motivation is if the role of affect effective, and the role of motivation will be easier to be done. On the contrary if the leader is not able to invest the influence of his subordinates, so difficult for him to understand the true character of his subordinates that different capabilities, knowledge and behaviour.

Four, inter-personal roles. A leader also play strategic, especially inter-personal roles in relation to its position as the leader of the bureaucracy, a leader is as the figure or figures that just appreciated. The leader must display a good attitude and true as the work ethos is high, discipline, and other positive attitude, bureaucratic leaders must put themselves as a guardian, that powering, and the impetus for his subordinates.

Fifth, the role of the information. A leader must be an informative, for the leader of the bureaucracy is the key holder, especially information about the bureaucracy that progressed. Communication ability is very needed by a leader in order to be an effective communicator. The role of informational is explained to the subordinate regarding the plans policies, and the expectations of the role and the instructions on how to work to be done the responsibility for the subordinate or other members, and purpose the purpose of the performance and the authority of the plan of action to achieve it.

The five roles associated also with had infiltrated democracy as a system of government. Related to this, Diamond, Linz and Lipset stated that democracy as a system of government must meet the three main conditions, namely: 1) the competition that seriously and widespread among the individuals and groups of the organization (especially political parties to compete for government positions that have the power of effective, on regular period of time and does not involve the use of force power; 2) political participation involving as many as possible people in the election of the leader or the policy, not least through the general election held on regular basis and fair, in such a way that none of the group that excluded; and 3) civil liberties and political freedom of speech, the freedom of the press freedom to form and join the organization, enough to guarantee (Akbar, 2016: 95-110).

This is also in consonance with delivered by Brinkerhoff (2000) related how a democratic governance against the participation of citizens and political power (government). He said that the democratic governance combine the characteristics of the political regime that gives citizens the right

to regulate themselves (democracy) with the structure and the mechanisms that are used to manage public issue in accordance with the rules and procedures agreed (governance).

Brinkerhoff define democratic governance as "a set of procedures screened assures meaningful competition among the broad participation in the choice of leaders and policies, and in the allocation of societal resources; and a high degree of civil, political and economic liberties (Brinkerhoff, 2000: 602). Other experts also gives a particular emphasis on democratic governance. Santiso (2000) stressed on accountability and transparency, the rule of law and anti-corruption, as well as participation and decentralization. Although Brinkerhoff stressed on the democratic element similar to, but he added that the emphasis on pluralism, policy reform of the state and respect for human rights.

The role of the leader to achieve democratic governance basically is how leaders can contribute to the progress of the community, with the attitudes and behaviour that is accepted by the community itself. That is why, democratic governance very stressed on the existence of transparency, accountability, justice and responsiveness. But more than that, emphasis remains on the loops leader integrity.

Democratic governance itself have been popularized by among others by March and Olsen (1995: 8-9) who see the context that democracy in the cultural empiricism, confidence and the ethos that developed through the interpretation and practice. The focus on the modern democratic governance, a choice in which democracy faced with limited himself and the uncertainty of its environment. Democratic governance at the beginning is known as a mechanism for the management of small city states and developed over the centuries as a model of the management of the countries that are relatively small in size and with a small population.

Based on the presentations, we understand democratic governance more as a modern democratic life practices that was held in a professional manner. This understanding gives us the understanding that the concept of "democratic governance" is still in the corridor of the system "democratic" that requires that each policy-making process by the state (state) must involve the people (civil society); the process of such involvement does not have patterned mobilitation, but the participative and based on the principles of good governance, that is transparency, accountability, justice and responsiveness.

3.2 The leadership of the integrity: effort to build trust on public services

The integrity very closely related with public trust. This means that the public trust in the leader is very dependent on how far the leader is able to show himself as the figure of integrity with all important aspects that become the integrity indicator. The integrity of this time can be categorized as something impossible owned caused by the multitude of the interests and the will of the leader is essentially a blatant attempt to search for personal gain. Therefore, fair if the integrity is considered as a quality or nature of behaviour that most rare. Even by many people, is referred to as the quality that almost extinct. John C. The Maxwell, says: "Unfortunately, integrity is a commodity that began to disappear at the time now. Personal standard is falling apart in the world who guarded jealously the pursuit of personal pleasure and shortcuts to success (Maxwell, 1995: 37).

Then the importance of the integrity of a crucial foundation for public trust toward the leader. This is delivered by Warren Bennis in his book Leaders: The Strategies for Taking Charge that the integrity is the foundation to build trust (trust). Trust is closely related with the predictability. A leader who has the integrity of building trust with the show to other people that when faced with moral challenges, every decision and spiralled predictable (Rukku and Ronda, 2011: 25-59).

A trusted leader is the leader who has the integrity, competency, loyalty to subordinates and also for his work and trusted by his subordinates. Wirawas (2008: 83) stated that a leader who have a high degree of integrity is usually have honest attitude keeps the commitment and behaves consistent.

The integrity of the absolutely necessary in leadership. People with the assessment as people who can be trusted tend to reach the achievements of the plan and work hard, rarely have difficulty. Those who have the value of lace tend not organized, not to be trusted and often surrender if facing challenges. (Zahra, 2011: 122-132)

Trust is important because it helps regulate the complexity, help develop the capacity of action, increase collaboration and improve the ability of learning organization. Trust is a willingness to hinges on others where we have trust in him and without trust as the core of every human relations, a supervisor will not be able to complete the task that charged him with good. To get the trust of his subordinates a supervisor should be competent to work, reliable by his subordinates, open and concerned about his subordinates (Yulianti and Wuryanti, 2012: 283)

That is why the leader integrity have certain characteristics that empirically visible in the behaviour of his leadership. The intended behaviour among others: first, sincerity. Sincerity is the behaviour without a sham and a false impression. The leaders of integrity be sincere -- their actions in accordance with his word. The leaders of integrity have characters that are not hypocrites. His deeds coherently with his words.

Second, consistency. One real works that reflect the integrity will leave the impression, but the behaviour of a leader must be consistent if he wants to have successfully formed an organization. In fact, integrity is directive because one piece of violation only of the integrity will be able to leave the permanent disablement. The leaders must be consistent in running the standard discipline. A leader who discriminated, using the level of the kingship or friend relationship to determine its response to breach of discipline, have serious integrity issue.

Third, the strength of heart. Become a leader must have more than just the image of himself (image) integrity, i.e. must have the strength of heart. The leaders from the outside it looks to have the strength of heart, but found in it the lack of integrity will not be strong enough to survive in difficult times. The leader of the integrity is weak cannot build organizations that are able to survive in a situation that is full of challenges.

Fourth, was able to survive until the end of. A leader can show integrity by implementing the best possible task, regardless of how important the task or who will get the praise. The leaders of integrity will not see that what is a burden is not a burd.

Therefore, no one if James Kousez and Barry Posner, two prominent researchers, in their book entitled Credibility: How leaders gain and lose it, why people demand it states - in his research report for almost 20 years of survey results to thousands of professionals from four continents and hundreds of the case study - that the number one factor that most critical for a leader is the integrity (Rukku and Ronda, 2011: 25-59).

It is clear that the leadership to become one of the key factors in the life of any organization including government organizations. Thoha (2004) stated that an organization will succeed or even failed to most is determined by the factors of leadership. So the importance of leadership problems, made the leader has always been the focus of the evaluation about the cause of the success or failure of the organization. The task leader (Goleman, 2002) is created on what he termed as resonance, a positive atmosphere that is able to make all the human resources in the organization continue to bind themselves (the trainer needs to) and contribute to the best for the organization. So also Schein (1992) stated that the leaders had a great impact on the success of the organization in the face of the challenges that appears.

The demands for the quality and performance of the leadership in the conduct of the administration surfaced and continue to increase has become the patron a leader and potential leader in bringing change in the organization and motivate its members to achieve the goal of the organization. The leadership is the basis in the management of human resources is expected to not

only on the operational aspect is in the establishment of the quality of life of the work but also on the underlying strategic aspects of the formation of the work life conditions.

In the perspective of public services, leaders must be able to bring the public organization provides excellent service. First and foremost on the heels of public organization is to provide services to the community. Tangkilisan (2005) said that public organizations is said to be effective when in reality its implementation bureaucracy can be serving in accordance with the needs of the community (client), means no obstacles (roomy) that occurred in the services, fast and precise in magnitude-6.6 services, and able to troubleshoot the prominent phenomenon due to social change that very quickly from the external factors. The effectiveness of public organizations are the product of a system that one system (elements) is the human resources reform. As part of a system, increasing the professionalism of the human resources reform is not automatically the performance of public organizations will increase. So when the human resources professional has apparatus, but is not supported by the sub-sub system such as institutional, governancy, adequate facilities and infrastructure performance would the corresponding public organizations will not be able to reach the level of optimal performance.

In relation to the public confidence that public confidence grow from the service quality. In line with the OECD statement (2000), that basically the public service is a public trust. "Public service is a public trust. Citizens expect public servants to serve the public interest with fairness and to manage public resources properly on a daily basis. Fair and reliable public services inspire public trust and create a favourable environment for businesses, thus contributing to well-functioning markets and economic growth," Thus the quality of public services is one of the strategic issue for the state apparatus must be implemented into the framework of building public confidence (Sanapiah, .

In an effort to embodiment of these things, leaders are significant factors. The role of the leader in building public confidence include internal scope related to efforts to move and ensure the entire apparatus resources high-performance and scope of external organizations in efforts to consider the public expectations and good external communication regarding the dimensions of the performance of the ministry of public service measures) specified, the efforts that have been, is being and will be done as well as the performance of the services that have been produced.

4. Conclussion

The values of democracy has various important indicators such as the participation of the public accountability, transparency and so on. However, relation with leadership, scope of the importance of the construction of the values of democracy is the integrity. The integrity of a crucial foundation that must be owned by a leader. Integrity is the foundation for anyone. The absence of integrity will not make a successful leaders achieve democratic governance.

The role of the leader to achieve democratic governance covering five main things such as decision makers, role affect, gives motivation to give an example, provides information and communicate. Remixing the whole role of this will not be easy if a leader does not have the integrity that can become the guidance in building trust by the public and his subordinates.

The public trust wakes up from the public services that are good. In the bringing of public services that the sink, a leader must be able to navigate all the owned resources to provide optimal services to the public. the leader has a great influence to determine whether a successful governance running.

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Nonpenal Effort in Addressing Illegal Fishing in the Lampung Province

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Abstract

Measures to address the crime of illegal fishing can be undertaken through penal and non-penal means. Non-penal measures are needed to generate output with respect to efforts to address illegal fishing. This study combines two methods of research, namely research on normative laws and supported by an empirical study of the law and qualitative analysis. Result of the research shows that non-penal efforts (preventive measures) in response to illegal fishing in the Lampung Province comprises of, The first: the patrol/supervision activity routinely conducted and integrated, the second: strengthening the role of local government in the economic improvement of fishermen, the third: strengthening local regulations based on local wisdom: the forth: the strengthening of traditional sanctions and administrative sanctions: a fifth socialization activities by law enforcement officials as well as other related service agencies.

Keyword: *nonpenal, illegal fishing, Lampung Province*

1. Introduction

Lampung province as a region which oversees waters contributed in order to declare Indonesia as the world's maritime axis. The province located in the southern tip of Sumatra Island is part of the maritime sector development interests/marine fisheries sector in particular. Lampung province has 645 km2 water area, the area is a potential to be developed as a power of natural resources, especially fisheries resources (Lampung Post January 17, 2015: 1) . Lampung Province is one of the provinces with the production of fishing caught is included in the group 2 , with an average production of between 120-220 thousand tons / year (Ministry of Marine Affairs and Fisheries Republic of Indonesia, 2015). Regarding to this condition, creates the territorial waters of Lampung become a strategic location occurrence of insecurity and crime associated with the practices of illegal fishing, especially with the use of explosives (bombs), trawl (trawls) conducted by the local fishermen and visitors from outside the waters of Lampung. This is certainly a major threat to the sustainability of marine resources in Lampung Province. Regional insecurity Lampung territorial waters will be outlined in a map/image below:

Picture. Vulnerability map Lampung Police Bodies

(Source: Secondary data on the Police Directorate of Police Bodies in Lampung in 2016).

The picture above shows that, with the wide of Lampung territorial waters will certainly lead to the occurrence of several criminal offenses including illegal fishing. Based on the above, the following will be presented some data in case of illegal fishing in 2013-2016 Lampung Regional Bodies:

Table. Case Data of Illegal Fishing Year 2013-2016.

No.	Case Type	Year			
		2013	2014	2015	2016*
Total – Amount		9	15	22	11
1	Explosive case	7	4	8	6
2	The usage of fishing gear that is not environmentally friendly Case	2	10	4	3
3	Violation ship documents	-	1	10	2

(Source:Secondary data is processed, Police Directorate of Water Lampung 2016)
Information : January – September 2016

According to the table above, the number of cases of illegal fishing that occurred in Lampung water territorial by the year 2013 increased in 2014 and 2015 and will be increased or decreased in 2016 with varying types of case. Increase the number of such cases, as well as the issuance of Ministry of Marine Affairs and Fisheries No. 2 of 2015 on the Prohibition of the Use of Hela Fishing trawler (trawls) and pull trawl (Seine Nets) in Regional Fisheries Management of the Republic of Indonesia.

Many cases of illegal fishing is happening in the waters of Lampung, motivated by various factors such as: custom/the tradition fishing by bombs usage, lack of the awareness among the fishing communities due to the preservation of the coastal environment, the weakness / lack of supervision and decisive action from law enforcement sea and relevant agencies, factors lack of socializations to the government policies are not touching fishing communities, and lack of involvement of cooperatives in supporting the activities / activities of the fishermen as well as the cost factor is relatively high in associate with obtaining a fishing permit (source: primary data processed, 2016).

Based on some factors above, law enforcement efforts are needed to combat these activities. Normative rule of law, especially criminal law should be carried out as the statutory provisions (based on the Code of Penal (Penal Code, the Code of Criminal Procedure (Criminal Code)) as well as relevant legislation such as Fisheries Law. But in this case law enforcement efforts in overcome illegal fishing activities especially those conducted by the local fishermen should also notice to the basic background of why they are doing these activities as described above.

As a rational effort to overcome crime (criminal policy), not only can be done by means of "penal" or the criminal law, but can also use means "nonpenal" or without the criminal law (Muladi and Barda Nawawi Arief 1998) .This may mean that in order to achieve a balance in the fight against crime, not only use the/forward penal but also accompanied by the means nonpenal. Or it can be said that the prevention and control of crime must be done with the "integral approach" that there is a balance between the penal and means nonpenal (Barda Nawawi Arief, 2010). Furthermore, from the point of criminal policy, the policy of the most strategically by means nonpenal, as more preventive and penal policies have limitations because/weakness (Barda Nawawi Arief, 2008).

Based on the above background, efforts are needed beside penal effort to be able to overcome the illegal fishing. The balance between effort penal and nonpenal in order overcome illegal fishing in the waters of Lampung region, also is oriented for the purpose of social welfare and protection of the community especially fisherman. This is the concern and consideration of researchers to examine and discuss further the efforts of nonpenal in overcome illegal fishing in Lampung province in research question which are:

1. What are the factors behind the occurrence of illegal fishing in Lampung province?
2. How to cope with illegal fishing in Lampung Province through nonpenal policies and constraints?

2. Research Methods

2.1 Types of Research

This research is a study that combines two types of research, namely the normative legal research and supported by empirical legal research. Normative approach is done by examining and reviewing the general principles of law, the rules of law or legal theories relating to crime prevention policies (criminal policy) either penal or nonpenal to answer the problem. While the empirical approach is used to address the problem by looking at the law in reality through the opinions, behaviors and attitudes are real. The combination of both is performed to find a more comprehensive answer related nonpenal due to overcome iillegal fishing in Lampung Province.

2.2 Types and Sources of Data

Type of data in this research is secondary data and primary data. Secondary data was sourced from the materials library. As for the secondary data comprises: primary legal materials, namely: Act No. 45 of 2009 on the Amendment of Act No. 31 of 2004 on Fisheries: secondary law include: government regulation, regulation and other regulations in the field of maritime affairs and fisheries: materials tertiary law include: scientific works, workshop materials and results of research scholars on the issues to be discussed. As for the primary data obtained directly from the results of research in the field through observation and in-depth interviews (depth interview) to the persons, namely those who are directly able to provide an answer in this study.

2.3 Location of Research

Location / region specific study conducted in Lampung province by taking samples of the area that is in Bandar Lampung (around the Bay of Lampung) and Pesawaran District. Both of these areas are considered to represent some of the areas that promote medium / nonpenal efforts in overcome illegal fishing activities.

2.4 Determining Sources

The sources in this research are: 1 Sub Director of Law Enforcement Police Directorat of Water Lampung, 1 person of Investigator Police Directorate of Water Lampung, 1 person of Police directorate of Water of Lampung, 1 person of the Head of the Law Enforcement Affairsof Naval Port Lampung, 1 person ofthe High Court Judge Lampung, 1 person of Officer Department of Marine and Fisheries Lampung Province, 1 person of Head of Tourism and Creative Economy Pesawaran District, 1 person of Chairman of HNSI Lampung, WALHI Chairman, 1 person of the menegement of NGO, 6 fishermen, and 2 theoreticians / academics. With a total resource amount of 17 people.

2.5 Data Collection and Processing Procedures

Secondary data collection is done through a study to some documents by examining some regulation, literature or library materials related to the issues discussed. Searches of legal materials above, can be done by reading, viewing, quoting, listen to and search through the internet media (Mukti Fajar & Achmad Yulianto 2013). Furthermore, in the case of primary data collection can be through in-depth interviews (depth interview) the sources that are competent in their field to provide answers to the problems in the research.

Once the data is collected, secondary data processing can be done by the selection of secondary data (material law), then classify and collate data from systematic research to get a general overview of the research results. While the primary data processing can be done in a way to re-examine the results of the interview obtained from informants. In this case there must be clarity, consistency answers or information and its relevance to the study. Must be some connection between the primary data with secondary data, and amongst legal materials collected. Furthermore, researchers do editing with the intention that the completeness and validity of data and information is guaranteed.

2.6 Data analysis

Analysis of the data to obtain answers and conclusions of the problems studied, done qualitatively, comprehensive and complete (Abdulkadir Muhammad 2004). Qualitative analysis is done by parsing data from the results of research into the sentence is good and right, so that the

analysis can be deduced inductively,i.e thinking in order to draw any general conclusions to be based on special facts.

3. The Research Results

31. Illegal Fishing by Local Fisherman.

Legal fishing practices not only among foreign fishermen who harm the country, and threaten the interests of fishermen, fish cultivation person, as well as the national fishing entrepreneur, but it is also done by the local fishermen. Illegal fishing practice carried out by fishermen or local businessmen colud be clasified into to (three) categories (Mukhtar 2013), namely:

(1) Indonesian flagged fishing ship former foreign fishing ship which had fake document or even no document permit
(2) Indonesia Fishing Ship (KII) document realfake or "real or fake" (in the sense of issuing official is not authorized, or counterfeit documents);
(3) Indonesian ships were undocumented at all, that means to catch fish without any permit.

Mardjono Reksodiputro (2015) also suggested that illegal fishing can be included also in a a way of fishing (although with permission or based on law of Indonesian local fishermen), were carried out in violation of rules such as "trawling" or by "dynamite". The usage of dynamite to catch fish, mostly conducted by our traditional fishermen. This method will certainly damage the reef and ultimately reduce a fish to breed.

There are several ways and types of illegal fishing activities that are often carried out by Indonesian fishing ships (KII) up to now (Nunung Mahmudah 2015), i.e:

1. Fishing without a license (Fishery Business License (License) and a letter Fishing Permits (SIPI) or even Permit Fish Boat Transportation (SIKPI);
2. This activity has licensed but violate the conditions specified (violation of fishing areas, fishing gear violation, violation of obedience-based);
3. Forgery or manipulation of the document (document procurement, registration and licensing of ships);
4. Transshipment in the middle of the ocean:
5. Non actived transmitter (specifically for ship required to install the transmitter): and
6. Destructive fishing practices (destructive fishing) marine environment by using chemical, biological, explosives, equipment or means, and / or buildings that endanger the preservation of fish resources.

Several modus and types of illegal fishing activities in the above, especially at points 1,2, and 6, are still common in territorial waters of Lampung Province. As has been shown in the table on the background of the above, these types of illegal fishing cases that occurred in the territorial waters of Lampung can be classified into three types, namely:

1) Fishing using explosives / bomb; in this case the doer can be charged under Emergency Law No. 12 Year 1951 on Explosives;
2) Fishing using prohibited fishing gear (associated with Ministry of Marine Affairs and Fisheries No. 2 of 2015 on the Prohibition of the Use of Hela Fishing trawler (trawls) and pull trawl (Seine Nets);
3) Violations of an administrative such as the completeness of permits/ documents of the ship.

To point 1 above, the perpetrators can be charged under Emergency Law No. 12 Year 1951 on explosives, while to point to 2 and 3, the doer can be charged under Law No. 45 of 2009 on the Amendment of the Law No. 31 of 2004 on Fisheries. It also shows that, these kinds of cases of illegal fishing that is done by the fishermen in the waters of Lampung region can be categorized as a crime because of fishing with destructive fishing tools (destructive), such as blast fishing, trawling (trawls) and can also be categorized as a violation related to administrative requirements.

3.2 The factors behind the occurrence of Illegal Fishing in Lampung Regional Bodies

Based on the results of field research conducted by interviewing several sources, it can be argued that the backfround factors that the practical of illegal fishing still occurs in the waters of Lampung region, i.e:

1. Tradition Factor

The tradition of bomb usage to catch fish has been associated since long/ hereditary for fishermen around the Bay of Lampung. For this reason as if this practice became legal they do. The fish they got from bomb, they sell direct in the middle on the sea with the "pembakul" .The fish bombers are not only come from local fishermen but also from outside Lampung (when interviewed on 20 September 2016, Anonymous, Fisherman).

Besides the bomb usage, as a tradition / the fishermen habits also use nets cantrang (trawls modifications) to catch fish. Fishermen have their own groups which are groups of fish bombs and cantrang group. In contrast to the fish bombing, the fish from cantrang fishermen will be sold on land through an auction process (when interviewed on 20 September 2016, Anonymous, Fisherman) ..

Associated with prohibit the nets trawls (pukat harimau) has existed since 1980, with the issuance of Presidential Decree No. 39 of 1980 on the Elimination of nets trawls (Djoko Tribawono 2013). And this rule was reinforced by Ministerial Decree No. 2 of 2015 on the Prohibition of the Use of Hela Fishing trawler (trawls) and pull trawl (Seine Nets) in Regional Fisheries Management of the Republic of Indonesia.

2. Knowledge and awareness Factors

Lack of knowledge and awareness of the law / rules to prohibit destructive fishing environment and the lack of awareness of the importance of preserving the marine environment to be the cause of the illegal fishing that is stil exist in many illegal fishing activity in waters of Lampung. In fact, they are less aware of the dangers that threaten their safety associated with the use of bombs to catch fish. (When interviewed on 14 October 2016, Mr. Mashabi, WALHI Lampung) The lack of their knowledge and understanding is related to the lack of socialization-conducted by the Marine and Fisheries Agency of Lampung Province regarding to government policies are not realized or totally reach the fisherman.(when interviewed on 5 October 2016, Mr. M. Fauzi, The Police Directorate of Lampung Water and on 14 October 2016, Mr. Mashabi, WALHI Lampung).

3. Firmness and supervision factors from law enforcement officers in the sea area.

Less strick of law enforcement agencies regarding illegal fishing practices which related to the settlement of the case in the middle of the sea (when interviewed on 14 October 2016, Mr. Mashabi, WALHI Lampung). While still a lack of supervision due to weak of coordination Marine and Fisheries Agency of Lampung Province with The Police Directorat of Lampung Water on the activities of the operations surveillance / patrolling for fishing ships around the territorial waters of Lampung is not maximized, causing the actors freely practice proficiency level (when interviewed on 6 October 2016, Mr. Susanto, Police Directorate of Lampung Water).

4. Sanction Factor

The lack of wary effect of sanctions imposed on the doer to be the cause of the existances of illegal fishing practice . Low sanctions imposed make them to become common to enter and out of the prison (when interviewed on 14 October 2016, Mr. Mashabi, WALHI Lampung). It is also an issue when the application of sanctions/ punishment carried out against the small fishermen as a result of their ignorance factor (Carkum and Saikum Cases in Lampung Tribune 16 September 2014: 11).

5. Economic factors and low cost

The economic factor is always the classic reason why the fishermen still doing illegal fishing practice in the waters of the Republic of Indonesia. The economic argument is more directed to the calculation of the short-term, operational costs are much lower bombings and the increase of market demand (Prone Areas Violation 2015). Fish bombing activity is considered as a low cost activity that is an efficient and effective way to catch fish with a specific target. Because it's only done in a short time and need a little amount of people with a simple simple equipment (Conference Report Regional

Anti-Fish Bombing Symposium 2012) . This conditionabove is also used by fishermen in the waters of Lampung. They argued that the bomb-making materials obtained from their network outside of Lampung, ie from Bandung. In the beginning they know this issue from word of mouth and eventually they take part since the amount of their catcehr can be a lot ± 5-6 tons during their fishing. The result of the catch is daily consume fish such as: mackerel, grouper, yellow tail even ornamental fish (when interviewed on 20 September 2016, Anonymous, Fisherman).

6. Licence Factor.

Licence Factor associated with the difficulty of letter permit procedure to the permits oil fuel; (BBM) where to buy one drum of oil they have to pass six tables of agency related (Coordination Meeting Investigator, investigators and Local Regulations Lampung Province on 26 November 2014). It has also become one of the causes of illegal fishing practices such as fishing without a license violation.

The factors above, not only the causes of the practice of illegal fishing in the waters of Region Lampung but also occur in the waters of Southeast Sulawesi province, where the tradition, the circulation of raw materials, bombers from other regions as well the lack of specifically legal sanctions become the main cause of illegal activities fishing/destructive fishing in those waters (Mukhtar 2008) . Whereas in developing countries, especially in coastal areas of illegal fishing activities have become a mainstay of the population along the coast as their livelihood. (Akpalu, W & Normanyo, AK 2014).

3.3 The Prevention Efforts of Illegal Fishing In Lampung province Through Nonpenal Policy

As the effort of criminal reduction (criminal policy) through the efforts nonpenal according G.P. Hoefnagel can be reached by "prevention without punishment" and Influencing views of society on crime and punishment / mass media "(Barda Nawawi Arief, 2010: 41-42). Nonpenal efforts inserted through the "prevention without punishment" of which include "social policy" and "administrative law". While that through the "Influencing views of society on crime and punishment / mass media" can be done with the usage of technology (techno prevention) and utilization of the potential effects of preventive law enforcement officers to conduct patrols are carried out continuously (Barda Nawawi Arief, 2010: 46-49):

The matter above, if it is reflected in the results of field research were obtained through interviews the sources of some of the relevant authorities, it can be explained that efforts to control illegal fishing in the waters of Lampung province through such nonpenal policy carried out by the following efforts:

1. Patrol Activity/Supervision

Tasks and role of the Police could be seenfrom various aspects of law enforcement, one of which related to "Aspects of Law Enforcement Nonpenal". Police activity in this case a service-oriented and community service which is a must and a duty or juridical mandate outlined by Police Constitution(Barda Nawawi Arief 2005: 15). This activity is realized in the form of patrols and supervision at vulnerable points of the practice of illegal fishing in the waters of Lampung (see map above). Water patrol activities undertaken by *Satrolda Polair* Lampung Police have carried out each month with different type of activities. (when interviewed on 7 October 2016, Mr. Huari Muis Kasatrolda Ditpolair Lampung Police) .In the case of the patrol/ supervision in the field if they catch the fishermen associated with violations case of license/uncompleted document, then handling the case transferred to the Marine and Fisheries Agency of Lampung Province to follow the guidance process and to apply the completing license. (when interviewed on 5 October 2016, Mr. M. Fauzi, Ditpolair Lampung Police).

The ongoing of these activities, is not without obstacles. There are internal barriers in the activity related to the limited fleet owned Ditpolair Lampung Police, the limitations of qualified personnel in the field of investigation as well as marine sciences and fisheries, limited fuel oil (BBM) allocated to Ditpolair Lampung Police. While the external obstacle related to weather factors, geographical factors Lampung waters, as well as the factor of knowledge and the low of legal awareness of fishing communities to receive direction from the Police. (Report of the Lampung Police Patrol Ditpolair 2016).

As with Ditpolair, the efforts of the Navy in securing the territorial waters of the activities carried out by the patrol and arrest the perpetrators if it found violations. Especially for the region Bodies Lampung, the role of the Navy is not too dominant, especially in the case of illegal fishing handle. This is due to the limitations of a fleet of ships that still rely on the center (when interviewed on 9 September 2016, Mr. Zainal Arifin, Lanal Lampung).

Patrol activities are also conducted by the Department of Marine and Fisheries Province, Regency / City. This integrated patrols activity conducted jointly with the Navy and Ditpolair Kamla (Radar Lampung in 2016). But unfortunately a routine patrol activity programmed by DKP is done after the increasingly widespread cases of illegal fishing in the waters of Lampung. As has been described above, that lack of coordination related patrols in an integrated manner has become one of the causes of the existing cases of illegal fishing in the Gulf of Lampung. But at least this activity should be appreciated in order to minimize the number of those involved in illegal fishing in the waters of Lampung. Event routine patrols and integrated at least can remove doubt about the lack of coordination between institutions in supervision conducting and can reduce the number of cases of illegal fishing in the waters of Lampung.

Supervision efforts can also be done by re-strengthening the role of the Supervisory Society Community (Pokmaswas) in each region accompanied with the giving of regular insentive so that the supervison is from them and for them can run maximally.

2. Strengthening the Role of Local Government in the Development of Fishermen Economy.

Nonpenal efforts in overcome illegal fishing in the waters of Lampung is inseparable from the role of Local Government. Among the role of Marine and Fisheries Agency can be realized through a program oriented to the welfare of fishermen. This can be realized by developing the aquaculture sector in the right area because not all waters is appropriate since the usual obstacle occurs and the environmental pollution.

Another effort is to promote the potential of marine tourism, where there is a change in the mindset of fishermen not to only rely on the results of capture fisheries as the main livelihood, but they get more income from the tourism sector by renting out their boats to the tourists. This happened on Pahawang island that was once too risky to illegal fishing practices have now changed (when interviewed on 2 September 2016, Mr. Jaka Sungkawa, the Head of the Department of Tourism and Creative Economy Pesawaran District). This change certainly would take a long time especially to change the mindset of fishermen. It took 10 years (1996-2006) for WALHI to do this mentoring (when interviewed on 14 October 2016, Mr. Mashabi, WALHI Lampung).

3. Strengthening Regional Regulation Based on The Local Wisdom

It is associated with the planning of the Region Regulation about the Zoning Plan Coastal Areas and Small Islands Lampung Province. The substance of Region legislation at least reflect the cultural values / based on local wisdom that is by involving the community in the management and sustainable use of marine resources and fisheries in coastal areas and small islands. With these rules they can find zones where they can utilize the fishery resources without damaging the environment.

Moreover to the Village Regulations on the Prohibition of Fishing with Capture Device that is not environmentally friendly is a concrete example of the strengthening of regulations based on local wisdom as a form of familial, deliberation, proprietary social, created by them and to be obeyed altogedther as well (when interviewed on 28 July 2016, Mr. Barda Nawawi Arief).

.4. Strengthening Customary l sanctions and administrative sanctions.

Strengthening sanctions customary in village regulation can raise effect for the community especially the fishermen. Existing rules relating to the offenses in the field of marine and sanctions can they easily understand and obey. With this regulation can prevent fishermen doing illegal fishing practices.

Furthermore, to the sanctions which are administrative, the judge has the right to act as a form of the principle of saving, the principle of restraint, the principle of selective and limitation in the sentences of imprisonment. In this case of a criminal target movement that is no longer the object of law but to the interests of the law (when interviewed on 28 July 2016, Mr. Barda Nawawi Arief).

5.Socialization

Preventive socialization activities carried out by the police, by presenting their figures in every activity of coastal communities to carry out the program "anjausilau" (silahtuhrahmi) as local wisdom approach in overcome crime, especially illegal fishing in the waters of Lampung.

Further activities "sambang nusa" which involves visiting the small islands and outermost perform certain activities such as socializing, spiritual activity as well as the activities of other social awareness of coastal communities especially the fishermen due to the impact of environmental damage resulting from their behavior to catch fish by material that damage the environment.

Social Activities are also conducted by the Marine and Fisheries Agency related to the usage of environmentally friendly fishing equipment, guidance pathways catch and licensing application. This has been done alhought not maximum (when interviewed on 19 September 2016, Mr. Bidin Marine and Fisheries Agency of Lampung Province).

4. Conclusion

Based on the description above can be concluded that: efforts to control illegal fishing in Lampung province can be done through: 1). patrol and supervision activities are carried out routinely and integrated by the law enforcement agencies in coordination with other relevant agencies: 2). strengthening the role of local governments in economic improvement fishing is conducted by cooperation between relevant agencies in realizing the programs oriented towards the welfare of fishermen: 3). strengthening regional regulations based on local knowledge by involving them as key actors in the process of management and utilization of marine resources and fisheries: 4) strengthening of traditional sanctions and administrative sanctions, the apply for this traditional sanctions not only to provide strong preventive effect but also detterent effect to community, especially fishermen because they are involved in the process of its formulation: 5). continuous socialization activities by law enforcement officials and other relevant service agencies can be an effective educational process for the fishing community.

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Regulation of The Cooperation Law Inter-Regional in Environmental Management in Lampung Province

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Abstract

This study aims to analyze the regulation of inter-regional cooperation law in environmental management in Lampung Province. The findings of this research are expected to be a basis in determining the model of legal policy of interregional cooperation in the field of environmental management in Lampung Province. Thus, the implementation of regional autonomy will be protected from regional ego and sector ego, and will eventually realize the ultimate goal of regional autonomy in the field of environment that is the welfare of local communities and environmental sustainability. This research method using *socio-legal* approach. This approach is very appropriate to use because in addition to reviewing the legal provisions that regulate inter-regional cooperation in the field of environmental management, also at the same time examine environmental management practices in the region. The practice is primarily concerned with Local Government involvement and communities in upstream-downstream relationships in watershed (DAS) management in Lampung Province. Therefore, this study, in addition to reviewing the environmental policy of the Lampung Provincial Government, also examines district and city government environmental policies, especially in environmental management involving more than one district / city.

The results showed that the legal arrangement of interregional cooperation in management of the environment in Lampung Province has not been specifically regulated. The basis of inter-regional cooperation is based only on the principles of regional autonomy and has not been based on the ecological characteristics and conditions in the region. Therefore, the approach still tends to be economic oriented and regional administration.The ideal concept is that the legal arrangement of cooperation inter-regional in the field of environment should be based on the principle of ecoregion.

Keywords: *cooperation, inter-regional, environment.*

1. Preface

Environmental issues are always inseparable from development, including in the context of the implementation of regional autonomy. Environmental damage and scarcity of natural resources as a result of environmentally insecure development tends to increase in the era of regional autonomy.[1] Society political access is increasingly fulfilled, but regional autonomy has led to the development of

[1] The principle of regional autonomy has actually been implemented since Indonesia's independence, even by the Dutch East Indies government, but found its peak momentum since the enactment of Law 22/1999 on Regional Government on 1 January 2001.

anthropocentrism paradigm in the treatment of the environment. The widespread authority in environmental management in local government instead expresses local egoism of local government and / or community in the region. Raising environmental conflicts is one of the consequences. This is exacerbated by the weak coordination between regions that was formerly conducted by the provincial government.[2] In Law no. 23 of 2014 on Regional Government has been given the foundation of legal arrangement of interregional cooperation. For that in some areas including in Lampung Province has issued a Regional Regulation which governs inter-regional cooperation. But unfortunately the provisional study shows that the legal arrangements are still very few and the regulatory substance is still very common. Each region tends to regulate its own local environment. Whereas environmental management is very important to be done jointly, especially between regions which is upstream with areas in parts of downstream watersheds (DAS).

For that reason, research with an environmental law policy approach is needed to answer the anxiety. *Science informs decision making throughout the policy cycle. Environmental policy can be initiated by identification of a problem, which is verified by research or monitoring and appraised for an appropriate policy response.*[3]Inter-regional cooperation needs to be done in environmental management, especially in cross-administrative areas, for example in the management of Watersheds (DAS). This is because the management based on ecoregion can not be limited by regional administrative boundaries (co-indecent). Therefore, it is necessary to reviewed more deeply the substance of its legal arrangement so that it can be developed a model of law policy on interregional cooperation in environmental management which is in line with ecoregion principle. This research takes the setting in Lampung Province which has various environmental characteristics (forest, watershed, and coastal) which can be used as pilot project and model of law regulation which can be applied widely in Provincial Region and also National.

2. Research Methods

2.1 Problem Approach

Problem approach in this research using legal approach (legal approach), namely to review various policies and arrangements on regional cooperation in the field of environment, both national and in Lampung.

The legal materials used are primary legal materials and secondary legal materials. Primary legal material consists of two parts, namely environmental legislation related to regional autonomy and regulations in the field of regional autonomy related to the environment. Secondary legal materials used in the form of legal literature, scientific papers, research results, dictionaries, scientific journals (periodical), especially related to environmental law and regional autonomy. Field data is used only as a complement to the analysis of legal materials.

Legal material is collected through identification procedures, inventory, and classification of legal materials according to the research problem. The collected legal material is processed through the process of editing, classification and systematization thematically (according to subject matter), for further analysis. The analytical method used is the legal analysis (legal analysis), namely by analyzing the contents (structure) of applicable law, systematization of legal symptoms described and analyzed, interpretation, and assessment of applicable law[4].

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[2]Hardi Warsono, "Kolaborasi dan Kerjasama Antardaerah ", in Agus Pramusinto and Erwan Agus Purwanto (editor), *Reformasi Birokrasi, Kepemimpinan dan Pelayanan Publik: Kajian tentang Pelaksanaan Otonomi Daerah di Indonesia*, Yogyakarta: Media-JIAN UGM-MAP UGM, 2009 , p.109.

[3] Laurie C. Alexander, "Science at the boundaries: scientific support for the Clean Water Rule", Journal Freshwater Science, Vol. 34, No. 4 (December 2015), pp. 1588-1594, The University of Chicago Press on behalf of Society for Freshwater Science, URL: http://www.jstor.org/stable/10.1086/684076.

[4]Meuwissen, D.H.M., 2007, *Tentang Pengembanan Hukum, Ilmu Hukum, Teori Hukum, dan Filsafat Hukum* (Penerjemah B. Arief Sidharta), Bandung: Refika Aditama.

3. Results and Discussion

3.1 Problems of Legal Regulation of Inter-Regional Cooperation in the Field of Environment

In the era of regional autonomy cooperation inter-regional is so important. It can not be denied that the strengthening of regional autonomy, has led to the phenomenon of ethnocentrism expressing local egoism of local government and / or local communities. The phenomenon of ethnocentrism is getting stronger along with the weak coordination between regions which was once intensively undertaken by the provincial government.[5] The results showed that one of the important factors that caused the conflict inter-regional was sourced from the utilization of natural resources.

In the perspective of regional autonomy, inter-regional conflicts - including in the environmental field - can occur in the absence of good inter-regional cooperation relationships in environmental management. Each region with its economic rights prioritizes egoism to manage the environment in its territory based on territorial-administrative approach. Whereas the character of the environment can not always be restricted territorially-administratively. Environmental management within a particular area can have widespread impact across certain regional boundaries, even countries. For that requires the handling together in order to achieve common goals.[6]

Nationally, the policy of cooperation inter-regional is not found its legal arrangement, especially in the field of environment. The legal basis of this policy in general has been regulated in Law no. 23 of 2014 on Regional Government, that is in Articles 363 to 370. In the article has been regulated on the consideration of the implementation of cooperation, the categories of cooperation (mandatory and voluntary), the parties in cooperation, and the role of central government. It also deals with financing cooperation, joint secretariat, scope of cooperation, monitoring and evaluation, and dispute settlement.

Further provisions as mandated by Article 369 of Law no. 23 of 2014 on Regional Government until now still use the old rules issued earlier. The regulations are: Government Regulation no. 50 of 2007 on Procedures for Implementation of Regional Cooperation, Minister of Home Affairs Regulation no. 22 of 2009 on Technical Guidelines for Procedures for Regional Cooperation; and Minister of Home Affairs Regulation no. 23 of 2009 on Procedures for the Development and Supervision of Regional Cooperation. While the Government Regulation Draft, which was compiled since 2016 and planned as a substitute for Government Regulation no. 50 of 2007 to date has not been ratified.

In line with the provisions that apply nationally, the arrangement of cooperation inter-regional in Lampung Province is still regulated in general. Inter-regional cooperation is only regulated in Local Regulation no. 14 of 2013 on Regional Cooperation. Substantively, the regional regulation has not been regulated comprehensively about inter-regional cooperation, moreover linked to environmental management. There is only one Regional Regulation related to cooperation in the field of environment, that is the Provincial Regulation of Lampung Province. 22 Year 2014 on Integrated River Basin Management in Lampung Province. This Regulation in several aspects needs to be reviewed in line with changes in environmental management authority in watershed areas, such as the authority of forest management which is now the authority of the provincial government.

Some districts / cities in Lampung Province already have Local Regulations on the Protection and Management of the Environment, but also has not yet integrated the provisions on inter-regional cooperation in environmental management. This indicates that the regions do not yet have a legal policy on cooperation which is oriented environmental management with ecoregion approach.

A review of the legal arrangements for interregional cooperation as outlined above found several problems or troubles. First, the legal arrangement is general, which means it applies to all government affairs that are the object of cooperation. There are no rules that specifically regulate cooperation in the field of environmental management. Whereas the environmental affairs have a special character, which

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[5]Hardi Warsono, " Kolaborasi dan Kerjasama Antardaerah ", in Agus Pramusinto and Erwan Agus Purwanto (editor), *Reformasi Birokrasi, Kepemimpinan dan Pelayanan Publik: Kajian tentang Pelaksanaan Otonomi Daerah di Indonesia*, Yogyakarta: Media-JIAN UGM-MAP UGM, 2009 , p. 109.

[6] hat Patterson in Ibid., p. 112.

requires a special arrangement as well. Secondly, the regulatory substance in the Government Regulation and the Minister of Home Affairs regulation has not been aligned with the latest Law. For example, it has not yet been regulated in the implementing regulation on the aspect of the classification of cooperation and the role of provincial and central government both in the implementation of cooperation and in the settlement of disputes. Third, there is no clear regulation on the legal form and the general framework of inter-regional cooperation models that can be applied. The results of literature search, until now the form of cooperation law is poured in the form of decisions with the head of the region,[7] regulations with the head of the region,[8] and joint decisions of local environmental agencies.[9] Fifth, the institutions that are formed also vary without criteria and clear boundaries. There are forums and non-structural bodies, but some are quite progressive by forming bodies such as inter-regional technical institutions. Though this kind of institution its nomenclature is not regulated in Government Regulation no. 18 of 2016 on Regional Devices. This is certainly difficult in addition to the implementation, also in terms of supervision and coaching and in the settlement of disputes.

From the perspective of the legal system, the legal arrangement of cooperation between regions only limited to reflect the principles of autonomy as the elaboration of the concept of democracy and the concept of welfare state law. Concepts of ecocracy concretely described in the principles of bioregion / ecoregion and ecological sustainability have not been reflected in the legal arrangement of inter-regional cooperation. As a result inter-regional cooperation that develops usually put forward short-term profits from the economic side than the long-term benefits of ecological sustainability.

3.2 Legal Concept of Intergovernmental Cooperation Policy in Environmental Management

On the basis of the problematic arrangement of inter-regional cooperation law as mentioned above, put forward some thoughts on the concept of the ideal legal arrangement of inter-regional cooperation in environmental management in the future. This concept would require further study normatively or empirically. The ideal concept is as follows. First, the scope of legal arrangement of cooperation inter-regional is not only focused on procedural aspects, but also includes aspects of authority and substance in accordance with the affairs that become the object of cooperation. Ideally the environmental affairs that are the object of inter-regional cooperation are affairs that affect cross-border areas and / or related to public services and affairs that have not been able to be implemented independently.

Substantially, if referring to Law no. 32 of 2009 on Environmental Protection and Management (abbreviated UUPPLH-2009), then the scope of cooperation should include aspects of planning, utilization, control, maintenance, supervision and law enforcement. This substance is not regulated either in national law or in the product of local law in Lampung Province. This distinction can not be resolved through the application of the legal principle of lex specialist derogatlegeinferiori, because between the laws on Regional Government and the Law on Environmental Management are in a different legal

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[7] Applied in cooperation "Kartamantul", with Joint Decree of Mayor of Yogyakarta, Sleman Regent, and Bupati of Bantul no. 01 of 2001, No. 01 / PK.KDH / 2001, No. 18 of 2001 on Management Cooperation of Urban Infrastructure and Facilities between Bantul Regency, Sleman Regency, and Yogyakarta City.

[8] Applied in integrated waste management "Sarbagita" Bali Province, namely by Joint Regulation between Government of Gianyar Regency, Badung, Tabanan, and Government of Denpasar City. 840 Year 2000, No. 658.1 / 3367 / EK, and No. 390.B of 2000 on Principles of Governance, Development and Community Cooperation in Waste Management between Gianyar, Badung, Tabanan, and Denpasar.

[9] Applied in environmental cooperation "Subosukawono-sraten", with the decision of the Head of Surakarta City Environment Office, Head of PEDAL Office of Boyolali District, Head of Sukoharjo District Environmental Office, Head of Environmental Office of Karanganyar, Head of Environment, Forestry, and Mining of Wonogiri Regency, Head of Environmental Office of Sragen Regency, Head of Environmental Office of Klaten Regency. 660.1 / 977 / XII / 2003, 660.1 / 737.A / XII / 2003, 660.1 / 737/2003, 660.1 / 660.1 / 258/24/2003 on Inter-city Cooperation Surakarta, Boyolali District, Sukoharjo District, Karanganyar Regency, Wonogiri Regency, Sragen Regency, and Klaten Regency (Subosukawonosraten) in the environment sector.

regime. If it refers to the legal principle of posterior lexderogatlegi priori, then the scope of environmental management that becomes the object of cooperation ideally uses the provisions of UUPPLH-2009.

Second, the basic principles of cooperation between regions should integrate the basic principles of cooperation in general with the basic principles of environmental protection and management. In general, the basic principles of cooperation are regulated in PP. 50 of 2007, that are: efficiency, effectiveness, synergy, mutual benefit, mutual agreement, good faith, prioritizing the national interest and territorial integrity of NKRI, equality of position, transparency, justice, and legal certainty.[10]In addition to these eleven principles, there are several other principles that are also important, namely: needs-based, engagement and ownership, flexible, and legitimately political and juridical.[11]

The basic principles are still general, while the environmental affairs have their own ecological characteristics that are cross-border administrative areas. Therefore, the principle of cooperation should be integrated with the principles of environmental protection and management as contained in the 1945 Constitution and UUPPLH-2009. There are at least three main principles, namely: (a) the recognition of the basic rights of a good and healthy environment as part of human rights (Article 28H paragraph (1), and (b) state control over the earth, water and natural resources (Article 33 paragraph (3) and (c) environmentally sound and sustainable in every economic activity (Article 33 paragraph (4). These three principles have been further elaborated in the principles contained in the UUPPLH-2009, namely: the principle of state responsibility, sustainability and continuity, harmony and balance, integrity, benefit, prudence, justice, ecoregion, biodiversity, pollution pay, participatory, local wisdom, good governance, and regional autonomy. namely: the principle of state responsibility, sustainability and sustainability, harmony and balance, integrity, benefit, prudence, justice, ecoregion, biodiversity, pollution pay, participatory, local wisdom, good governance, and regional autonomy.

Interregional cooperation in environmental management must pay attention to these principles, especially the three basic principles contained in the 1945 Constitution and several other important principles in the UUPPLH-2009, especially the principle of ecoregion. Through the principle of ecoregion can resolve the regional ego as a result of the fragmentation of authority of each region. Based on this principle, the environment can be managed jointly by several areas that are ecologically located within a certain region or ecological region. The integration of these principles philosophically aims to achieve the goals of cooperation in harmony with the intent and purpose of environmental management.

Third, the legal form of cooperation agreement with fellow regional governments ideally poured in two stages, namely memorandum of understanding (MoU) and cooperation agreements. The MoU is the first stage of the cooperation process, because through this MoU the new parties declare the will to do the cooperation, not set the contents of the agreement in detail, and has not regulate the rights and obligations of the parties in detail and the legal consequences. In the second phase, the MoU is followed up with a cooperation agreement. Through this agreement strictly regulated the subjects of cooperation, cooperation objects, scope of cooperation, rights and obligations, duration of cooperation, termination of cooperation, circumstances of force, and dispute settlement. Thus has a strong legal basis for proof in case of dispute. Of course, cooperation agreements inter-regional have a legal character that is not entirely the same as the ordinary covenant agreement. Inter-regional cooperation agreements have more public character (*publiekrechtelijkesamenwerkings-overeenkomst*),[12] because the promised is the affairs of government (public affairs) and the legal subject is also a government organ. A cooperation agreement is a legal act that makes public policy an object of agreement. The nature of the policy agreement is primarily to make the act of agreement held by the state administration agency or official as a means of realizing the government's policy (de overeenkomstalsbeleidsinstrument).[13] The typical character of the

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[10] See the provisions of Article 2 PP. 50 Year 2007.

[11] Anonim, *Model Kerjasama Antardaerah*, Yogyakarta: PLOD UGM dan Apeksi, 2006, hlm. 62-65.

[12] See W. Riawan Tjandra, Law of State Administration, Yogyakarta: Atmajaya University Yogyakarta, 2008, p. 52.

[13] Laica Marzuki, *Kebijaksanaan Yang Diperjanjikan (Beleidsovreenkomst):* Hukum dan Pembangunan, No. 3, Year XXI, Juni 1991, h. 269.

policy agreement, in its implementation more dominated by public law. The rules and principles of public law apply not only in the date occurence of the agreement but is applicable in terms of implementation and law enforcement.

While the legal form of cooperation between the government and third parties or the private sector ideally form a cooperative contract. In this contract at least contains rights and obligations of the parties, terms of cooperation, dispute settlement; and sanctions for parties that do not meet the agreement. In this cooperation contract must be regulated in detail the above aspects, so in addition to facilitate the implementation and enforcement of the law in case of dispute.

Fourth, there is clear regulation on the role of the government and provincial governments in the mechanisms of inter-regional cooperation. This role has already been regulated in Law no. 23 of 2014 on Regional Government. For example: the role of central and provincial governments in terms of financial assistance, monitoring and evaluation, and in dispute settlement. Ideally, the role has been initiated since the planning, so that strategic environmental issues that are cross-border or have broad impact on some areas can be easier to protect and manage. The strategic role of central and provincial governments in the implementation of interregional cooperation is in line with the inter-regional cooperation philosophy as an instrument to further strengthen relations and inter-regional ties within the framework of regional autonomy. Interregional cooperation is an important instrument for implementing regional autonomy which is welfare in welfare state's perspective. The harmony of inter-regional development, synergic between disadvantages and advantages potential regional, the ultimate aim to achieve mutual prosperity, in this case the welfare of all people in Indonesia.

The inclusion of provinces and / or governments in inter-regional cooperation in environmental management is in line with the ecosystem approach that should be the main base or basis for inter-regional cooperation in environmental management. The welfare of the people in the region as the ultimate goal of cooperation should not ignore ecological sustainability as a prerequisite for sustainable prosperity. Based on the strategic role, the provincial government can issue legal products that regulate cooperation inter-regional districts / cities in the region. In the legal products can be set more specific things according to the characteristics of the region, such as strategic environmental issues that become the object of cooperation.

Fifth, the arranged of institutional model and format of inter-regional cooperation in the field of environment. Ideally environmental management models, such as watershed approach management model, integrated waste management model, integrated coastal zone management model, etc. are integrated in the application of inter-regional cooperation models. The choice of which model is applied depends on the policy of each region and the characteristics of the cooperative environmental issues. Whichever model is chosen, the success of the cooperation will be largely determined by several things, namely: the commitment of regional leaders, the identification of needs that are worthy of cooperation, integration and harmonization of needs issues to be in cooperation into existing or planned regional planning systems, participatory, and with institutional or institutional modeling.[14] The institutional cooperation format can be: (1) cooperative institution; (2) coordination forum; (3) coordination, monitoring and evaluation forum; and (4) joint business entities.

For environmental cooperation, the first and third institutional models are more ideal, because their formation is relatively not difficult. In addition, these two institutional models not only serve as coordination forums or information sharing containers, but has the power to form and implement joint programs. Environmental management requires a coordination function, but at the same time contributes to the formation and implementation of joint programs over the long term.

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[14]Thres Sanctyeka, "Merajut Kepentingan, Menebar Kesejahteraan: Upaya Peningkatan Pelayanan Dasar Melalui Kerjasama Antardaerah*",* in *Sewindu Otonomi Daerah*, KPPOD, Jakarta, 2009, hlm. 6-7.

4. Conclusion

Based on the results and discussion above, can be summarized as follows:

1. The legal arrangement of interregional cooperation in the environmental field in Lampung Province is still general. There is only one Regional Regulation that is directly related to the Local Regulation no. 14 of 2013 on Regional Cooperation. The problem is that the environmental affairs have special characters, which require special arrangements as well. The substance of the regulation in the Government Regulation has not been aligned with the mandate of Law on Regional Government and UUPPLH-2009. Has not been set clearly on the legal form, institutional, and cooperative models causing its implementation to be very diverse and usually more short-term economic oriented.
2. The ideal setting concept of inter-regional cooperation in the field of environment, among others: the scope of legal arrangement of cooperation between regions is not only focused on procedural aspects, but also includes aspects of authority and substance in accordance with the affairs that become the object of cooperation, the basic principles of cooperation between regions must integrate the basic principles of cooperation, the legal form of cooperation agreement with fellow regional governments ideally set forth in the form of memorandum of understanding (MoU) and cooperation agreement, there is clear regulation on the role of government and provincial governments in inter-regional cooperation mechanisms and arranged models and institutional cooperation format inter-regional in the environmental field.

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How Far is the Precautionary Principle Considered in the Benefits of Genetically Modified Organisms World Wide?

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Abstract

It has been years since the human kind first started to advance their life qualities. Humans have evolved all kind of aspects in their lives such as economically, socially, technologically, and scientifically. If we are to integrate between technology and science, we would end up with one of the leading aspect in human life that is biotechnology. From the early stages of using organisms or molecular analogues into certain products or services, biotechnology has taken us into a very different level of new nature insertion that is the Genetically Modified Organisms (GMO). GMO is an organism (human, animals, and plants) or microorganism that is genetically engineered, in order to create new and inheritable characteristic. Because of its direct impact upon human and environment health, the implementation of the precautionary principle is ought to and has been able to settle worries that come from countries across the world. Either GMO is considered as a scientific or trading premise, both Cartegana Protocol on Biosafety and the Sanitary and Phytosanitary Measurement from the World Trade Organization have ensured the safety of those products. Despite all the regulations, nowadays, there are still a lot part of countries that banned the usage of GMOs domestically. These actions have left law experts and international organizations wonder how far the countries consider the binding of GMO regulations and its precautionary principle.

1. Introduction

Since the beginning of early human civilization, biotechnology has become a part of human activities, aiming on improving the quality of life. As time goes by, traditional biotechnology such as using yeast to make alcohol has evolved into a modern way of using genetically engineered (GE) substance. Those products of GE are called the Genetically Modified Organisms (GMO) under the regulations of Cartegana Protocol on Biosafety (CPB). GMO is an organism (human, animals, and plants) or microorganism that is genetically engineered, in order to create new and inheritable characteristic.[1]

It only became a problem when GMO are commercialized below the regulation of the Sanitary and Phytosanitary (SPS) Agreement. Nations do not trust the resemblance of SPS Agreement standard with the CPB regarding to GMO products. Thus, the Precautionary Principle (PP) came through as a link between SPS Agreement and CPB with the goal of minimizing human health and environmental risks. Despite of that, there are still most nations who prohibit the cultivation of GMO benefits commercially such as Germany, Italy, and Poland. Due to that, the purpose of this research is to understand the implementation of PP by the nations regarding to the benefits of GMO according to CPB and SPS Agreement and the establishment in Indonesia.

[1] IDEP Foundation, 2012, "Apa itu transgenik?" Pg. 1, accessed from www.idepfoundation.org.

This research uses the normative legal research with secondary type sources consisting of primary, secondary, and tertiary material of legal source. The collecting method of the research data is through literature-study techniques. Afterwards, the providing data would be process by a law comparison among countries to have a proportion of precautionary principle adoptions. The result stated that in order to regulate the GMOs, CPB has few requirements that have to be fulfilled for export-import mechanisms such as Advanced Informed Agreement, Simple System of Agriculture Commodity, Biosafety Clearing House, Export Documentation, risk assessment and management. In the other hand, SPS Agreement regulates the needed standards for GMO products that are Codex Alimentarius, World Organization for Animal Health (OIE), and International Plant Protection Convention (IPPC). As for implementing PP, nations implement by adopting through their national law; Korea (still adapting), Brazil (CTNBio and *estudo de impacto ambiental*), Germany (The Vorsorgeprinzip), and Indonesia (environment management act, government regulations No. 27 year 2012, and government regulations No. 5 year 2012).

Based on the urgency acknowledged above, it is very clear that the importance of this matter should be considered in order to provide a clearer and better understanding on the practice of implementing PP's role as the international environmental law's principle between states, particularly in the benefits of GMO.

2. Precautionary Principle and the GMOs

2.1 Precautionary Principle

On the early year of 1970, the precautionary principle was recognized from a German fundamental environmental law principle known as the vorsorgetprinzip. It is now adopted into many policies that connect with environmental cases in German such as acidic rain, global warming, and the North Sea pollution.[2] And then, the precautionary principle was introduced in the 1987 Ministerial Declaration of the Second Conference on the Protection of the North Sea through the amendment of the Maastricht Treaty on the European Union.[3]

Internationally, the precautionary principle was first introduced on the 1984, through the First International Conference on Protection of the North Sea, which is followed by number of conventions and international treaties, among them are the Bergen declaration on sustainable development, the Maastricht Treaty on the European Union, the Barcelona Convention, and the Global Climate Change Convention.[4] Nowadays, the precautionary principle has enrolled in international policies that relate with high risk international issues whereas the science is still in doubt or as sustainable development national planning.

Definitions of precautionary principle have never sought the light of day, although it is clearly explained in the 15th principle of Rio Declaration which stated:

> "Where there are threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation."

The term of "measures" is not particularly mentioned, but mainly accepted as governments' actions in using their authorities to lack or give provisions as to consider the developments or activities of its' countries' environmental issues. Mainly, the precautionary principle is just a form of a "careful" nature. While specifically, precautionary principle is an environmental-risk origin principle that acts as a standard to prevent serious cases relating to human and environmental health, based on uncertainty or science presumption upon negative circumstances.[5]

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[2] Joel Tickner, 1999, "The Precautionary Principle in Action: A Handbook", Dakota: Science and Environmental Health Network", pg. 2.

[3] Leeka I. Kheifets, 2001, "The precautionary principle and EMF: Implementation and Evaluation", *Journal of Risk Research*, vol. *4*, no. 2, pg.115.

[4] Joel Tickner*, loc.cit.*

[5] Marco Marrtuzi, 2004, *The Precautionary Principle : Protecting Public Health , the Environment and the Future of Our Children*. Denmark: World Health Organization*,* pg. 7.

Precautionary principle aims to avoid case in a negative possibility which is addressed as ruin problems. Ruin problems can be explained as an absolute more that 0% chance of irreversible risks. One of the real examples of an irreversible risk is extinction of a species.[6] The component of precautions consists of:[7]

a. Having a purpose, such as establishing an intended kind of agriculture or seed breeding.
b. Considering and re-evaluating dangerous practice alternatives.
c. Transferring burden of proof to the financially responsible which comes with the responsibility of evaluating, understanding, researches, information, and professionalism.
d. Evolving a democratic and open procedure that allows a whole decision making methods and criteria.

2.2 What is the GMO?

Genetically Modified Organisms (GMO) are living organisms that experienced changes of their nature and characteristics using modern science technology which studies the inheritance of an organism's nature or characteristic to another that creates a new nature. Genetic engineering can be understood as changes of an animal's or plant's nature to develop new natures that are intended by humans. For example, a pest-resistant gene from a certain bacteria is inserted to a plant. Due to that, the plant embraces that same resistant. From that example, we can identify that GMO's are not only possible between the same species, but also different species which are called as transgenic.[8]

a. GMO's Advantages

The advantages of GMO's among human lives are clearly seen in two aspects that are food and health (medicine)..[9] . Genetically Modified (GM) plants are used as crops that are consumed by humans and animals. Theses crops are eventually produced faster through a genetic engineered process rather than a conventional one. The processed crops contains characteristic that can adapt and have high tolerance to drought, pests, and herbicide. As in for medication, GMOs are usually or expected to be used in

1) Insulin. As a form of medication for diabetes patients, insulin is one of the first GMO health products. In the making of insulin, a certain bacteria are modified genetically to adjust human's insulin gene.[10]
2) GMO can produce medication such as growth hormone.[11]
3) GMO is now a lot used for Hepatitis B Vaccine (produced from yeast). In the future, it is expected that vaccines are inserted into plants or crops, so it is possible to eat the vaccines instead of injecting them.[12]

b. GMO Positive Impacts

GMOs advantages best seen in agriculture are divided into pests' resistance and herbicide resistance.[13] *Bacillus thuringiensis* or *Bt,* is a genetically engineered modification discussed widely for pests' resistance. Bt is an organic insecticide used in the last decades as eradicator by organic farmers and a licensed method in controlling pests. The poison from *Bt* are isolated and inserted into crops'

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[6] *Nassim Nicholas Taleb, 2014, The Precautionary Principle (with Application to the MGO), NYU School of Engineering Working Paper Series, pg. 2.*
[7] A. Wallace Hayes, 2005, The Precautionary Principle, Boston: Harvard School of Public Health, pg. 162.
[8] Jeri Freedman, 2009, *Science and Society Genetically Modified Food*, New York: The Rosen Publishing Group, pg.2.
[9] Lilian E. Forman, 2010, *Genetically Mofified Foods*, Minnesota: ABDO Publishing Company, pg.13.
[10] Steven Seefeldt, 2014, "Genetically Modified Organisms and Food", *University of Alaska Fairbanks*, vol. *94*, pg. 3.
[11] FAO, 2003," Genetically Modified Organisms and Aquaculture". *FAO Fisheries Circular*, *No. 989*, pg. 4, accessed from https://doi.org/10.1108/00346659410048901.
[12] Sarad E. Parekh, 2004, *The GMO Handook: Genetically Modfified Animals, Microbes, and Plants in Biotechnolog*y, New York: Springer Science+Business Media, pg. 40.
[13] Bill Freese, 2014, "The GMO Deception: (Chapter 36) Genetically Modifief Crops and the Intensification of Agriculture", from *The GMO Deception* by Sheldon Krimsky, New York: Skyhouse Publishing, pg. 36

gene, now elaborated in corns. The benefits of *Bt* are focusing on enhancing pests' resistance.[14] Despite all the positive impacts, critics have been given due to this issue for causing the high rates of monarch butterflies' larvae.[15]

c. GMO Negative Impacts

Although GMOs are proven to have a lot of positive returns to human lives, states' concerns are never eased. In fact there a few of negative impact classified from GMOs.

1) Human Health Risk

The concerns when it comes to health risk consist of allergies, poisoning, and antibiotic resistance. [16] On 2005, the National Research Arm of the Australian Government (CSIRO) Scientists reported that they have genetically engineered peas to be pests' resistance which caused an allergy that led to a lung failure to rats. Due to that minor testing, the long term project was abandoned. This fact has rises the doubt weather the same impact would occur with humans.

2) Habitat Change

GM supporters declared that GM Crops have indirectly contributed to forest conservation by allowing marginal land to be processed which prevents wood cutting in the forest that changes field soil position. The fact is, experience indicates that the process of GM crops have increased the change of soil usage. [17]

3) Pollution and Foreign Species Invasion

Agricultural modern practices applied in herbicide, pesticide, and fertilizer has causes severe damages in a big part of environments through out the world, especially water and soil[18] besides that, GM crops have introduced cross breeding between crops or natural plants that grows in the area. The genetic current alone is not a risk and several times are a part of a plant's development or evolution. But it is always to be kept it mind that these kind of evolution can possibly lead into an uncontrollable plant which end up to a risk of extinction due to the foreign species.[19]

2.3 GMO and the Precautionary Principle

The arguments of GMOs and the risks they carry are in spotlight between scientists. Scientists believe that the GMO works under the precautionary principle, because the GMO risks have a system. Two aspects of the system include spreading and the impact towards health and ecosystem. Ecologically, regarding to intended maintenance of soil and plants, GMO has its habit to spread without control thus the unknown risks.[20] Cross breeding of a plant type with GMOs prevents their freedom that directs to a very wide and irreversible system effect without knowing the flaws.[21] Precautionary measures that relates with GMOs consists of two requirements; appropriate science and supporting evidence as a part of valuing risks that has a role of introducing consequences from the GMOs.[22] Whenever science is proven unqualified, then precautionary approach takes actions. From a

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[14] Eliana M. G. Fontes, 2002, "The Emvironmental Effects of Genetically Modified Crops Resistant to Insects", *Neotropical Entomology*, vol. *31*, no. 4, pg. 499.

[15] F. B. Peairs, 2010, "Bt Corn: Health and the Environment", Colorado: Colorado State University, pg. 2.

[16] Nancy Mills, 2006, Genetically Modified Organisms, *Center for Ecogenetics & Environment Health*, pg. 314.

[17] Marlon Henkel, 2015, *21st Century Homestead: Sustainable Agriculture I*, pg. 30, accessed from https://books.google.co.id/books?id=bGLxCQAAQBAJ&printsec=frontcover&dq=marlon+henkel&hl=id&sa=X&redir_escy#v=onepage&q=marlonhenkel&f=false

[18] Sheldon Krimsky, S, 2002, *Environmental Impacts of the Releases of Genetically Modified Organisms*, Massachusetts: Encyclopedia of Pest Management, pg. 1.

[19] P. Kameri-Mbote, 2005, "Regulation of GMO Crops and Foods", Jenewa: *International Enviromental Law Research Center*, pg. 7.

[20] Renate Schubert, 2010, *Future Bioenergy and Sustainable Land Use*, London and Sterling: Earthscan, pg. 149.

[21] Simonetta Zarrilli, S., 2005, "International Trades in GMOs and GM Product: National and Multilateral Legal Frameworks, New York and Geneva: United Nations, pg. 42.

[22] Natalie Ferry, 2009, *Environmental Impact of Genetically Modified Crop*, Oxfordshire: CAB International pg.329.

practical implementation, the Cartegana Protocol on Biosafety (CPB) focuses on the precautionary aim. It states:[23]

*"*Lack of scientific certainty due to insufficient relevant scientific information and knowledge regarding the extent of the potential adverse effects of a living modified organism on the conservation and sustainable use of biological diversity in the Party of import, taking also into account risks to human health, shall not prevent that Party from taking a decision, as appropriate, with regard to the import of that living modified organism intended for direct use as food or feed, or for processing, in order to avoid or minimize such potential adverse effects."

3.4 Precautionary Principle: GMO's Link Between Research and Trade

The different premise of GMOs between CPB and SPS Agreement has always been a problem world wide. Both of them do underline GMO in the export-import activities, yet CPB treats GMO as a research matter; an environmental reason, while SPS Agreement takes GMOs and commercialize them as a part of the international trade. Society feels that SPS Agreement opposite perspective of GMO from the CPB could lead to very dangerous causes. They need one thing in common to act as a "bridge" between them. The answer is one: precautionary principle. The WTO states that SPS Agreement will prioritize international trade without neglecting the environment through risk assessments and risk managements performed by each country domestically. To understand how to vision precautionary principle as the link between research and trade, it is likely to learn of GMO regulations in CPB and SPS Agreement.

1. GMOs in the Cartegana Protocol on Biosafety (CPB)

The Cartegana Protocol on Biosafety (CPB) was entered into force on 11 September 2003, and it is the first international law that regulates genetic engineering specifically. The existence of this rule reflects the global concerns towards the safety, health, and environment risks. For the first time on the international law history, there is an implicit acknowledgement that inherited GMOs from different organisms can carry a different risk and biological hazard as well. As of that statement, the international community considered a regulation to this matter is very much needed. The CPB states that GMOs do have high chance of giving impacts to the biodiversity, human health, and social economy, where the impact mentioned has to experience risk assessments or policy calculations.

Precaution is the base of this protocol, which takes the form of a policy making or risk assessment.[24] CPB refers to "GMO" with the term of "LMO" or Living Modified Organisms, and it regulates the nature, transit, handling, and benefits of an LMO which could lead to minor issues when dealing with cultivation or sustainable biodiversity that is very risky to human health.[25] CPB divides LMO into two types of procedures; direct contacts with environment, such as seed for soil cultivation or animal breeding[26] and in forms of food, such as crops.[27] CPB underlines the clear information given during import-export of a GMO. There are a few rules and procedures that regulate information during and export-import activity:

1) The Biosafety Clearing House (BCH)

The BCH is the base of biological safety in the form of an internet forum.[28] The BCH consist of information of national law, regulation, and guidance in applying CPB as adding information of countries' reports that agree to import a GMO product.

2) Advanced Informed Agreement (AIA)

AIA only regulates objects of living organisms such as seed or a fish to grow in a new environment and breed to create a new natured of GMO generation.[29] Parties that export GMOs will give

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[23] Article 11 point 8 of the Cartegana Protocol: Procedurs for Living Modified Organisms Intended for Direct Use as Food or Feed or for Processing.

[24] Lim Li Lin, 2007, "Chapter 26: Cartagena Protocol on Biosafety" dari buku *Biosafety First*, Norwegia: Tapir Academic Publishers, pg. 2.

[25] *Article 4 of Cartegana Protocol..*

[26] Article 7(1) 0f Cartegana Protocol.

[27] Article 7(2) of Cartegana Protocol.

[28] See http://bch.biodiv.org

administrations to the receiving country. The country will either accept or reject based on the rules regulated by the AIA.

3) Simpler System of Agricultural Commodity

GMOs that are in form of food (crops) are regulated in a simpler version. States that agree to import GM Foods are likely to report in the BCH. The purpose of reporting is to maintain the international trading system transparency.[30]

2. GMOs in the Sanitary and Phytosanitary (SPS) Agreement

On the 1st January 1995, the Sanitary and Phytosanitary (SPS) Agreement is established on the same time as the World Trade Organization (WTO).[31] Originally, agreements that are relevant to GMO or particularly Genetically Modified Food (Labeling) are *The Agreement on Technical Barriers to Trade* (TBT Agreement) which regulates standards of production, process, packing, labeling and *The Agreement on the Application of Sanitary and Phytosanitary Measures* (SPS Agreement) that regulates measurements needed to protect the lives and health of humans, plants, and animals. TBT Agreement is a continuous action of SPS Agreement.[32] When it comes to giving standards, the SPS Agreement is known for the "three sister organizations" which are:

a. Codex Alimentarius

Standardization for food product or agriculture in the form of texts with relates to practice, labeling, additions, inspection, certification, nutrition, and pesticide.[33]

b. International Plant Protection Convention (IPPC)

This convention regulates phytosanitary protection and management that as a reference by nations to prevent contamination of plant illness towards environment.

c. *World Organization for Animal Health* (OIE)

OIE's roles is to provide recommendations based on scientific proof to measure prevention, management, and demolishing animal diseases including zoo noses, especially in an occasion where humans, animals, and environment interacts.[34]

4 Benefits of the GMO between Sates

1. Indonesia

Indonesia does not take advantage of GMO commercially, but is on their way. PT Perkebunan Nusantara is recently given permission by Indonesia's Ministry of Agriculture to introduce their products (GM Sugar) commercially. Indonesia does not have any exporting activities regarding to GMO. Although for import, Indonesia accepts tempeh, tofu, cotton, corn, and soybeans. Tempeh and tofu are a major part of food consumed in Indonesia. The main ingredients of both foods are soybeans. The rate of consume from soy beans is 2.7 million metric tons (MMT) which overcome 9% of Indonesia market. While soybean import are 4.3 MMT on 2014. As the 9th biggest cotton exporter in the world, Indonesia consumed 457 MMT, and corn takes place of consuming for 7.4 MMT. There are numerous of regulations that relate to GMO in Indonesia's national law:

a. Law No. 32 Year 2009 on Environment Protection and Management.
b. Law No. 18 Year 2012 on Food.
c. Ministry of Agriculture Decree No. 856 Year 1997.
d. Government Regulation No. 28 Year 2004 on Food Safety, Quality, and Nutrition.

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[29] Aaron Cosbey, 2000, "The Cartegana Protocol on Biosafety: An analysis of Results", Kanada: International Institute for Sustainable Development, pg.1.
[30] *Ibid,* pg. 704.
[31] World Trade Organization, 2010, "The WTO Agreement Series: Sanitary and Phytosanitary Measures", Switzerland: World Trade Organization, pg. 3.
[32] Heike Baumuller, 2004, "Domestic Import Regulation for Genetically Modified Organisms and Their Compatibility with WTO rules", pg. 39, accessed from http://www.ris.orf.in/imagies/RIS_images/pdf/abdr_July044.pdf
[33] Food and Agriculture Organization of the United Nations and World Health Organization, 2016, *Understanding Codex*, Rome: FAO and WHO, pg. 13.
[34] Corning, S., 2014, "World Organisazion for Animal Health: strengthening Veterinary Services for effective One Health collaboration", vol. *33,* no. 2, pg. 641.

e. Government Regulation No. 21 year 2005 on Biological Diversity.
Indonesia has ratified both CPB and the World Trade Organization (SPS Agreement) through Law No. 21 Year 2004 and Law No. 7 Year 1994.

2. Korea

Korea's subjects for food labeling are soy bean, corn, cotton, sugar beer, alfalfa, and food products that are contained in crops. The labeling requirements are adopted both for domestic or imported products.[35] There are two laws that regulate GMO:

a. Food Sanitation Act revised on 3rd February 2016 and implemented on 4th February 2017.
b. Guideline on Labeling Gm Food revised on 25th January 2017 and implemented on 4th February 2017.

3. Brazil

On November 1st, 2016, there are 58 genetically engineered products that are agreed to be cultivated commercially by Brazil; 34 products for corn, 10 products for soy bean, one product for eatable dried beans, and one product of a eucalyptus. The total area used to plant genetically engineered crops on previous years (2015/2016) reached 43 million hectares, which encourage Brazil to be the second most produced genetically engineered crops in the world.[36] Those products with herbicide resistance outgrew the adoption by societies than can be seen by planting coverage of 65% for farm area, 19% for insect resistance, and 16 % for gene stacking.[37]

Brazil has ratified the CPB on November 2003. The national law framework of Brazil for agricultural biotechnology is in the *Law #11,460 of 2007 and Decree #, 591 of 2006*. There are two government bodies that regulate biotechnology in Brazil:

a. *The National Biosafety Council* or CNBS. This council act below the president and is responsible to establish *National Biosafety Policy*
b. *The National Technical Commission of Biosafety* or CTNBio is established on 1995 under the first law of biosafety in Brazil (Law # 8,974).

4. German

In Germany, there are no products of GMO that are produced commercially; including GM seeds which are not allowed to sell overseas. Although so, seed companies like Bayer Crop Science, BASF, KWS from Germany, provides biotechnology seeds for farmers across the world. Germany used to cultivate MON 810 Corn from Monsato until April 2009, because it was banned by the ministry of food, agriculture, and consumers protection, Ilse Aigner. Regarding to GMO regulations, on November 2003, German ratified the CPB. Domestically, the Federal Office of Consumer Protection and Food Safety or German abbreviation BVL is an authority in Germany that regulates GM Crops. The BVL is a part of the Federal Ministry of Food and Agriculture (BMEL). It accepts report from genetically modified provision requests and then hands over the report to the European Food Safety Authority (EFSA) which checks the quality of the data in order to evaluate risk potentials.

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[35] Seung Ah Cheung, 2017, "USDA GAIN Report No. KS1&11: Korea's New Biotech Labeling Requirements", pg. 4.
[36] OECD, 2011, "Agricultural Innovation and Challenges for Promotion of Knowledge and Information Flows in Agrifood Systems in Brazil", Paris: OECD Conference on Agricultural Knowledge System (AKS), pg. 12.
[37] João F. 2017, "USDA GAIN Report No. BR 1624: Agricultural Biotechnology Annual Brazil -Agricultural Biotechnology Report, pg. 3

5 How do States Implement the Precautionary Principle?

1. Indonesia

The focus of precaution as an environmental law principle is when the cases of electric cable radiation and land slide.[38] There are three environmental principle acknowledged in Indonesia, that is polluter pay principle, prevention principle, and precautionary principle.[39] Law No. 32 Year 2009 on Environment Protection and Management (UUPPLH) regulates about precautionary principle on Article 2f. UUPLH also regulates an analysis of environmental impact that has to be fulfilled with every company or factor. The UPPLH article 47(1) and (2) stated:[40]

(1) Every business and/or activity that has a potential of effecting the environment, threatening the ecosystem and lives, and/or human safety and health, are demand to organize and analysis of environmental risk.

(2) Environmental risk analysis mentioned in point (1) consists of:

a. Risk assessment;

b. Risk management; and/or

c. Risk communication.

The precautionary principle can also bee seen in the Government Regulations No. 27 Year 2012 on environment permission and Government Regulations No. 5 Year 2012 on types of business that obligates to analyze environment impact.[41] The Ministry of Agriculture Regulation No. 61/Permentan/Ot.140/10/ on testing, evaluating, releasing, and withdrawing varieties of GM foods was created as a preventing action upon GM foods. Unfortunately, in this regulation there are no indication of precautionary principle, environment risk analysis, and environment permission. This is not relevant with the higher regulations such as CPB, UUPPLH, Government Regulations No. 27 Year 2012, and Government Regulations No. 5 Year 2012 and need a re-evaluation based on the principle of *lex superior derogate lege inferiori.*[42]

2. Korea

There are three environment regulations in Korea, but none of them have implemented the precautionary principle.

a. Framework Act on Environmental Policy (FAEP)1990 and *Natural Environment Conservation Act (NECA)1991*only introduce the prevention principle instead of precautionary principle, both of them does not mention lack of science and focus on the economic sides.[43]

b. Act on Impact Assessments on Environment, Transportation, Disasters (AIA) 1999 did not mention of the precautionary principle but rather an unclear version of sustainable development.[44]

3. Brazil

Precautionary principle is one of the environmental aspects that are very much deliberated. In Brazil, the implementation of this principle was taken seriously since the "RR Soy Bean" Case occurred. The

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[38] David Cole, 2005, "The Precautionary Principle-Its Origins and Role in Environmental Law", pg. 4 accessed from https://www.laca.org.au/images/stories/david_cole_on precautionary_principle_EDO.pdf

[39] Andri G. Wibisana, 2006, "Three Principles of environmental law: the polluter-pays principle, the principle of prevention, and the precautionary principle" from *Environmental Law in Development: Lessons from Indonesian Experience*, Massachusetts: Edward Elgar Publishing, pg.24.

[40] La Ode Angga, 2014, "Penerapan Prinsip Kehati-hatian dalam Kebijakan Perlindungan dan Pengelolaan Lingkungan Hidup di Bidang Pertanian Untuk Keunggulan Varietas Produk Rekayasa Genetik", *Supremasi Hukum*, vol. *3, no.* 2, pg. 114.

[41] Pasal 3 ayat (1) dan (2) PP No. 27 Tahun 2012 tentang Izin Lingkungan.

[42] Wahyu Sasongko, 2013, *Dasar-Dasar Ilmu Hukum*, Bandar Lampung: Penerbit Universitas Lampung, pg. 29.

[43] See Article 7-2 of FAEP and Article 3(5) NECA.

[44] See Article 1 of AIA

case involved *Instituto Brasileiro de Defesa do Consumidor* (ICED) that sues the National Technical Commission on Biosafety (CTNBio).[45]

ICED did not agree for the reaction CTNBio gave in provisioning the soy bean from Monsato without a proper standardization of precautionary approach. Brazil Court of District underlined that CTNBio should have taken *estudo de impacto ambiental* EIA seriously. EIA is a study to decide for a GM qualifications. On the other side, Brazil High Court was satisfied enough with CTNbio's administration as a form of precaution it self. Through this case, the government finally changed the authorities of provisioning a GMO. On November 2003, Brazil's President has established a biosafety law that demand CTNBio to take precautionary principle in giving provisions seriously.[46]

4. German

*The Vorsorgeprinzi*p Has a big role in making environmental law policies in Germany. Sometimes, the principle is the main reference in the national policies. Besides that *The Vorsorgeprinzip* has become a link between other principles. Cameron and Abouchar stated that *Verschelechterungsverbot* and correction at source is another special form of the vorsorgeprinzip.[47]

Water management in German has included vorsorgeprinsip in a wide substance. But, for a few decades the principle is never adopted in energy resources management. Matter of fact, the environmental principle never taken places in the energy resources policies through the federal Energy Management Act/Energiewirtschaftsgesetz (EnWG). because of that, the energy resource policies are in deliberation of destruction, while precautionary principle can be seen in Article 2 (4) of EnWg. The Article declares the probability in minimizing environmental damage risks.

Table 1.1
Nations in Implementing Precautionary Principle

No.	Country	Benefit of GMO	*Cartegana Protocol*	*SPS Agreement*	*Precautionary Principle*
1.	Indonesia	Accepted as food	Ratified through Law No. 21 Year 2004	Ratified through Law No. 7 Year 1994	Law No. 32 Year 2009, Government, Regulations No. 27 Year 2012, Government Regulation No. 5 Year 2012.
2.	Korea	Accepted as food	-	Ratified on 1 January 1995	Adapting
3.	Brazil	Accepted as food and feed	Rarified on November 2003	Ratified on 1 January 1995	CTNBio/EIA
4.	Germany	prohibit GMO	Ratified on November 2003.	Ratified on 1 January 1995	*The Vorsorgeprinzip*

From the table above, we can see that Indonesia, Korea, and Brazil support GMOs, but Germany does not. From four countries, only one does not embrace the precautionary principle, which is Koreas. The precautionary absence does not mean GMOs can be banned. While precautionary existence does not mean GMOs are welcomed.

[45] Robert L. Paalberg, 2001, *The Politic Precaution: Genetically Modified Organisms in Developing* Countries, London: The John Hopkins University Press, pg. 77, accessed from https://books.google.co.id
[46] Lesley K. McAllister, 2005, "Judging GMOs: Judicial Application of the Precautionary Principle in Brazil", *Ecology Law Quarterly*, vol. *32*, no.1, pg. 173.
[47] *Ibid.*

6 Conclusion

The GMO is regulated specifically by the Cartegana Protocol on Biosafety (CPB). The CPB underlines that due to research issue, GMO's are exported and imported by looking up to certain regulations such as Biosafety Clearing House, Advanced Informed Agreement, and simpler system agricultural commodity. Because of these high standards, it became a problem when GMO is commercialized through the Sanitary and Phtyosanitary (SPS) Agreement with presumption of minor qualifications. Precautionary principle came through between these regulations that takes both CPB and SPS Agreement on the same page. This is proven by SPS Agreement which acts through risk assessment and management. The SPS Agreement also has international standard organs which are Codex Alimentarius (food), International Plant Protection Convention, World Organization of Animal Health.

Every country has its own ideas on GMOs; Indonesia, Korea, and Brazil support the GMOs, while Germany prohibited the GMOs. As for implementing the precautionary principle, nations implement by adopting through their national law; Indonesia (environment management act, government regulations No. 27 year 2012, and government regulations No. 5 year 2012), Korea (still adapting), Brazil (CTNBio and *estudo de impacto ambiental*), and Germany (The Vorsorgeprinzip). Out of four countries, only one does not embrace the precautionary principle, which is Korea. The precautionary absence does not mean GMOs can be banned. While precautionary existence does not mean GMOs are welcomed. This means that the precautionary principle is not permission or requirement for GMO to be acknowledged in countries, that precautionary principle are an effort to minimize risk whenever it is "intended" not "automatically".

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IDEP Foundation; 2012, "Apa itu transgenik?" Pg. 1, accessed from www.idepfoundation.org
Paalberg, Robert L.; 2001, *The Politic Precaution: Genetically Modified Organisms in Developing* Countries, London: The John Hopkins University Press, pg. 77, accessed from https://books.google.co.id
See http://bch.biodiv.org

Responsibility to Protect: Possibility of Implementation International Community to Protect Civilian

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Abstract

Myanmar gets International attention. The Myanmar Government that carried out the Rohingya ethnic cleansing at Rakhine State. The action was conducted systematically on the grounds that Rohingya were illegal immigrants from Bangladesh. Myanmar is incapable of exercising its sovereignty to protect the civilians living in its territory. Therefore, International community condemned the actions of the Myanmar Government. The criticism is based on the understanding that a State has complete sovereignty and is exercised to protect civilians living in the territory of the State. It is called responsibility to protect that was created to protect people from genocide crime, war crime, crime against humanity and ethnic cleansing. International community must act to stop the humanitarian crisis in Myanmar accordance United Nations Charter and other international agreements. The humanitarian crisis in Myanmar is at strake whether Responsibility to Protect can be the basis for protecting civilians.

Keywords*: Rohingya, Responsibility to Protect, International Community*

1. Introduction

Rohingyas are known as predominantly Muslim ethnic minorities that live in Rakhine State, Myanmar. Rakhine State, formerly known as Arakan, is located on the western coast of Myanmar.[1] It borders Bangladesh to the northwest, the Bay of Bengal bounds it to the west, and a mountain range to the east divides Rakhine from the rest of Myanmar. An estimated one million Rohingyas live in Rakhine State. Most of Rohingyas population is in the three northernmost townships, Maungdaw, Buthidaung, and Rathedaung.[2] Myanmar, its country, is considered as a quite diverse ethnic. Bamars, also referred to as Burmans, are Myanmar's dominant and majority ethnic group, but a number of ethnic minority groups constitute forty percent of the Myanmar population. Myanmar's ethnic diversity does not entail religious heterogeneity. The majority of the population in Myanmar is Buddhist, with lack of minority religious populations.[3]

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[1] Saovanee Kaewjullakarn dan Lalin Kovudhikulrungsi. 2015. What Legal Measures should ASEAN Apply to Help the Rohingya. Kuala Lumpur Internationa; Business, Economics and Law Conferences 6. Vol 4, April 18-19 2015, Hotel Pura, Kuala Lumpur, Malaysia.
[2] Siti Khalijah Binti Haji Abdul Rahman. 2014. Rohingya Muslim Ethnic Violence: World's Response and The Role of United Nations. International Conferences of Global Islamic Studies. 105.
[3] John F. May & Thomas R. Brooke, *Deciphering the Demography of Myanmar*, Population Reference Bureau (Sept. 2014), http://www.prb.org/Publications/Articles/2014/myanmar-demography.aspx.

Rohingya represented the Islamic minority of Buddhist led state, which never experienced an original identity acknowledgment to these people, as well as the rest of Burmese country.[4] They are frontiersman that their ancestral roots and cultural ties are placed along the borders Myanmar and Bangladesh and today their residence place are located in Rakhine State Myanmar country. After Myanmar independence from Britain colonial rule in 1948, in the regime that have ruled in Myanmar one after another, the ethnic-linguistic identify of this groups was recognized, but this identify systematically by the anti-Islamic military governments that since 1962 have organized, has been ignored.[5]

The conflict by Rohingya ethnic become complex due to the muddled various information regarding Rohingya ethnic is referred to as Bengali, which is somehow a recist gesture and they imagine them as the remained illegal immigrants from colonial and they don't have any authentic document of citizenship. This claim was hard to be push aside because on 1977-1978, among the Rohingya refugees, there is a huge amount of Bihar people and seasonal labor from Chittagong have been chased out from bay of Bengal due to the slowness oil gas industry. Moreover, Rohingya ethnic do not have any citizenship document due to several factors; which are the nonchalant attitude of them towards the citizenship registration after 1948 as well as the negligence of local registry office in order to keep the record well since 1948.

Ethnic violence between the stateless Rohingyas and majority Rakhines in Myanmar's Rakhine state erupted again until today. Tatmadaw (arms force of Myanmar) and other armed groups under government control are committing gross violation against Rohingya. Reports indicate that these violations, perpetrated primarily by state actors on a widespread and systematic basis, rise to the level of crimes against humanity, ethnic cleansing and war crime.

2.1 Rohingya to be lost: Root of All Cause.

As it was said, if national authorities clearly are not able to protect its people from genocide, war crimes, ethnic cleansing and crimes against humanity, then the international community can be acted with the theory of responsibility to protect to support of these people against these crimes. So, in order to response to this question which whether the theory of responsibility to protect in relation to the Rohingya issue is also applicable or not, should be demonstrated initially the commit each one of the crimes against the Rohingya and any failure of the Myanmar government to protect them.

1. Denial of Citizenship and Displacement

The Myanmar's 1982 Citizenship Law did not acknowledge Rohingya's existence that has left Rohingya without a nationality.[6] Thus, a move was reinforced by publication in 1983 of the result of a census in which Rohingya were not counted. In 1989, the government instituted a citizen verification program. In this program, individuals were issues color-coded citizenship scrutiny cards, which categorized citizenship card by colors. Full citizens held pink cards, associate citizens held blue, and naturalized citizen held green.[7]

The Union Citizenship Act allowed people whose families have lived for two generations in Myanmar to apply for identity cards. Initially, the government provided many Rohingya with citizenship or identification cards under this provision. However, after the military coup in 1962, the government began giving less documentation to fewer and fewer Rohingya children, refusing to recognize fully new generations of the Rohingya population. The consequences of the 1982 Citizenship Law have affected

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[4] Aye Chan. 2010. "Who are the Rohingyas". Piccima Zone Magazine, Feb 2010, Vol 1,No. 1.

[5] Zarni, Maung: Cowley, Alice. 2014. "The Slow-Burning Genocide of Myanmar's Rohingya". Pacific Rim and Policy Journal. 23/3: 682-752.

[6] Burma Citizenship Law (Myanmar). http://www.unhcr.org/refworld/docid/3ae6b471b.html.

[7] Amnesty International. 2004. Myanmar: The Rohingya Minority: Fundamental Rights Denied. Al Index: ASA 16/005/2004. London Amnesty International. 11. https://www.amnesty.org/en/documents/ASA16/005/2004/en/.

Rohingya since its enactment. Because many Rohingya are stateless, most do not have standing in Myanmar courts and have limited access to economic opportunities, education, and property ownership. [8]

And that was the beginning when Myanmar Government confiscated Rohingya lands, causing more Rohingya to become internally displaced or to flee the country. By law, the Myanmar government owns all land in the country and only citizens have the right to use and enjoy their land. As a result of their statelessness, Rohingya have no legal to the land on which they live and work, leaving them vulnerable to land confiscation by the government.

2. Deportation and Population Forcible Transfer

The second paragraph (D) of Article 7 of the Rome Statute of the International Criminal Court, deportation and population forcible transfer defines as the entitled "The individual forced displacement relevance with deportation or other forced action from the area in which these individual are lawfully present, without good reason according to international law ". In both cases, the material element, the transfer of individuals from one land to another land is demanded (Forced displacement).

The first mass exodus of the Rohingya people, which attracted the international society's attention to itself, is an immigration mass from northern Arakan State to Bangladesh newly independent state in 1978. In this process, more than two hundred and twenty thousand Rohingyas have been displaced in Bangladesh borders. The second mass exodus of the Rohingya people to Bangladesh occurred between May 1991 and March 1992. The strict forced labor, land confiscation, restrictions on freedom and widespread rape and torture, was causing a large portion of the population have no choice except escape.

However, over the past several decades, the Myanmar government has attempt to expel the Rohingya from the country or transfer them to camps which are located far from their home and there is still serious concerns about this fact that the Burmese government is trying to divide the population of Buddhists and Muslims from each other and thereby facilitate the ethnic cleansing of Rohingya Muslims of Arakan State.

3. Crime of Genocide

With the adoption of the "Convention on the Prevention and Punishment of the Crime of Genocide" in 1948, the crime of genocide prohibition was passed for the first time. Article 2 of the Convention, defines the genocide as follows: "In this convention, the genocide is said to each one of the following acts which is committed with intent to destroy in all or a part of national, ethnic, racial or religious group as follows:(1) killing members of the group; (2) Creating severe damage to the physical or psychological health of members of a group; (3) To deliberate put a group under poor living conditions that lead to physical destruction in whole or in part of the group; (4) Implementing the measures that are carried out with intent to prevent procreation among the group; (5) Children forcible transfer of a group to another group."

Genocide crime has homogeneous nature with crime against humanity. The fundamental difference is that in the crimes against humanity, the non-civilian population in the framework widespread or systematic attack is targeted, while to commit the crime of genocide is necessary that to be exist specific intent destroy of the protected group (In whole or in part). In some cases, overlap and compatibility between these two concepts is created.[9]

The Rohingya characteristics and history shows that they are considered as a national, ethnic, racial and religious group under the Genocide Convention. Although the Myanmar officials denied the Rohingya historical presence, but historians have proved signs of the presence of Rohingya in Rakhine

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[8]. Yegar, Moshe, (1972), *The Muslims of Burma: a study of a minority group*. Available from: http://www.netipr.org/policy/downloads/19720101-Muslims-Of-Burma-by-Moshe-Yegar.pdf. 2

[9] Azzi Sattar. 2007. Protecting the Rights of minorities in the light punishment of perpetrators of genocide in multilateral in international case law. Journal of Law. Faculty of Law and Political Science at Teheran University. No. 4. Winter 2007. 134-135.

state before the nineteenth century.[10] Their language is "Rohingyalish" and the majority of them are Muslims. Therefore, their language and religion is different with other ethnic groups in Rakhine state and Myanmar's country and this two part of the Rohingya people identity form as a distinct group.[11] Officials' measures that are carried out to deny the Rohingya people ethic identity, clearly indicates that the government wants to destroy the foundations that the Rohingya existence is based on it. Rohingya people identity denials are formed in various forms of violence, including the governmental authorities that forced them to introduce themselves as "Bengali" and the people are clawing towards of targeted sanctions against the Rohingya and violence action.

Myanmar's government due to genocide, acts that has been committed by the country's security forces against the Rohingya, is recognized responsible, because according to the Genocide Convention, the governments are responsible for the genocide exercises of the governmental institution. Myanmar army, Myanmar police forces and Nasaka to form the Myanmar's security forces which according to the internal laws of Myanmar's country, are considered the governmental institution and their actions are attributable to the Myanmar's government.

4. Ethnic Cleansing

In can be said that ethnic cleansing is a set of actions which it ultimately demolishing members of ethnic groups that are targeted in the ethnic cleansing, to not be present in the cleaning area or in summary, ethnic cleansing can be defined as "Remove from the territory".[12] Ethnic cleansing in fact is a particular kind of deportation and forced transfer of population and "there is the absolute relationship between the ethnic cleansing and crimes against humanity, because ethnic cleansing is concerned only with conflicts which is an underway between ethnic rival groups, but deportation and forcible transfer of population is not related only to the ethnic cases".[13]

It must be said that the increasing evidence which exist about the killings and violence against the Rohingya people in the Rakhine state, indicates that the forced transfer of Muslims, their deportation from the Myanmar and adoption the specific rules and guidelines of Rohingya people helps to facilitate the destruction and violence against the Rohingya people, which is done with government support, therefore, the government's intention is not only to expel the Rohingya people of the Rakhine state, but also it is followed that by killing members of the group, inflicting serious physical or mental damages and imposing the conditions that lead to physical destruction of group to remove them. Therefore, the government's intention is not only to cleanse them from the Rakhine State, but also with regard tothe implementation of discriminatory policies, their destruction has been also targeted. Eventually, ethnic cleansing has led to the genocide.

2. International Framework

Myanmar is a signatory of several legally binding human rights instruments, which are particularly pertinent to their mistreatment of the Rohingya, such as the 1979 Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) and the 1989 Convention on the Rights of the Child (CRC). It is also party to the 1966 International Covenant on Social, Cultural, and Economic Rights (ICESCR), though not to the 1966 International Covenant on Civil and Political Rights (ICCPR). Nevertheless, as a UN Member State, Myanmar is not just subject to legally binding instruments such as

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[10] Yegar, Moshe, (1972), *The Muslims of Burma: a study of a minority group*. Available from: http://www.netipr.org/policy/downloads/19720101-Muslims-Of-Burma-by-Moshe-Yegar.pdf, p. 2

[11] International Human Rights Clinic (2015). Persecution of the Rohingya Muslims: is Genocide occurring in Myanmar's Rakhine State, Prepared by the Allard K. Lowenstein International Human Rights Clinic, Yale Law School for fortify rights. Available from: http://www.fortifyrights.org/downloads/Yale_Persecution_of_the_Rohingya_October _2015.pdf, p. 42-43.

[12] Bevan, Robert (2006). The Destruction of Memory. London, cpi/Bath Press. 27.

[13] Azizi, Sattar. Opcit. 223.

treaties and conventions, but also to customary international and human rights law. The 1948 Universal Declaration of Human Rights (UDHR) details rights that all people should enjoy regardless of their legal status. The UDHR further guarantees the right not to be discriminated against, a right which is also upheld in the ICCPR[14] and ICESCR[15], as well as the right to freedom of movement, also specified in the ICCPR.[16] The 1992 *Declaration on the Rights of Persons belonging to National or Ethnic, Religious or Linguistic Minorities* is particularly important, as it underlines minority rights that everyone is subject to, citizens and non-citizens, such as the freedom to practice their culture, religion and language within the confines of a state (A/RES/47/135). Further protection for the Rohingya and other such groups against discrimination, is specified in the ICCPR, compelling states not to provoke hatred or discrimination against them, and similarly in the CRC which obliges all the rights it endows to be indiscriminately applied to every child.

Myanmar is also governed by several obligations under international humanitarian law and international human rights law, in particular due to the past and ongoing conflict within its borders. It ratified the Geneva Conventions in 1992, also known as the laws of war, and the 1949 Genocide Convention, ratifying it in 1956. States are also responsible for ensuring that crimes against humanity and other war crimes do not occur within their borders, and therefore must investigate and prosecute any instances thereof.

2.1Applying the Responsibility to Protect by International Community

The Responsibility to protect later is mentioned as RtoP consisted of two basic principles. The first one explains that state sovereignty implies responsibility, and as a consequence, the primary responsibility for protection of the people in a state lies with the state itself. The other principle is that if people are suffering from serious harm as a result of civil war, insurgency, repression or state failure, and the state in question is unwilling or unable to halt or avert it, the principle of non-intervention yields to the international responsibility to protect.[17] The Responsibility to Protect has been addressed in numerous international instruments, including UN General Assembly Resolutions 63/308 and 60/1, and paragraphs 138-139 of the World Summit Outcome Document.[18] The two resolutions reaffirm that governments and heads of state have the responsibility to protect their populations from genocide, war crimes, crimes against humanity and ethnic cleansing. These are deemed to be gross and systematic violations of the most fundamental human rights to life, physical integrity, security and freedom from violence.[19]

The first pillar explains that states are responsible for protecting their populations from genocide, war crimes, ethnic cleansing and crimes against humanity. This obligation is part of customary international law.[20] The term "ethnic cleansing" does not appear in Article 4(h) of the Constitutive Act; thus, it can be said that the RtoP is a step forward in terms of international security and human rights norms. The second pillar places a responsibility on the international community to assist states in achieving their RtoP obligations. The third pillar states that the international community, through the UN, should play a crucial role in helping to protect civilians from the above-mentioned crimes. Peaceful

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[14] See Article 26 of ICCPR.
[15] See Article 2 of ICESCR.
[16] See Article 12 of ICCPR.
[17] International Commission on Intervention and State Sovereignty, (2001). *The responsibility to protect"*: http://responsibilitytoprotect.org/ICISS%20Report.pdf.
[18] Rahayu. 2012. EKsistensi Prinsip Responsibility to Protect dalam Hukum Internasional. MMH. Jilid 41. Universitas Diponegoro. 129.
[19] Catherine Drummond, (2010). *The ASEAN Intergovernmental Commission on Human Rights (AICHR) and the Responsibility to Protect: Development and Potential*: http://www.r2pasiapacific.org/docs/R2P%20Reports/AICHR%20and%20R2P_Report%20No_1%202010.pdf. (accessed 1 September 2017) at 8.
[20] United Nations General Assembly, *Implementing the responsibility to protect: Report of the Secretary-General*, A/63/677 12 January 2009.

means are recommended as the first option; however, if these are not adequate and the national authorities fail to protect their civilians from such crimes, paragraph 139 allows the taking of collective action through the UN Security Council.[21]

In the Rohingya case, the Responsibility to Protect obliges the international community to protect this ethnic Muslim group from all crimes, including ethnic cleansing. According to the International Coalition for the Responsibility to Protect (ICRtoP), there are several measures that exist to address this problem; for example, 23 General Assembly resolutions since 1991, the Security Council's resolution 1612 in 2005, and 22 Human Rights Council resolutions.[22]

1. ASEAN

The Rohingya are classified as stateless, and also may not be classified as ASEAN people. However, this does not mean that they are not protected under the ASEAN regime. Human rights protection has always been of importance to the ASEAN community, for it is one of the reasons ASEAN was formed in the first place.15 Moreover, over the last decade, ASEAN has developed and adopted a number of human rights instruments and other organs responsible for protecting human rights. These includes:

a. The ASEAN Human Rights Declaration (AHRD),
b. The Chaam Hua Hin Declaration on the Roadmap for the ASEAN Community (2009-2015),
c. The ASEAN Charter Establishment of the ASEAN Intergovernmental Commission on Human Rights (AICHR), and The ASEAN Intergovernmental Commission on the Promotion and Protection of the Rights of Women and Children. Collectively, the above documents are referred to as the "ASEAN human rights architecture".

AHRD clearly mentions that the protection of human rights is applicable to every person, meaning every individual regardless of their nationality. Accordingly, the Rohingya should have their human rights protected under ASEAN law.

The idea of having a regional human rights body emerged as part of ASEAN's official agenda in 1993; however, it took almost 16 years before a human rights body known as the ASEAN Intergovernmental Commission on Human Rights (AICHR) was set up. The AICHR is a judicial mechanism created under the ASEAN Charter.[23] Its main mandate is to promote human rights rather protect it, as stated in Article 1.4 and Article 1.6 of its Term of Reference (TOR).[24] Moreover, under Article 6.1 of the TOR, decision-making under AICHR should be based on consultation and consensus. Unsurprisingly, the AICHR has long been criticized for being "toothless", "window dressing" and even a "lame duck", for its inability to cope with disputes among ASEAN countries.[25]

As seen from the best practice related to other regional human rights courts, the Southeast Asian Court of Human Rights (SEACHR) is an interesting case in terms of advancing the protection of human rights among the ASEAN member states. It should be noted that when the Organization of African Union (OAU) decided to adopt the Constitutive Act and transformed itself from the OAU to the African Union (AU), it also established an African Court of Justice in order to resolve any controversial and disputed regional economic and political integration issues. It was not possible to create the SEACHR through political statements or regional conferences alone; therefore, the SEACHR needed to be set-up using a separate treaty. The establishment of the SEACHR should be separated from ASEAN for several reasons. First, there is always a likelihood that ASEAN as a whole will not accept the findings of the court, based on questions over its authority. Second, if the SEACHR had been set-up under ASEAN, Timor Leste would have been unable to participate. Lastly, the principle of consultation and consensus under Article

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[21] Ibid. 22.

[22] International Coalition for the responsibility to protect, *Q&A The responsibility to protect and Burma*: http://responsibilitytoprotect.org/FINAL%20At%20a%20Glance%20Burma(1).pdf.

[23] See Atricle 14 of the ASEAN Charter.

[24] Terms of Reference of ASEAN Intergovernmental Commission on Human Rights at 1.4 and 1.6.

[25] John D. Ciorciari, (2012). Institutionalizing Human Rights in Southeast Asia. *Human Rights Quarterly*, 34:3 http://muse.jhu.edu/journals/human_rights_quarterly/v034/34.3.ciorciari.pdf.

20 of the ASEAN Charter means member states can only make positive decisions having been through consultation and achieving consensus. Such an approach may weaken a legal mechanism and produce an ineffective court.[26]

The crisis in Myanmar, including the persecution of Rohingya, anti-Muslim violence, and systematic abuses against other ethnic minorities, are not only a problem for Myanmar, they are a problem for all of ASEAN. The risk factors and specific indicators enumerated in this report, including those for war crimes, crimes against humanity, and genocide, demonstrate a high risk of atrocity crimes in Myanmar in the year ahead. Such crimes threaten to undermine the human rights standards and common dignity of ASEAN citizens. They also threaten to spill over borders and affect the economic and physical security of neighboring countries. APHR will remain focused on the escalating crisis and determined to draw the attention and action of ASEAN's leaders. This report is more than a detailed listing of warning signs. It also represents a call to action to prevent the further escalation and perpetration of atrocity crimes that will affect Myanmar and the entire region.

Indonesia needs to invoke ASEAN, to participate more actively in humanitarian crisis:

1. Recognize the escalating crisis in Rakhine State and the plight of Rohingya as a serious danger to both Myanmar and ASEAN by prioritizing the issue in Summit meetings.
2. Conduct an independent investigation of conditions and risks of increased violence and displacement in Myanmar, as well as associated risks to ASEAN, including greater refugee flows to countries like Malaysia and Thailand.
3. Expand the mandate of the ASEAN Intergovernmental Commission on Human Rights (AICHR) to include country visits, inquiries, complaints, and emergency protections mechanisms, and ensure adequate independence and staffing support for its members. Engage AICHR to conduct a follow-up investigation into the Rohingya crisis.
4. Deploy ASEAN monitors well ahead of the Myanmar elections to observe and report on the Rohingya crisis and broader anti-Muslim and ethnic minority dynamics.
5. Utilize existing mechanisms in ASEAN, such as the ASEAN Troika, AICHR, the office of the ASEAN Secretary General, and the role of the AS EAN Chair, to respond appropriately to humanitarian crises in member states in accordance with the principles of the ASEAN Charter and the ASEAN Declaration on Human Rights.
6. Commit to protecting those fleeing the crisis in Rakhine State, including by granting prima facie refugee status to Rohingya and providing the UN refugee agency with unfettered access to asylum seekers.
7. Ratify the 1951 Refugee Convention
8. Call upon the Myanmar government to adhere to regional and international human rights and humanitarian standards, including by rejecting the "Protection of Race and Religion Bills."
9. Call upon the Myanmar government to address the root causes of the Rohingya crisis by amending the 1982 Citizenship Law to provide Rohingya with equal access to full citizenship, promoting reconciliation initiatives, denouncing hate speech and propaganda, and holding perpetrators of violence, including government officials, accountable.

3. Conclusion

The Rohingya problem remains unresolved, and any solution needs to come, not only from the GOM, but also from regional human rights mechanisms such as ASEAN. Even though no legal instrument recognizing the Rohingya as nationals of one country exists, the fact that they have been settled in Myanmar for several generations is undeniable. The Burma Citizenship Law of 1982 labels

[26] Hao Duy Phanpp. (2009) A Blueprint For Southeast Asian Court of Human Rights. *Asian-Pacific Law & Policy Journal,* 10:2. 391-392.

them as foreigners and accordingly as stateless. However, the condition of being stateless does not allow a legal entity to deprive a group of people of their human rights. Actually, the Rohingya should be considered human beings whose rights need protecting. As a result, the authors suggest that ASEAN, as a regional organization, should play an active and important role in terms of human rights protection for the Rohingya. The AHRD emphasizes that the protection of human rights should be applied to every person, and the AICHR is one such human rights protection mechanism. However, in reality the AICHR is barely able to function since its main task is to promote human rights only. Furthermore, there is no complaints mechanism, which allows any individual or state to lodge an application. For this reason, it is no surprise that the AICHR is sometimes referred to as a "lame duck" or as "toothless". As a result, and in order to manage human rights issues effectively in the region, the Southeast Asia Court of Human Rights (SEACHR) should be established and utilized more effectively. Another possibility would be to apply the RtoP principle, because it is recognized by all the ASEAN member states. The core idea of the RtoP principle clearly encompasses ethnic cleansing as a type of crime, for which the international community has a responsibility to protect against. Not only would this be a progressive move from an international security and human rights point of view, but could also be applied effectively in the Rohingya case.

In order to settle humanitarian crisis in Myanmar, it needs to prioritize diplomatic measures or peaceful attempt such as negotiations, mediation, consolidation, good offices. Indonesia has given certain efforts to minimize the humanitarian crisis, for example submitting Indonesia's Minister of Foreign Affairs, Retno Marsudi to meet Aung San Suu Kyi. In that encounter, Indonesia ask Myanmar to stop the humanitarian crisis occurred, so that there will be victims for Rohinya ethnic no more. The Author would like to suggest ASEAN's leader to consider the possibility of giving Rohingya the right to be independent as a country, or perhaps other privileges to Rohingya. Those privileges could take in form as applicable and regulations. If the independency seeks its light, it can be submitted to UN Security Council to form a special board that could role as a supervisor upon Rohingya's existence. The independence and privilege given to Rohingya can be a legitimacy to their citizenship that Rohingya do not have now as in stateless.

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Implementation of Coordination of Financial Services Authority and Deposit Insurance Agency (LPS) and Bank Indonesia to the Troubled Bank

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Abstract

Based on Law No.21 Year 2011 concerning Financial Services Authority of Indonesia (Financial Service Authorithy/FSA) in order toregulate and control banking institutions in Indonesia, it is necessary for restructuring the more integrated supervision in performing oversight of the banking industry and for building an effective coordination mechanism.The importance of the coordination between FSA and Bank of Indonesia/BI is to supervise an oversight of the troubled so that it could guarantee in creating a sound bank.In fact there were several actions that was deviated from the applicable provisions by the banking institutions.

This study is aimed to analyze the coordination of the FSA and BI to the troubled banking institutions, the subject matter of the coordination of the FSA and BI, as well as coordination mechanisms of FSA and BI to the troubled banking institutions according to the laws.This research is a normative legal research with normative juridical approach. The data were analyzed qualitatively, comprehensively, and completely which describes the contents of data quality in a regular sentence, cascading, logical.

The results showed that the result of the coordinationof FSA and BI is supervisory regulation product that related to the minimum capital adequacy of banks, banking products as well as banking information system that is formed in an integrated manner.Coordination mechanisms FSA and BI to the troubled banking institutions, if the results of surveillancehealth of banks could be saved.Completion of liquidated banks as much as possible is avoided.The impact is detrimental to the banking system and depositors, as the bank's assets are not sufficient.

Keywords: *Bank Indonesia, Banking Regulation, Banking Regulation Supervision, Coordination, Financial Services Authority, Problem Banking Institution*

1. Preliminary

Based on Law no. No. 21 of 2011 on FSA, for the regulation and supervision of banking institutions in Indonesia, a more integrated supervisory structure on the banking industry and effective coordination mechanisms is needed. The importance of the coordination of FSA and BI is purposed to do the supervision of problem banks in order to create a healthy bank. In fact there are still bank actions deviating from the prevailing provisions.

Based on the background description of the problem, the authors formulate the main issues as follows:

a. How does the coordination form between FSA and BI with the problem bank institutions?
b. How does the coordination mechanism between FSA and BI with troubled banking institutions?

BI pursuant to Act Number 23 of 1999 concerning Bank Indonesia (the BI Law) is a central bank of the Republic of Indonesia. BI is an independent state institution, free from the intervention of the Government. The task of BI to regulate and supervise the bank, has been transferred to FSA according to FSA Law. The task of BI for establishing and implementing monetary policy is being done through controlling the circulation of amount of moneyand controlling the interest rates. The effectiveness of task execution requires the support of an efficient, fast, secure, and reliable payment system that is the goal of implementing the task of organizing and maintaining the smoothness of the payment system. An efficient, fast, secure, and reliable payment system requires a sound payment system that is the goal of managing and overseeing the bank. The link between the implementation of these three tasks is mutually supportive, then the achievement of BI goals will work well[1].

Outsiders are not allowed to interfere with the performance of BI's duties, and BI is also obliged to refuse or ignore any intervention from any party. To further ensure such independence, the BI Law

provides a special position to BI in the constitutional structure of the Republic of Indonesia. As an independent state institution the position of BI is not parallel to the State High Institution. The position of BI is also not the same as the Department, because the position of BI is outside the Government.

Neni Sri Emaniyati, *Pengantar Hukum Perbankan Indonesia*, PT Refika Aditama, Bandung, 2010, page. 70.

Such a special status and position are required so that BB can exercise its role and function as a monetary authority more effectively and efficiently.[2]

BI's objectives are set to achieve and maintain the stability of the rupiah. The stability of the rupiah means the stability of the value of rupiah towards the goods and services and towards the currency of other countries. In order to maintain the stability of the rupiah, BI must consider and coordinate with the government to ensure that policies are aligned and mutually supportive with other fiscal and economic policies.[3]

In order to implement and establish monetary policy, BI is authorized to:

a. Establishing monetary targets with regard to inflation rate objectives;
b. Conduct monetary control by means of means including but not limited to:
i. Open market operations in both rupiah and foreign currency markets;
ii. Determination of the discount rate;
iii. Establishment of mandatory minimum reserves;

In order to regulate and supervise the bank, this BI assignment has been transferred to OJK in accordance with the enactment of FSA Law. Implementation of the above tasks have a linkage and therefore must be done mutually support for the achievement of BI goals effectively and efficiently. The task of determining and implementing monetary policy is carried out by BI, among others, through controlling the amount of money in circulation and interest rates. The effectiveness of task execution requires the support of an efficient, fast, secure, and reliable payment system that is the goal of implementing the task of organizing and maintaining the smoothness of the payment system. An efficient, fast, secure, and reliable payment system requires a sound payment system that is the goal of managing and overseeing the bank. The link between the implementation of these three tasks is mutually supportive, then the achievement of BI goals will work well.[3]

A bank can also be said to be problematic if the bank is experiencing difficulties that may endanger the continuity of its business, such as the deteriorating business conditions of banks with marked decline in capital, asset quality, liquidity, and others. The occurrence of these things due to lack of implementation in accordance with the principles of prudence and the implementation of a healthy banking.[4] Meanwhile, based on the provisions of Article 1 point 5 of the Regulation of Deposit Insurance Agency Number 4 / PLPS / 2006 concerning the settlement of failed banks that have no systemic impact, states that problem banks are banks based on the assessment of the Banking Supervisory Agency (LPP) experiencing difficulties that endanger the continuity of its business and Placed under special surveillance by the LPP.

The problematic structural bank criterion is that if all aspects of CAMEL'S have been classified as unhealthy, and the condition of the bank in general has been classified as severe, such as low and low capital, liquidity has endangered the bank's business continuity. The condition of such banks occurs because of the large burden of non-performing loans and can not be resolved properly, so the difficulty ultimately affects the conditions of profitability, solvency and liquidity. This is sometimes exacerbated by the lack of good faith from the owners and management of the bank to make a settlement. Therefore, a comprehensive and time-consuming rescue effort is required, especially since bank owners and managers are no longer able to resolve bank problems.[5]

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[2]Didik J. Rachbini dan Suwidi Tono, Bank Indonesia Menuju Independensi Bank Sentral, PT. Mardi Mulyo, Jakarta, 2000, pages. 179-180.
[3]Sri Emaniyati, *Ibid.,* page. 71.

2. Discussion

After the establishment of FSA, the tasks and responsibilities of BI have been reduced, the task of regulating the supervision of the financial services sector has shifted to FSA, while the monetary policy, the payment system is still implemented by BI as the central bank. The function of bank supervision that has been transferred is expected to improve the focus of BI in exercising its authority as a monetary authority and payment system by using its instru- ments.

FSA as an institution established under RI Law no. 21 Year 2011 on FSA Law, to conduct supervision on the financial services industry in an integrated manner. Under the provisions of Article 1 Sub-Article 1 of the FSA Law, it is formulated that FSA is an independent institution and free from interference by other parties, and it has the functions, duties and authority for doing the regulation, supervision, examination and investigation. Coordination of FSA and BI in formulated supervisory regulations in the banking sector e.g. the obligation to fulfill the minimum capital of banks, integrated banking information system, foreign fund receiving policy, receipt of foreign currency and commercial loans of LN, banking products, derivative transactions, other business activities of the bank, the determination of a bank institution that belongs to the systemically important bank category and other data exempted from the provisions concerning the confidentiality of the information of this law.

The purpose of creating a sound banking system is to maintain the interests of the community that couldbe develop fairly, in the sense that on one hand pay attention to risk factors such as capabilities, both from the system, financial, and human resources. Microprudential surveillance is focused on the health of individual banks by conducting bank balance sheets analysis, particularly related to capital adequacy in the face of business cycles. The purpose of microprudential surveillance is to protect customers and to reduce the threat of infectious bankruptcy effects of banks on the economy, asset quality, liquidity, and others.

Article 69 Clause (1) Sub-Clause (a) of Law Number 21 Year 2011 states that BI's task in regulating and supervising banks is transferred to FSA related to microprudential, while BI still has macroprudential-related banking regulation. It means that the task of banking arrangement is not fully implemented independently by FSA. Microprudential and macroprudential task settings are closely related. Coordination of policy is very important because to exchange information, to maintain confidence that the financial condition of the bank is maintained.

FSA oversees the microprudential aspect and BI monitors the macroprudential aspects well. FSA supervision on bank soundness, banks are also required to conduct bank soundness checks using a risk-based bank rating either individually or consolidatively.[6] Indicators for banks to examine / investigate bank soundness through an individual risk approach through several factors, including:

a. Risk Profile
   Assessment of the risk profile factor is an assessment of the inherent risk and quality of risk management implementation in the bank's operations against various risks.
b. Good Corporate Governance (GCG)
   Assessment of GCG factors is an assessment of bank management on the implementation of GCG principles.
c. Profitability (earnings)
   Assessment of earnings factors include an assessment of earnings performance, earnings sources, and sustainability earnings bank.
d. Capital (capital)
e. Assessment of capital factors includes an assessment of the level of capital adequacy and capital management of banks.[7]

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[4] Rachmadi Usman, *Aspek-Aspek Hukum Perbankan di* Indonesia, Jakarta: PT Gramedia Pustaka Utama, 2001, Page. 143.

[5]Zulfi Diane Zaini, *Op.cit.,* Page. 264.

[6]Article 2 Bank Regulation of IndonesiaNumber 13/1/PBI/2011about Assessment of the soundness of commercial banks

[7]Article 7 Bank Regulation of of Indonesia Number 13/1/PBI/2011

The success or failure of a bank depends on the existence of an effective bank supervisory system. If the monitoring system is not good, it will affect the performance of banks that are not good anyway. If the monitoring system is good, it will encourage the bank to continue to improve its performance so that it affects the condition of a healthy and credible bank. Because in general the objective of the bank supervision system to ensure that banks are management and Good Corporate Governance and comply with applicable laws and regulations.

Bank statements related to the health and performance of banks, debtor information systems, credit testing, and bank accounting standards, regulation and supervision on the prudential aspects of banks, including: risk management, bank governance, principles of customers and anti Money laundering, prevention of terrorism financing and banking crime, and bank checks.managed in a healthy and careful manner in accordance with the principles of risk

The obligation to convey information related to the business activities of a bank to FSA is necessary considering the need to monitor the state of a bank. Monitoring the state of the bank is done to protect public funds and maintain the existence of banking institutions in good health. Therefore, in order to obtain the truth of the report submitted by the bank, FSA is authorized to examine the books and files contained in the bank. Bank Report submitted to FSA such as balance sheet and annual profit and loss statement and explanation, as well as other periodic reports, in the time and form stipulated by FSA. The balance sheet and annual profit and loss calculation must first be audited by a public accountant.

FSA in determining the status of troubled banks still adopt or refer to FSA Rules in conducting supervision and regulation of bank soundness assisted by bank with bank health report every three months or month of March, June, September, and December. In addition, FSA is also required to prepare financial statements consisting of semi-annual, annual and monthly, quarterly and annual reports from January 1 to December 31.[8]

FSA does some kind of supervision in order to carry out its duties. Several types of FSA supervision based on an analysis of the condition of a particular bank, namely:

1) Normal Control (routine)
2) Intensive Supervision
   In the framework of intensive supervision, the steps that can be performed by FSA are:
   1) Ask the bank to report certain matters to FSA;
   2) Increase the frequency of updating and appraisal of the business plan with adjustments to the targets to be achieved;
3) Requesting the bank to prepare action plan according to the problems faced;
4) Put on-site supervisory and / or on-site supervisory presence, if necessary.

   If the bank placed under intensive supervision requires supervision or further remedial measures, it can be carried out to the next stage of surveillance or special surveillance.[9]

a. Special surveillance
   Special surveillance is supervision conducted on banks assessed experiencing difficulties that endanger the continuity of his business. Banks which is assessed experiencing difficulties that endanger their business continuity are banks that meet 1 or more of the following criteria:

(1) Ratio of Minimum Capital Adequacy Ratio is less than 8%;
(2) The Statutory Reserves Ratio in rupiah is less than the ratio set for the Bank's Minimum Reserve Requirement, with deteriorating developments in a short period of time or based on BI's assessment of fundamental liquidity issues.

Once doing its authority to conduct special inspection toward a particular bank, BI shall submit written notification in advance to FSA. The examination can not provide an assessment of the soundness of a bank.[10]

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[8] Article 38 of Law Number 21 Year 2011 about Financial Service Authorithy.

[9] Article 2 Bank Regulation of IndonesiaNumber 6/9/PBI/2004.

In the framework of special supervision, BI can perform several actions, among others:

(1) Ordering bank and / or bank shareholders to submit a capital restoration plan in writing to BI;
(2) Ordering the bank to fulfill mandatory supervisory action obligations; and
(3) Ordering the bank and / or shareholders of the bank to take action, among others, to replace the Board of Commissioners and / or Board of Directors of Banks, write off credit or financing based on sharia principles classified as loss and take into account losses of banks with bank capital, merge or consolidate with other banks , sell the bank to buyers willing to take over all bank liabilities,hand over the management of all or part of the bank's activities to other parties, and suspend certain business activities of the bank.[11]

The period of bank with special supervisory status is a maximum of 3 months for a bank not listed on the capital market or 6 months for a bank listed on the capital market (listed banks). Duration can be extended and renewal can be given a maximum of 1 time and a maximum of
3 months. The extension considerations, especially those related to the necessary legal process, include amendment of the articles of association, transfer of ownership rights, licensing process, and due diligence process by new investors.

If in the process of supervision and examination turned out the state of the condition of the bank getting worse, Then the bank can be categorized as a Bank Fail (failing bank) and submitted to LPS.[12] FSA also coordinates with LPS against a problem bank that is in the effort of restraint by FSA. Form of coordination conducted between FSA with LPS is in the form of information based on the assessment conducted FSA. LPS may also conduct check on banks related to their priority tasks, functions and authority in coordination with FSA.[13]

In addition, FSA also coordinates with:

(1) BI and LPS to conduct joint monitoring in order to support the duties and authorities of each institution, and to build and maintain an integrated information exchange facility to support such activities and to monitor and evaluate the stability of the financial system;
(2) Law enforcers and other agencies, institutions and / or other parties that has jurisdiction in the field of law enforcement;
(3) Minister of Finance, BI and LPS to prevent and handle crisis conditions based on legislation on financial system safety nets;
(4) The Supervisory Authority of the Banking, Capital Market of other countries and other international organizations or institutions.[14]

OJK has the coordination with Government, BI, LPS. Protocols are regulated in the form of FKSSK whose membership consists of Ministry of Finance, BI, OJK, LPS. FSSK is required to monitor the evaluation of financial stability. Monitoring is conducted once in 3 months to prepare recommendations to each member to maintain financial stability and to exchange of information. FSA and BI require the formulation of legislation related to the coordination of 4 institutions incorporated in the Financial System Stability Coordination Forum (here in after referred to as FKSSK).

Integrated supervision involves one-stop supervision is conducted by OJK in coordination with BI, LPS and Finance Minister. This activity is carried out through FKSSK. Coordination by OJK through FKSSK in order to support the task and authority of each institution.

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[10] Article39, 40 of Law Number 21 Year 2011 about OJK

[11] Article 5 and Article 7Bank Regulation of Indonesia Number 6/9/PBI/2004.

[12] Article 8 Bank Regulation of Indonesia Number 6/9/PBI/2004.

[13] Article 41, 42 of Law Number 21 Tahun 2011 about Financial Services Authority (FSA) [14] Academic Paper of the Establishment of Financial Services Authority (OJK) contained in http://www.perpustakaan.depkeu.go.id/, didownload tanggal 4 setember 2014, hal.23-24.

3. Conclusion

1. Coordination of FSA and BI cooperation and LPS in handling of problem banks must run proactively in accordance with the prevailing laws and regulations in order to keep the stability of the national financial system. FKSSK is a tangible form of the seriousness of a coordinating system in handling problem banks and also plays an important role in assisting the stability of the national financial system.
2. Investigation of problem banking institutions in accordance with prevailing regulations. If the results of bank health surveillance can be saved, the liquidated bank settlement is maximally avoided. Because the impact is detrimental to the banking system as well as depositors of funds, because bank assets are inadequate.

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Transgender as A Social Problem: A Film Analysis of *Lovely Man* By Teddy Soeriaatmadja

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Abstract

Transgender people (known as 'waria) are considered as one of the social problems in Indonesia. Transgender people are still most likely to be linked with sexual disorder, sexual transmitted disease (STD), poverty, and prostitution, hence the rejection from the society. The life of transgender people in Indonesia has inspired many film-makers to make a film that tells their story in various perspectives. "Lovely Man" is one of a few Indonesian films that talk about transgender, especially from the viewpoint of the transgender people themselves. Directed by Teddy Soeriaatmadja, this film shows how impoverished transgender people who work as prostitutes were treated in the society. The purpose of this research is to analyse the representation of transgender people in Jakarta and how discrimination against transgender people still exists in the society. This research applies Descriptive Qualitative Research Approach and uses John Fiske's semiotic theory to analyze this movie in three levels of codes, that are reality, representation, and ideology. This research also uses film analysis theory from Joseph M Boggs dan D.W Petrie as the research tools. The visual and audio aspects of this film are the main data source combined with literature studies as the secondary source. The result of this research shows that this film represents the struggle of transgender people and their battle with heteronormativity in the society. However, heteronormativity is also shown as an individual value that the main character has in his mind as it is represented through his relationship with his daughter.

Keywords: *Transgender, gender, discrimination, characterization, society.*

1. Introduction

Gender is one of the most fundamental aspects in human's life. According to American Psychology Association, gender is part of attitude, behaviour, and/or feelings that are socially and culturally constructed based on their sex (APA, 2012)[1]. Meanwhile the term 'transgender' first introduced in the 1980s (Stryker and Whittle, 2006: 4). Sally Hines, in one of her books titled *Transforming Gender Transgender Practices Of Identity, Intimacy And Care*, is described as people who transform or change their gender through medical surgery and/or some temporary changes, such as cross-dressing and cross-behaviour (2007: 1). Basically, transgender is a term that falls in between 'transvestism' and 'transsexual'. Transvestism refers to rather temporary change of gender through their physical appearance by cross-dressing, and transsexual refers to someone who change their gender and sexuality by performing a sex

[1] *American Psychology Association.* (2012). https://www.apa.org/pi/lgbt/resources/sexuality-definitions.pdf

reassignment surgery or a genital reconstruction (Stryker and Whittle, 2006: 4). Transgender, however, refers to someone who socially change their gender role without doing genital reconstruction (Stryker and Whittle, 2006: 4).

As Hines also mentioned that traditionally, most societies in this world have only two binary compositions of genders, male and female (2007: 9). Therefore, in many cultures, the existence of transgender people is considered as a problem. Their presence often labelled as an act of transgression towards the social constructs that have been shared among the members of the society for generations (Hines, 2007: 5).

It is safe to say that nowadays, transgender people have been treated way better than they used to get in the past. But the truth is, it has been a long journey for them to fight for equality and better treatment in every aspect of their lives. The struggle of LGBT community has been going on for decades, and as time goes by, their voices are being heard and many of their aspirations were granted. One of the most important moments for them was the legalization of same-sex marriage in the United States of America back in June 2015. This has become an open door for even more LGBTQ movements, which includes transgender people, around the world.

Back in 1950s, there were some discriminatory prejudices against transgender people. For instance, transgender people were considered as a group of people who suffered from sexual disorientation caused by some biological deficiencies in their DNA (King, in Hines, 2007: 11). This is one of the most common opinion about transgender people. The fact that they were considered as people with disorientation had led to further discriminatory acts, such as telling them to seek for help from a psychiatrist (Hines, 2007: 12). This also showed that, back then, people saw them and treated them as if they were suffering from mental illness.

However, despite the positive growth of acceptance towards transgender people in the society, apparently part of them are still living under the fear of discrimination. According to Hines' research about transgender people community, which involved real-life transgender people, some of them admitted how they are still afraid of discrimination, even some of them still received some discrimination from transphobic people (Hines, 2007:88). Transphobic is a specific term to describe a person who suffers from transphobia, which refers to an extreme fear of transgender people. These people are basically the ones who cause damages to transgender people (Hines, 2007: 200). The fear that they have towards transgender people are the main reason of their discriminatory behaviour that can cost a lot from the transgender people's side, such as losing jobs or even losing custody, only because of their status as transgender people (Hines, 2007: 200). Basically, discrimination that transgender people have been suffering are not limited to certain aspects only.

Discrimination can happen everywhere and at any time. According to Hines, the form of discrimination addressed to transgender people are varied, from being hatefully stared at in public places, and up into their identity which is not being legalized by the constitution (Hines, 2007: 200). Transgender people, especially male-to-female transgender, who work or has an experience in prostitution are susceptible to discrimination and violence, as well as sexual abuse. Judith Bradford, Sari L. Reisner, Julie A. Honnold, and Jessica Xavier had done a research to find out how transgender people who worked in sex industry had suffered from discrimination. The result showed that 41% of the respondents (total respondents: 143) admitted to experienced discrimination and sexual abuse due to their identity and their appearance (Bradford, Reisner, Honnold, and Xavier. 2013).

In the UK, there is an attempt from the New Labour to provide citizenship for transgender people, to provide social inclusion for transgender people so their political participation would increase (Monro, 2003: 1). However, Monro argues that this attempt was necessary. In fact, this plan has provoked some problems, including the limitation regarding categorization for transgender people and despite this regulation, equality for transgender people was still something to reach for (Monro, 2003: 1).

In Indonesia, transgender people (also known as 'waria') are still struggling for acceptance in the society. They are still considered as one of national's social problems, as they are often being negatively stigmatized. Transgender people in Indonesia often being linked to poverty, prostitution, and often blamed for the source of sexually transmitted diseases (STD) (Koeswinarno, 2004: 3). Many transgender people

in Indonesia are still living in poverty, and as the result, they work as prostitutes (Koeswinarno, 2004: 4). Moreover, Indonesia is known as a religious country. This makes transgender people's struggle to fight for equality and acceptance in Indonesia is still a long way to go.

In order to stop all these acts of discrimination towards transgender people, or all parts of LGBT community, education is one of the ways out. Hines explained that discrimination proves that the society does not have enough education about transgender people (Hines, 2007: 201). Education can be an open door for people to get better understandings about transgender people's life. The other reason that can lead to discrimination is the misconception that happened due to the misrepresentation of transgender people in media. Here, we see the importance of media to build people's mindset or stigma about transgender people. Therefore, when the media wrongly represents transgender community, it can lead to a misconception that may provoke discrimination towards transgender people. Nowadays, media's role in transgender's life has transformed. The role of media and transgender people has become mutual. As the public's response towards their existence has grown positively, transgender has more freedom to show themselves in popular media (Ekins and King, 2006: 40). Through popular media, such as television, films, music, or books, transgender people can express themselves and show their identity.

Film is one of the popular media that often depicts social problems or social phenomenon in a form of a structured narrative. As Graeme Turner explained that film is a part of mass media that has powerful impacts to their audiences (1999: 42). The reality often becomes an inspiration for film makers and the main subject of the story (Turner, 1999: 42). The real-life social phenomenon that is shown in films, mostly has gone through some distortion, which means that there are some fictional aspects in films to build a certain narrative structure. In films, the reality is represented through characters, storyline, music, dialog, costume, and through some technical aspects such as lighting, shot, and camera angle. Along with its development, now there are more film makers who realize that films can be a powerful media to issue certain messages regarding the real social circumstances of the world.

According to a research conducted by Joanna McIntyre (2015: 1-13), film and television, that are also considered as 'screen media' has a powerful impact on giving the minorities, including transgender people, the voice and, even, validity. McIntyre's research focuses on the representation of transgender through Australian television programs and films that leads into revealing the representation of 'acceptable' transgenders in Australian culture. Her research shows that Australian media industry has been developing on representing transgender community. It also shows that there is discrepancy between female-to-male and male-to-female transgenders, as the female-to-male transgenders are still under-represented in the mainstream media.

Lovely Man (2011), is one of Indonesian's films that focuses in telling the reality of transgender people' life in Jakarta. Directed by Teddy Soeriaatmadja, this film tells a story about a transgender woman (*waria*) named Ipuy who worked as a prostitute in Jakarta. The story started with Ipuy's teenage daughter, named Cahaya, searching for her father in Jakarta. After a long trip from her hometown, she finally arrived in Jakarta and immediately visited Ipuy's 'workplace' to finally discovered that her father is a transgender prostitute. The story continues by following Cahaya and Ipuy's one-night journey. As the story develops, we can see how the people around Ipuy treated her and her transgender friends. This film shows how discrimination still happens to transgender people, especially to those who work as prostitute and still live in poverty.

This research, however, focuses on analyzing an independent film titled *Lovely Man* by breaking down the narrative and visual aspects of the film, covering theme, characterization, and cinematography. The purpose of this research is to reveal the representation of transgender as a part of social problem and to find out the issues regarding transgender people featured in this film. Through these aspects also, this research will attempt to identify the position of this film in the movement of the LGBT, especially transgender community.

2. Research Methodology

This research focuses on the gender representation, particularly transgender, in *Lovely Man*, directed by Teddy Soeriaatmadja. By implementing discourse analysis method, which according to Eriyanto (2001: 3-5), is a method used to comprehend a certain text on broad level, further than linguistic level. Sarah Mills, who is known for her works on gender and media studies, explained that by using discourse analysis, one needs to be able to study the text into its ideological state through the structures used in the text (Mills, 1995: 123).

By using John Fiske's television codes combined with Boggs and Petrie's film analysis theory, this research tries to explain how this film try to depict and represent transgender people (*waria*) through its narrative and technical aspects in the film, which includes theme, characterization, and lighting or color aspect of the film. This research applies John Fiske's theory of codes of television. Basically, television programs and films share one common characteristic, that they are both motion pictures. Every program aired on television has been transmitted into codes. 'Code' is a system of sign and meaning that is conventionally applied and related to certain culture—the culture in which the 'code' is used (Fiske, 1987: 3). Fiske categorized television codes into three levels; 1) **Level of reality**, which includes appearance, dress/costume, make up, environment, behaviour, speech, gesture, and expression, 2) **Level of representation**, that focuses on technical aspects, such as camera movement, lighting, music, and sound, and the last one 3) **Level of ideology**, which focuses on ideological aspects or the story's disposition that are represented by symbols or the story as a whole (Fiske, 1987: 4).

2.1 LGBT And Film Industry

Transgender-related issues are no strangers to film industry, whether it is in Hollywood or in Indonesia. There are plenty of films from various genres that depict the life of a transgender. *Glen or Glenda* (1953) is the first film that has a transgender person as the main character[2]. The story circles around the true story of the main character, played by Ed Wood, who was a real-life cross-dresser. This film was made by Ed Wood himself and he hoped that this film can educate the audience about transgender and to build tolerance towards transgender people in the society at the time.

As time goes by and the film industry has significantly developed on so many levels, there are more films made to tell a social phenomenon such as transgender people. In the United States of America (USA), transgender people have become a common subject to be told through stories for television programs or films. *The Danish Girl* (2015) is the latest film to talk about a transgender woman as the main character. This film is also one of the most highly appreciated films by critics and *movie-goers* in that year. This film tells a story of a man (Eddie Redmayne) who slowly discovered his interest in female clothing and style, until he finally realizes that he wanted to be a real woman.

Indonesian film industry also has a long history of involving a transgender character. *Betty Bencong Slebor* (1978) is considered as the first Indonesia film that tells a story of a transgender woman, played by Benyamin Sueb, one of the most legendary Indonesian actors. This film is a comedy that tells a story of a transgender woman called Betty who worked for a man called Bokir. BBS offered a breakthrough story, as well as performance, because there was no other gender-themed film that focused on the life of a transgender character. BBS also became an open door for other films to get a transgender character into the story. The latest Indonesian film that tells a story of a transgender woman is called *Taman Lawan* (2013) played by the late Olga Syahputra and directed by Aditya Gumay. This film is in the same genre as BBS, that is comedy. It tells a story of a transgender prostitute who was haunted by a ghost of a dead friend. Although transgender people have been depicted into so many films, unfortunately most of them portray them as an object for people to laugh at, or simply as a joke. This happened because most of them did not tell ther story through a realistic transgender's perspective. Most of them put transgender people as the object of society and simply put them into a 'laughable' disposition.

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[2] Anderson,Tre'vell. (2015). *Visibility matters: Transgender characters on film and television through the years*. LA Times. http://timelines.latimes.com/transgender-characters-film-tv-timeline/

Then it makes *Lovely Man* a totally different and unique film, compared to those films. This film has different viewpoint, which means this film tells a story of a transgender woman in a realistic approach. This film offered a realistic perspective of transgender community who live in poverty and work as a prostitute in Jakarta. LM does not exaggerate the main character, who is a transgender prostitute, nor did they turn them into a foolish comedic character. Instead, LM let the main character to develop as the story escalated. This viewpoint is very important because that is how audiences can relate to the story and the characters both emotionally and intellectually (Boggs and Petrie, 2012: 321).

The narrative structure of LM is told in realist structure. According to Fiske, this structure allows the film to portray the reality through visual or technical representation (Fiske, 1987: 21). Furthermore, Marion Jordan explained that a story that has a realistic social narrative structure tends to have a main character that becomes the center of the narrative and its conflict as well as reflects the whole problem told in the story (Jordan, in Fiske, 1987: 22). Related to this theory, LM has Ipuy as the focus or the center of the main issue, that is transgender's existence.

2.2 Lovely Man's Theme Analysis

Every cinematic aspect in a film, from the narrative aspects to its cinematography (technical) aspects, will help to build the main idea of the story and through those aspects as well, we can analyze the theme (Boggs and Petrie, 2012: 27). Furthermore, according to Boggs and Petrie, analyzing and finding out the film's theme, is the first step that needs to be done before breaking down other aspects of the film. There are four important elements in a film that can be used to help figuring out the big idea of a film (that will lead to other elements related to the theme), they are plot, mood, characters, and film's texture (Boggs and Petrie, 2012: 32).

LM is a film that has two main characters, Ipuy and Cahaya. It is safe to say that LM is a film that focuses on the main characters, therefore, the big idea of this film is shown or represented through the main character. As the story escalated, we can see how the main characters developed through their reaction towards every conflict and problem that happened to them. As a result, the audiences would eventually sympathize with the main characters.

Ipuy, as the main character, is the representation of the whole social issue that is related to transgender and the society. Therefore, this film is categorized as a social-themed film. Through the events and conflicts that happened to Ipuy, the film slowly reveals the social nature of the conflicts. However, a film that tells about social issues, does not necessarily have to give a solution to fix the problem. Instead, this type of film focuses on telling a social problem through the unique main character who is a part of a big society (Boggs and Petrie, 2012: 22).

2.3 Analyzing Characterization in Level of Reality

As mentioned above, Fiske's level of reality is built by some supporting elements such as appearance, dress/costume, make up, environment, behaviour, speech, gesture, and expression (Fiske, 1987: 4). These elements have strong relation to some characterization aspects mentioned by Boggs and Petrie. Boggs and Petrie explained that there are seven aspects that we can use to analyze the characterization in a film, such as appearance, dialog, external action, internal action, reaction from other characters, contrast between characters, choice of name, and caricature or leitmotif (Boggs and Petrie, 2012: 49-54). Due to the similarities between the two theories, the analysis for the level of reality combines both theories and focuses only on the characters.

LM has two strong dynamic characters and they are the most important yet dominant elements of this film. However, not all elements mentioned by Boggs and Petrie appears through the characterization. The most dominant aspects of characterization that are shown in this film are appearance, dialog, and contrast between the two main characters (Ipuy and Cahaya).

Starting from the appearance aspect, LM shows the two main characters in contrast appearances. Ipuy who is a transgender prostitute has quite muscular and masculine figure (see figure 1). Apart from that, he is also seen as the only one who wore a bright red dress among his other friends who also works as prostitutes. The dress choice itself distinct him from other characters in this film, and this can help the

audience to identify the main character and also to draw the audience's attention to him (Boggs and Petrie, 2012: 50).

Figure 1. Ipuy and Cahaya's first meeting

Through the dialog that happens between characters, Ipuy was portrayed as a bold, outspoken character, and spoke in high-pitched voice. As a transgender, Ipuy got a lot of strange look from other people that always made him angry. He was not afraid to be rude, because he knew that he had to stand up for himself, especially when being objectified. However, some dialogs showed him as a mature and loving person. There are moments when Ipuy talked to Cahaya, he spoke in softer voice and told her some advices. For example, by the end of the film, Ipuy told Cahaya his one last advice. He said:

"Apapun yang Cahaya lakukan dalam hidup, bukan masalah benar atau salah. Tapi itulah jalan hidup".

("*whatever happens to Cahaya's life, it is not about right or wrong. But that is the way of life*")

The dialogs and speeches between the two characters show another way of characterization in this film, that is through character contrast. Ipuy's outspoken, loud, and blunt character is being contrasted by Cahaya's shy, polite and quiet character. The contrast is also shown in through their appearance. While Ipuy was wearing red sleeveless dress, Cahaya wore her school uniform with hijab. The contrast between them is what defines them as individuals, among others.

It can be concluded that the elements at the level of reality presented by John Fiske have similarities with elements that support the characterization aspect in the film proposed by Boggs and Petrie. Based on the above description, it can be said also that the signs that fall into the level of reality in this film tend to be dominant, especially related to its characterization. The story in this movie is centered on the two main characters, namely Ipuy and Light. The characters in this film are built through several aspects, such as appearance, dialogue, reactions of other characters, and character contrast.

2.4 Cinematography Aspects In The Level Of Representation

On this level, the technical aspects of a motion picture, such as shots, angles, lighting, and camera movements, is considered as a medium to represent the reality. In LM, the lighting and color are the most important and dominant technical aspects. This film mainly has yellow tone in it, due to the natural lighting technique. Which means, this film mainly used the natural lights from street lamps in Jakarta. Lighting and colors hold a very important function in a film, which is to build the mood. Therefore, there are some colors or lighting technique that are often linked to certain genres, such as black and dark light are often used for horror films (Boggs and Petrie, 2012: 59).

The yellow lights used in this film has dark shade to it, which helps to build the gloomy or depressing mood to the story. This type of color use is called desaturation, which means the color has gone through a tone-change, that causes to build different or contradictive mood or emotional effects (Boggs and Petrie, 2012: 192). We would think that yellow is a bright colour and often used to create happy mood. But due to the desaturation effect, the color brings up a different emotional effect to the story. Desaturation also has the irony effect (Boggs and Petrie, 2012: 192). The irony that is represented through the lighting and colour effect, basically, support the ironic element of the story. The element of

irony plays a big part in the story as Ipuy, who is a transgender, apparently has a teenage daughter. This aspect pushed the characer, Ipuy, to show the patriarch upbringing despite his femininity.

Figure 2. Representation of present and past events using color

In the ending sequence, the film shows the past life of Ipuy and Cahaya when she was little. Throughout the entire sequence, we can see the pink color dominating, scene by scene (see figure 2). The pink color represents happiness and a complete change of mood, compared to the dark shade of yellow presented almost in the entire film. From this particular use of color, we can sympathize to the characters and feel how happy they were in the past.

2.5 Ideological Struggle of Transgender

LM is not the first Indonesian film that tells a story of a transgender person. This film has successfully portrayed a realistic side of lower-class transgender people. This film shows the reality of transgender people's life and how discrimination still haunts their everyday life. Ipuy became a constant victim of discrimination from people around him. People often seen looking at him with disgust, insulted him verbally, even sexually abused him by raping him. With the blunt portrayal of discrimination towards Ipuy, the audience were given a hard-hitting idea of the reality of transgender people's struggle to be equally treated as a human.

This film does not only portray a lower-class transgender whose life stuck in prostitution, but LM also depicts the other side his life that is as a father. This is the side of transgender's life that had never been turned into a film before. This familial element of the story succeeded to 'humanized' Ipuy as a transgender. Through his daughter, Cahaya, we can see how this story sends a message of anti-discrimination and abusive behaviour towards transgender people. Despite her calm and quiet gesture, Cahaya showed courage to stand up for her father to the people who try to insult him. Having Ipuy as a transgender as well as a father also gives a fresh viewpoint on transgender people's portrayal in Indonesian film industry. This becomes a subtle way to send a message of tolerance to transgender people, as they might have another life that other people has never seen before.

However, the most important part of the story that shows resistance to gender discrimination is Ipuy's role as a father. As a father, Ipuy often showed his attention and how caring he was to Cahaya. This aspect shows that sexual orientation and gender does not preclude a transvestite, like Ipuy, to be a good parent for her child. In addition, through various events and conflicts experienced by Ipuy also shows that a transvestite is also worth to be appreciated, because the sexual orientation and gender of a person should not be a reason to judge others.

3. Discussion

The most dominant element of this film is the main character, Ipuy. He is the medium for the audiences to witness and see the life of a lower-class transgender though his experiences and perspective. Furthermore, through Ipuy's character, we can identify the representation and the ideological state of this film regarding transgender's existence. Mills explained that in a text, characters or roles are constructed with a set of ideological stances of the creator's mind (Mills, 1995: 123). There is a certain way of portraying genders through characters in a text that is mainly influenced by the society's stigma of how

every gender should be created, built, and developed (Mills, 1995: 123-124).

Ipuy is, basically, a transgender character with (or live in) every stigma and prejudice towards transgender people that circulates in the Indonesian society. As explained by Koeswinarno that in Indonesia, transgender people are still regarded as a social problem. Their presence is identical with poverty, prostitution, to sexually transmitted diseases (such as HIV) (Koeswinarno, 2007: 3). Not only that, transgender people still often receive rejection, discrimination, and harassment from the surrounding environment. The various problems surrounding the transgender's life, especially from the lower classes, are depicted in this film.

The life of the transgender people that was reflected through the life of Ipuy shows the major problems proposed by Koeswinarno, that is putting transgender people as one of the social problems in Indonesia. In addition, the transgender people in this film are also depicted as victims of discrimination in their social environment. Transgenders are often being abused both verbally and non-verbally. Even in this film we can see that transgenders are also susceptible to become victims of sexual harassment. This is brutally shown in one particular sequence when Ipuy was being raped by a group of thugs.

However, this film also has an uncommon element of Ipuy's life that is not often being seen or represented in mainstream media, which is his status as a father. This is an unexpected element from a transgender character who has every social stigma that has been known or believed by most of the people. The fatherhood side of a transgender woman in this film emphasizes the ideological message of this film, which is the opposition against gender discrimination.

Ipuy's character also represents another focus of the film to illustrate the struggle of transgender people to obtain fair treatment just like other humans in general. The portrayal of Ipuy as character who is a transvestite as well as a father, showed the human side of Ipuy behind his appearance that is considered unorthodox to society, and it also shows that they deserve to be treated fairly by society.

4. Conclusion

Lovely Man has successfully raised the issue of gender discrimination, especially against transgender people, without degrading them. Through the main character, Ipuy, this film shows the rigors of life as a transgender in the society. Through the various elements that contribute in building the story, especially the characterization, in the end this film is able to construct the lives of transgender people from a more realistic point of view and taking the perspective of lower-class transgenders.

This film not only shows the existence of transgender people who are still living in poverty and prostitution, but also trying to show their struggles, especially in standing up to discrimination. The film features some discriminatory demeanor experienced by Ipuy and ultimately succeeds in making the audience feel sympathetic towards Ipuy, especially after realizing the irony that occurred in his life. Unlike other Indonesian films involving transgenders in it, this film did not place the main transgender character as an object of joke, but also as a figure that needs to be respected.

This film also constructs the transgender figure as both object and subject in the story. From the perspective of Ipuy's position in society, Ipuy is an object of discrimination by the community in the neighborhood. But Ipuy was not entirely powerless. Instead, he often stood up for himself whenever he felt mistreated by others. Therefore, through some of his actions, Ipuy is also conceived as a subject who fought his way out of the objectification.

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Tax Debt in the Bankruptcy Dispute: Industries Badja Garuda Inc. v.s. Tax Office of Medan Belawan

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Abstract

The biggest problem for the debtor who is the business actor is his inability to repay the loan to the creditors in case the business activities have problems. The inability to pay may result in the debtor being petitioned for bankruptcy by the creditor or the debtor himself. Curator as the party who performs the management and the settlement of all debtor debts is obliged to make a bill list based on the nature and rights of the bills of creditors as stipulated in Act Number 37 Year 2004 on Bankruptcy and Suspension of Obligation for Payment of Debts (the Law 37/2004). The problem that occurred in the case of Bankruptcy of Industries Badja Garuda Inc. (IBG Inc.) that the Tax Office of Medan Belawan (Tax Office) made a legal effort against the list of tax bills made by the curator of IBG Inc. which set Tax Office as the concurrent creditor through *renvoi* procedures to the Court Commerce so that the Tax Office loses its precedent over tax debt as stipulated in the Law of Commercial Court refuses the request so that the cassation law is also applied to the Supreme Court which in its decision strengthen the decision of the District Court. For that reason, there is a review effort but the Supreme Court in its sentence Number 45 PK/Pdt.Sus/Pailit/2016 still reinforces the previous verdict. This research is normative research with descriptive type and problem approach applied is normative applied with case study type of court decision. The result of the research indicates that the Tax Office has lost its predecessor right as regulated in Article 21 Paragraph (4) in Act Number 16 Year 2009 regarding General Provisions and Tax Procedures (the Law 16/2009) on the status of tax debt of IBG Inc.

Keywords: *Tax Debt Status, Bankruptcy, Renvoi Procedure*

1. Introduction

The Company is any form of business that carries on any kind of business that is permanent and continuous and established, operates and domiciled within the territory of the State of Indonesia for the purpose of obtaining profit and or profits. Profit or profit is obtained by running and developing the company in accordance with the form and business activities. To run and develop the company, additional funds are required. Additional funds can be obtained through other parties such as banks or finance institutions as the owner of the funds.

The company's need for additional funds can be obtained by entering into a loan agreement with the fund owner. The lending party is called the creditor or the debtor while the party receiving the loan is called the debtor. Lending by creditors to debtors is due to the belief that the debtor can

return the loan to the creditors on time. Creditors are unlikely to lend to debtors without the trust of creditors.[1]

Borrowing is not a bad thing for a company (debtor) if the company is still able to repay its debts. Conversely, if the company continues to suffer losses and setbacks to a state in which the company stops paying or is unable to repay its debts, then the debtor is negligent. Negligence of this debtor can be caused by intentional factors or caused by compulsion (disability).[2] These various factors can not be used as an excuse for the debtor to stop paying its obligations to creditors who have the right to receive a receivable refund.

Company debt may arise from the desired agreement by the company (debtor) with the other party (creditor) whereas the engagement sourced from the law is born due to the will of the legislator and out of the will of the parties concerned. Debts arising from laws such as taxes. Taxation is a compulsory contribution of the state payable by an individual or a coercive body under the law, without direct compensation and used for the purposes of the state for the welfare of the people.

Companies that conduct their business activities and obtain an income are included in the tax subject, provided that their business activities are established or domiciled in Indonesia. That is, that in addition to the debt that the company owns because of the debt obligations agreement, the company has a debt to the state because of the law. Any additional economic capability received or obtained by a taxpayer originating from Indonesia or from outside Indonesia, which may be used for consumption or to increase the property of the company concerned shall become the object of tax as evidenced by the Taxpayer Identification Number. The corporate tax debt can be forcibly requested by the tax authorities[3] Because the circumstances, deeds and events that made the company resulting in corporate debt in the form of taxes. The tax liability shall have prior rights for the state through the General Directorate of Taxation as stipulated in the Law 16/2009 and the Law 37/2004 stipulates that the State has the right to pre-empt the tax bill, except for the repayment provided for in Article 1139 and Article 1149 of the Civil Code. The exceptions are logical because it is devoted to the cost of the case and the execution fee which is the first action to save the debtor's property or the taxpayer.

Companies that are in a state of bankruptcy become one of the economic phenomena that can not be avoided in the business world. The debts of a bankrupt company against a creditor need to be paid attention, especially to tax payments because a bankrupt company often fails to fulfill its obligations to pay taxes in whole or in part or in other words still have tax debt. This situation directly affects the state revenue through taxes, especially when it occurs in large companies that have a very significant contribution in tax deposits.

Bankruptcy is a process where by a debtor is declared bankrupt by a commercial court for not being able to repay its debt. The competent Commercial Court, shall declare a bankrupt debtor if it proves the requirement to be declared bankrupt as referred to in Article 2 Paragraph (1) of the Law 37/2004 (Bankruptcy and Suspension of Obligation for Payment of Debts) Law, the debtor has two or more creditors and does not pay off at least one debt that has been due and can be billed. The declaration of bankruptcy by the judges of the commercial court resulted in the debtor's loss of civil right to control and manage the property which has been placed in the status of public confiscation, under the control of the Heritage Hall or the curator appointed by the judges of the commercial court and under the supervision of the supervisory judge.[4] After the verdict of bankruptcy is done verification meeting (matching debts) that will determine the consideration and sequence of rights of each creditor.

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[1]Sutan Remy Sjahdeini, *Hukum Kepailitan: Memahami Undang-Undang No. 37 Tahun 2004 tentang Kepailitan*, Jakarta: Pustaka Utama Grafiti, 2010, p. 2.

[2]Zainal Asikin, *Hukum Kepailitan & Penundaan Pembayaran di Indonesia*, Cet. 1, Rajawali Press, Jakarta, 2001, p. 25.

[3]Fiscus is a tax official as a representative of the government in tax collection. The authorized official shall be the Ministry of Finance, the Governor / Head of the First Level Region, through the Regional Revenue Office, and the Regent / Mayor of the Second Level Region, through the Office of the State Revenue Service.

[4]Imran Nating, *Peranan dan Tanggung Jawab Kurator dalam Pengurusan dan Pemberesan Harta Pailit,* Raja Grafindo Persada, Jakarta, 2005, p. 44.

The curator determines the bankruptcy property, which will be used as money to pay all debtor debts. Then, the curator determines the level of creditors that can be paid his receivables with the bankruptcy property and divides it according to the Creditor List Plan which will get payment from the bankrupt property. The Law 37/2004 determines the priority order of the right to obtain a settlement of receivables from creditors. The position of the creditors is determined based on the type and nature of the receivables of each creditor divided into three categories of creditors, namely Preferential Creditor (Creditor Preferred) consists of Secured, Privilage Right and Unsecured Creditor).[5]

The results of verification meetings include receivables recognized, receivables recognized, and receivables refuted. If there is no agreement on the receivables it denies, then it is settled by renvoi procedure. Renvoi procedure is a creditor's denial of the list of (temporary) creditors creditor recognized/refuted by the curator. Renvoi procedures are submitted at the meeting of matching receivables by creditors. The reason the creditor denies the list of divisions because the curator does not place the order of debt priority based on the nature and type in the payment of the bankrupt property so that the interested creditors feel disadvantaged.

Article 41 Paragraph (3) of the Law 37/2004 protects the existence of the preceding right to the tax debt, which the settlement of tax debt collection is done outside the bankruptcy proceedings. But this is defined as protection against tax debt that has been paid before the verdict of the bankruptcy read out. To obtain the settlement of debtor's tax debt that has been declared bankrupt done a study, by taking the case of Industries Badja Garuda Inc. (hereinafter abbreviated as IBG Inc.) as a tax object that still has tax payable until the decision of bankruptcy declaration.

Due to the bankruptcy statement of the Medan District Commercial Court Judge against IBG Inc., the company's assets were inserted into the bankruptcy boedel which can be taken by public confiscation of all debtor's bankrupt wealth by the curator. To that end, IBG Inc. is no longer authorized to administer and conduct legal acts of his company for the sake of law turning to the curator who is tasked to perform the order of bankruptcy property. The bill receivable list for tax debt made by the curator in the verification of matching receivables received a rebuttal by the Tax Office of Medan Belawan (Tax Office) representing the country in tax collection. The distribution of receivables to Tax Office as set forth in the distribution list of receivables does not receive a portion consistent with the provisions of prior rights. All of IBG Inc.'s tax debt amounting to Rp 12.273.221.260,00 countries only get paid Rp 1.015.550.245,00 as a very low amount of all tax debt bills as well as list of second stage distribution as well as cover of sale/order of bankrupt property and party property the third being a debt guarantee.

The legal action that a creditor may make in the event of an objection to a list of accounts receivable is renvoi procedure (reappointment). To that end, Tax Office filed a request for renvoi procedure on objections to the division of receivables list made by the curator of IBG Inc. (in bankruptcy) by registering to the Medan Commercial Court Clerk as stated in the Commercial Court Judgment of Medan Number 04/Pailit/ 2013/PN.Niaga.Mdn with the verdict stated that the objection petition of Tax Office can not be accepted or known as Niet Onvankelijke Verklaard (N.O.)[6].

The decision of the Panel of Judges at the first level is considered wrong in applying the law so that the Tax Office filed a cassation appeal decided by the Supreme Court in its decision No. 406 K/Pdt.Sus-Pailit/2015. The Supreme Court ruling reaffirmed the first decision by rejecting the appeal request from Tax Office so that the Tax Office conducted an extraordinary remedy, namely the review decided by the Supreme Court in decision Number 45 PK/Pdt.Sus/Pailit/2016 with legal considerations reinforce Judgment of the Judges of the Commercial Court of Medan and the verdict of the Cassation Judges and declared the Refusal to reject the request.

The purpose of this study is to obtain a clear, detailed and systematic description of the prior rights owned by the General Directorate of Taxation on tax debt to collect taxpayers who are in an insolvency state or in the process of bankruptcy of debtors as taxpayers. This paper is divided into four parts, namely part one is the introduction or background, part two is the method and material

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[5]Sutan Remy Sjahdeni, *Sejarah, Asas, dan Teori Hukum Kepailitan,* cet-1, Prenadamedia Group, Jakarta, 2016, p. 13.

[6]Abdulkadir Muhammad, *Hukum Acara Perdata Indonesia*, PT Citra Aditya Bakti, Bandung, 2012, p. 212.

used in the research and section three describes the results and discussion of the status of tax debt in bankruptcy of IBG Inc. and the application of the preceding right of billing tax debt in bankruptcy as well as the last as a pole is a conclusion and suggestion.

2. Method and Materials

This research used a normative research with descriptive research type. The problem approach is the applied normative approach with case study type. The data used are secondary data in the form of primary legal materials, namely law and court decision and secondary law material that is literature and other library resources. Data collection was done by literature study and document study. Data processing is done by examination of data, data reconstruction and systematisation of data which then conducted qualitative analysis.

3. Result and Discussion

3.1 The Status of Tax Debt in Bankruptcy Industries Badja Garuda Inc.(IBG Inc.)

The bankruptcy status is obtained by the debtor or creditor applying to the Commercial Court in accordance with the requirements and procedures as Law Number 37 Year 2004 on Bankruptcy and Suspension of Obligation for Payment of Debts (the Law 37/2004). IBG Inc. is a legal entity that has been declared bankrupt in Verdict Number 04/Pailit/ 2013/PN.Niaga.Mdn upon application of IBG Inc. employees. As a result of the ruling, IBG Inc. lost the right to take care of his property and turned to the curator (Article 15 of the Law 37/2004).

Based on its authority, IBG Inc. curator records all property of the Company to be used as payment of creditors' receivables (Article 100 Paragraph (1) of the Law 37/2004). The bills of creditors get paid in accordance with the rights and nature of the bills. Furthermore, to determine the right and nature of the bill, the Curator IBG Inc. calls the creditors to conduct verification meeting of accounts receivable which will be described as follows:

1. Verification of Tax Debt in IBG Inc. Bankruptcy

The Panel of Judges of Commercial Court of Medan in Verdict Number 04/Pailit/ 2013/PN.Niaga.Mdn appoints Arif Rohman Syaeful, S.H. and Sahat Parulian, S.H. as curator and supervised by Janner Manik, S.H., M.M as a supervisory judge to perform the ordering and handling of IBG Inc. bankruptcy property. The first stage of the handling of IBG Inc.'s bankruptcy property, namely the supervisory judge shall notify the creditors to file a bill (Article 113 Paragraph (1) of the Law 37/2004). The creditor who filed the bill is PT. Bank Negara Indonesia (PT BNI), employees of IBG Inc. and Tax Office of Medan Belawan.

Based on the invoice, on November 19, 2013 the curator delivers and classifies the creditor according to the nature of the invoice in the Temporary Billing List (hereinafter abbreviated TBL). TBL states that PT BNI is a Separatist Creditors because of the nature of the bill is protected with the right of dependents while the employees of IBG Inc. as Creditors with Privileges whose bills in the form of unpaid wages. Furthermore, Tax Office which has a bill in the form of tax debt is classified as a concurrent creditor. To that end, the curator calls the creditors to conduct verification meetings related to TBL (Article 102 of the Law 37/2004).

a. Verification Meeting of Receivables of IBG Inc. Creditor

Based on the decision of bankruptcy statement of IBG Inc., Supervisory Judge within 14 (fourteen) days stipulates the deadline for submission of bill (Article 113 Paragraph (1) the Law 37/2004) as stipulated No. 01/HP/04/Pailit/2013/PN.Niaga.Mdn dated 04 October 2013. The determination is made so that the creditors register the bill. The bill list submitted by the creditors of IBG Inc. is listed in Table 1 as follows:

Table. 1. The creditors of IBG Inc.

No.	Name	Invoice

1.	PT BNI	Rp 431.919.667.498,00
2.	Tax Office	Rp 12. 275.221.260,00
3.	Karyawan IBG INC. sebanyak 411 (empat ratus sebelas) orang karyawan/pekerja	Rp 11.532.956.128,00
4.	Karyawan IBG INC. sebanyak 48 (empat puluh delapan) orang karyawan/pekerja	Rp 923.810.920,00
5.	Karyawan IBG INC. sebanyak 42 (empat puluh dua) orang karyawan/pekerja	Rp 622.130.724,00

Source: Verdict of Commercial Court Number 04/Pailit/2013/PN.Niaga.Mdn.

The bill list submitted by creditors can be recognized or denied by the curator based on the description of the Bankrupt Debtor (Article 116 Paragraph (1) of the Law 37/2004). IBG Inc. as a Bankrupt Debtor provides information regarding the amount of debt and the nature of each bill. Furthermore, the IBG Inc. curator makes TBL which contains the claim recognized or denied and the position of each creditor based on the nature of the receivables. TBL made by the curator in bankruptcy case of IBG Inc. are listed in table 2 below:

Table. 2. Temporary Billing List IBG Inc.

No.	Name	Creditor Invoice (Rp)	Creditor Invoice (Curator Version) (Rp)			
			Acknowledged			Recognized
			Special	Separatist	Concurrent	
1.	PT BNI	431.919.667.498,00	0,00	431.811.167.498,00	108.500.000,00	0,00
2.	Tax Office	12.275.221.260,00	2.100.0000,00	0,00	12.273.121.260,00	0,00
3.	Karyawan IBG INC. sebanyak 411 orang	11.532.956.128,00	10.926.157.453,00	0,00	0,00	606.798.675,00
4.	Karyawan IBG INC. sebanyak 48 orang	923.810.920,00	901.005.280,00	0,00	0,00	22.805.640,00
5.	Karyawan IBG INC. sebanyak 42 orang	622.130.724,00	468.026.665,00	0,00	0,00	154.104.059,00
Jumlah Tagihan		457.273.786.530,00	12.297.289.398,00	431.811.167.498,00	12.381.621.260,00	783.708.374,00

Source: Verdict of Commercial Court Number 04/Pailit/2013/PN.Niaga.Mdn

TBL that has been recognized/refuted by the curator as shown in Table 2 is then verified for receipt of negotiations with creditors if there is any objection to the collection received (Article 111 Paragraph (1 b) of the Law 37/2004). Based on Table 2, PT BNI has a bill amounting to Rp 431.811.167.498,00 which belongs to the group of bills that have the right of preference and is separatist because the bill is protected by material security rights. While the remaining bill of Rp. 108.500.000,00 is classified as a concurrent bill and recognized by PT BNI through its attorney as Law Firm Duma & Co Our Letter. Ref: 083/DC/Pailit/IBG/XI/2013 dated 01 November 2013.

Employee or laborer of IBG Inc. as much as 501 (five hundred one) person with total bill of Rp. 13.078.897.772,00 and which was denied by the Curator of IBG Inc. of Rp. 783.708.374,00 because the invoice document was not found. Tax Office has total bill of Rp. 12.275.221.260,00. The

total bill is divided into 2 (two), namely the bill that has the right prior (preferen) is special Rp. 2.100.000,00 and the remaining bill of Rp. 12.273.121.260,00 belong to a concurrent bill.

b. Tax Office of Medan Belawan (Tax Office) as the concurrent creditor of IBG Inc.

The Temporary Billing List (TBL) recognized or denied by IBG Inc. Curator has placed the creditors' receivables based on the nature of the receivables as is the Bankruptcy Law. The curator classifies the nature of the bill to determine which receivables will be paid in advance compared to other creditors. For that reason, the bankruptcy of IBG Inc. based on TBL that PT BNI has a separatist and concurrent bill whereas IBG Inc. employees have outstanding bills.

Total bill of Tax Office is classified as a special bill of Rp. 2.100.000,00 and the remaining bill of Rp. 12.273.121.260,00 belong to a concurrent bill. The concurrent bill has received recognition from Tax Office in the verification meeting on October 08, 2014. As the letter of notification No. S-458/WPJ.01/KP.0404/2013 dated 31 October 2014, the total Tax Office bill is stated in Table 3 below:

Table. 3. The Annual Tax Return IBG Inc.

No.	Kohir Number	Dated	Invoice
1.	00001/301/01/112/05	26 Mei 2005	Rp.83.087.566,00
2.	00003/307/97/112/99	04 Januari 1999	Rp. 436.861.492,00
3.	00004/307/01/112/05	26 Mei 2005	Rp.1.742.215.816,00
4.	00013/240/00/112/02	11 Juli 2002	Rp.1.675.909,00
5.	00017/207/97/112/98	09 Desember 1998	Rp. 4.050.002.103,00
6.	00021/107/05/112/05	16 Juni 2005	Rp.150.000,00
7.	00022/107/06/112/06	20 Juni 2006	Rp.150.000,00
8.	00024//201/01/112/02	02 September 2002	Rp. 102.823.113,00
9.	00045/207/01/112/03	17 April 2003	Rp.460.103.306,00
10.	00059/207/00/112/03	01 Agustus 2003	Rp. 318.180,00
11.	00061/207/00/112/03	01 Agustus 2003	Rp. 882.728,00
12.	00067/201/00/112/02	11 Juli 2002	Rp.89.040.387,00
13.	00069/201/99/112/02	06 Maret 2002	Rp. 17.208.526,00
14.	00085/107/07/112/06	27 Februari 2006	Rp. 300.000,00
15.	00087/207/01/112/05	26 Mei 2005	Rp.1.398.134.744,00
16.	00092/206/01/112/05	26 Mei 2005	Rp.3.556.139.264,00
17.	00241/107/06/112/06	16 Nopember 2006	Rp. 150.000,00
18.	00300/101/07/112/08	26 Februari 2008	Rp. 100.000,00

19.	00398/101/05/112/06	15 September 2006	Rp. 100.000,00
20.	00455/107/05/112/05	12 September 2005	Rp. 150.000,00
21.	00488/107/06/112/07	10 April 2007	Rp.150.000,00
22.	00563/107//01/112/05	26 Mei 2005	Rp.328.109.745,00
23.	00566/101/06/112/07	31 Mei 2007	Rp.600.000,00
24.	00568/106/05/112/06	28 Agustus 2006	Rp. 100.000,00
25.	00642/101/02/112/03	29 Juli 2003	Rp.2.758.249,00
26.	00849/106/06/112/06	05 Oktober 2006	Rp. 300.000,00
27.	00968/106/04/112/06	10 Februari 2006	Rp. 100.000,00
28.	01090/101/04/112/05	02 Februari 2005	Rp. 150.000,00
29.	01292/107/05/112/06	07 Maret 2006	Rp. 100.000,00
30.	01541/101/04/112/05	11 Februari 2005	Rp. 150.000,00
31.	01897/101/06/112/07	06 Desember 2007	Rp. 100.000,00
32.	02408/106/06/112/07	01 Maret 2007	Rp. 300.000,00
33.	02410/106/06/112/07	16 Agustus 2007	Rp. 100.000,00
34.	02766/106/07/112/07	10 Desember 2007	Rp. 100.000,00
35.	03257/101/03/112/04	14 Juni 2004	Rp.10.132,00
36.	Distress Warrant		Rp. 1.500.000,00
37.	The Cost of Ordering Letter Force Execution		Rp. 500.000,00
Total			Rp. 12.273.221.260,00

Source: Verdict of Commercial Court Number 04/Pailit/2013/PN.Niaga.Mdn.

Based on table 3, IBG Inc. has tax due from 1998 to 2008 with total bill of Rp. 12.273.221.260,00. Tax Office billing which is the cost of Distress Warrant and the cost of the Order of Undertaking Forfeiture of Rp 2.000.000,00 is recognized by the curator as a bill that is precedent because it meets the criteria of Article 1137 Civil Code *j.o.* Article 21, Article 22 and Article 45 of Law Number 16 Year 2009 regarding General Provisions and Tax Procedures (the Law 16/2009). While the remaining tax invoice amounting to Rp 12.273.121.260,00 is classified as a concurrent bill because the preceding nature has been lost due to expiration (Article 21 Paragraph (4) Letter (a) of the Law 16/2009). The billing expiry that resulted in Tax Office is classified as a concurrent creditor.

2. Reasons and Legal Considerations regarding the Status of Taxes Payable in Bankruptcy IBG Inc.

The application for Tax Office is filed against the Phase II Permanent Phase List (PPL II) which is the closing of the IBG Inc. bankruptcy property. The Panel of Judges of Commercial Court

in Verdict Number 04/Pailit/2013/PN.Niaga.Mdn states that the application of Tax Office is unacceptable (N.O.). On the ruling of the Commercial Court, Tax Office made a cassation appeal to the Supreme Court. The Supreme Court Assembly rejected the appeal of Tax Office in Verdict Number 406 K/Pdt.Sus-Pailit/ 2015.

The extraordinary legal effort is made by Tax Office because it considers the errors of the judge and the obvious mistake with Judex Juris and Judex Facti considerations. Tax Office filed a request for review (PK) to the Supreme Court. Supreme Court Assembly in Verdict Number 45 PK/Pdt.Sus/Pailit/2016 strengthen Cassation Verdict No. 406 K/Pdt.Sus-Bankrupt/2015 and Verdict of Commercial Court of Medan No. 04/Pailit/2013/ PN.Niaga.Mdn. The existence of the verdict of the Constitutional Court which reinforces the Cassation Verdict and the Commercial Court Ruling then the reasons and legal considerations are the same, which will be described as follows:

a. Absence of Judge Errors and Errors with Judex Juris Considerations and Judex Facti

The application of renvoi procedure of Tax Office does not meet the formal requirements as the Medan Commercial Court ruling stating the request is unacceptable (N.O.). The verdict was upheld by the Supreme Court Assembly with Verdict Number 406 K/ Pdt.Sus-Bankrupt/2015. Tax Office in bankruptcy of IBG Inc. has filed a tax bill as Letter Number: S-458/WPJ.01/KP.0404/2013 dated October 31, 2014. Total bill of Tax Office is Rp. 12.273.221.260,00.

In the process of bankruptcy of IBG Inc., the curator has announced to the creditors to file an objection on the Temporary Billing List (TBL) until December 13, 2014 with the renovation of the procedure as Article 193 Paragraph (1) of the Law 37/2004. Up to the specified date, no creditor has filed an objection and the TBL is deemed to have been binding. The Tax Office submits an objection as the letter of the Head of Tax Office dated December 16, 2014 Number: S-983/WPJ.01/KP.0404/2014 on the announcement of Phase II Permanent Phase List (PPL II) which is the closing of IBG Inc. bankruptcy process. Such objection letters in consideration of the Supreme Court Assembly should be filed against TBL which is a list of claims recognized and denied by the curator. Thus, the objection of Tax Office has been past time as the Supreme Court Judge Verdict Number 45 PK/Pdt.Sus/Pailit/2016 states that there is no mistake in Judex Juris and Judex Facti considerations. The request for renovation of the Tax Office procedure should be filed against TBL not against PPL II which is a list of divisions and closings of IBG Inc. bankruptcy.

b. Loss on the Preliminary Tax Debts due to Expiration

Tax Office as creditor of IBG Inc. has filed a bill in the form of tax debt as Letter Number: S-458/WPJ.01/KP.0404/2013. In bankruptcy cases, debt can arise because of the agreement or the law. In this case, the tax debt belongs to the debt that was born as stipulated in Law Number 16 Year 2009 regarding General Provisions and Tax Procedures (the Law 16/2009). The Law 16/2009 is a special rule (lex specialist) in Bankruptcy Law.

IBG Inc. has tax due from 1998 to 2008 amounting to Rp 12,273,221,260.00. Judex Facti and Judex Juris consider that tax debt owned by Tax Office has lost its predecessor right. The loss of such prior rights is due to the right to collect taxes, including interest, penalties, increment and expense of tax billing expiration after exceeding 5 (five) years since the issuance of Tax Collection Letter (Article 22 Paragraph (1) the Law 16/2009).

Based on the above explanation, the consideration of the Supreme Court Judge in the review examination (PK) did not find any new evidence (novum) proposed by Tax Office. Tax debt has the right of preference (preferen) compared to other debts that make Tax Office as Creditor with Privileges as Article 21 the Law 16/2009. The provisions of such article are void as judged by Judex Facti and Judex Juris stated that the tax liability in bankruptcy of IBG Inc. has lost its pre-emptive rights because the tax invoice has exceeded 5 (five) years as the Tax Collection Letter from 1998 to 2008. Over time since the issuance of the Verdict The Commercial Court on the application of renvoi Tax Office procedure by 2015. The consideration of the Supreme Court Assembly in Verdict Number 45 PK/Pdt.Sus/Pailit/2016 strengthens Judex Facti and Judex Juris' consideration that the request for renvoi procedure is unacceptable (N.O.). The request for renvoi of Tax Office procedure should be submitted to the Temporary Billing List (TBL) which the curator recognizes/refutes not to the Phase

II Permanent Phase List (PPL II) which is a list of both sharing and closing in the bankruptcy of IBG Inc.

3.2 Implementation of Pre-existing Right (Preferent) on Tax Collection of Debt in Bankruptcy Dispute

Bankruptcy is a common confiscation of all the wealth of the Bankrupt Debtor whose management and ordering is done by the Curator under the supervision of the Supervisory Judge (Article 1 Number (1) of the Law 37/2004). Bankruptcy Law has determined creditors based on the nature of the receivables of Preferential Creditor (Creditor with Privilege and Separatist Creditors) and Concurrent Creditors.[7] Bankruptcy of a business entity that still has tax payable becomes an obligation that must be paid even if it has been declared bankrupt.

Tax liabilities arise due to legal events which are in public law whereas in the dispute of bankruptcy arising from the existence of legal events arranged under civil law (agreement). According to formal teachings, tax debt can arise because of the deed of a tax subject. The tax subject as Article 2 Paragraph (1) of Law Number 36 Year 2008 concerning Income Tax (hereinafter referred to as the Law 36/2008) states that the tax subject is an individual, a body and a permanent establishment.

From the civil law aspect, the tax debt in its collection has the preceding character as stipulated in Article 1137 Civil Code which states that the right of the State Treasury, auction Office and other public bodies formed by the Government to take precedence, the orderly exercise of that right and the duration of the rights Is governed by various specific laws concerning such matters. In this case, the position of tax debt as the holder of the privilege that refers to the regulation of special law that is Law No. 16 of 2009 on General Provisions and Procedures of Taxation (the Law 16/2009). To that end, the preceding rights over tax collection of debts in the bankruptcy dispute are as follows:

1. Preferential Right (Preferent) on Tax Collection of Taxes Under the Taxation Law

Tax Payable is an accrued tax including administrative sanctions in the form of interest, penalty or increment stipulated in the tax assessment letters or similar letters pursuant to the provisions of the tax laws and regulations as Article 1 Number (8) of Law Number 19 Year 2000 regarding Tax Collection by Distress Warrant (hereinafter referred to as the Law 19/2000). The provisions concerning the tax debt are stipulated in Article 12 Paragraph (1) of the Law 16/2009 which states that every taxpayer shall pay the tax payable in accordance with the provisions of the tax laws and regulations, not subject to the existence of tax assessment letters. Tax liability arises when there is a cause of obedience and which consists of (circumstances, events or actions) that cause the person is taxed according to the law of taxation.[8]

The Directorate General of Taxation which is a state representation has the prior right to collect the goods of the Taxpayer as Article 21 of the Law 16/2009. The purpose of the existence of the preceding rights of this country is further explained in the Elucidation of Article 21 of the Law 16/2009 which is to determine the position of the state as Preferred Creditors who have the right of prior to the goods of the Taxpayer to be auctioned in public.

The application of the preceding right to the collection of tax payable may be made by a Distress Warrant as stipulated in the Law 19/2000 Taxpayer shall be a series of measures to allow the Taxpayer to pay off taxes and tax collection fees by reprimanding or warning, to execute billing at once and to simultaneously, notify the Distress Warrant, to propose prevention, to carry out foreclosures, to carry hostages, to sell goods which have been seized as Article 1 Numbers (9) in the Law 19/2000.

The procedure of collection of tax debt until the due date of payment has not been settled, the following collection actions are taken:[9]

a. Warning Letter

Tax collection is done by first issuing warning letter by the official. An unpublished warning letter against an approved taxpayer to repay or delay the payment of taxes.

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[7] Sutan Remy Sjahdeni, *Sejarah, Asas, dan Teori Hukum Kepailitan, Loc. Cit.*

[8] Bohari, *Pengantar Hukum Pajak,* PT. Raja Grafindo Persada, Jakarta, 2008, p. 112.

[9] Billy Ivan Tansuria, *Pokok-pokok Ketentuan Umum Perpajakan*, Graha Ilmu, Yogyakarta , 2010, p 294-296.

b. Distress Warrant
A distress warrant is issued by an official and directly informed by the tax bailer to the tax payer, if the amount of the tax debt is not paid by the insurer after the expiry of 21 (twenty-one) days since the date of warning letter.

c. Letter of Order Conducting Foreclosure
Official shall issue Letter of Order Conducting Foreclosure if after 2 x 24 hours after the forced letter is notified to the taxpayer and the tax debt is not paid by the taxpayer. Based on Letter of Order Conducting Foreclosure, the tax authorities execute confiscation of property of the taxpayer.

d. Announcement of Auction
The auction announcement shall be made by the official if after the expiry of 14 (fourteen) days after the date of the foreclosure, the taxpayer shall not settle the tax debt and the tax collection fee. Announcement of auction for moving goods is done 1 (one) time and for goods is not done 2 (two) times.

e. Sale of Confiscated Goods
Sale of Printed Consumers' Assets shall be made by an official through a state auction office if after 14 (fourteen) days after the announcement of the auction, the taxpayer shall not settle the tax debt and the tax collection fee.

Based on the above tax collection procedure, tax debt can be collected first. Implementation of the country's precedent over the tax debt is with the payment of the tax debt in advance, payments to other creditors are settled after the tax debt is settled. The provisions on the preceding rights include the principal taxes, administrative sanctions in the form of interest, penalties, increases and tax collection fees as Article 1 Paragraph (8) in the Law 19/2000.

2. Preferential Right (Preferent) on Tax Collection of Debt Under the Bankruptcy Act

Taxpayers declared bankrupt then for the sake of law the debtor (taxpayer) loses his right to exercise control and management of his property. Furthermore, the handling of debtor's assets (taxpayers) bankrupt and the settlement of all debts will be done by a curator under the supervision of a supervisory judge. In bankruptcy law, the position of the creditor is classified into 3 (three) kinds: Separatist Creditors (secured creditors), Preferred Creditor (preferred creditors) and Unsecured Creditors. Tax debt is a Preferred Creditor which must be prioritized first of its payments rather than other debts.[10]

If the taxpayer is declared bankrupt, dissolved or liquidated, the curator, liquidator or person or entity assigned to perform the order is prohibited from distributing the taxpayer's property in bankruptcy, dissolution or liquidation to the shareholders or other creditors before using the property to pay the tax debt from The taxpayer concerned.[11] Therefore, there are 2 (two) ways that Tax Office can undertake to collect tax subjects in the bankruptcy dispute as follows:

a. Prior to the existence of the Bankruptcy Statement

Bankruptcy law has provided legal certainty to protect the interests of creditors of its borrowers in bankruptcy disputes. Another creditor who is not a bankruptcy applicant may request the cancellation of any legal act of the debtor that will harm the interests of the creditor. The bankruptcy process experienced by the debtor is a legal act that can harm the creditor. To that end, creditors who feel they will be disadvantaged by a bankruptcy statement against the debtor may file a request for termination of a bankruptcy hearing to the Commercial Court Judges. This is done to avoid losses to other creditors with a bankruptcy statement against the insolvent petitioner. The provisions have been stipulated in the Elucidation of Article 41 Paragraph (3) of Law Number 37 Year 2004 concerning Bankruptcy and Postponement of Debt Payment Obligation (the Law 37/2004) stating the actions that must be done due to the Act, for example the obligation of payment of tax. Under this provision, the

[10] Man Suparman Sastrawidjaja, *Hukum Kepailitan dan Penundaan Kewajiban Pembayaran Utang,* Alumni, Bandung, 2006, p. 34.

[11] Billy Ivan Tansuria, *Op.Cit,* p.303.

settlement of tax debt is outside the bankruptcy proceeding process because it has the privilege of completion.

After the taxpayer has been given a bankruptcy verdict then the collection of tax by a forced letter in accordance with Article 7 Paragraph (1) of the Law 19/2000 can not be applied in the bankruptcy process because with this forced letter can not be justified to foreclose and sell the property of bankrupt debtors (taxpayers). Fiskus or General Directorate of Taxation must follow the provisions in the bankruptcy process because the taxpayer has been terminated bankrupt. Thus, when the taxpayer is terminated in bankruptcy then the law that must be applied is Article 3 Paragraph (1) of the Law 37/2004 based on the principle of *lex specialis derogate lex generalis*.

b. After the Declaration of Bankruptcy

With the bankruptcy statement to the business entity which has the tax payable, Fiscus conducts verification meetings as matching or testing of debts of the insolvent or creditors receivables that must be entered into the curator. In this verification meeting, examination, matching and testing of creditor bills with debtor bank accounts are held. To determine the bills filed by the creditor will be accepted or rejected by the curator based on the evidence presented by the creditor. To that end the creditor must include the calculations and statements he had at the time he put his bill to the curator.[12]

Jurisprudence for the same problem can be found in Supreme Court Verdict No. 13.74 PK/Pdt.Sus/2011 in a bankruptcy case between PT. Koryo International Indonesia (Debitor-Respondent Bankrupt) with PT. Lemindo Jaya Abadi (Creditor-Applicant for Bankruptcy) involving Tax Office Madya Tangerang and Foreign Investment Service Offices of Region Four in tax debt matters. The legal reason stated by the Supreme Court Assembly is that Tax Office does not include creditors in the scope of bankruptcy because the form of tax debt is a bill that was born from the Law on the Law 16/2009 not because of the relationship of accounts payable. The Law 16/2009 gives special authority to tax officials to conduct direct execution of tax debt outside the intervention of judicial authority. Therefore, the tax bill should be applied to the provisions of the the Law 37/2004 which places the settlement of tax debt collection outside the path of bankruptcy process as it has a privileged position in the settlement.

It is in accordance with the Verdict of the Supreme Court of the Republic of Indonesia Number 017K/N/2005 dated August 15, 2005 stating that taxes payable are payable under public law and must be paid in advance of other debts, impossible to be resolved in bankruptcy proceedings. Therefore, it can be understood if the process of debt repayment of the company in the bankruptcy process is not specifically regulated in the Law 37/2004.

Based on the above description, the taxpayer declared bankrupt, dissolved or liquidated, the curator, liquidator or person or entity assigned to perform the order is prohibited from distributing taxpayer's assets in bankruptcy, dissolution or liquidation to shareholders or other creditors before using the property for pay the tax debt of the taxpayer concerned (Article 21 Paragraph (4) Letter (a) of the Law 16/2009). If the exception to Article 1139 and Article 1149 of the Civil Code is logical as it is reserved for the cost of the case and the execution fee which is the first action to rescue the debtor's or the Taxpayer's property.

Legal considerations in the settlement of tax debt should be settled outside the bankruptcy proceedings (Article 41 Paragraph (3) of the Law 37/2004) and grant special powers to the tax authorities to execute direct execution of taxes payable without court intervention. Prior to the decision of bankruptcy declaration in this case the country represented by the Tax Office may request the cancellation of any legal act of the debtor that may harm his party. Thus, the settlement of tax debt is outside the path of bankruptcy proceedings because it has the privilege of completion.

4. Conclusion

In the process of verification of receivables in bankruptcy of IBG Inc., Tax Office of Medan Belawan (Tax Office) declared as a concurrent creditor by the curator associated with tax debt IBG Inc. To that end, Tax Office made an effort to renovate the procedure to the Commercial Court on the

[12] Sunarmi, *Hukum Kepailitan Cet-2,* PT. Sofmedia, Jakarta, 2010, p. 151.

status of the concurrent creditor for receivables of IBG Inc. from 1998 to 2008 based on notification letter No. S-458/WPJ.01/KP.0404/2013 dated 31 October 2014. The application of the renvoi is declared not accepted by the Panel of Judges of Commercial Court on the legal grounds that the tax debt bill must be made within 5 (five) years since the issuance of Annual Tax Return. Supposedly, Tax Office will collect at the time of issuance of Annual Tax Return until the maximum of 5 (five) years, the billing done by Tax Office to IBG Inc. has been past (expired). In addition, the reason is unacceptable because the objection filed by Tax Office is incorrect because it was done on the Phase II Permanent Phase List (PPL II) which is a list of divisions as well as bankruptcy closure of IBG Inc. Supposedly, Tax Office filed an objection to the Temporary Admission Bill (TBL) recognized/denied by the Curator as stipulated in Article 193 Paragraph (1) of the the Law 37/2004 which is in the list of bills prior to the issuance of the Permanent Phase List (PPL). To that end, Tax Office filed a cassation appeal (Number 406 K/Pdt.Sus-Pailit/2015) and Review (Number 45 PK/Pdt.Sus/Pailit/2016), with the same verdict that is to strengthen the decision of the Commercial Court. Thus, the status of tax debt in the bankruptcy of IBG Inc. becomes expired because tax collection of taxes is done after exceeding the period of 5 (five) years since the stipulation of Annual Tax Return so that Tax Office loses the right of preference and status as concurrent creditor.

Tax debt is prior and privileged so that the Tax Office is located as a preferred creditor in whose collection must take precedence (Article 21 Paragraph (1) of the Law 16/2009). To that end, the Tax Office may collect tax debt outside the bankruptcy proceedings against the taxpayer being filed for bankruptcy through the Commercial Court as provided for in Article 41 Paragraph (3) of the Law 37/2004.

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Spreading of Poor Household Around Wan Abdul Rachman Forest Park and Mangrove Forest in Sidodadi Village (Study in Sidodadi Village Sub District of Teluk Pandan District of Pesawaran)

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Abstract

The existence of forest is very important to the characteristics of society, so it can influence to prosperity of the household. However, based on the fact there are many people who live around the forest live in poor condition. This research was concluded to identify the spreading of poor household and analysing of geographic poverty which close to Wan Abdul Rachman Forest Park (Tahura WAR) and the mangrove. Respondents were determined randomly with social eighty five respondents. The method of accumulation data were used direct interview to respondent by using questioner. There were thirty seven percept households in Sidodadi Village included in poor category. The result of mapping respondents showed that poor household were closer to Tahura WAR's area. The poverty's happened because of low quality human resources and less of household mind set in appreciating the importance of education and a lot of insurance in household is low of income and difficulty access in completing the necessary live.

Keyword: *mangrove, poverty's household, forest park.*

1. Introduction

Characteristic of a society can be seen from kinds of factors that is background, geographic condition, and culture which develop in the neighbourhood. Generally the prosperity characteristic of forest society is identical with the poor society background (Widyastuti, 2012). Poverty can be defined as a low standard of living or can be meant as a situation where the people's life marked by less of main needs (Sartika, dkk., 2016). Mostly the poor society are in a village around forest which has limited access (Syaf dkk., 2013). Life needs and limited access can give effect to the society who lives close to the forest.

Sidodadi Village is a village which border with WAR Forest Park and mangrove forest. Most of households who live in Sidodadi Village have livelihood resources as fisherman and farmer. The condition causes the society's economy level low (Andrianto dkk., 2016).

The existence of poor society makes its interest for researches to have a research about poverty. Some researches about poverty level have been done before by Andrianto dkk. (2016) and Amir dkk. (2013). But, the research that have identification the dispersal characteristic of poor household through mapping in the area that closes to the forest park and mangrove forest in Sidodadi Village still less to be done.

Research about the dispersal characteristic of poor household in Sidodadi Village by using mapping in a different area was needed to be done. Mapping of this research is to identify the poverty effect and see the dispersal of poor household in Sidodadi Village the goal of this research is to

identify the dispersal of poor household and analyse the poverty level of the society in the area which closes to WAR Forest Park and mangrove forest in Sidodadi Village.

2. Research Methode

This research was done in January till March 2017. The research location was Sidodadi Village Teluk Pandan District Pesawaran Regency. Sidodadi Village has uniqueness because of lying between coastal areas which has mangrove forest and WAR Forest Park. The research population was Sidodadi household who live near with the mangrove forest and WAR Forest Park.

Picture 1. Map of research location in Sidodadi Village

This research population was 584 householders. Sampling was done by *Simple Random Sampling* and it got 85 samples (14%) of the householder. Sidodadi Village is divided into 4 countries with sampling in each country by using *Cluster Sampling*, so that it got the number of samples in each country that was:

Table 1. The sample number of every country in Sidodadi Village Teluk Pandan District Pesawaran

No	Country	Population Number	Sample Number
1.	Dusun 1	210 PN	31 (37%)
2.	Dusun 2	120 PN	17 (20%)
3	Dusun 3	125 PN	18 (21%)
4	Dusun 4	129 PN	19 (22%)
	Total	584 PN	85

The data in this research was got by observation way and direct interview to the respondents by using questionnaire and the second data was got by literature review from related institute with the

research the poverty level of household was measured by using scoring technique with basic data variable indicator of household, economy characteristic of household, material wealth, education, service access and infrastructure. The poverty level measurement was done by scoring 1 in the first answer option, 2 in the second, 3 in the third and the score accumulation was categorized into 3 classes that were not poor, medium, and poor. The data processing and analysing were done steeply by data grouping, calculation, with a calculator, and data tabulation the existence of poor household was done by mapping every population of villager's house which was become samples. The mapping was done by using GPS (*Global Positioning System)*.

3. Results and Discussion

3.1 Poverty Level

Sidodadi Villager was a village whose some of its villagers have low economy level (poor) (Andrianto, dkk., 2016). 42% of household in Sidodadi Village included in not poor category. The characteristic of any respondent be seen in table 2. The result of the research in table 2 showed that characteristic of respondents was a factor that affected the difference of poverty level in Sidodadi Village.

Tabel 2. The Characteristic of any Respondent in Sidodadi Villages Teluk Pandan District Pesawaran

No	Characteristic	Criteria	Number of Respondent				(%)
			1	2	3	4	
1	Age	24-26	3 (4%)	1 (1%)	1 (1%)	0 (0%)	6%
		27-51	13 (15%)	11(13%)	11 (13%)	10(12%)	53%
		52-77	15 (17%)	5 (6%)	6 (7%)	9(11%)	41%
		Total					100%
2	The number of family	3-5 orang	22 (25%)	15 (17%)	13 (15%)	12 (14%)	74%
		6-8 orang	9 9(11%)	2 (2%)	5 (6%)	6 (7%)	25%
		9-11 orang	1(1%)	0 (0%)	0 (0%)	0 (0%)	1%
		Total					100%
3	The number dependents	1-3 orang	26(30%)	14(17%)	16(19%)	14(16%)	82%
		4-6 orang	5(6%)	3 (4%)	2 (2%)	5 (6%)	18%
		Total					100%
4	Job	Farmer	8(9%)	5 (6%)	15 (17%)	17(21%)	53%
		Trader	3 (4%)	2 (2%)	0 (0%)	0 (0%)	6%
		Fisherman	8(9%)	0 (0%)	0 (0%)	0 (0%)	9%
		Repairshop	2(2%)	1 (1%)	0 (0%)	0 (0%)	3%
		Others	10(12%)	9 (11%)	3 (4%)	2 (2%)	29%
		Total					100%
5	Fixed Income	Have fixed income	16(19%)	11 (13%)	6 (7%)	2 (2%)	41%
		Haven't fixed income	15 (17%)	6 (7%)	12 (14%)	17(21%)	59%
		Total					100%
6	Income	<IDR 1900000	16(19%)	10(12%)	6 (8%)	4 (5%)	44%
		>IDR 1900000	15 (17%)	7 (8%)	12 (14%)	15 (17%)	56%

		Total					100%
7	Education	Senior High School	17(21%)	8(9%)	8(9%)	3 (4%)	43%
		Junior High School	5 (6%)	3 (4%)	0 (0%)	6 (8%)	18%
		Elementary School	9(11%)	6 (8%)	10 (10%)	10 (10%)	40%
		Total					100%

The households that included in not poor category were lying in Country 1 and 2. Mostly, the households that included in not poor category were the ones that had some income above the Minimum Working Wages (MWW) >IDR1900000 (Lampung Province Government, 2016). The high income level as well as the easy access to fulfil the life needs made the households in Country 1 and 2 was dominated by not poor households. Country 1 was dominated by the households that included in medium category. The house that included in medium category was the households that could fulfil the based needs like clothes, food, home, and health services but it hadn't been able to fulfil the social psychology needs like the need of education, environmental interaction of the home and transportation (The National Family Planning Coordination Institute, 2013). Besides, the households in Country 3 and 4 were dominated by poor households

.

Table 3. Poverty Level in Sidodadi Village Teluk Pandan District Pesawaran

Categori	The Number Of Households					Percentage of Poeverty Level
	Dusun 1	Dusun 2	Dusun 3	Dusun 4	Σ	
Poor	4 (5%)	6 (7%)	10 (12%)	11 (13%)	31	37%
Medium	11 (13%)	0 (0%)	2 (2%)	5 (6%)	18	21%
Not Poor	16 (19%)	11 (13%)	6 (7%)	3 (3%)	36	42%

The households in Sidodadi Village had poverty level as many as 31 householders (37%) and were dominated by the households that lived in country 3 and 4. The poverty in Country 3 and 4 was affected by kinds of factors that were the short of human being resources, the short of education, lots of dependents in the household, less of income, and the limited access in fulfilling the life needs. Mostly, the households had the livelihoods as a fisherman, trader, mangrove farmer, and services (driver and repair shop). The household income that was under the MWW<IDR 1900000 caused the poor household to have difficulty in fulfilling the life needs. The household with the income under the MWW province had the income resources more than one.

The existence of poor household in Sidodadi Village showed that the poor household inclined to close to WAR Forest Park area. The thing could be seen on Picture 2 which showed that household poverty in Country 3 and 4 were dominated by the poor household. The household poverty in Country 3 and 4 was affected by the limited access of the household to fulfil the life needs. County 3 and 4 were countries which lying on an area around WAR Forest Park. The household access in fulfilling the life needs properly caused the poor household depended on the agriculture products very much from WAR Forest Park. The base services access and infrastructure that were in Sidodadi Village mostly outside the village area, so that for the household of Country 3 and 4 still had difficulty in using the facilities and infrastructure there like health service, market, and the access to reach the district. The distance of base service access caused the poverty in Country 3 and 4 high.

Country 1 and 2 were countries that close to mangrove centre. The households in Country 1 and 2 were countries that had a little number of poor households. Lots of income resources for the households and the access of main street that close enough to connect Sidodadi Village with others villages caused the household could fulfil the life needs properly. It related to Makmun (2014), an area that has limited access could increase the poverty of community.

Picture 2. Map of poor household dispersal in Sidodadi Village

The existence of Tahura WAR for the household in Country 3 and 4 in using non-wood forest product wasn't enough to increase the household economy. The household dependency against the forest product caused it didn't increase the economy prosperity for the households which were lying on Country 3 and 4. It result, the economy income level of poor household in Country 3 and 4 was under the Province MWW. Besides the existence of mangrove forest in Country 1 and 2 promoted the income resource for the households that had work as fisherman. Lots of income source became households did not depend on the mangrove product only. So that the existence of poor household that close to mangrove forest in Country 1 and 2 were only a little. This is meant the income level was a factor that influenced poverty level.

The low of education level of poor household in Country 3 and 4 that mostly as much as 12% only reached Elementary School and caused the short of opportunities to get the proper jobs in increasing the prosperity in poor household (Fadlillah, 2016). Kaplale (2012) explained that education indirectly could affect the households' mind set, the higher study he achieved the higher motivation. Besides according to Ustama (2009) education factor was a factor that could cut off the chain of poverty, since could increase the life quality and make the society prosperity come true. The thing explained that with low of education would affect the household mind set in achieving the good jobs to increase the household prosperity in Sidodadi Village.

Country 1 was a country that had a smallest poverty level (5%) and the household in Country 2 that became the respondent in poor category was 7%. Country 1 had the main job resource as a fisherman and the side job as a trader, then Country 2 had a main job resource as a farmer, service, and the side job was a trader. The mostly education level of the household in Country 1 and 2 was Junior High School that was 20% in Country 1 and 10% in Country 2. The good education level was in the standard quality of education that was 12 years in study (Ministry Of Education and Culture, 2016). This made the household potential to get the proper income resource still enough.

The household poverty level in Sidodadi Village was caused by the number of family member. Purwanti (2014) said that the highly of family member would also need the high cost of life. A little income caused the poor household couldn't fulfil their needs. The household that had family member about 1-3 people mostly were 82%, and 41% of the householders were old people. This related to Waluyo (2006) that said age condition determined so much the working productivity level

of someone in doing economy activities. The age condition of respondent would show the ability to increase the household economy. Then the large number of family member could cause a burden to fulfil the needs. More details Adiana dkk. (2012) state that the burden of poor household was heavier because there was many family members in it and they was not productive. It made the attempt to increase the quality of human resources in poor household was difficult to develop.

4. Conclusion

The household in Sidodadi Village with poor category was 37%. The poverty's happened because of low quality human resources and less of household mind set in appreciating the importance of education and a lot of insurance in household is low of income and difficulty access in completing the necessary live.

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The Protection of Indigenous People's Constitutional Rights: Case of Kasepuhan Ciptagelar

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Abstract

The Indigenous People's is a society entity that maintains its ancestral life order, which historically existed before the Unitary State of Indonesia was proclaimed. The Indonesian Constitution has guaranteed the constitutional rights of all citizens, including the indigenous people's. Sleain, Article 18B Paragraph (2) of the 1945 Constitution has rescued that it has mandated that the state recognize and respect the traditional rights of indigenous people's as long as it is alive and in accordance with the development of society and the principle of Republic Indonesia.

In practice, the constitutional rights of indigenous people's are violated and discriminated against by various parties. However, until now there is no legislation act that explicitly regulates the indigenous people's and the protection of its rights. To date, the regulation of indigenous people's is partially regulated in various laws and regulations, which are predominantly in the forestry sector.

One of indigenous people's which is still alive and developing is Kasepuhan Ciptagelar society in West Java. In fact, the Kasepuhan community themselves often experience discriminatory acts. Thus, the government needs a stronger effort in realizing the indigenous people's constitutional guarantees in field practice.

This research aims to examine the implementation efforts of indigenous people's protection in Kasepuhan Ciptagelar, by analyzing the cases that occurred that correlated with existing regulations. In addition, this study also provides some insertion in refining the regulations on indigenous people's protection.

Keywords: *Indigenous People's, Constitutional Rights, Kasepuhan Ciptagelar*

1. Preliminary

Indigenous peoples (MHA) are closely related historically, sociologically, and ecologically with the Unitary State of the Republic of Indonesia. As a community entity that existed before the consensus established a country called Indonesia, MHA has existed and is still alive and survive to this day. Activities found in the field show that MHA proved to be a unity that is able to maintain nature and its environment.[1] The ability to preserve this nature will be strongly tied to local wisdom and customary laws run by the MHA. Nature that includes resources in it such as land, forest, river,

[1] Nature and environment in the local wisdom of the MHA is something that needs to be maintained. This makes the MHA has a strong relationship with nature and its resources. Examples of MHA that until now have existence in maintaining its nature that is Baduy society (more complete in Asep Kurnia and Ahmad Sihabudin, 2010. Time Baduy Talk, Jakarta: Earth Literacy), Community of Kuta Tasikmalaya (more complete in Iman Hilman, 2011, Wisdom Local Indigenous peoples Kampung Kuta in Protecting and Managing the Environment, in Proceedings of International Conference on Sundanese Culture Volume II, Bandung: Rancage Culture Foundation)

and all the resources in it have a very strategic position. For MHA, land is not just an economic resource. Soil is an integral part of the whole life of Indigenous peoples. Various custom rituals are performed as a form of MHA spiritual relation with nature, including forests.[2]

The existence of the MHA, however, should not be ignored by the state. Article 1 Paragraph (3) of the 1945 Constitution stipulates that Indonesia is a legal state. It contains the consequences for the state to satisfy the elements of the rule of law, with the most universal element being the enforcement of human rights. This human rights enforcement must be implemented in a non-discriminatory manner, which means that MHA must be guaranteed to uphold its rights.

Constitutionally MHA itself has a guarantee in the Constitution. The warranty can be found in Article 18B Paragraph (2) which reads:

> States recognize and respect the unity of Indigenous peoples and their traditional rights as long as they are alive and in accordance with the development of society and the principle of the Unitary State of the Republic of Indonesia, as governed by law.

The article has expressly assigned responsibility to the state to (1) recognize the MHA and its traditional rights; and (2) respect for the MHA and its traditional rights. This Article also at the same time provides a barrier to the recognition and respect for the MHA, ie if the MHA concerned meets the following conditions: (1) is still alive; (2) in accordance with the development of society and the principle of the Unitary State of the Republic of Indonesia.

The above juridical construction faces various obstacles in its implementation effort. Cases that occur indicate that MHA experienced various discriminatory actions from various parties, ranging from communities outside the community MHA and even government officials. This is also exacerbated by the globalization that is put forward the aspects of material profits through the private sector. Often large-scale private companies engaged in industry, such as plantations, forestry, and mining get support from the state.[3] Ultimately such conditions greatly hinder the protection and fulfillment of the constitutional rights of the MHA.

In addition to the problems sourced from outside (external) MHA above, the source of potential other problems arise also from within (internal) MHA itself. If traced from the constitution, the state recognition and respect of an MHA can not be done if the concerned MHA does not meet the specified barrier, especially on the second barrier.

There is a potential conflict between legal norms made by the state and customary law norms prevailing in the community. MHA is in fact always subject to customary law, in turn will experience problems if there is a positive legal norms that must be adhered to simultaneously.

Nonetheless, MHAs are trying to adapt to the contemporary conditions they face. Kasepuhan Ciptagelar, is a community of MHA which recently became a conversation in various media. The fascination with which they are discussed is the effort within their communities to adapt and take on roles in various developmental programs like the general public, but without abandoning customary law. This is in stark contrast to the mainstream stigma of the MHA, which is ancient and closes itself from the times.

This paper seeks to describe the extent to which the MHA in Kasepuhan Ciptagelar make efforts to adjust to the development of the times, especially related to the development of society and the principle of the Unitary State of the Republic of Indonesia, so it can be seen also how the protection of the MHA constitutional rights in Kasepuhan Ciptagelar. The data used in this paper is obtained from literature studies and also observations that have been done by the author in 2015 ago.

2. Discussion

2.1 Empirical Condition Kasepuhan Ciptagelar

Kasepuhan Ciptagelar community is an Indigenous peoples Sunda administratively located in the Sirnaresmi Village, Cisolok, Sukabumi, Jawa Barat province is one of the Kasepuhan incorporated

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[2] Inkuiri Nasional Komisi Nasional Hak Asasi Manusia, 2016. *Hak MHA Atas Wilayahnya di Kawasan Hutan.* Jakarta, Komnas HAM. Page 25

[3] Inkuiri Nasional Komisi Hak Asasi Manusia. *Ibid*. Page 58.

in Indigenous Unity Banten Kidul. Kasepuhan distance Ciptagelar capital district 46 km and from the capital of the province 198 km.[4]

The term Kasepuhan comes from Sundanese, with the basic word sepuh which means old. It shows that Kasepuhan is an old settlement. In the order of the old settlement of Sunda, known 3 (three) types, namely Kabuyutan, Kasepuhan, and Kanoman.[5]

According to hereditary stories, Kasepuhan Ciptagelar people come from Pakuan Pajajaran, the capital of the Sunda Kingdom which according to historical records stood in the 7th century to 16th century AD. According to hereditary stories also, the movement of society from Pakuan Pajajaran to Kasepuhan region is now motivated by the attack launched by the Sultanate of Banten.

Historical records show that it is true that the Sultanate of Banten ever attacked the Kingdom of Sunda.[6] In his last attack, the Sultanate of Banten under the leadership of Maulana Yusuf succeeded in bringing Palangka Sriman Sriwacana, the coronation stone of the Sundanese King. By bringing this stone, the throne can not be passed on by the Sundanese, or in other words the Kingdom of Sunda has lost its sovereignty after the last attack. Remnants of Pakuan Pajajaran who do not want to submit to the Sultanate of Banten is then according to the story of hereditary escape to the south. This is supported by the existence of old villages (kabuyutan and kasepuhan) in the southern region of Banten and West Java, including Kasepuhan Ciptagelar.

As MHA, Kasepuhan Ciptagelar community has an institutional structure of adat. Kasepuhan Ciptagelar led by an Elder who is often called Abah. When viewed from the way to get its power, Kasepuhan Ciptagelar use the form of monarchy, where power is obtained based on lineage. This also applies to positions or other positions under Abah. The institutional structure can be seen in the chart below.

Chart 1 The traditional institutional structure of Kasepuhan Ciptagelar Community [7]

[4] http://www.ciptagelar.info/lokasi/

Abah is the highest customary leader in Kasepuhan. All customary tools within the institutional structure of adat are accountable to Abah. Abah position is obtained from generation to generation, not through election or deliberation, therefore Kasepuhan Ciptagelar government system has the same pattern with monarchy system. Now Abah who holds the power is Abah Ugi Sugriana Rakasiwi, replacing Abah Anom who has died in 2007.

In Kasipuhan Ciptagelar society apply the law that is not written, or which is equal with adat law. Customary law is inherent and run Kasepuhan people with obedience. The continuous implementation of adat law, in addition to being based on the nature of customary law that binds its people internally,[8] also related to the nature of Pajajaran society as the ancestor of Kasepuhan Ciptagelar community that is open, egalitarian, and has a strong social system.[9]

Customary law that prevailed in Kasepuhan Ciptagelar is a legal design that puts the ecological aspect. This is in accordance with the main features of MHA that have a multidimensional relationship with the land and its environment. For MHA, land is not just an economic resource. Soil is an integral part of the whole life of Indigenous peoples. Various custom rituals are performed as a form of MHA spiritual relation with nature.[10]

Despite carrying out customary law in daily life, the Kasepuhan Ciptagelar community did not subsequently reject the reforms that emerged with the times. It makes Kasepuhan Ciptagelar has its own uniqueness compared with other MHA-MHA. If during this MHA is described as a remote community unit[11] even backward, the Kasepuhan Ciptagelar MHA is the opposite of the picture. For the size of MHA, Kasepuhan Ciptagelar indeed has been more advanced. Kasepuhan Ciptagelar even has its own logo that is used to identify and promote themselves to the public.

Image 1. Kasepuhan Ciptagelar Logo

The Kasepuhan Ciptagelar community, opening their access to technological progress, continues to use its customary law as a filter. Customary law prevailing in Kasepuhan Ciptagelar itself, puts the agricultural sector as a sector that should not be touched by modern technology.[12] That is, in addition to agriculture, other sectors in MHA Life can be touched by modernization.

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[5] Kabuyutan contains the meaning of the very (most) old settlement, Kasepuhan means old settlements, and Kanoman, meaningful young settlement.

[6] The assault occurred during the last three reigns of the Sunda Kingdom, namely the reign of Queen Dewata Buana (1535-1551), the reign of King Nilakendra (1551-1567), and the reign of King Ragamulya (1567-1579), in Mumuh Muhsin Z., *ibid*. Page 8.

[7] Ki Ugis Suganda, 2009. *Komunitas Masyarakat Adat Kasepuhan Ciptagelar: Membangun Posisi Tawar Hak Atas Hutan Adat*, dalam Hutan untuk Masa Depan Pengelolaan Hutan Adat di Tengah Arus Perubahan Dunia. Jakarta: AMAN-DTE. Page 37.

[8] Rudy (2016). *Hart Primary Rules di Lampung Barat*. Lampung Post NewsPaper, August 27, 2016.

[9] Dedi Mulyadi (2015). *Spirit Budaya*. Purwakarta: Bagian Humas dan Protokol Setda Kabupaten Purwakarta. Page 10.

[10] Inkuiri Nasional Komisi Nasional Hak Asasi Manusia, 2016. *Hak Indigenous peoples Atas Wilayahnya di Kawasan Hutan.* Jakarta, Komnas HAM. Page 25

[11] Some legislation uses various terms in the identification of MHA, such as Mayarakat Adat yang terpencil on Undang-Undang Nomor 20 Tahun 2003 tentang Sistem Pendidikan Nasional, and Komunitas Adat Terpencil dalam Keputusan Presiden Nomor 111 Tahun 1999 tentang Pembinaan Kesejahteraan Sosial Komunitas Adat Terpencil.

[12]The Kasepuhan Ciptagelar community has a living philosophy that rice that is an agricultural product is the source of life, so that the rice and all its processed products should be treated with the best, and the people believe that what their ancestors have done is the best treatment. Nevertheless, the agricultural system that has been run by the Kasepuhan Ciptagelar community has proved capable of providing a more food stability system than other regions, more fully in Sutanandika, 2014. *Hukum Adat Kasepuhan Ciptagelar: Pola Rasionalitas*

The process of entry of modern technology above, can not be separated from the role of traditional leaders in Kasepuhan Ciptagelar, namely Abah. Abah who initiated the use of the river in the Kasepuhan environment to become a source of microhydro energy. In other words, abah as a traditional leader in Kasepuhan Ciptagelar also at the same time become an initiator in the effort of empowering existing resources. This can be seen in the inclusion of electric power in Kasepuhan environment. Electric power is generated by self-powered microhydro power plants.[13] The use of river potential as a source of electricity has been initiated and implemented since the time of Abah Anom, and still continues to this day.

It does not stop at the use of river aloes as a power station, a form of modernization that enters the other ciptagelar kasepuhan is the television channel (named CiGa TV) and radio transmitter (named Radio Swara Ciptagelar with UHF number 107.7) specifically kasepuhan area. Content that is broadcast through two electronic media is arranged in such a way that can meet the demand of residents kasepuhan.

Image 2. CIGA TV Operational Sites and Radio Swara Ciptagelar

The inclusion of reforms in the life of society Kasepuhan certainly make people become more creative and capable. The management of these technologies involves members of the Kasepuhan community.

Kasepuhan people are also actively involved in state activities, ranging from ceremonials such as flag-raising ceremonies, to democratic agendas such as elections and general elections. The programs pursued by the government in the Kasepuhan region are also well received by the Kasepuhan community.

Dina Nanjerkeun Ketahanan Pangan. Tesis Magister Pendidikan dan Budaya Sunda Universitas Pendidikan Indonesia.

[13] Hertiyo Sembodo, 2011. *Pengelolaan PLTMH Berbasis Kelembagaan Masyarakat Adat Secara Mandiri: Kasepuhan Ciptagelar*. Jurnal M&E Volume 9 Nomor 4 Desember 2011.

Image 3. The National Flag Raising Ceremony On Proclamation Day August 17, 2017

The difference is that the Kasepuhan community has one command in choosing their political representatives. In this process Abah has sole authority in determining the voice of the entire Kasepuhan community. If Abah has chosen a name, then it is certain all Kasepuhan people who have the right to vote will choose the same name. Such a system is not something that is seen as harmful to democracy, because as mentioned earlier, for the Kasepuhan community, its customary law is binding without force, so the Kasepuhan people entrust their political choice to their adat leader. In addition, for the people of Kasepuhan Abah is a figure who is considered more capable in determining the choice, so that in addition based on the binding of customary law, Kasepuhan community is also based on the belief that Abah will choose the right people to become representatives of the people who fight for the region.

The existence of these developments, still does not eliminate customs and customary law in Kasepuhan Ciptagelar. The association still shows the nature of the Sundanese indigenous people someah hade ka semah, as well as maintaining the hand of asor as a form of honor to the adat leader. The same can also be found in agricultural systems, building design and cultural order Kasepuhan Ciptagelar society that continues to live until today.

The description of Kasepuhan Ciptagelar above, when associated with Article 18B Paragraph (2) of the 1945 Constitution clearly has been eligible for recognition and respect. First, the MHA still exists and currently has a fairly good existence among other MHAs as well as among the general public. Secondly, there is an effort to adapt itself to the development of society, in the form of promotions to the general public and the upatya adapt to the principle of the Unitary State of the Republic of Indonesia in the form of participation in state activities.

Such recognition and respect, in real terms, need to be set forth in the laws and regulations that provide guarantees for MHA protection. However, until now, the regulation is still partially regulated in various laws and regulations, and it is limited to the sectoral scope, in this case the forestry sector and natural resources. Although the 1945 Constitution states that if the regulation on MHA is regulated in law, not regulated by law, it is now deemed necessary to make the MHA regulation with a special law. It aims to minimize discriminatory actions as often experienced by other MHAs. In addition, regulation with the law will clarify the MHA's constitutional rights fulfillment system in the local legal product mechanism, since the MHA in its realm has different territory with administrative territory as recorded by the government. This has implications for the arrangement being partial and different from each region.

3. Closing

MHA in Kasepuhan Ciptagelar is an MHA that has made efforts to adjust to the development of society and the principle of Ngara Kesatuan Republik Indonesia. In other words, there has been an effort to fulfill the constitutional rights of MHA Kasepuhan Ciptagelar itself. Currently there is a need for protection from outside MHA Kasepuhan Ciptagelar, especially from the government. The government needs to draft a special law on MHA, so that MHA safeguards can be implemented more systemically.

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Climate Change Adaptation Through a Shift in Cropping Area Onto the Upper Stream Region: Measuring Coffee Beans Response in Physical Quality

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Abstract

The extensification onto upstream region can be regarded as a farmer's behavioral adaptation to the climate change to look for the optimum temperature in growing coffee. This behavior is rampant for Robusta-dominant people agroforestry coffee (*Coffea canephora*) in Lampung Province, Indonesia. The negative impact certainly causes land degradation, while the positive impact on its quality has not been well-measured. This study aims to determine the effect on the upward shift on cropping area altitude to the coffee fruit quality using Ordinary Least Square (OLS) Regression Model. The field survey was conducted from June to August 2017. Samples of ripe cherry coffee collected from 32 sites in the approximate elevation range of 300 to 1,170m ASL. The independent variables observed consists of sites elevation, slope steepness, and the exposition area of cultivation. Two indices of bean quality were used as the independent variables. First one was the index of [WD_1000]: the weight of 1000 dried coffee fruit. The other one was [FLOAT], the percentage of ripe coffee fruit floated in the water. Conclusion: For each a-100 m of upward elevation, the [WD_1000] was increased by 24.18g/1000 dried beans accompanied with the [FLOAT] by 1.99% of floating watered bean. It is recommended to conduct further research on revealing the effect on the coffee cup taste.

Keywords: *climate change adaptation behavior, coffee bean quality*, *shifting cultivation to upper region.*

1. Introduction

Climate change had affected almost every aspect of community and livelihood, including the coffee farmers' behavior in shifting cultivation onto the upper stream region of the catchment area of Batutegi Dam in Lampung Province, Southern tip of Sumatera- Indonesia. On one side the behavior, indeed, causes the escalation of land degradation (such as rising soil erosion rate and declining water infiltration, while simultaneously increasing drought occurrence in the dry season and flood occurrence in the wet season), destroying germplasm, and worsening water body deterioration. Yet, on the other side, the behavior could be regarded as the local wisdom to climate change adaptation that is controlled by the steadily rising air temperature.

According to Killeen and Harper, (2016) both the productivity and quality of Arabica and Robusta coffee are largely dependent on the climate suitability, especially the precipitation and air temperature. In contrast to the precipitation variable that is very difficult to manipulate, there are two simple opportunities to achieve suitable temperature condition for coffee crop cultivation. The first choice is to manage the shade trees (see Jaramillo *et al*., 2011) and the second is to move up onto the upper region across the landscape. The first one, indeed, is normally applied by farmers in coffee crop cultivation agroforestry system. But this choice is in trading off with the threshold of sunlight

intensity to meet the coffee crop photosynthesis requirement. The second choice, therefore, becomes the only opportunity left in the effort to combat the global warning by compensating the air temperature. It is well known in the scientific community as the classical Braak's Law that the temperature will decrease by 0.56^0C for each 100m elevation in the atmospheric region (Arsyad, 2000). The behavior of the farmer in shifting cultivation onto the upper region could compensate the rising air temperature (as the effect of the global warming) so the air temperature suitability for growing coffee crop could be retained, as well as its productivity and quality. So far we have not found a published paper that assess the effect of the upward shift in cultivation area altitude on the coffee fruit or bean qualities. For the sake of revealing the effects of the farmers' behavior, we were interested in conducting this study.

2. Material And Method

2.1 Study Area

This study was conducted on the catchment area of Batutegi Dam, Lampung, the Southern tip of Sumatera-Indonesia from June to August 2017 by using survey and modeling approach.

2.2 Procedure

Samples of the ripe fruit of coffee were collected from 32 sites of people coffee agroforestry in the approximate elevation range of 300 to 1,170 m ASL. The research location is pointed out by the Figure 1. We started from lowest elevation and went up to the summit. We made the plot sites observation for each 25m to 30m elevation ranges. We chose 3-5 coffee crops and took ripe cherry bean for around 3kg for each plot. We also took some observation for each site plot elevation including the slope steepness, the exposition or direction of cropping area plot, the air temperature, and the air humidity by using the altimeter, clinometer, compass, thermometer, and hygrometer respectively.

We used two indicators to express the coffee fruit quality indices. First one was symbolized as the quality index of [WD_1000] that to express the weight of 1000 dried fruit and the other was the percentage of coffee fruit that floated in water as symbolized by the quality index of [FLOAT]. To prepare the quality index of [WD_1000] variable, we took around 1kg of coffee fruit, placed it into the oven chamber that set at 70^0C for 6 days, weighed it, and then counted it. Whereas for preparing the quality index of [FLOAT], we took around 1kg coffee fruit, soaked it in water, separated the floated beans by nest then weighed, and then expressed by the percentage of the fresh fruit coffee.

The ordinary least square regression (OLS) model at 1% and 5% of significance level was applied on the predicting bean qualities, *i.e.* quality index of [WD_1000] and the quality index of [FLOAT], which we treated as the dependent variables. Whereas for the independent variables were applied 3 tree attributes of each cropping areas that includes the elevation, the slop steepness, and the exposition. The elevation [ELV] was expressed in a 100m range of different heights. The slope steepness [STEEP] expressed in percentage. Meanwhile, the area expositions were expressed in 3 dummy variables with the eastward direction used as the reference and scored as follows: if the dominant exposition area of plot was in the direction of southward it is symbolized as [D_SHT], northward as [D_NRT], and westward as [WST] and we scored by *1,* and otherwise was *0*. In Table 1 we provide the dependent and the independent variables, their units, their scores, and their method of acquisition. We applied statistic software to optimize the parameter.

Table 1. The variables, symbol in model, unit, scale of measurement, and the acquisition methods for modeling preparation.

No	Variabel	Symbol	Unit	Scale of measurement	Data acquisition and preparation for variables in modeling
I.	***Dependent variables***				
	1 Coffee fruit	[WD_1000	gram	ratio	Field sampling at each plot site

.	quality index 1	]			from 3-5 tree coffee crops, took bean for around 1 kg, dried in oven for 6 days then weighted for 1.000 beans.
2.	Coffee fruit quality index 2	[FLOAT]	%	ratio	About 1 kg coffee bean was soaked in water, netted that float, weighed, and then calculated it in %
II.	***Independent variables***				
.	1 Elevation		[ELV] *100 m m ASL	ratio	Recording each plot site elevation by altimeter then divided by 100m
2.	Slope steepness	[STEEP]	%	ratio	Recording the slope steepness for each plot by clinometer.
3.	Cultivation plot area exposition:				Observing the dominant direction of each plot area site then:
	- Northward	[D_NRT]	-	dummy	-scored by *1* if in the northward direction, by *0* if others
	- Southward	[D_SHT]	-	dummy	-scored by *1* if in the southward direction, by *0* if others
	- Westward	[D_WST]	-	dummy	-scored by *1* if in the westward direction, by *0* if others

We realized that our air temperature data were merely the temporary data that only recorded once time in our survey. This kind of data were certainly could not represent for the long period of, that certainly control coffee crop growth, so we prefer to use the elevation [ELV] variable as the independent variable to predict the quality of coffee fruit than using air temperature [TEMP]. Based on this argument we then hold an assumption that there was a differential fall of air temperature in accordance with the elevation or topographic sequent across the landscape. For the sake of testing the validity of this assumption, we also employed an OLS regression model with the air temperature, which expressed in symbol of [TEMP] as the dependent variable, and the [ELV] accompanied by air humidity, which expressed by symbol of [HUMD] as the independent variables. For this purpose we also used the significance level of 1 and 5%. This verification step was an important thing as the way to prove that the people's behavior in shifting up their coffee cultivation area onto the upper region could be regarded as an adaptation behavior from the climate change in order to find out a more suitable air temperature to grow the coffee crop. Figure 1. The Study Area [Source: reproduced from The Management Unit of Protected Forest of (KPHL) Batutegi's document, 2014]

3. Result and Discussion

3.1 The generic description of study area

The area study is lied in the south hemisphere which specific geographic coordinate references is in between latitude *05⁰05'50''S – 05⁰16'33''S* and longitude in between *104⁰30'34'' E –104⁰49'14'' E*. The acreage of around 58,162 ha is under controlled by Unit of Management Protected Forest (KPHL) Batutegi, Service Office for Forestry Affair of Lampung Province Local Government. Almost 70% of the acreage are cultivated by the farmer as coffee agroforestry under concessionary as Social Forestry Agreement (*HKm*) for 35 year with land holding around 1-5ha per farmer. Under the concession, farmers are obligated to apply agroforestry system which prohibit them to take timber instead of non-timber products, such as rubber sap, rattan, honey bee, coffee bean etc. The area is also the catchment area of Batutegi Dam that constructed in 1995 for water reservoir of around 9 million m^3 annually and to generate hydropower of around 125.2 GWH annually (www.pu.go.id, 2017). As could be examined in the Document of Land Resource Evaluation Planning Project I (CSR: Center for Soil Research Institute of RI, 1989) the topographic is a hilly complex to mountainous. Under the tropical rainforest the geologic parent material of clastic sedimentary rock have formed various silty loam, loam, and clayed soils with common characteristic of low pH and poor fertility.

The descriptive statistic of the field survey observation is depicted in Table 2 that consisted of the minimum, the mean, the maximum, and the standard deviations (SE) of the variables of air temperature, air humidity, elevation, bean qualities indices, area elevation, and slope area steepness. Besides, number of the area exposition for the four direction we enlisted in this table as well.

Table 2. Descriptive statistic of variables observed at the study area

No.	Variable	Unit	Minimum	Mean	Maximum	SE
1.	Bean quality index of	g/1000	1,001.4	1,074.6	1,180.3	70.6

	[WD_1000]	dried beans				
2.	Bean quality index of [FLOAT]	% watered floating fruit	0.03	0.09	0.27	0.07
3.	Air temperature [TEMP]	^{0}C	22.0	26.1	31.8	1.9
4.	Air humidity [HUMD]	%	50.0	71.4	84.0	7.3
5.	Area elevation [ELV]	m ASL	349	788	1,173	237
6.	Slope steepness [STEEP]	%	2.7	11.5	23.8	5.5
7.	Number of plot area's exposition	Counted number	South: 4	West:8	North:5	East:17
8.	Monthly Rainfall (in the month of)*	mm	107(August)	244(----)	374(May)	124(---)

Source: research result (2017); Note: * Climate Station of Pesawaran District, Lampung Province (2017, unpublished); the sign of (---) =not relevant

As depicted in the Table 2, both the coffee fruit quality indices were varied enough as expressed by their wide range of standard error (*SE*). This variation seemingly controlled by the variation of temperature as the sheds of the differences of their elevation. The *SE* of air temperature across the landscape of the study area was 1.9^{0}C that equal to its variance $(1.9)^2$=3.6^{0}C. To assess if this variance of the air temperature could be considered as those of the effect to the global warming, we need to refer the work reported by Nikolaj *et al*. (2015) whose proved that the air temperature in the Artic zone in the Holocene geological era was warmer of around 2-4^{0}C than that of the present era and had significantly affected the melting glacier which further makes the sea level 0.16 m higher. This suggests that the increase of air temperature of around 2^{0}C was enough impact to global warming. Based upon the proof provided by Nikolaj *et al*., (2015), the range of air temperature recorded from this study was 22-32^{0}C with SE=1.9^{0}C or approximately to 2.0 ^{0}C. This finding also could be regarded as identical with the effect of global warming if we move down from the summit along the slope across the landscape of the study area and vice versa. The opposite direction, therefore, was the reverse of the step up moving onto the summit and could be regarded as a seeking of compensation behavior against the raising air temperature. This behavior is rampant at he study area (KPHL Batutegi, 2014). But in other side this behavior also could be considered as an adaptation of the global warming. We had also tested the assumption of the decreasing air temperature as the function of the area of elevation. For this purpose we employed the OLS regression between air temperature [TEM] as the function of the elevation [ELV] accompanied by the air humidity [HUMD] as provided in Table 3 and Table 4.

Tabel 3. Analysis of variance of the air temperature [TEM]^{0}C as the function of increase of elevation [ELV] per 100m upward and their air humidity [HUMD] recorded during field survey

Source	DF	SS	MS	F	P
Regression	2	29.080	14.540	4.90	0.015**
Residual Error	29	86.006	2.966		
Total	31	115.086			

Source: Research result (2017)

Table 3 depicts that the variation of [TEM] we obtained from this study was explained well enough by the variation of the [ELV] accompanied by [HUMD]. As depicted from Table 4, for each 100m increase of elevation, the air temperature would decline around 0.332±0.1328 ^{0}C and vice versa, regardless the air humidity. This fact told us that temperature decreases 0.465^{0}C for each 100m moving up across the landscape of the people's coffee agroforestry areas. This fact suggests that approximately in accordance with the classical Braak's Law, which postulates that for each increase of 100m altitude in the atmospheric zone, there is a decrease in air temperature by 0.50^{0}C (see Arsyad, 2000). In the model, we also have separated the effect of air humidity [HUMD], so we could claim

that the effect of [ELV] to the declining air temperature is free from the effect of the air humidity variance.

Tabel 4. The T-test of the air temperature [TEM]^{0}C as the function of shift up of elevation [ELV] for 100m move upward and their air humidity recorded during the filed survey

Predictor	Coef	SE Coef	T	P
Constant	35.888	3.455	0.00	-
Elevation [ELV]	-0.3321	0.1328	-2.50	0.018**
Air Humidity [HUMD]	-0.09986	0.04336	-2.30	0.029*

The regression model could be expressed in Eq.{1} as the following:

[TEM] = 35.9 - 0.332 [ELV] - 0.0999 [HUMD]
R-Sq(adj) = 20.1%

Eq. {1}

[2] The Impact on the coffee fruit qualities

As mention above, we use two terms to express the coffee fruit quality indices, the dried bean quality index of dreid weight and the percentage floating coffee fruit in water.

The dried coffee fruit quality index of weight

The impact of elevation, slope steepness, and exposition area of cultivation on the rife coffee fruit are simultaneously depicted in Table 5. By examining the *R_Sq(adj)*, the variance of the three independent variables only could explain as many as 53.3% to the variance of the coffee fruit quality, especially for the dried weight of 1000 beans quality index [WD_1000], whereas the remaining 46.7% must be explained by other variable besides of the three from the model. The three variables, nevertheless, was robust enough for explaining the variance of the quality index of [WD_1000]. This claim was proved by the P-value=0.000. This value told us that based on the three kinds of data (*i.e.*: data of elevation, slope steepness and cultivation area exposition), the model could predict the quality index of [WD_1000] in very high precision. We could write P=0.0004 that approximately for P=0.000. It meant that if we use the three variables, for every 10,000 times of prediction, there would be only 4 time misses.

Table 5. Analysis of variance of the impact of elevation, slop steepness and the plot area exposition of cultivation on the coffee ripe fruit cherry

Source	**DF**	**SS**	**MS**	**F**	**P**
Regression	5	10708	21416	7.61	0.000***
Residual Error	24	67533	2814		
Total	29	174612			

Among the three variables, we could further examine on how much was the effect on the dried bean quality index of [WD_1000] by examining the result of the *T-tes*t. As depicted in Table 6, the elevation [ELV] variable could affect the dried bean quality index of [WD_1000] very significantly (P=0.000). The optimum parameter of this variable was 24.187. The fact connoted that if the two other variables were remained constant, the average quality index of [WD_1000] would increase by 24.187 gram for each 100m shift upward of cultivation area and vice versa. It also could be considered that farmer's behavior in moving up their area of cropping were the behavior in the climate change adaption in order to achieve the more suitable temperature for growing coffee three. This fact, therefore, could be equalized as the term for measuring the effect of adaption behavior to the global warming especially in pursuing better coffee bean quality.

Table 6. The T-test to examine the magnitude effect of variables of elevation, slope steepness and cultivation area exposition on the dried weight of coffee bean

Predictor	**Coef**	**SE Coef**	**T**	**P**
1.Cosntant	279.81	48.49	5.77	0.000***
2.Elevation [ELV]	24.187	5.228	4.63	0.000***
3.Slope Steepness [STEEP]	-0.170	1.879	-0.09	0.929
4.Plot Area Expotision(*Eastward=0*:	------	------	------	------
-*Soutward* [D_SHT]	28.26	35.79	0.79	0.437
-*Westward* [D_WST]	9.30	25.79	0.36	0.722
-*Northward* [D_NRT]	-95.87	28.02	-3.42	0.002***

In contrast to the elevation impact, the influence of slope steepness variable that symbolized by [STEEP] that resulted the optimum parameter was -0.170. It meant that in case the two variables were retained to constant, there would be make decrease as much as 0.17g in dried weight fruit bean quality index of [WD_1000] for each change up a-1% the slope steepness and vice versa. This was a merely little decreasing in dried fruit bean quality so that did not give a significant effect as connoted by the P=0.929. The fact also told us that the slope steepness range of the whole areas of study was similar enough (see Table 1 row 6) to induce soil erosion process that could not make significantly difference effect to the lowering soil fertility. Another reason that perhaps the soil surface of the ground in the whole study areas was covered by good litter basalt that protected the soil fertility well enough. This claim is needed to further research anyhow.

This was an interesting fact that cultivation areas which exposition is at northward [D_NRT] depicts the worst bean quality index of the [W_1000] among 3 other directions. The northward direction of cultivation areas [D_NRT] produced the lower quality at average of 95.87g than those of the eastward direction. This difference is very significant with P=0.002. Perhaps the most probable explanation to the fact was the least solar beam radiation that could suppress photosynthesis process, especially in the period of bean filling and ripening, which in the region normally take place since 6 month before. As could be examined in Figure 1, the whole area of study is lied at the south hemisphere in between *$05^0 05'50''$ S – $05^0 16'33''$ S.* This period was coincided with solar position in the south hemisphere and so did the period of bean filing and ripening stage for almost of coffee agroforestry at the area of study. The cultivation areas with northward expositions, therefore, is always face back to solar beam radiation, so that much more suffers from lack of the ultraviolet ray during the period of bean filling.

Based on the analysis above, we could write the regression equation as in Eq. {2}

[WD_1000] = 280+24.2[ELV]-0.17[STEEP]+28.3[D_SHT]+9.3[D_WST]-95.9[D_NRT] R-Sq(adj) = 53.3%

Eq.{2}

The percentage of floating coffee fruit in water

Similar to the quality index of [WD_1000], the three independent variables that were applied for predicting percentage of floated ripe cherry bean in water, symbolized as quality index of [FLOAT], had performed as robust predictors as well. This claim was proved by the analysis of variance that produced P=0.005 as displayed in Table 7. This meant that if we predict the quality index of [FLOAT] based on the three independent variables as many as 1000 times, it would be fail only 5 times. It was important to note, anyhow, that the achievement occur after we omitted the 3 data outliers.

Tabel 7. Analysis of Variance of quality index of a-1000dried bean

Source	**DF**	**SS**	**MS**	**F**	**P**
Regression	5	1020.48	204.10	4.46	0.005***
Residual Error	24	1098.67	45.78		

Total	29	2119.15			

S = 6.76592 R-Sq = 48.2% R-Sq(adj) = 37.4%

In contrast to the index of quality [WD_1000], the effect of shifting cultivation upward would decrease the ripe coffee cherry bean quality index quality [FLOAT]. As depicted in Table 8, there is a rise of float cherry bean at average of 1.993% for each 100m shifting elevation area of cultivation [ELV] upward, and vice versa. The increase was significantly difference as connoted by P=0.007. The fact perhaps was caused by the activity of rampant borer insects for cherry coffee beans, followed by the shifting up of the elevation of the cultivation areas. The higher the elevation, the more humid the air which further accompanied by the decreasing air temperature. This argument also supported by the Eq. {1} expressed above. There are some possible explanation to the fact especially in its connection with the borer pests that are controlled by air temperature or humidity. For example, Jaramillo *et al*., (2009) proved that the activity of *Hypothenemus hampei,* insect borer of family of *Scolytidae*, is optimum in between air temperature around 15-35^{0}C.

The female activity in boring coffee fruit will drops drastically when air temperature is reaching 35^{0}C. The insect also normally fail to spawn, and then leads to suppression of the propagation of their offspring and lessen the boring of cherry bean. Otherwise, the offspring will abundant and the intensity of boring the coffee cherry fruit will rampant then worsen the quality that collected from the higher elevation of the study areas that air temperature decline from 35 to 15 ^{0}C. This argument also concurent to the research conducted by Hindorf and Omondi (2016) in Kenya that the higher the elevation of cultivtaion area the more abundant the pest attacking coffee fruit especially coffee berry desaese. As depicted in Table 3, the air temperature record during the study was between 22-32^{0}C. This record seems very concurrent with the above argument. Jaramillo *et al.* (2011) estimated that climate change would worsen pest prevalence as the berry borer that could coffee fruit and bean quality. According to Patay *et al.*, (2016) in warm and humid climate, coffee species are susceptible to various fungal infections, which can kill them in large areas. The most common fungal disease of coffee species is caused by *Hemileia vastatrix* Berk. & Broome, a *basidiomycota*, which causes a *ecoloration* on the lower surface of the leaves. Hindorf and Omodi (2016) also reported that activity of the coffee borer was rampant during the wet season that normally in between the period of January to March in Kenya. This report also supported to the our finding, as could be refered to the Table 2 (row 8) that the wet season occour in May *i.e.* the month before we conducted the field survey.

In addition to the above explanation, Agegnehu *et al.*, (2015) record that the variation of precipitation and air temperature variables are the most favorable to increase of coffee pest disease. Major disease that occurred because of the two climate variables' variation during coffee growing will increase pest and disease prevalence, expanding the altitudinal range in which the fungal disease coffee rust and the coffee berry borer can survive (Laderach *et al*., 2010). For example, rising temperatures will increase infestation by the coffee berry borer that is *Hypothenemus hampeii*, particularly where coffee grows unshaded and the cropping is continuous throughout the year.

Table 8. The *T-test* to examine the independent variables that affect the percentage of the floated ripe coffee fruit in soaked water test as index of [FLOAT]

Predictor	**Coef**	**SE Coef**	**T**	**P**
1.Cosntant	-1.243	6.085	-0.20	0.840
2.Elevation [ELV]	1.9929	0.6743	2.96	0.007***
3.Slope Steepness [STEEP]	-0.0845	0.2349	0.2349	0.722
4.Area Expotision(*Eastward scored=0*):	------	------	------	--------
-*Soutward* [D_SHT]	-1.475	4.534	4.534	0.748
-*Westward* [D_WST]	3.446	3.346	3.346	0.313
-*Northward* [D_NRT]	-8.021	3.545	3.545	0.033**

As those to the cherry bean quality index of [WD_1000], the slope steepness [STEEP] are not significantly impacting the coffee fruit quality in term of quality index of [FLOAT]. The fact was not completely understood. Perhaps the range of slope steepness in whole area of study was relatively

homogenous so does the susceptibility cherry fruit of coffee the pest. It was because the rate of soil erosion was too low that the soil fertility were homogenous too and made nutrient uptake by the crop was indifferent in term of the stance against pest and disease of the coffee crop. But further studies on the effect of slope steepness on the soil fertility, the crop's endurance to the pest, and the percentage of floating coffee fruit are necessary.

As for the impact of the area exposition to the cherry fruit quality index of [FLOAT] also shown a similar characteristic: only the northward direction of cultivated area exposition [D_NRT] which significantly different effect from the eastward one. But in this matter, it was a reverse compared to the effect on the quality index of [FLOAT] variable. The variable of [D_NRT] variable could produce the floated cherry fruit around 8.02% lower than that of the eastward direction. This discrepancy was significant as connoted by P=0.033. We thought that the explanation to this fact was certainly similar with the effect of area exposition to the coffee bean's quality index of [WD_1000] that the coffee crop which against the solar beam would much more influent but opposite in value. In this matter of fact the solar beam had given the positive impact on the quality cherry coffee fruit. This fact was not also completely understood on how the relationship among the solar beam, the endurance to the pest, and the abundance of the coffee fruit floated in soaked water test.

The regression model of the percetage of floated coffee beans fruit as the function of the elevation, slop steepness, and the expotion of the cropping area is expressed in the Eq {3}, as follows:

$$[FLOAT] = - 1.24 + 1.99\,[ELV] - 0.084\,[STEEP] - 1.47\,[D_SHT] + 3.45\,[D_WST] - 8.02\,[D_NRT]$$

R-Sq(adj) = 37.4% Eq. {3}.

4. Conclusion

For each 100m shift in cropping area onto the upper stream region there would be an antagonistic indices between the two. The index of [WD_1000] will increase by 24.18g/1000 dried beans while the [FLOAT] will increase by 1.99% of floating. It is recommended to conduct further research on revealing the effect on the coffee cup taste.

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Marine Pollution: International Law Perspective and Settlement Disputes

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Abstract

Marine pollution is a problem faced by people in the world. Its influence can reach all human activity at sea and because of different sea nature with mainland hence, sea pollution problem can influence all coast country either developing or developed country. The purpose of this study is to examine the model of marine pollution dispute resolution based on International Law. This research uses juridical - normative empirical research method. In order to resolve this dispute over sea law, international law has regulated the marine pollution in the 1973/1978 Convention and the Convention on the Law of the United States of America, and the United Nations Convention on the Law of the Sea (UNCLOS). Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter 1972 discusses the prohibition of deliberate waste disposal at sea. Convention for the Prevention of Pollution from Ships 1973/1978 discusses how to regulate waste disposal. The United Nations Convention on the Law of the Sea (UNCLOS) discusses measures to prevent, mitigate and control pollution of the marine environment.

Keywords: *Marine Pollution, International Law, Settlement Dispute*

1. Introduction

Pollution of the marine environment is getting the attention of the world today, whether it is National, Regional and International because of the impact it has on the environmental sustainability and the benefits of natural resources that exist in the sea to be disturbed both for the national interests of coastal countries as well as for mankind as a whole. The pollution of marine environment in the last decade has received much attention from various parties. As seen in the discussions through seminars and symposia held both at national, regional and international level, all the attention discusses and examines the issues of the marine environment, thereby enhancing understanding and awakening awareness of marine environmental issues. This understanding and awareness generally means that the pollution problem of the marine environment poses a threat to the livelihood of both human life, animals (fauna), and growing plants (flora).[1] These three types of life are filling the environment or the "biosphere" above the globe becomes threatened for its continuity and sustainability, because it is exposed to the poison that causes annihilation. Therefore polluted sea currents and winds are spread everywhere and affect the marine environment.[2]

Pollution of the marine environment is a problem faced by the people in the world. Its influence can reach all human activities at sea and because of different sea-to-land nature, sea pollution problem

[1]Arifin Siregar, *Hukum Pencemaran Laut di Selat Malaka*, Medan, Kelompok Studi Hukum Dan Masyarakat, Fakultas Hukum Universitas Sumatera Utara, 1996, hlm.1.
[2]*Ibid*, hlm. 6.

can influence all coastal state both developing and developed countries, so it is necessary it is realized that all coastal states have an interest in marine pollution.[3]

However, it seems that the law has not been able to prevent the destruction of marine ecosystems completely. Without the awareness of all layers of society and government, the problem is impossible to overcome. Based on the Government Regulation (hereinafter abbreviated as PP) No.19 / 1999 on "Sea Pollution" is defined as the entry / inclusion of living creatures, energy substances and / or other components into the marine environment by human activities so that its quality drops to a certain extent that causes the marine environment in accordance with the quality standard and / or function.[4]

Protection of the marine environment, in addition to national efforts, regional and global cooperation is also required, technically direct in handling cases of pollution of the marine environment, as well as in formulating international provisions, to protect the marine environment.[5] In international environmental law, there have been many international conventions and agreements on marine pollution problems such as the 1972 Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter (London Dumping) in which the ban on the deliberate disposal of wastes in the marine environment, International Convention for the Prevention of Pollution from Ships 1973/1978 (MARPOL 1973/1978) which discusses how to regulate waste disposal, and United Nations Convention on the Law of the Sea (UNCLOS 1982).

In this case the author took one case occurred in 2009 ago, where one of the waters in Indonesia polluted by oil spills caused by other countries. The oil spill comes from a burst of oil fields in Australia called Montara. The offshore oil project failed to drill on August 21, 2009 so that oil from the seabed bursts and pollutes Australian waters and spreads beyond the boundaries of ZEE Indonesia. This pollution is a very important issue for Indonesia. This is because the pollution has entered the territory of the Exclusive Economic Zone (ZEE) of Indonesia. The Exclusive Economic Zone itself is defined as an area beyond the territorial sea whose width should not exceed 200 miles measured from the base line used to measure the territorial sea width, where the coastal State has more rights within the area of this Exclusive Economic Zone, sovereign rights. The difference between ZEE and the territorial sea is that within the ZEE the coastal State can only enjoy sovereign rights, not full sovereignty.[6]

As a result of the pollution, there will be an impact felt by Indonesia. Speaking on the short-term impact of this pollution, it will be felt directly by the local people (NTT fishermen). For example, marine and fishery cultivation in West Timor, Rote Island, Sabu and Sumba failed miserably. Whereas most of NTT people use marine area as their livelihood. This resulted in the fate of approximately 17,000 NTT citizens who rely on life from the sea is threatened. While the long-term impacts resulting from this pollution include threatened extinction marine ecosystems such as tuna, whales, dolphins, rays, sharks, and seven species of sea turtles in this marine area of the timor. This is exacerbated by extending into the waters around Rote Ndao regency, even to the Sewu Sea, especially around Sabu Raijua and the south coast of Timor Island.

In United Nations Convention on the Law of the Sea (UNCLOS) 1982 Article 192 on pollution of the open seas states that: "States are obliged to protect and preserve the marine environment in accordance with international rules and national legislation". In addition to that article, the protection of the marine environment, especially in the case of pollution due to oil spills, is also regulated in other international legal instruments, including the 1958 Geneva Convention on the regime of the high seas, namely Article 24, which reads:

"Every state shall draw up regulations to prevent pollution of the seasby the discharge oil from ships of pipelines or resulting from the exploitation and exploration of the seabed and its subsoil taking account to the existing treaty provisions on the subject".[7]

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[3]Juarir Sumardi, *Hukum Pencemaran Laut Transnasional*, Bandung, Citra Aditya Bakti, 1996, hlm.1.

[4]Article 1 paragraph 2 of Government Regulation No.19 of 1999 on Pollution Control and / or Sea Destruction.

[5]Article 197 of the United Nations Convention on the Law of the Sea 1982.

[6]Heru Prijanto, *Hukum Laut Internasional.*

[7] Free translation of the author: "Setiap Negara wajib mengadakan peraturan-peraturan untuk mencegah pencemaran laut yang disebabkan oleh minyak yang berasal dari kapal atau pipa laut atau yang disebabkan oleh

There is also the Stockholm Declaration of 1972 consisting of twenty-six principles, in which the 7th principle states that:

> *"State shall take all possible steps to prevent pollution of the seas by substance that are liable to create hazard to human health, to harm living resources and marine live, to damage amenities or to interfere with other legitimate uses of the sea".*[8]

But unfortunately, because although the instruments that regulate the protection of environmental sustainability, especially the sea has existed from the first, but in the implementation still not fully able to run well. There are still frequent cases of environmental pollution, especially the sea, even over time sea pollution increasingly mushrooming everywhere either caused by ships, drilling or waste is thrown away carelessly. It is important to know deeply about how international law provides protection to the marine environment.

Based on the description on the background as above, it can be formulated the problem in this research is how the model of marine pollution dispute resolution based on International Law? 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 Completion Under the United Nations Convention on the Law of the Sea (UNCLOS) 1982

The 1982 United Nations Convention on the Law of the Sea (UNCLOS) has set about the marine environment, both protection and settlement. Protection and preservation is set out in Chapter 12, in Chapter 12 explaining that each country has an obligation to protect and preserve the marine environment in accordance with Article 192 of UNCLOS which says that:
"States have the obligation to protect and preserve the marine environment."

Each country is also required to take all measures to prevent, mitigate and control pollution of the marine environment such as Article 194 paragraph (1) which says that:
"States shall take, individually or jointly as appropriate, all measures consisting with this Convention that is necessary to prevent, reduce and control the best practices of the disposal and inappropriate with their capabilities, and they will endeavor to harmonize their policies in this connection."

The environmental pollution measures mentioned in Article 194 paragraph (3) are:

a. *the release of toxic, harmful or noxious substances, especially those which are persistent, from land-based sources, from or through the atmosphere or by dumping;*
b. *pollution from vessels, in particular measures for preventing accidents and dealing with emergencies, ensuring the safety of operations at sea, preventing intentional and unintentional discharges, and regulating the design, construction, equipment, operation and manning of vessels;*
c. *pollution from installations and devices used in exploration or exploitation of the natural resources of the seabed and subsoil, in particular measures for preventing accidents and dealing with emergencies, ensuring the safety of operations at sea, and regulating the design, construction, equipment, operation and manning of such installations or devices;*
d. *pollution from other installations and devices operating in the marine environment, in particular measures for preventing accidents and dealing with emergencies, ensuring the safety of operations at sea, and regulating the design, construction, equipment, operation and manning of such installations or devices.*

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eksplorasi dan eksploitasi dasar laut dan tanah dibawahnya dengan memperhatikan ketentuan-ketentuan perjanjian internasional yang ada mengenai masalah ini."

[8]Free translation of the author: "Negara berkewajiban untuk mengambil tindakan-tindakan guna mencegah pencemaran laut yang membahayakan kesehatan dan kesejahteraan manusia, sumber kekayaan hayati laut terhadap penggunaan lingkungan laut."

UNCLOS 1982 also regulates the obligation of participating countries to ensure that the exploration and exploitation of marine resources within its national jurisdiction does not result in damage and pollution of the marine environment in the marine environment of its own country and the marine environment of other countries, therefore any country is not allowed to move or alter pollution either directly or indirectly from one region to another according to Article 195 which says: *"In taking measures to prevent, reduce and control pollution of the marine environment, States shall act so as not to transfer, directly or indirectly, damage or hazards from one area to another or transform one type of pollution into another."*

States that are in urgent condition due to pollution of the marine environment and are aware of pollution will damage the marine environment of other countries are obliged to notify the countries that are expected to be subject to such pollution, in accordance with Article 198 which states that: *"When a State becomes aware of cases in which the marine environment is in imminent danger of being damaged or has been damaged by pollution, it shall immediately notify other States it deems likely to be affected by such damage, as well as the competent international organizations."*

Article 210 makes it clear that States should make regulations to prevent, reduce and control pollution of the marine environment due to dumping. Article 211 explains that states should also adopt regulations to prevent, mitigate, and control pollution of the marine environment arising from vessels carrying flags or registered in their country. Article 212 also explains that states should also make regulations to prevent, mitigate, and control pollution of the marine environment originating from or through the air.

For a country which defames the marine environment it is given responsibility for compensation in accordance with the provisions of international law. Each country is also required to have a regulation on compensation caused by pollution of the marine environment, in addition the state shall also undertake international cooperation to guarantee such compensation in order to implement applicable international law pursuant to Article 235 which explains:

1. *States are responsible for the fulfilment of their international obligations concerning the protection and preservation of the marine environment. They shall be liable in accordance with international law.*
2. *States shall ensure that recourse is available in accordance with their legal systems for prompt and adequate compensation or other relief in respect of damage caused by pollution of the marine environment by natural or juridical persons under their jurisdiction.*
3. *With the objective of assuring prompt and adequate compensation in respect of all damage caused by pollution of the marine environment, States shall cooperate in the implementation of existing international law and the further development of international law relating to responsibility and liability for the assessment of and compensation for damage and the settlement of related disputes, as well as, where appropriate, development of criteria and procedures for payment of adequate compensation, such as compulsory insurance or compensation funds.*

In the event of any dispute in the application of this Convention each State Party is required to resolve it in a peaceful manner, in accordance with Article 279 which explains:
"States Parties shall settle any dispute between them concerning the interpretation or application of this Convention by peaceful means in accordance with Article 2, paragraph 3, of the Charter of the United Nations and, to this end, shall seek a solution by the means indicated in Article 33, paragraph 1, of the Charter."
The participating countries are also freed to choose what peaceful means they will use to resolve the gap in the implementation of this Convention in accordance with Article 281.

Where the disputing State Party agrees, the dispute resolution may be through a general, regional or bilateral agreement that shall govern the procedure for making binding decisions for the disputing countries, the permanent procedure to which the parties to the dispute have chosen shall replace the procedures applicable to the Convention this is described in Article 282:
"If the States Parties which are parties to a dispute concerning the interpretation or application of this Convention have agreed, through a general, regional or bilateral agreement or otherwise, that such dispute shall, at the request of any party to the dispute, be submitted to a procedure that entails a

binding decision, that procedure shall apply in lieu of the procedures provided for in this Part, unless the parties to the dispute otherwise agree."

2.2 Completion UnderInternational Tribunal for the Law of the Sea (ITLOS)

In addition to UNCLOS there is the International Tribunal for the Law of the Sea or ITLOS which regulates the procedures to be implemented in the courts to resolve marine environmental pollution disputes if disputes cannot be resolved through peaceful means. ITLOS or the International Court of Law of the Sea is an independent legal entity established by UNCLOS 1982 to adjudicate disputes arising from the interpretation and application of the Convention. The Tribunal is made up of 21 independent members, selected from among the people with the highest reputation for fairness and integrity, and have recognized competencies in the field of maritime law. This court consists of 5 arbitrators, each disputing party appoints an arbitrator and they jointly appoint the remaining three. In that case necessary, the President of ITLOS serves as the designation authority. The arbitral tribunal decides on its own procedure which provides for a great deal of flexibility.[9] The process of settlement in court can be done in two ways: written and oral. Article 44 ITLOS has explained, namely:

1. *The proceedings consist of two parts: written and oral.*
2. *The written proceedings shall consist of the communication to the Tribunal and to the parties of memorials, counter-memorials and, if the Tribunal so authorizes, replies and rejoinders, as well as all documents in support.*

The oral proceedings shall consist of the hearing by the Tribunal of agents, counsel, advocates, witnesses and experts.

In the case of communication if the dispute is the State then the Assembly is required to provide information to the disputing Government, in accordance with Article 52 paragraph which reads:

"All communications to the parties shall be sent to their agents."

The court shall decide on jurisdiction in the event of a dispute as described in Article 58:

"In the event of a dispute as to whether the Tribunal has jurisdiction, the matter shall be decided by the Tribunal."

After the court has decided on jurisdiction the case will begin, but the case will begin with notice of a special agreement on the number and sequence of defense. If the parties have not agreed on the number and sequence of defense then each may file a warning within a certain time, it is in accordance with Article 61 which explains that:

1. *In a case begun by the notification of a special agreement, the number and order of the pleadings shall be governed by the provisions of the agreement, unless the Tribunal, after ascertaining the views of the parties, decides otherwise.*
2. *If the special agreement contains no such provision, and if the parties have not subsequently agreed on the number and order of pleadings, they shall each file a memorial and counter-memorial, within the same time-limits.*

If the written process has been sealed, no document may be brought to the court unless the consent of the other party arises and if there is objection from the parties, the court may permit for the preparation of the necessary documents in accordance with Article 71 which reads:

1. *After the closure of the written proceedings, no further documents may be submitted to the Tribunal by either party except with the consent of the other party or as provided in paragraph 2. The other party shall be held to have given its consent if it does not lodge an objection to the production of the document within 15 days of receiving it.*
2. *In the event of objection, the Tribunal, after hearing the parties, may authorize production of the document if it considers production*

[9]https://www.international-arbitration-attorney.com/id/law-of-the-sea-dispute-settlement-mechanism/diaksespadaJumat, 18 Agustus 2017.

The parties may also file a witness or expert who is registered in the document and notified to the court, in accordance with Article 78 paragraph (1) which reads:

> *"The parties may call any witnesses or experts appearing on the list communicated to the Tribunal pursuant to article 72. If at any time during the hearing a party wishes to call a witness or expert whose name was not included in that list, it shall make a request therefor to the Tribunal and inform the other party, and shall supply the information required by article 72. The witness or expert may be called either if the other party raises no objection or, in the event of objection, if the Tribunal so authorizes after hearing the other party."*

Article 89 explains that either party may file an application for temporary action during a dispute in the process of filing a court and awaiting the establishment of an arbitral tribunal.[10] After the court process has been implemented, a judicial decision must be made in the form of a judge's assessment and ratified and read to the public openly no later than 14 days after the closing session, in accordance with Article 112 paragraph (4):

> *"The decision of the Tribunal shall be in the form of a judgment. The judgment shall be adopted as soon as possible and shall be read at a public sitting of the Tribunal to be held not later than 14 days after the closure of the hearing. The parties shall be notified of the date of the sitting."*

If the allegations of disputes are judged and reasonably justified by the courts, it shall determine the amount, nature and form of the financial ties or security to be sent from the disposal of the appropriate vessel or crew described in Article 113 paragraph (2):

> *"If the Tribunal decides that the allegation is well-founded, it shall determine the amount, nature and form of the bond or financial security to be posted for the release of the vessel or the crew."*

The parties may submit an interpretation or revision of the judgment regarding the meaning or scope of the dispute, this is described in Article 126 paragraph (1):

> *"In the event of dispute as to the meaning or scope of a judgment, any party may make a request for its interpretation."*

2.3 Completion Under Arbitration

The parties may agree to a dispute arising or to be settled by arbitration[11] if the arbitration is held without the agreement of both parties then it is not an arbitration agreement, in the case of an arbitration agreement the court is not authorized to adjudicate the case,[12] in the event that the parties choose to settle the dispute through arbitration after a dispute arises in relation to it shall be made in a written agreement signed by both parties.[13]

Arbitrage settlement can be pursued in several ways, namely the settlement by an arbitrator institutionalized or to an ad hoc arbitration body. The institutionalized arbitration body is a standing arbitration body and has its procedural law. While the ad hoc arbitration body is a body created by the parties for a while. The appointment of an ad hoc arbitration body will inadvertently lead to difficulties in the future. The problem is that the parties must really understand the nature of the arbitration and formulate its own procedural law.[14]

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[10]1. A party may submit a request for the prescription of provisional measures under article 290, paragraph 1, of the Convention at any time during the course of the proceedings in a dispute submitted to the Tribunal.

2. Pending the constitution of an arbitral tribunal to which a dispute is being submitted, a party may submit a request for the prescription of provisional measures under article 290, paragraph 5, of the Convention:

a. at any time if the parties have so agreed;

b. at any time after two weeks from the notification to the other party of a request for provisional measures if the parties have not agreed that such measures may be prescribed by another court or tribunal.

[11]See Article 7 of Law Number 30 Year 1999 on Arbitration and Alternative Dispute Settlement.

[12]See Article 3 of Law Number 30 Year 1999 on Arbitration and Alternative Dispute Settlement.

[13]See Article 9 of Law Number 30 Year 1999 on Arbitration and Alternative Dispute Settlement.

[14]Huala Adolf, *HukumPenyelesaianSengketaInternasional*, Jakarta: SinarGrafika, 2004, hlm. 40.

The process of dispute resolution through arbitration has several positive elements, namely:[15]
1. The parties have the liberty to elect their arbitrators directly or indirectly (in this case with the help of a third party such as an international tribunal) appointing the arbitrator to one or both parties.
2. The parties have the freedom to determine the procedural law or the requirements of how a judgment will be based eg in determining the law of procedure and law to be applied to the subject matter of the dispute.
3. The nature of the arbitral award in principle is final and binding.[16]
4. Arbitration proceedings may be held in confidence, if the parties so wish.[17]
5. The parties themselves determine the purpose or task of the arbitration body.

In addition to the positive elements, the international arbitration body has the following shortcomings:
1. In general the state is still reluctant to give its commitment to submit its dispute to international court bodies, including international arbitration bodies.
2. The dispute resolution process through arbitration does not guarantee that its decision will be binding. International law does not guarantee that those who lose or are dissatisfied with the verdict issued will carry out the decision.

In the event of a dispute whose settlement is agreed upon to be settled by arbitration, the procedure shall be as follows:[18]
1. Petition for arbitration

The first stage of arbitration should begin by applying for an arbitration. In the application letter must be attached a copy of the text or deed of the treaty which specifically submits the dispute to the arbitrator or the arbitral panel; or agreements containing the premises that the dispute arising out of the agreement shall be terminated by the arbitrator or arbitral council (*Pactum the Compromitendo*).
In the petition the petition must at least contain (Article 38 of Law Number 30 Year 1999):
a. Full name and place of residence or place of domicile of parties;
b. A brief description of the dispute is accompanied by an attachment of evidence; and
c. The content of the demands is clear.

2. The parties shall not appoint the arbitrator
If the parties do not appoint the arbitrator, the elected arbitrator will then designate a team of three arbitrators who will examine and decide on the dispute. If the dispute is deemed simple and easy, a single arbitrator will be appointed to examine and decide the case.
3. Inspection process and grace period required

The parties in a strict and written agreement are free to determine the arbitration proceedings used in the proceedings so long as they are not contradictory to Law No. 30 of 1999 concerning Arbitration and Alternative Dispute Settlement. Likewise, parties are free to determine the duration and place of the examination or trial, including arbiters and arbitral assemblies.

If the parties within a maximum period of 14 (fourteen) days with the assistance of one or more experts or a mediator fails to reach an agreement, or the mediator fails to find both parties, the parties may contact an arbitration body or an alternative institution dispute resolution to appoint a mediator.

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[15]*Ibid,* hlm. 41.
[16]J. G. Merrills, *International Dispute Settlement*, Camridge: Camridge U.P., 1995, hlm. 105 quoted from Huala Adolf, *Hukum Penyelesaian Sengketa Internasional*, Jakarta: Sinar Grafika, 2004, hlm. 41.
[17]Christine Gray and Benedict Kingshury, *Inter-state Arbitration Since 1945: Overview and Evaluation*, Y.B.I.L., Vol. 2, 1953, hlm. 64 quoted from Huala Adolf, *HukumPenyelesaianSengketaInternasional*, Jakarta: SinarGrafika, 2004, hlm. 40.
[18]Ari Wirliadi, "AnalisisKedudukanArbitraseNasionalDalamPenyelesaianSengketaBisnis di Indonesia danPerbandingandenganArbitraseInternasional", *Skripsi*, Pekanbaru: Universitas Islam Negeri Sultan SayarifKasim Riau, 2015, hlm. 51-53.

Unlike the judicial appeals ruling that can still be appealed and the cassation, the arbitral award, whether decided by ad hoc arbitration or arbitration institution, is a decision on the final level, and because it is directly binding on the parties. Article 631 The RV places a principle that the award of arbitration shall be in accordance with applicable law legislation in the disputed field.[19]

Based on the Indonesian National Arbitration Board (BANI) Rules and Procedures the arbitral panel is entitled to determine the final decision, preliminary verdict, interlocutory decision, or partial decisions. Broadly speaking there are three kinds of arbitration decisions based on BANI Rules and Procedures, which are as follows:[20]

a.Interrupted Decision

Under ordinary circumstances the assembly shall establish a ruling that rejects jurisdictional issues as one of the interlocutors. However, if it is deemed necessary the assembly may proceed with the arbitration process and decide the matter in the final decision.

b. Final Decision

The arbitral tribunal shall determine the final decision within 30 days from the closing of the trial, unless the assembly considers that the period may need to be extended.

c.Decision of the Peace Agreement

The peace effort is a must by arbiters and arbitral tribunal before and during the trial period. Such peace may be exercised on the efforts of the parties themselves, with the assistance of a mediator or other independent third party, or with the assistance of the assembly if agreed upon by the parties.

The nature of the arbitral award is final and binding, it is based on the agreement of the parties. This verdict is final or final, and there is no longer any remedy that can be done by the parties.

3. Conclusion

The settlement of marine pollution disputes under international law is regulated in 2 conventions, UNCLOS and ITLOS. UNCLOS regulates pollution of the marine environment in articles, Article 235, which requires marine polluters to compensate in accordance with international law, Article 279 which obliges States parties to resolve it in a peaceful manner, and Article 281 which gives freedom to States Parties to resolve disputes with what peaceful way to use. ITLOS regulates court procedures in the settlement of marine environment pollution disputes using peaceful means of arbitration. The peaceful settlement model of arbitration. Arbitration can be conducted in two ways, namely permanent arbitration and ad hoc arbitration depending on agreements between member states of UNCLOS and ITLOS.

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[19]*Ibid,* hlm. 53.
[20]*Ibid,* hlm. 53-54.

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Law Problem on the Coastal Village

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Abstract

The existence of the Village as a unit of law society provides a deep understanding that the village institution is not only a mere administrative entity but also a legal entity that must be respected, privileged, protected within the governmental structure of Indonesia. One of the important and strategic communities expected to sustain our maritime power is village of coastal society. Coastal society in socio-cultural perspective is a community group whose cultural roots were originally built on a combination of maritime culture of the sea, coast and market oriented.

Empowering coastal villages through development ultimately depends on development planning and policies in these villages. Therefore, in relation to the acceleration and economic development in the corridor, harmonization and synchronization of central government and village government policies related to villages is important to do because it is key in supporting the success of economic development in the Corridor of Sumatera.

The purpose of this research is to explore and mapping the legal problems faced by coastal villages and formulate a comprehensive mapping model of the problems faced by villages in the coast so that it will be easy to determine the solution of the problems. The specific purpose of this research is to extract the legal issues that are vital to the coastal villages and mapping (grouping) on them.

Keywords: *Law Problem, Village, Coastal*

1. Intriduction

The village is the smallest entity in its size as an autonomous government unit. The existence of village government becomes very important to bring the state service closer to the community. The existence of village entities, on the one hand is an absolute thing as a result of community interaction, but on the other hand also the responsibility of the state to organize it in one frame of the Unitary State of the Republic of Indonesia.

The spirit of "building the village" strengthened again after the issuance of Law No. 6 of 2014 on the Village. Previously, the village setting was only regulated in Law Number 32 Year 2004 regarding Regional Government. That is, the paradigm that was built at that time, the village is seen as part of the regime of local government. Furthermore, if traced, the paradigm that builds is that village autonomy is considered to be a part or "residue" of regional autonomy, so that the village becomes a subordinate of the local government.

According to the current law, the village is defined as a legal community unity that has territorial boundaries to administer and administer government affairs, the interests of local communities, based on community initiatives, origins rights, and / or recognized traditional rights and respected in the system of government of the Unitary State of the Republic of Indonesia.[1]

[1] Article 1 Number 1 of Law Number 6 Year 2014 on the Village

There is an important meaning in the general provisions of the village in the village law, that is, village administrations have the authority to regulate and administer government affairs, which also includes forming legal products in the form of village regulations. The purpose of village setting as regulated in Article 4 of the Village Law[2] provides an illustration that the village has been placed as a strategic government unit within the Unitary State of the Republic of Indonesia.

Such a large responsibility, of course, requires consideration of various aspects, ranging from human resources embodied in the form of bureaucrats / government officials, as well as systems built through legal products. In fact, the implementation of village governance still faces various problems, including legal problems. Whether directly or indirectly, the legal problems faced will have an impact on the village community. If so, then the village setting objectives as described above will not be met.

This paper seeks to examine the legal problems of villages in coastal areas. Villages in coastal areas are selected with consideration among others:

a. Coastal villages have potential for force majeure that needs to be offset by legal arrangements and countermeasures;
b. Villages in coastal areas have potential in economic, cultural and tourism development; and
c. The development of the "build from the outermost" paradigm and the "maritime development" of the current government.[3]

The method in writing this paper using normative legal research methods with a socio legal approach. Sources of data used in this study are primary legal materials as well as examples of cases that occur and published in the news.

2. Discussion

Rural development is closely related to social, economic, political, order, defense and internal security issues.[4] The whole issue requires a formal, juridical arrangement in the form of a systematic and synchronized legal product at every level of government. Such arrangements aim to minimize any problems that may occur, or as a means of solving the current problem.

Common problems faced by regions (especially villages) in coastal areas, among others:[5]

1. Utilization of Natural Resources coastal and sea is still considered open to the public, so that anyone can be exploited, this becomes a source of conflict in the fishery community.

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[2] Village Setting Aims:

a. Giving recognition and respect to the existing village with its diversity before and after the establishment of the Unitary State of the Republic of Indonesia;
b. Provide clarity of status and legal certainty of the Village in the constitutional system of the Republic of Indonesia;
c. Preserve and promote the customs, traditions, and culture of village communities;
d. Encourage the initiative, movement, and participation of village communities for the development of potential and Village Assets for the common good;
e. Establish professional, efficient and effective village governance, open and accountable;
f. Improving public services for the villagers in order to realize the village community to accelerate the realization of general welfare;
g. Improve socio-cultural resilience of village communities in order to realize the village community that is able to maintain social unity as part of national resilience;
h. Promoting the economy of village communities, as well as addressing the national development gap; and
i. Strengthen the village community as the subject of development.

[3] http://www.kemlu.go.id/id/berita/siaran-pers/Pages/Presiden-Jokowi-Deklarasikan-Indonesia-Sebagai-Poros-Maritim-Dunia.aspx accessed on 6 September 2017 at 11:44 wib

[4] Rukin, 2015. *Differences Perspektif Coastal Society in Coastal Village Development in Sidoarjo Regency*. Proposal Disertasi Program Doktor Ilmu Administrasi FISIP Unversitas Jember. Page. 5.

[5] H. Mardjoeki, 2012. *Community Empowerment Coastal Coastal North District Cirebon*. Jurnal Ekonomi Vol. 1 No. 1 September-Desember 2012. Page. 53.

2. The use of fishing gear of both the size of the fleet, the technology and the catching area in general is still not regular, resulting in reduced spawning or breeding areas.
3. Limited facilities of basic services including physical infrastructure become isolated and underdeveloped.
4. Low use of technology, caused by low knowledge and not able to compete with large entrepreneurs.
5. Working pattern (leaving to go to sea at night and returning in the morning even until afternoon, afternoon to rest) this resulted in lack of communication with community leaders.
6. Not yet optimal policy governing the life of coastal communities, thus causing conflict gap.

The problems faced by the coastal villages associated with the legal arrangements that have not existed, or have been there but do not have a strong reach so that there are many deviations from the rule of law, among others:

a. Pollution and Environmental Damage..
   Development in the coastal area which is a process of change to improve the standard of living of the community, is inseparable from the activities of space utilization and coastal resources also activities utilization of assimilation services coastal environment. These activities often make changes to natural resources.
   Development activities in the area of land and sea, there are still many negative impacts on the environment that ultimately resulted in the decline of coastal and marine environmental quality as well as the sustainability of natural resources, namely in the form of pollution and environmental damage and excessive use of coastal and marine resources. In relation thereto, the efforts to control pollution and environmental damage that may arise should be part of the policy and action steps of environmental management in each sector of development activities.[6] Pollution and environmental damage is sourced from the internal factors of the village, namely the lack of awareness of the villagers in protecting the environment, as well as from external factors namely the immigrants / tourists and private companies engaged in mining. Cases of pollution that have occurred seriously and harm the village community that Bintan beach is polluted by oil.[7]
b. Lack of local wisdom empowerment in the management of coastal and marine resources.
   Local wisdom is increasingly eroded by globalization brings a crucial impact. On the one hand the flow of law uniformity through national law must be done to create the legal order of Indonesia, but on the other hand local wisdom and customary law of local communities have a stronger power in binding the community and generate community militancy to uphold the customary law.
   There should be efforts from the government at every level, including the village government to empower local wisdom. Such empowerment should not necessarily take the form of standardizing customary law into positive law, but can be directed to accommodative and flexible policies and programs. Efforts to empower local wisdom, in addition to reducing the potential for environmental damage as diuraiak before, also become part of community empowerment.
   Pendekatan pemberdayaan masyarakat yang bepusat pada manusia (people-centered development) is then based on the insight of community-based management, which is a people-centered development mechanism that emphasizes social learning technology and program formulation strategy. The goal to be achieved is to improve the ability of the community in mengaktualisasikan himself (empowerment).[8]

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[6] Bambang Pramudyanto, 2014. *Pollution Control and Coastal Damage.* Jurnal Lingkar Widyaiswara Edisi 1 No. 4, Oktober – Desember 2014. Page. 22.
[7] http://nationalgeographic.co.id/berita/2015/01/pesisir-bintan-tercemar-minyak accessed on 6 September 2017 at 12:48 wib.
[8] Stefanus Sanis, dkk, 2007. *Management of Coastal and Marine Resources through the Empowerment of Local Wisdom in Lembata District of East Nusa Tenggara Province*. Jurnal Pasir Laut Volume 2 No. 2, Januari 2007. Page. 70.

c. The maturity of the village government's ability to develop development designs in its coastal areas.
   As is known, the quality of human resources in the village apparatus is still experiencing a fairly high disparity. The quality of such bureaucrats, of course, will have difficulties when it comes to designing regional development. The design consists of stages covering the stages: defining problems, defining evaluation criteria, identifying alternative policies, and evaluating alternative policies,[9] which requires expert and multi-field planners and reliable.
   Facing the above conditions, it is necessary to improve the quality and resources of the bureaucrat apparatus at the village level. In the process, for regional development to continue, it is also necessary to supervise the local government.
d. Running management but not integrated
   It can not be denied that coastal villages have the potential for more varied problems than rural areas in the higher altitudes. The potential of these problems, with each other will be related and affect, so it should be handled in an integrated manner. Such alignment has the urgency to reduce other problems arising from other problems. Models that have been previously proposed and proven effective in managing coastal areas will also be related to community empowerment, with samples such as in Raas Island, Sumenep regency of Madura.[10]
e. Lack of regulation of force majeure in coastal areas.
   Natural disasters are events that are unpredictable. Especially in coastal areas that have potentially non-threatening and forceful (force majeure) conditions over natural disasters from the oceans. In order to face the condition, we need a legal framework that is responsive and appropriate to the condition of the area concerned. As for the purpose of village setting, the regulation of crucial issues such as over the state of natural disasters should also be regulated in local legal products.
   This is to further streamline what the handling effort when a natural disaster occurs so that the handling will be more responsive and does not take a long time.
f. Public awareness of what rights and responsibilities are.
   Public awareness will certainly be very influential in the development process in coastal areas. Often conflicts occur in fishing societies that result from the idea that coastal natural resources are always open to the public. In the end, this assumption precisely plunges society into conflict, either between society and government, society with company, or between fellow society.
   To overcome this kind of conflict, the legal products, especially at the village level, should be established to regulate what and the rights and obligations of the community to the coastal natural resources, as well as to regulate the dispute resolution procedures.

The fruits of the problems described above require the prevention and mitigation effort attempted from the beginning. The above problems also occupy the same position so that in prevention efforts should get the same portion. The mechanism that can be designed for such efforts when viewed from a legal perspective is by establishing relevant regulations that are able to accommodate the living law or local wisdom of the local community, without prejudice to the constitutionality aspect of the existing legislation.

The above arrangements need to be established starting from the village level as the smallest government entity that has the right of origin, as well as the local government as the builder - not just the superior to the existing villages. Through clear regulation and construction, will create legal certainty to the problems of village law on the coast, which on the other hand also requires harmonization and synchronization with the above legislation.

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[9] Achmad Djunaedi dan M. Natsir Basuki, 2002. *Coastal Development Planning.* Jurnal Kelautan. Volume 3 No. 3. Page. 229-230.

[10] Adi Waluyo,2014. *Modeling Management of Coastal Areas and Small Islands Community-Based Integrated (Case Study of Raas Island of Sumenep Regency of Madura.* Jurnal Kelautan Volume 7 No. 2 Oktober 2014. Page. 75-85.

3. Conclusion

Villages in the coastal areas have a little problem that must be made in the form of legal arrangements ranging from village and regional levels. The problems are internal (from the villagers in the coastal areas themselves), external factors (entrants and firms with high capital), as well as system factors (lack of quality and responsive arrangements, legal arrangements made, should be accommodating-or at least not contrary to local wisdom, must also have a relationship that is in sync and harmonious with existing legislation.

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Effect of Self Efficiency and Training to Career Development in Teacher Students in the Subject of Bekasi City

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Abstract

The purpose of this research is to determine the effect of self-efficacy and training on career development in the public elementary school teachers in the district Jatiasih Bekasi. The research methodology was survey which were selected by simple random sampling technique. Analysis and interpretation of the data indicate that (1) self-efficacy has a positive direct effect in career development, (2) training has a positive direct effect in career development, (3) self-efficacy has a positive direct effect in training.

Keywords: *Self Efficacy, Training, Career Development*

1. Introduction

Profession as a teacher is now no longer considered one eye. Especially when the position of a civil servant teacher is already in hand. Various benefits such as teacher certification, functional allowance, transport or honda (local honorariums) are the drivers of university graduates for a career as a teacher, especially civil servant teachers. In the structure of civil servants of the education department, there are two types of career paths to choose from: structural and functional career paths. Career to become a teacher entered the realm of functional career ladder. Both career level both functional and structural is supported by the status of the person in the career as a civil servant. Group is one measure of success of one's development to pioneer career become a civil servant teacher. The group of teachers in civil servants starts from Group Ia up to IVe. The position of the group of civil servant teachers is one of them is determined by the level of education that has been taken. The higher the education when registering to become CPNS then when the civil servant is higher the class will he won the first time. It is regulated in PERMENPAN and RB (Regulation of the State Minister of Administrative Reform and Bureaucratic Reform) No. 16 of 2009 on Teacher Functional Position and Credit Score Chapter VII article 17. Careers thrive due to personal and organizational influences. Personal influence is one of them by self-efficacy or self-imposed belief in self. Self-efficacy in the civil servant teacher is less. This is evidenced by when to reach a level that requires scientific papers to raise the class they choose not to do because they feel unable. There is also a willing but do not make their own scientific papers. What they do is to pay people who understand about the making of scientific papers to create scientific papers for them so they can go up the class.

The element of the comfort zone and the lack of self-efficacy make the grade increase at point IVa to IVb difficult to achieve by many civil servant teachers. To support the career of teachers in increasing the increase of the group required training of writing a scientific paper that is accommodated by the local education office. Head of Sub-district UPTD Jatiasih responded to the socialization of the writing of Scientific works related to the making of classroom action research (PTK) this describes the government's efforts to improve the capacity of civil servant teachers. However, the training provided is considered not to meet the needs of civil servant teachers.

The training was felt less because only one day and less intensive. To reach group IV.b civil servant teachers must get a value of 12 with 1 PTK worth 3. Thus, one teacher must make 4 pieces of PTK. PTK made was not directly approved but must go through the bureaucratic process of service to enter into LPMP Bandung. Classroom action research that has been given to LPMP must be perfect so that civil servant teachers must undergo several revisions. But the perfect desire for the writing of scientific papers coveted by LPMP is not balanced with the capacity of researching and writing owned by civil servant teachers. So this raises its own problems. This illustrates that the self-efficacy possessed and the training of writing scientific papers given still need to be improved again so that civil servant teachers have a qualified knowledge in conducting research so as to maximize its ability to develop a career. So that good self-efficacy and training will affect the development Career of civil servant teachers, especially in terms of level hikes.

1.1 Career development

The concept of career development begins with the meaning of the career itself. According to Gary Dessler (2008: 346), "career as the occupational positions person has had over many years". A career as a position has been held for many years. Furthermore, it is expressed by Luis R. Gomez, et.al (2010: 304) which states, "career development is an ongoing and formalized effort that focuses on developing enriched and more capable workers." Career development is a continuous effort and Formalized that focuses on developing and enriching the worker's abilities. According to Stewart (2011: 376) states that "career development activities that help people manage the progression of their work experiences across their lives". Activity Career development can help people manage the development of their work experience through their lives Further, Luis R. Gomez, et.all (2010: 304) gave an opinion on career development that is, "career development is not a one-shot training program or career-planning workshop. Rather, it is an ongoing organized and formalized effort that recognizes the people as a vital organizational resource. "The above opinion explains that career development is not one of the career planning training programs or workshops. Rather, career development is an organized and sophisticated formalized effort that recognizes people as an important organizational resource. Noe (2010: 373) provides a definition of career development, "career development is the process by which development progresses tasks, activities and relationships." Career development is the process by which employees progress through The levels that must be passed.

Based on the above description, it can be synthesized career development is a process to improve the skills of employees through a series of stages that contribute to exploring a person's career to become an important asset of the organization.

1.2 Self Efficacy

Self efficacy is defined by Jason A Colquit (2013: 181), "self-efficacy defined as the believer required for task success." Self-efficacy is defined as the belief that one has the capabilities required to Running the behavior necessary for the task to be successful.

According to David Boddy (2008: 510), "self-efficacy is an individual's belief that he or she is capable of performing a task." Self-efficacy is an individual belief that he is capable of performing tasks. According to David A. Whetten and Kim S. Cameron (2011: 447), "self-efficacy, the self-efficacy, the sense that they have the ability and competence to do Task successfully. People with a higher sense of self efficacy are more likely to decide to try tough tasks, to persevere in their endeavors, to be calm than anxious during task performance, and to organize their minds analytically. According to Jennifer M. George and Gareth Jones (2012: 141), "self-efficacy, self-efficacy is one's belief about his ability to perform certain behaviors successfully. Perceptions of self efficacy affect the goals people set for themselves and the risks that they are willing to take: the greater perceived self-efficacy, the higher their goal of choosing and stronger commitment and perseverance in their persuing them. Perception of self efficacy affects several types of behavior which, in turn, is necessary for human achievement. Fred Luthans (2005: 601) adds Inputs of efficacy are mastery experiences, vicarious learning / modeling learning, social persuasion, and psychological arousal.

Based on some of the above description can be synthesized Self-efficacy is self-confidence of its own ability to complete the work optimally and can carry out certain behaviors successfully.

1.3 Training

Training according to Jerald Greenberg and Robert A. Baron (2012: 141) is, "training is the process of systematically teaching employees to acquire and improve job-related skills and knowledge." Training is the process of teaching employees systematically to acquire and improve skills and Work-related knowledge. According to John M. Ivancevich and Robert Konopaske (2013: 395), the definition of training is "training is the systematic process of altering the behavior of employees in a direction that will achieve organization goals. Training is related to present job skills and abilities. "Training is a systematic process of changing employee behavior in a direction that will achieve organizational goals. Training related to present work skills and abilities. It has a current orientation and helps employees master the skills and abilities needed to be successful. Training has a different meaning to development. The difference between the two is expressed by Luis R. Gomes, et.al (2010: 274) which says "training is the process of providing employees with specific skills or deficiencies in their performance." Training is the process of providing students with specific skills Or help them correct their lack of performance. Raymond A. Noe (2010: 559) defines the training as follows, "Training is a company's planned effort to facilitate employees' learning of job-related competencies." Training is an effort that companies plan to facilitate employee learning related to job competence. According to Pamela S. Lewis (2007: 247), "Training is a planned effort to assist employees in learning job behaviors that will improve their performance . According to Robert Kreitner (2009: 286), "training is the process of changing employee behavior through training : Using an experience guide to change employee behavior or attitude of some kind of experience guide.

Meanwhile, according to Fred Luthans and Jonathan P. Doh (2012: 520) the definition of training is as follows, "Training is the process of altering employee behavior and attitudes in a way that increases the probability of goal attainment." Training is the process of changing attitudes and attitudes By increasing the likelihood of achieving employee goals. From some of the above description can be synthesized that Training is an impact that can be felt by employees by facilitating the learning of employees related to job competence so as to improve employee performance.

2. Research Methods

This research used survey method with path analysis technique. The research data was collected by selecting the sample in the population. Affordable population in this study were all civil servant teachers in the State Elementary School Jatiasih Kota Bekasi amounting to 335 people. From calculations using Slovin, then obtained the number of samples as many as 183 civil servants SD Negeri in Kecamatan Jatiasih Kota Bekasi which will be used as sample frame in this study. The data collection used for this research is descriptive statistics and inferential statistics.

3. Research Result and Discussion

The Effect of Self Efficacy on Career Development Based on the calculation results obtained correlation coefficient of 0.308 and coefficient value of 0.259. This means that self efficacy has a direct positive effect on career development. The results of this study are in accordance with Albert Bandura's opinion, Self-Efficiency, the exercise of control, (1997: 428) which states that "efficacy influences career choice through its influence on vocational interests . Self-efficacy does affect career. Proven since the beginning of career selection is influenced by efficacy in self. This is reinforced by the results of research Albert Bandura (1997: 433) suggests that, "the research just discussed the evidence that perceived efficacy is a central mediator through which socialization practices and past experiences influence educational and career choices". The recently discussed study

provides evidence that perceived success is a central mediator where socialization practices and experiences influence past educational and career choices.

Richard J. Gerrig and Philip G. Zimbardo (2008: 437) also argue that, "self-efficacy is the belief that one can perform adequately in a particular situation. Your self-efficacy influences your perceptions, motivation, and performance in many ways. "Self-efficacy is the belief that one can perform adequately in certain situations. The sense of self-efficacy affects perception, motivation, and performance in many ways.

Self-efficacy does influence career selection through vocational interests. This is stated by Bandura (1997: 425) "Self efficacy relates to the selection of duties as well as career selection, self efficacy is an important mediator of external influences and has a direct influence on the selection of careers.

Although self-efficacy is not an absolute element but it is a bit of an employer's consideration. As expressed by Albert Bandura (1997: 249), Efficacy belief influences acceptance of job offers after controlling for degree of match in value orientation. Strategies of trust affect the acceptance of job offers after controlling the level of matches in the value orientation. More research is needed to determine how independent selection in response to recruitment strategies influences career paths.

3.1 The Influence of Training on Career Development

Based on the calculation results obtained correlation coefficient of 0.260 and coefficient value of 0.196. This means that training has a direct positive effect on career development. The results of this study are in accordance with the opinion of Luis R. Gomes, et.al (2010: 322) states, "career development is ongoing organized and formalized effort that is focused on developing enriched and more capable workers. It has a wider focus, longer time frame, and broader scope than training. Depelopment must be a key business strategy. "Career development is a progressive and formalized effort that focuses on developing a wealth of worker capabilities. It expands focus, long time frame, and enlarges coverage rather than training. Development should be a key strategy of a business. If an organization survives in today's increasing competition and global business environment.

Career development is related to the ability that can be possessed after employees upgrade their skills through training. Training is one way to improve employee performance. Through the training of employees is expected to improve its performance so that the management will provide compensation in accordance with the work that has been done.

As training continues to be provided to workers for capability, this will affect the outcomes achieved by the worker in handling the assigned task. This will certainly affect profits for the company and also allows the worker to get a better career position. Similarly, the career development of teachers will increase the level of its class according to the rules that have been established if given the training one of them terntang writing scientific papers.

3.2 The Effect of Self-efficacy on Training

Based on the calculation results obtained correlation coefficient of 0.248 and coefficient value of 0.248. This means that self efficacy has a direct positive effect on training. The results of this study are in accordance with the opinion of Richard J. Gerrig and Philip G. Zimbardo (2008: 177), "Self-efficacy may be important in terms of training employees to improve the skills they believe are inadequate to perform well". Self-efficacy may be important in terms of employee training to improve the skills they believe in inadequate to do well. Strong Self Efficacy as well as frequent training will automatically affect job performance and such multiple effects will affect employee career development.

Self-efficacy is reinforced by convincing oneself that the abilities that he has attained while attending a rehearsal course are self-administered when completing the work given by the employer. Raymond A Noe, John R. Hollenbeck, Barry Gerhart, Patrick M (2008: 280) states that "Self-efficacy is the employees' belief that they can learn the content of the training program." Self-efficacy is the employee's belief that they can successfully learn the contents of the training program.

Training is also very influential and influenced by the efficacy of self-owned. Furthermore, Craig (2008: 368) explains "Comparison of pre- and post-training self-assessment of self-efficacy."

The self-assessment of self-efficacy self-assessment and self-assessment assessments showed significant improvement As a result of the training.

Managers need to ensure that the employee's motivation to learn is as high as possible. They can do this by ensuring the self-effectiveness of the employee, understanding the benefits of training, realizing training needs, career interests and goals, understanding the characteristics of the work environment, and ensuring the basic skill level of the employees.

4. Conclusion

(1) there is a positive direct effect between self efficacy and career development, (2) there is a positive direct effect between training and career development, (3) there is a positive direct effect between self efficacy and training.

(2) Suggestion: (1) For the Headmaster of SD Negeri in Kecamatan Jatihasih Kota Bekasi, to help improve the self efficacy of teachers in various ways such as giving training, giving opportunity for teacher to attend training, increasing ability to obtain higher career ladder, (2) For the civil servant of SD Negeri Elementary School in Kecamatan Jatiasih, Kota Bekasi, to continuously improve self efficacy by attending training so as to obtain a higher career ladder, (3) For other researchers, can be used as reference material in the framework of further research related to self efficacy and Training on career development.

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The Role of Creating Shared Value (CSV) to Enforce Social Welfare for Stakeholder

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Abstract

This research was aimed at investigating the strategy of Creating Shared Value (CSV) in order to enforce social justice for stakeholder. This research was conducted through socio-legal approach and descriptive-qualitative method. The results show that, CSV is the ideal business strategy approach to enforce social justice for stakeholder by involving societies on the development of business, CSV is a development of Corporate Social Responsibility (CSR). The concept of CSV, which emphasizes the importance of incorporating social problems and needs in the practice of business strategy. CSV transforms into a concept that requires the company to play a dual role, namely to create economic value and social value at the same time. The company is not only responsible for the shareholder as it has been, but it has shifted to a wider range, to the social sphere (stakeholder). Social welfare is a state where people feel comfortable, peaceful, happy, and most important is able to meet the needs of his life. To achieve the social welfare, the company must not only be able to seek as much profit as possible, but also must be balanced with sustainable community empowerment. The importance of social welfare is how society can be involved in the progress of the company around it and able to be independent to fulfill its economic life. CSV concept will provide jobs for the community and it is a way to enforce social welfare.

Keywords: *Creating Shared Value (CSV), Social Welfare, Stakeholder*

1. Introduction

The implementation of Corporate Social Responsibility (CSR) in Lampung Province has a huge potential to be able to provide society welfare sustainably. If look into current condition, there are many companies that have been operating in Lampung so long. However, not all companies are able to implement a sustainable CSR program even to combat poverty in Lampung Province. In fact, Lampung Province is currently the province with the largest number of poor people in Sumatera, which is stand in the 3rd rank after the Province of Aceh and the Province of Bengkulu. Therefore, the Company should be able to understand and apply in a concrete manner that CSR is not a *fund-sharing program*, but an aspect that exists within the company that covers the economy, the social, and the environment, and closely linked to sustainable development.

CSR is a corporate or business world commitment to contribute to sustainable economic development by looking at corporate social responsibility and focusing on the balance between attention to economic, social and environmental aspects. Requiring CSR is one of the government's efforts in balancing economic growth and economic equity. In implementing CSR, companies will generally involve community participation, both as objects and as subjects of CSR programs. This is because the community is one of the parties who are quite influential in maintaining the existence of a company. The public is the party who most feel the impact of a company's production activities, both positive and negative impacts. The objectives of CSR

are (1) To create corporate image and maintain, usually implicitly, the assumption that corporate behavior is fundamentally good; (2) To liberate the accountability of the organization on the basis of the assumption of a social contract between the organization and the community. The existence of this social contract demands to liberate the social accountability; (3) As an extension of traditional financial reporting and its purpose is to provide information to investors.

CSR is a program to help government to combat the complicated social problems in Indonesia, especially the problem of poverty. The company implements CSR as a business commitment by conducting its activities in an ethical manner and contributing to sustainable development through cooperation with stakeholders. In this way, volunteerism in the concept of CSR could not be understood as something that able to choose to run or not to be implemented, but rather how to carry out the social responsibilities beyond those that regulated in the regulation. The pattern of responsibility that is run is not elitist, but involves the full public as an active public. Poverty has become a global problem that needs to be addressed, especially in developing countries. The active role of the business world is needed in efforts to alleviate poverty and empower communities. Strategic CSR planning will enable the program to become a social investment to empower communities, to enable them to fully support sustainable economic and social life in a sustainable and gradual manner. CSR's contribution is an ongoing contribution, working closely with employees, their families, local communities, and the wider community to improve the quality of life in ways that are acceptable to the business as well as to the development itself.

Over time, the concept of CSR began to be modified with a concept that is more profitable, both for companies and society. The development of the CSR concept is Creating Shared Value (CSV). CSV is a business strategy that emphasizes the importance of incorporating issues and social needs in the design of corporate strategy. CSV is a concept that requires companies to play a double role of creating economic value and social value together, without any priority or disregard. Providing solutions to economic, social, and environmental issues is not a *part-time work*, but must be embedded within the business-core of corporate strategy. The existence of the company in the midst of the social and community environment concerned in the contract, where the company is obliged to carry out the social contract obligations which are generally non-commercial transactions.

The transaction is a very closely related transaction to the social environment in which the company is located. For the company, CSV implementation means fulfilling the legal and business rules, as well as maintaining sustainability for the company. CSV is forming a new opportunity for a sharing value with society. Where is it not merely under pressure from external factors as a certainty if a company is accepted in its environment, but as a sustainability between public relations with the company, the improvement of the company's economy and the welfare of society.

2. Method and Materials

This research uses primary data in the form of direct interviews to the related parties and stakeholders. In addition to primary data, the authors also utilize secondary data and literature study by looking for supporting literature related to this research. In order to obtain accurate data, then the following steps are taken: First, the study of literature, the way taken is to read, study, cite, compare and connect the legal materials of legislation and literature, so as to become one Easy to process. Second, conduct interviews on parties related to the problems studied. Data Processing in this research is done through stages (1) Editing, which is checking the data carefully to avoid from errors of data collected. (2) Classification, data that has been collected and then classified based on their respective subjects, this processing is done to avoid errors in the data grouping. (3) Organizing, data that has been collected and then sorted in accordance with the grouping, in order to avoid errors in the sense in accordance with systematization of materials.

3. Results and Discussion

The classic problem that both central and local governments have to face is the low of

labor absorption that results in high unemployment. Lampung Province is one of the provinces that has high unemployment rate which means has the greater poverty rate. Lampung's poverty rate from the result of the National Socio- Economic Survey (SUSENAS) September 2016 reached 13.86 percent. Compared to the previous semester conditions (March 2016) Lampung poverty rate decreased
0.43 points, from 14.29 percent. In line with the declining percentage, the number of poor people in Lampung in September 2016 also decreased by 29.82 thousand people to 1.140 million people compared to the poor population in March 2016 which amounted to 1.170 million people. Rural areas become concentrations of poverty where 15.24 percent of the population is categorized as poor. This figure is equivalent to 912.34 thousand inhabitants. While in the urban area, the poor population are 10.15 percent or 227.44 thousand inhabitants. During the period of March 2016 - September 2016, both urban and rural areas experienced a decrease in the percentage and number of poor people. In urban areas decreased around 5.95 thousand people (3.55%), while in rural areas decreased about 23.87 thousand people (2.88%).

Poverty is when society is in a very limited condition, whether it is in the accessibility of factors of production, opportunities / business opportunities, education, other living facilities, so that in every activity and effort becomes very limited. World Bank defines poverty is that, concerning the absolute standard of living of the society of the poor in equality refers to the relative living standard across the whole society. Poverty can be measured by comparison between the income level and the minimum survival value of a person over a period of time. Poverty in general has led to the mobilization of people to move from village to city. Where urbanization is decided as a step to improve the standard of living. In addition, the inequality of development in rural areas has always been a major pretext for encouraging villagers to leave their hometowns.

The phenomenon of poverty that occurs in urban and rural areas requires an intervention of empowerment, both from the government and from the private sector. Empowerment process should be poured in the form of a clear program along with the steps of empowerment. Ambar Teguh S. (2004) states that the purpose of this is to improve the life of society, welfare and continuity in many aspects of life both physically and socially.

3.1 The Implementation Corporate Social Responsibility (CSR)

The government today has tried to improve the welfare of the community, for example by providing rice to the poor through *poor rice* assistance programs, not yet able to solve the problem of poverty thoroughly. This step is only an operational form of government to realize the fulfillment of some basic needs of the poor and only temporary. In addition, according to Ambar Teguh S. (2004) programs that strived by government such as Takesra, Kukesra, PDMDKE, P2KP etc, have not been able to provide significant impact to the community. This is because these programs are not accompanied by appropriate and sustainable program management. Because basically, to create community empowerment and independence, not enough with the stimulant of funds only, but the stimulant of the fund is accompanied by the ability of management and good organizing.

The community empowerment interventions in the effort to improve the welfare are not only done by the government, either the Central Government or the Local Government, but the private sector, especially the company, also have an important role in poverty eradication. The company can undertake community empowerment programs through a corporate social responsibility. But it must be realized, that there are many companies in Lampung only realize CSR program is only a charity. A charity activity does not require an ongoing commitment from the company. The most common form of CSR is allotment toward local organizations and the poor. Sunaryo (2015) stated that the CSR approach based on caricature and humanitarian motivation is generally done by an *ad-hoc* program, partially and unorganized. CSR at this level just *do good and to look good*.

In the Local Regulation of Lampung Province, Number 20 Year 2012 on Corporate Social Responsibility states that the scope of Corporate Social Responsibility includes corporate assistance, social welfare provision, a compensation for recovery and/or improvement of environmental functions and spur economic growth based on community-based quality Local Government Programs. Actually the sustainable development that is achieved by CSR programs can be divided into three parts, namely social, economic, and environment. The three things cannot be separated from each other, a CSR program can not only focus on economic development activities, but does not restore the environment, and vice versa, there is no aspect left behind in

implementing a good CSR program (no one left behind). The regional regulation also discussed a partnership program aimed at maintaining environmental functions, providing direct assistance to target communities, and fostering, improving and fostering community self-sufficiency in the targeted areas. Basically, all sustainable CSR programs are well proclaimed by the Local Government, but in its implementation, the company still chooses a simple way, for example providing only grants, social assistance or donations without coaching and follow-up on long term targets, it looks like temporary and mere formality.

In the study of Busori Sunaryo, Feri SN, and Agus M. Irkham (2015), CSR is the result of dialectics between companies and society. Since both are living and developing entities, the results of the dialectics are also evolving. Initially, the company considers the problems that occur in the community surrounding the company is not a matter of company. However, over time, there is a strong position from the community so that CSR activity is more charity or cash assistance. In the short term, charity is very effective because the company can carry out activities without any disturbance from the community. However, in the long run, the relationship becomes unhealthy, there is dependence from the community. Then, CSR raises the concept of community development, where in that concept, people are facilitated to conduct productive economy and solve problems in their environment. Busori Sunaryo, Feri SN, and Agus M. Irkham (2015) stated that the measure of success is not limited to product (output) and increase of income but also change of way of thinking (impact). Community development activities received a lot of praise and appreciation from various parties, but there is one criticism of the activity, that is, there is no relationship between programs that run with the core activities of the company. Thus, the progress of the company cannot be a parameter as the progress of society as well and vice versa.

In order to create Good CSR, we must integrate the four principles of good corporate governance, namely fairness, transparency, accountability and responsibility in harmony. In addition, the interests of shareholders and stakeholders must also be considered. In the study of University of Catholic Parahyangan about Corporate Social Responsibility: Concepts, Regulations and Implementation (2010), Here are Some Steps You Can Do To Formulate CSR, namely:

1. Engagement, the initial approach to the community to establish good communication and relationships. This stage can also be a socialization of CSR program development plan. The main objective of this step is the awakening of community understanding, acceptance and trust that will be targeted by CSR. Social capital can be the basis for building "social contracts" between the community and the companies and parties involved.
2. Assessment, is an identification of problems and needs of the community that will be the basis in formulating the program. This stage can be done not only based on needs-based approach, but also based on rights-based approach (international convention or normative standard of social rights of society).
3. Plan of action, is a formulate action plan. The program to be implemented should look into aspirations of the community (stakeholders) on the one hand and the mission of the company including shareholders on the other.
4. Action and Facilitation, which is to implement the agreed program. Programs can be done independently by local communities or organizations. However, it can also be facilitated by NGOs and companies. Monitoring, supervision and mentoring are the keys to successful program.
5. Evaluation and Termination or Reformation that assess the extent of successful implementation of CSR programs in the field. If based on the evaluation, the program will be terminated then there needs to be some sort of termination of the contract and the exit strategy between the parties involved. For example, implement CSR through capacity building to the community (stakeholders) who will continue the CSR program independently. If the CSR program is to be reformed, it is necessary to formulate lessons learned for the development of the next CSR program. New deals can be formulated as long as necessary.

In practice, Ginanjar Kartasasmita (1996) stated that in CSR practice, efforts are made referring to three sides:

1. Enabling
   Creating an atmosphere or climate that allows the potential of the developing community.
   Here the starting point is the recognition that every human being, every society, has the

potential to be developed. That is, there is no society at all without power, because, then it will easily become extinct. Empowerment is an effort to build that power, by encouraging motivation and awakening awareness of the potential it has and working to develop it.

2. Empowering
   Strengthen the potential or power of the community. In this framework required more positive steps, apart from just creating a climate and atmosphere. This reinforcement includes concrete steps, and involves the provision of inputs, and opening access to a range of opportunities that will make people more empowered. For that, there needs to be a special program for people who are less empowered, because the general programs that apply to all, cannot always touch this layer of society.
3. Protecting
   Empowering also means protecting. In the process of empowerment, it must be prevented that the weak become weakened, because of the lack of empowerment in the face of the strong. Therefore, the protection and protection of the weak is very basic in nature in the concept of community empowerment. Protecting does not mean isolating or masking of interactions. Protecting should be seen as an attempt to prevent uneven competition, and strong exploitation of the weak.

The things above cannot stand separately, but must be a concept that prioritizes an integrated development. In addition, the most important is the sustainability nature of the CSR, where every CSR program is not only implemented for a short time. But it can be applied in a certain period of time by making a series of activities, with regard to other factors such as environment, social and also religion.

3.2 The Concept of Creating Shared Value (CSV) and Stakeholder Welfare

In its development, now the concept of CSR has turned into a more profitable concept for the community where society is involved in a business development of a company. Progressive companies see how CSR can be seen as a concept that brings great opportunities for improving the company's economic performance as well as the opportunity to improve the quality of corporate relationships with its social communities through mutual value creation, this concept known as Creating Shared Value (CSV). In Harvard Journal Review by Porter & Kramer (2006), explains that CSV is an operational technical policy and process that enhances the company's competitive values and simultaneously promotes social and economic conditions.

Porter & Kramer (2006) describes an example in the application of the CSV concept to a company engaged in food and nutrition, CSV is in three main components: (1) agriculture and sustainable development, (2) the manufacturing environment and its human resources), and (3) products and consumers. Through this concept, both companies and communities will benefit synergistically. In the first chain, agriculture and farmers are the main focus in promoting mutual benefits. Farmers and companies are interconnected as producers and consumers. The entrepreneur (in this case acts as the consumer) wants to buy high quality agricultural products from the farmer (producer), therefore the consumer needs to improve the knowledge of farmers by providing training and means to achieve the required product quality. Educate farmers and their families while enhancing farmers' empowerment and awareness of sustainable development. On the other hand, the entrepreneur as a consumer must provide a price that matches the quality of the goods produced by the farmer and appreciates the efforts made by the farmer in producing the goods if it has included elements of sustainable development. In the second chain, manufacturing or industry creates mutual benefits for the human resources working in that industry sector. The company has responsibility for improving employee welfare, educating skilled and motivated and responsible employees, is also an important factor in creating mutual benefits.

In the third chain, through its products, the company not only profits but also has the obligation to educate buyers (end-consumers) either directly through products or indirectly through intelligent advertising impressions. For example, for the food industry, presenting the nutritional or nutritional facts contained in the product is of paramount importance. In addition, the company is challenged to create innovative products rich in nutrients but low in fat and calories. The consumer should be critical in examining the product to be purchased, whether expiration date, nutritional content, advice and producer service to the consumer.

According to Muslich (1998) business ethics is the knowledge of the ideal way of regulating and managing a business that takes into applicable norms universally of morality and economics/social, and the application of norms and morality is supporting the purpose and

purpose of business activities. According to Bambang Rudito and Melia (2007) as quoted from Sunaryo (2015) that the business ethics undertaken by the company refers to several different levels and this is very dependent on the company's position with the communication around it. The lowest level of ethics is sympathy, a feeling that another community needs to be pitied, needs help, support but the company does not see what the community really needs and only provides the simple help. At the next level is empathy, a feeling that acknowledges the existence of other communities outside the company and at the same time acknowledges the differences and feels the difference or the circumstances. In this sense of empathy comes the soul to help and give a place to the other side to go along side by side.

At the highest level is a commitment, a feeling in which the company is part of a wider community and willing to work with the community. The company is aware that without the cooperation of other parties (other communities), it is impossible that the activity will run properly and correctly, this commitment encourages the emergence the needs of other parties. Those things show that the high level of a business ethics conducted by a company cannot be separated from its role to the community and environment as an effort to implement business ethics. According to the National Committee on Governance Policy (KNKG, 2010) there are general principles of business ethics:

6. Corporate business responsibility in creating prosperity, not limited to shareholders but also to the stakeholders and the environment in which the company operates.
7. The impact of business activities is not limited to the economic and social sectors only, but the company should also contribute to creating justice, human rights, education, innovation and utilization of natural resources efficiently and effectively, and maintain its liveliness.
8. Business actors should not only comply with applicable legal and regulatory sentences, but should also fulfill the spirit of the rules and maintain the principle of mutual trust and ethics of business people.
9. Respect the environment through activities that protect, preserve and improve the quality of the environment in a sustainable way. In addition, companies must prevent wasteful use of natural resources and dispose of waste that causes environmental damage.
10. Business actors should commit unlawful acts, such as bribery, money laundering, and other corrupt acts.

The implementation of CSV that exist in Lampung is PT. Nestle Indonesia Panjang Factory. The factory that was established in 1978 is specialized in producing instant coffee Nescafe with a variety of taste. CSV serves as a policy and operating practice that enhances the competitiveness of enterprises as well as promoting economic and social conditions of society economically, socially and environmentally for the wider community and helping solve the economic problems that faced by the community. Nestle has been cooperating with coffee farmers in Tanggamus District, Lampung Province since early 1994. Nestle has been developing farmers in the area to grow and develop, and able to compete with other regions. Coffee has become a superior commodity in Tanggamus Regency is Robusta Coffee, with the production of 32,000 tons/year. The ongoing coaching program is conducted to improve the productivity and yield of coffee production, able to produce high quality coffee, provide jobs, increase income and also improve the welfare of farmers in the district. The partnership is proof that the company is able to provide a sustainable positive impact where both parties benefit.

Nestle cooperates with a group of coffee farmers to teach them how to cultivate good coffee. In improving the quantity and quality of coffee crops, farmers are given a learning facility called *Sekolah Lapang*, which provides an understanding to the coffee farmers how to grow quality coffee. Whereas before, coffee farmers only pass coffee cultivation according to ability and knowledge inherited by their ancestors only. Over time, the productivity of coffee farmers is usually only 500-700 kilograms per hectare, now it has increased 1.2-1.5 tons per hectare in one growing season. This has demonstrated Nestle's commitment in implementing the CSV concept as well as possible. However, regarding Nestle's sales did not force the farmers to sell to Nestle's company, coffee farmers could sell wherever they deemed more profitable. The interesting thing in this partnership process is that the coffee farmers sold their crops to the local market or the market around Lampung province, but now the coffee beans from the Tanggamus residents can be absorbed by the international market, this is a pride for Nestle and the coffee farmers itself.

The progress towards coffee production from Lampung not only occurred in price, quantity or quality of coffee, but now has popularize Lampung to the national and international scene. This is because the Government of Lampung Province has established cooperation with

PT. Nestle Indonesia to include a typical logo of Lampung, that is Siger crown on Nescafe Classic coffee packaging. This thing has done in order to introduce Lampung Province, so that Lampung coffee "Robusta" increasingly well-known by society and worldwide by displaying Siger Lampung logo on the packaging of Nescafe Classic coffee products. The inclusion of the logo in Nescafe states the commitment of both parties to provide information to consumers about the origin of coffee they consume. The inclusion of the logo boasts of Lampung and is also a means to promote the culture and natural wealth in Lampung. Until now Nescafe Classic coffee has penetrated the developed countries such as England, Germany, Russia, and Australia. The Ministry of Trade Republic of Indonesia recorded that the realization of coffee product exports until September 2016 reached 650.2 million US dollars and placed Indonesia as the fourth largest coffee producer in the world. From the data of PT Nestle Indonesia, the number of Nestle Indonesia partnerships has now reached approximately 20,000 coffee farmers, and more than 18,000 of them have received a 4C (Common Code for the Coffee Community) validation, a standard that covers various aspects of sustainable coffee farming.

The benefits of CSV implementation at Nestle in Lampung, can be seen from two actors, namely the company itself and the related parties. On Nestle's side ensures the availability of high quality supply of raw materials; Improve community relations and product quality; Lower manufacturing and distribution costs; Achieve a competitive advantage for shareholders. While from the community, the coffee farming community is able to improve the yield and increase revenue; Reduce the use of natural resources; Create jobs for local communities; Improve access to get nutritious and quality products of consumer choice; Generate investment and economic growth.

In accordance with the example above, there are parties who have positions that greatly affect the sustainability of the company, namely stakeholders. Stakeholders can be grouped into two major groups namely, market stakeholders and non-market stakeholders. According to Sony Warsono et al (2009), the stakeholder market is the parties involved in economic transactions with companies relating to the implementation of the company's main objective of providing goods and services to the public. They are shareholders, creditors, suppliers, customers, employees, and distributors / wholesalers / retailers. The shareholder invests in the company and as a result receives dividends and capital gains. The creditor lends money and earns interest payments. Employees contribute their skills and knowledge to earning wages, salaries, bonuses, and professional development opportunities. Partners get paid for providing raw materials, whereas distributors and retailers engage in transactions with companies because they help the distribution of products from factories to sales outlets to customers. Companies need customers who are willing to buy their products or services.

Subsequently, stakeholder groups categorized as non-market stakeholders include communities, as level of government, activist groups and non-governmental organizations, media, business support groups, and the general public. The natural environment is represented by an activist group, which includes environmentalists.

In conducting its business, the company definitely interacts with various parties that have interests with the company (stakeholders) and the parties want the company to act in accordance with what is expected. Brytting (1998) writes that the organization consists of a coalition of different stakeholders who contribute to the activities of the organization or company.

Companies are required to pay attention to stakeholders' interests, create added value from products and services for stakeholders, and maintain the added value created. Thus, in many cases, companies that want to succeed and survive in their business must be good at handling and taking care of the interests of both groups of stakeholders above as well. And that business should be done well and ethically. In so doing, the company should be responsible for its actions and business activities that have influence over the particular persons, communities, and environments in which it operates. Companies must conduct their business activities well and consider creating a prosperous society.

4. Conclusion

Lampung Province is a province that has a great nature potential, but at the same moment also has a high level of poverty or social inequality. Many large companies operating in Lampung, but have not been able to provide the impact of welfare for the people of Lampung, especially in the economic field. This is due to the widespread understanding of the concept of corporate social responsibility in the effort to eradicate poverty. Despite this, PT. Nestle Panjang Factory has been able to change the society's negative paradigm towards the company. Nestle is able to provide changes to the mindset of the community, especially in the effort to develop coffee cultivation. Through the CSV approach, Nestle has not only managed to overcome social problems such as the difficulty of getting people to work and maximizing natural resources, but at the same time being able to promote the image of the company and Lampung Province to the international scene.

The partnership between companies and communities in an effort to increase the quantity and quality of coffee farmers in Tanggamus by Nestle, will be a role model of other companies in doing business among society and involving the community in the process of business development is an important thing beside earn profit as much as possible. The quantity and quality of coffee will affect the level of opinion of coffee farmers and even provide jobs for local communities. This will indirectly affect progress in other areas as well, such as access to good education for future generations.

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Dramaturgy Study on Communications by Gay in Bandar Lampung

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Abstract

LGBT current issues at this time, particularly gay, have been growing and complicated. This issues affects the style of communication they used to. This phenomenons make researcher interested in conducting research with the aim to know the communication style used by gay in the city of Bandar Lampung. Research methods used in this study is a qualitative with dramaturgy study. To answer the above problems, researcher raised the sub focus for research as follows: front stage communication style. The subject of the research is the gay or homosexual. The informants is selected by using purposive technique, research informants amounted to 8 (eight) gay peoples. Communications style that became the reference in this study i.e. the animation style and impression style. The research results showed that almost all gays played the front Stage in accordance with their role in society, they acted like an actor performing in a stage play.

Keywords: *Communication Style, Gay, Dramaturgy.*

1. Introduction

Referring estimation data for groups in the HIV-risk population released by the Ministry of Health in 2012, there are 29,236 LGBT people in Lampung. Consist of 16,268 gay, MSM PLHIV 1,618, transgender 1,265; Transgender PLHIV 91; Transgender client 9.853; And transgender PLHIV client 141. (lampung.tribunnews.com accessed on April 16, 2017). This data shows LGBT as the iceberg phenomenon.The data shows there are thousands but on the other hand there are still many numbers of those who hide and embarrassed to reveal themselves ..

In Bandar Lampung, for example, Lentera Muda Lampung or Gay Lam is one of the communities formed to accommodate gay in the province of Lampung. The gay people of Bandar Lampung are increasingly showing their existence. Although they form a community that tends to be closed, access to these people have been widespread. The choice to live as gay, life in the midst of society must have complex problems. The pressure felt to be gay certainly not only from the environment but also from his past, his relationship with family, interactions with fellow gays, and various traumas of childhood that must be overcome. It has a low resistance to stress, it always tries to keep things away by doing other things that they think can reduce the pressure at hand. Hope for the future also poses a problem that a gay must face.

Harton-Hunt said gay has been exist in all human societies. Homosexuality is absent, rare or confidential, in approximately one-third of the communities studied by Ford and Beach. In about two-thirds, some forms of homosexuality are considered acceptable and reasonable for at least some categories of people or stages of life (1984: 151).

Gay is a phenomenon has been discussed intensifily, because it is considered "different", gays actually have a lot of things to open themselves in the community but a large portion og gay remains silent, because they are afraid would have been accepted by society. As the ages began to emerge LGBT community that allows gays to interact with each other. As social creatures who need each other, gays also make a good communication with fellow gay and non-gay, but when there is a gay who has not opened himself in the community then they must close their identity. Interpersonal communication is gradually creating a repeating style of communication on gay communication itself. Thus, gays can have their own distinctive features in communication that can be judged through their style.

Everyone has a different style of communication and this is no exception for gay. In theory the reduction of uncertainty directs how gay people first communicate with new people/persons in their social environment. They must be careful to show the style of communication. Once they know the environment whether it is good or bad, then they will make a communication style that will show the existing symbols. While in symbolic interaction theory onc can know what kind of symbols they use, such as their style of language, the way they look and many other things.Main theory in this research is Queer Theory Judith Butler *Performance,* We will see *performances* from the standpoint of LGBT.

Performance theory consist of two stages which are; communication style of gays in the front stage and back stage. This is the areas where researchers can describe the style of communication undertaken by gays, aided by both previous theories already mentioned. *Front stage* informant in terms of the front stage just from how she socialize with other people, how he played a role in the social environment and how they are camouflaged to be accepted by the surroundings. Where researchers want to know the purpose of gay behavior behave like an actor who is playing a role in order to cover his identity. *Backstage*, here the researchers will examine the communication styles, informants views of the stage behind him. The style of a gay in a private environment, where there is less social control should limit their expressions.

2. Research Method

This study uses qualitative descriptiv, with focus on dramaturgy, as Goffman quoted in the book Research Methods for Public Relations: dramaturgy is presented as skill for human. Gofftman mention there are two roles in this theory, namely the front stage and back stage. Front stage covers, setting,(personal appearance, the expressive equipment (equipment to express themselves). While the back stage itself is all the hidden parts to complete the successful acting or existing personal appearance in the front.

Research focus

The criteria of the informants are:

1. A gay man who is still not fully open.
2. Lived in Bandar Lampung.
3. 18 years old above

3. Results and discussion

Researchers found a thing that distinguishes between gay communication with communication in general through language of “bintil”. The existence of this language is meant that if there are foreigners who enter into their associations the person can not know what they are talking about and only be a secret between gay fellows only.

The results of interviews to informants about self-disclosure, it turns out that each individual of turns out to have their own reasons why they become gay, some are due to family factors, bad experience factors, economic factors, even just to feel curiousity. Their choice of being gay can make them feel closed in the family environment because some of the informants have not been able to open themselves as gay families, but some of them are also open to being gay to work and campus

environments. The researchers wanted to know how the communication styles used by gays as long as he covered himself in *front stage* and the style of communication in its own gay friends in the *back stage.*

The style of communication is a uniqueness that each person has and communication style between one person and another person are different. The difference between communication styles between one person and another can be a difference in the characteristics of the model in communicating, the manner of communicating, the way of expression in communication and the responses given or shown at the time of communication. When a person communicates, he not only provides information but we also present information in a certain form to others and how to understand and respond to a message.

Of the two communication styles that have been studied, researcher can conclude that gay life is not like the stereotype that exist in the community. Because in the way they communicate is also not different from heterosexual either inter-personal or between individuals with groups. Therefore, to interact with other people is not a difficult thing to do by them, they are quite offset from the opponent biacaranya, and do not forget also they always analyze people they just know first. As described in uncertainty reduction theory says Berger and Calabrese (in West and Turner, 2008: 173-175) that when the man who had first met later in the conversation, then they will make predictions *(prediction),* so that the time of uncertainty It is reduced then it will create an atmosphere conducive to the development of interpersonal relationships.

In establishing a relationship, can be said to be just like heterosexuals. Because basically they remain the same men who have a masculine side. Therefore, they feel more comfortable in relation. In addition, the bonds that exist between individuals of gays are not limited to friendship alone but rather to close family relationships. For example when there is one partner involved in the conflict, the other will try to reconcile the couple or in other words become a mediator for the couple to keep a good relationship even if not together again.

This statement, in accordance with *Queer theory* promoted by the philosopher Judith Butler poststructuralist Americans who contributed many ideas in the fields of politics, economics, and gender equality. For Butler, a gender can not be based on a person's biological identity. The only basis for identity, gender, and sexuality is action. Because action is always changing, the identity is always changing. Subjects never become the identity of the final, but always *in-process.*

In Butler's view, it is perfectly legitimate to have a masculine identity at one time and a feminine identity at another time. Similarly, the *male from female feminine* or *masculine.* This of course also affect the issue of sexual orientation. If a person's sexual identity is not final, unstable, there should be no necessity of a woman liking a man and vice versa.

The conclusion that can be drawn from here is that both sex, gender, and sexual orientation are things that are fluid, unnatural, (and constructed by social conditions). So in Judith Butler's thought, LGBT is not a social aberration, but a variation in human identity based on performative action.

1. Communication Style gay people in *front of the stage.*

Gay definitely has a life like a normal human being, but in real live they have *privacy* which they need to cover when they are in a social environment, such as the work environment, colleagues, even family. This can be termed the next stage *(front stage)* is a stage which consists of parts of the show on the appearance and style. It is on this stage that gays will build and show the ideal figure of identity that they will highlight in their social interactions. And impression management displayed a picture of a gay about his ideal concept that might be received by the audience, gays will hide certain things in their performances in front of the stage *(front stage).*

The style of communication displayed by gays is also encouraged from within the individual whose purpose is to meet the needs that exist in individuals such as comfort needs, which they do with the same-sex. In interaction at the front stage *(front stage)* gays should be very careful, they are always analyzing new people they know or what they had seen that they spend it later did not produce a negative image of the other party.

Based on interviews with eight informants in communicating in *front of stage* was gay not only interpersonal communication verbal issued, but the style of non-verbal as well they use and have included in the style of animation that can be displayed with the gesture of the body, eye contact and

facial expressions. But the style of animation at this *stage front* area gays only use eye contact when he meets new people or new he saw he knew. The eye contact is played by looking at the whole new people around them, and there are several reasons why they do that one to see the movements of people who have same-sex love as well. From this eye contact they can assess gay and non-gay ones.

And to force memorable, which can stimulate others so it is easy to remember and can give the impression to others is not too they show, because they show the style impression it will make others think more negative and their role in the *front stage* will fail. Where the dramaturgy concept of the front stage is a stage consisting of a performance section of appearance and style. In the book (Sudikin, 2002: 49-51) on this front stage someone will build and show the ideal figure of identity that will be highlighted in the social. The management of the impression displayed is a person's portrayal of the ideal concept of himself that the public may accept, and that person will hide certain things in their performances. So in terms of looking for fellow gays, they will understand when meeting with other gay fellow in terms of physical appearance and style of dress what want to become a symbol or identity of their own.

In a communication style that is displayed in the *front stage* gays include animation styles and memorable style that often they use a given symbol one person to another so that others can judge ourselves. It can show a meaning or meaning that indicates a person's identity indirectly. In gay appearances only fellow gay people can judge that someone is gay or not. But gay men have a distinctive symbol or late unique only known by gays only when in *front of the stage.*

From the discussion of the communication styles of gays in the *front stage,* it can be associated with their interpersonal communication theory of symbolic interaction therein. When they communicate with others face-to-face, both organized and in the crowd they still provide verbal and non verbal symbols. From the author's observations, gays give meaning, create and change objects in the interaction. Such social symbols can manifest in physical form (visible objects), words (to represent physical objects, feelings, ideas and values), and actions (which people do to give meaning in communicating with others) (Charron, in Ahmadi , 2008: 302). Symbols in the interactions that gay people use are the forms of representation and communication that are determined by the people who use them.

When in the front stage in symbolic interaction displayed the same as a normal man more, so we can say the *performance* shown gays was not excessive, which are mentioned in *Queer Theory* that mess dress or appearance of a person in order to blur the gender norms so their *performance* should men in general without blurring the norm. And their role in the next stage *(front stage)* can be said to be successful, because they can mask their identities.

2. Communication Style of the gay in the back stage

In communicating the gay not only face the social environment, but the environment that makes it comfortable and secure they also have a communication style that is displayed as well. We call this stage with the rear stage *(back stage)*. On this stage all the preparations of the actors are tailored to what will be faced in the field, to cover the original identity and this stage is also called a private stage, which should not be known by others.

Based on interviews with eight informants about *back stage,* animation styles and memorable style they used regardless of anything. This is where the symbols will be displayed freely by gays. And most striking is that with the style of animation, according to informants generally the gay people have a gesture of a weak body like women and this is shown when they talk to fellow gay like a hand that is tapering, always tidy hair, lips are always wetting while Talking, and gnashing the nutmeg when speaking. It is done with a particular purpose, that is, they simply want to attract or gesture to other gays that they are gay. And that often do gesture body that is gay woman.

Similar to the style of animation, this style known also as memorable style, the focus is clothing. Clothes are form of expression the .Gays tend to be very concerned about appearances if they are in the back stage because with a good look can be viewed more in the back stage. In dressing with fellow gays they usually make a deal first to wear what kind of clothes, and the clothes they wear are strictly transparent t-shirts, tight pants, have striking colors like red or ijo vanished.

Not only clothes, accessories are also a choice to be considered, and accessories worn like clocks that have gold, ring, gold or silver necklace, this is done in order to beautify their appearance in

the back stage. The use of the rings they normally use also becomes a unique symbol, because the ring is usually placed on the thumb or on all the fingers. The number of use of the ring was sometimes they use to get the spotlight from others and can indicate it is gay.

However, in this study found a thing that distinguishes between gay communication with communication in general through the language that they use the language *Bintil*. The existence of this language is meant that if there are foreigners who enter into their association the person can not know what they are talking about and only be a secret among gay people only. For example; *eke:saya, dese:dia, kanua:kamu, inang:ini, polo:pulang, mekong:makan, tandus:tidur, um aja:diam saja, sutra:sudah, apese:apa, kesindang:kesini, lupita:lupa, begindang:begini, jahara:jahat, mawar:mau, mandala:mandi, ujian negara:hujan, tinta semangkuk:tidak suka, jalinan kasih:di jalan, pelita harapan:pelit, meong:main, endul:enak, dendong:dandan, lekong:laki, pewong:perempuan, mak lampir:malam, ani-ani:anak-anak, tubang:tua, sekong:sakit, tewer:tahu, beyong:bayar, tinta adinda:tidak ada, benyong:banyak, lapangan:lapar* and many more terms they use in communicating to fellow gays.

Bintil language of gays are reviewed through the *Queer theory.* As mentioned in the *Queer theory* that Judith Butler rejects the principle of identity that has a beginning and an end. Butler also rejects the view that sex *(male / female)* as determinants of gender *(masculine / feminine),* and gender as a determinant of *sexual orientation.* Identity is not related to sex or gender. Identity derived from *performative* action, which is always changing. This so-called Butler as a human identity is never stable. The use of a communication style while in the back stage is made more flexible by gays because they feel when in the *back stage* no one would bother him. And when when in the *back stage* precisely interpersonal communication will be established with both matches what they want.

Based on the discussion of the communication style of gays in the *front stage* and *back stage,* each informants have a communication style that is almost the same as being in the front stage and back stage. Through their experience, gays can control themselves if they are on the front stage when interacting with friends, community, and family that ultimately shapes the style of gay communication.

The connection with the theory that supports the results of research is the theory of symbolic interaction in which theories pay attention to the symbols that gays out of one's consciousness. Symbolic interactions assumes that the way humans mean the world and itself is related to society. The essence of symbolic interaction is an activity that is characteristic of man, ie communication or exchange of symbols that are given meaning. In essence, symbolic interaction emphasizes a relationship of symbols and forms of communication from the interaction results that describe the intent of the code or symbols given from the way to appear to convey the intent and purpose of a person in the use of clothing that can provide an identity.

In terms of appearance that includes how to dress and accessories used is a symbol that someone gives to others so that others can assess ourselves. Appearance can show a meaning or meaning that indicates a person's identity indirectly. In gay appearances only fellow gay people can judge that someone is gay or not even if sometimes others can see it. But gays have symbols or unique features that gays know only. In Butler's view, it is perfectly legitimate to have a masculine identity at one time and a feminine identity at another time. Similarly, the *male from female feminine* or *masculine.* This of course also affect the issue of sexual orientation. If a person's sexual identity is not final, unstable, there should be no necessity of a woman liking a man and vice versa.

Thus, in the concept of the dramaturgy of difference gays in the *front stage* and *back stage* are different. While they are on the front stage they play their best to keep people positive so that the goals they will achieve will be realized. Whereas when they are on *back stage,* they act freely without considering how the roles are going to do and they feel free with it so that a greater sense of comfort when in the front stage.

Theoretically, the author expect this research can be useful for the development of communication science, especially in the interpersonal communication verbal and non verbal which is especially present in the style of communication of gays. This research can also provide knowledge and understanding to the audience about the style of communication of gays, such as how to look including dresses, hairstyles, and accessories worn by gays, the use of terms that are often communicated by gays. In addition, this research is still a lot of shortcomings in terms of the theory

studied, and for further research can provide improvements or additional theories that can complement this research in order to be developed again well.

4. Conclusion

1. Communication style by gay in *front of stage* is by manipulating the way they dress, as well as a very different attitude. This is done by them deliberately in an effort to create a good picture in front of the stage *(front stage)* so they can be accepted in the social environment.
2. Communication styles by gay in the *back stage* shows their status as gay. By displaying clothes with striking colors, accessories that look dominant, using *Bintil* language as their communication language, and gestures that look feminine, and the way they communicate even more freely and relaxed where the goal is to achieve a psychological need such as acceptability, satisfaction, Gain a sense of security and comfort.
3. In this study, gay people do not affect the behavior of others, such as making other people gay too, and what is done by gays can be said positive because some of them have job or positive activity. In addition, a person who feels himself as a gay is generally caused by some factors like; lack of attention in family, had been exposed to sexual harassment, or just out of curiosity about personal finding on sexual orientation.

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The Ethnic Immigrant Living in Sidowaluyo Village, Sidomulyo Subdistrict, South Lampung District

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Abstract

This paper aims to explore the lives of ethnic immigrants in the village Sidowaluyo Sidomulyo District South Lampung regency. The subjects of this study were 38 heads of households, consisting of 15 ethnic Balinese family heads, 14 heads of Javanese ethnic families, and 9 heads of ethnic Sundanese families. The questionnaire about the immigrant ethnic life, consisting of 22 items with open and closed questions, is used to measure the lives of ethnic immigrants. The findings of this study indicate a difference in economic life to three ethnic immigrants, but mostly in the agricultural sector. The differences in the social and economic life of the heads of the three ethnic families relate to the type of migration and the ability to take advantage of opportunities.

Keywords: *life, ethnicity, immigrant, village Sidowaluyo*

1. Introduction

Population mobility (migration) in addition to increasing the population, can also increase the diversity of ethnic groups in the destination area. Increasing the number of residents has implications for the fulfillment of the various needs of the population in terms of both quantity and quality. While ethnic diversity can play a role as a glue of the unity of the nation, it also has the potential to be a source of conflict between tribes. This is related to the ability of ethnic groups to identify themselves in a new place which can then give birth to a form of adaptation to their new environment and produce a harmonious life between tribes.

Ethnic identity (ethnicity) is an aspect of acculturation that focuses on subjective feelings toward groups or cultures (Phinney 1990, Phinney et al., 2001: 495). Ethnic identity is needed to understand acculturation. Acculturation is now understood not to require that we give up the culture of origin and assimilate into a new culture, but acculturation is a two-dimensional process (Berry, 1990, 1997, LaFromboise, Coleman, & Gerton, 1993; Nguyen et al., 1999; Sayegh & Lasry, 1993 in Phinney, et al., 2001: 495). Two dominant aspects of acculturation, namely the preservation of cultural heritage and adaptation of a person to the host community, and may vary freely (Liebkind, 2001 in Phinney et al.,

2001).

The following two questions are a tool for identifying strategies used by immigrants in dealing with acculturation: Is it valuable to preserve one's cultural heritage? Is it valuable to develop relationships with larger communities? (Berry, 1990 in Phinney et al., 2001: 495). Referring to Berry's theoretical framework, ethnic life within a region is a form of acculturation that retains the cultural heritage of origin and develops relationships with larger communities that are considered valuable.

The phenomenon of ethnic diversity contained in Lampung Province is closely related to government policy in the distribution program of population distribution that has been implemented since the Dutch East Indies government is the colonization program. This program was first

implemented in 1905 where Lampung became the first area to receive the colonists who came from the island of Java is from the area of Karisidenan Kedu in Central Java to Gedong Tataan area. The first colonist area was named after the colonists' name, Bagelen Village. Over time, besides the government-run migration through the transmigration program, there is also a spontaneous migration of people from Java to Lampung, causing the population of Lampung to increase rapidly. Up to the 2010 Population Census the population of Lampung has reached 7,608,405 people with a growth rate of 1.24 percent per year.

Changes in the demographic conditions of Lampung due to population mobility not only in terms of numbers, but also the ethnic diversity that comes to Lampung. The province is inhabited by other indigenous tribes of Lampung as well as various tribes such as tribes originating from South Sumatra (Semendo tribe), Bali, Lombok, Java, Minang / Padang, Batak, Sundanese, Madura, Bugis, Banten, Palembang, Aceh, Makassar, citizens of descent, and foreigners (Chinese, Arabs). In 2010, the ethnic groups in Lampung were dominated by Java (63.84%), others in Lampung (13.51%), Sundanese (9.58%), South Sumatran tribes (5 , 47%), Banten (2.27%), Bali (1.38%) and others (Minangkabau, China, Bugis, Batak, and others 3.63) (BPS, 2012).

Tribal diversity is also found in one of the regencies in South Lampung regency. Living in this area are: Java (61.00%), Sundanese (13.3%), Lampung (12.7%), South Sumatra (4.7%), Banten (3.7%) , Bali (1.6%) and others (Minangkabau, China, Bugis, Batak, and others 3.01) (BPS, 2012). This ethnic diversity coloring the life of the people of Lampung positive impact that is the wealth of culture and customs in Lampung and the negative value in the form of inter-ethnic conflict.

Positive values are reflected in the daily social interactions in activities related to social, economic, cultural, and other activities. Such as mutual cooperation in marriage, circumcision, and when there are people who died as a positive value in social activities. Cooperation also occurs in economic activities, both at the household level and at the community level, such as working in different tribal households. While in the field of culture these positive values appear in the use of the language of instruction used by the community, such as using one of the languages of different tribes or the existence of word insertion from one of these tribal languages.

Positive values will be mutually beneficial as long as there is no interethnic friction, on the other side tribal interaction can cause social conflict because of the difference of interest. Therefore, the rich culture and customs are very vulnerable to social conflict, as happened in Lampung. How the lives of ethnic people are described in this article. The exposure of the ethnic life is limited to Javanese, ethnic Balinese, Sundanese, and indigenous ethnic Lampung.yang inhabit Sidowaluyo village, Sidomulyo subdistrict, South Lampung regency.

2. Research Methods

This type of research is a survey research, which is a type of research conducted on a group of people who performed simultaneously and in collecting data using a questionnaire. The research was conducted in Lampung Selatan District Sidomulyo Subdistrict of Sidowaluyo Village which was determined purposively with the following consideration, that is inhabited by various tribes and as a prone to social conflict. Subjects in this study were all ethnic family heads who numbered more than 1.0% (Java, Sundanese, Balinese, and indigenous ethnic Lampung). The determination of the number of subjects based on the willingness of the subject to receive the researcher's visit to the interviewee and the willingness of the subject to address the designated meeting location as well as consider the non-paramteric statistical tool used.

This study interviewed 45 heads of families consisting of 4 ethnic groups, namely ethnic Balinese, Javanese, Sundanese, and Lampung ethnic. Interviews with Javanese, Sundanese, and Lampung ethnic groups were conducted at the Sidowaluyo Village Head Office. The interview was assisted by four students representing the four ethnic groups. While interviews on ethnic Balinese were conducted in one of the respondents' houses. This is done because at the time the research took place along with the rice harvest season, so the opportunity to be able to meet every resident in his house during the day is very limited. Therefore, the number of ethnics to be interviewed is also very limited and the data presented in this paper is less able to describe the lives of the four ethnic groups as a whole in accordance with the reality in the field. But at least the results of this study provide little

picture of how the lives of some ethnic immigrants when compared with the original ethnic origin region.

The object of this research is the life of indigenous ethnic and ethnic migrants focused on economic life and subjective wellbeing that they feel. Economic life is studied from aspects of occupation, ownership of agricultural land, and income earned. Then from the aspect of subjective well-being is focused on the comfort and security they feel.

The data were obtained by structured interview using questionnaire consisting of 22 open and closed question items. Data collected include demographic, social, and economic data. In addition, in-depth interviews were also conducted to key informants to obtain data on the welfare associated with the conflict that has occurred in this village. The data collected were analyzed using descriptive statistics and qualitative analysis of triangulation.

3. Research Results

3.1 Overview of Sidowaluyo Village

Sidowaluyo village is administratively included in Sidomulyo District of South Lampung District. The topography of the area is lowland with an area of 3,290 hectares. This village is a transmigration village whose population is imported from Java and Bali in stages. The first phase in 1958 was brought in by migrants from the island of Bali with 55 families. A year later the village officially became a village on 9 September 1959 which was a consensus of local community leaders. Subsequent transmigrants were transmigrants from East Java Province, Central Java Province and the last from West Java Province in 1962.

The village is bordered by other agricultural villages in Sidomulyo Subdistrict. The boundary of the village is as follows: North side is bordered by Way Gelam Village, Southern side is bordered by Sukamarga Village, West side is bordered by Sidodadi Village, and Eastside is Sidoharjo Sub District of Way Panji District. Accessibility to this village is relatively easy because it can be achieved by using various types of vehicles, both two-wheeled vehicles and four-wheeled vehicles. The road conditions are quite good although paved is rough and pebbly.

Sidowaluyo villagers until the end of 2015 amounted to 7,551 people, consisting of 3,711 men and 3,840 women, with the head of the family as much as 2597. Population density of 229.5 people / km2 is quite dense. The socio-economic condition of the people of Sidowaluyo village is agrarian, with the most 87.64 percent of the population working in agriculture. The rest in a small percentage of the population of Sidowaluyo village work on various jobs such as laborers, teachers, traders, civil servants, drivers, rental services, artisans, midwives, nurses, Indonesian National Army (TNI), Police and no longer work retired).

3.2 Demographic Conditions of the Head of the Ethnic Family of Migrants

3.2.1. Age

The demographic conditions presented in this section include ethnicity, age and place of birth / migration status. These four aspects are an important aspect of understanding the process of ethnic acculturation in the destination area in terms of what cultural values should be maintained and how important it is to develop interactions with other ethnic networks.

There were four (4) interviewed in this study with unequal amounts, due to the readiness of the residents and the limitation of research time to obtain the highest number of ethnic Balinese compared to the other two ethnic groups. From the age aspect as the most important variable in the demography, the age of the youngest family head of 20 years old and the oldest 65 years old with average age 39,67 years. Table 1 shows that most of the 95.5% of the head of all four ethnic families live in productive age groups that are economically active or working age. In addition, the average age of indigenous ethnic Lampung is 45.43 years higher than that of the 40.37 year old immigrant, in the same percentage being in the 30-40 year age group and 40-64 years.

Table 1. Background Demographic of Ethnic Immigrants in Sidowaluyo Village

Name of Ethnic	Ethnic Immigrants	
	Frequency	Percentase
Bali	15	39.5
Jawa	14	36.8
Sunda	9	23.7
Total	38	100.0
Age Group		
<30	4	10.5
30-40	16	42.1
40-64	16	42.1
>64	2	5.3
Avarage of age	40.37 year	
Total	38	100.0
Place of birth		
The same village	26	68.4
The same subdistrict	6	15.8
The same district	2	5.3
The same province	4	10.5
Total	38	100.0

Source: Data of research results are processed

3.2.2 Place of Birth

Further searches for the birthplace of these four ethnic heads of families are destined to gain their migration status. The study found that the heads of all four ethnic families were entirely born in Lampung Province and 68.4% were mostly born in the same village in Sidowaluyo village, the rest were born outside this village but still in one sub-district or district. Similarly, the head of the original ethnic family of Lampung is mostly 71.4% not from the village of Sidowaluyo. From this birthplace information it is useful to characterize the types of migration by the head of the family. Based on the area of migration, migratory household heads of ethnic families are classified as close migration types, mainly in one district. Thus, it can be argued that the entire head of an immigrant ethnic family can not be called a long-distance migrant population that transcends inter-provincial boundaries. There are only 10.5% or 4 heads of immigrant ethnic families who can be called long-distance migrants between districts (Table 1).

The concept of migration refers to the movement of geographic or horizontal mobility in the area of the second level (district / city) administrative region with the aim of settling in the destination area as outlined in the Law of the Republic of Indonesia Number 10 of 1992 concerning the Development of Population and Prosperous Family Development Article 1 paragraph 7 (Trisnaningsih, 2016: 2017). As such, they are not referred to as migrant populations but are more likely to be referred to as ethnic immigrants.

3.3 Condition of Socio-Economic Life Head of Family Ethnic Immigrants in Sidowaluyo Village

The socio-economic conditions in this section are focused on the two main variables, namely the level of education and the type of work of the head of the ethnic families of indigenous and ethnic origin of Lampung. In terms of education, it is seen that the educational condition of the head of the original ethnic family of Lampung is better than that of the migrant ethnic families, as they are 85.7% more likely to finish up to senior high school and college. While the heads of ethnic families of educational conditions are just the opposite, ie more are only up to elementary education level and that too not all, because in the group including those who have not / have not attended school and only graduate elementary school.

3.3.1 Education

Education is one of the indicators to measure the progress of a nation in the Human Development Index / HDI composite index used by the United Nations in its annual report. In education, there are differences in educational outcomes of the three ethnic immigrants. This study obtains educational attainment on ethnic Javanese immigrants is the highest complete all high school and college. In contrast, most of the Balinese and Sundanese migrants only finish their education until elementary education (junior high school).

3.3.2 Work

In relation to employment, education can also increase worker productivity and this has been extensively researched by many experts who have a positive and significant relationship between education level and productivity, so that education is used as the main variable to increase worker productivity. Education provides a broad insight to their owners in looking at existing job opportunities. This appears to be the type of work that many Javanese immigrants do, with their higher education (57.1%) working on non-agricultural jobs (Table 2).

Table 2. State of Education and Occupation of Ethnic Migrants in Sidowaluyo Village

Education	Ethnic Immigrants							
	Bali		Jawa		Sunda		Total	
	f	%	f	%	f	%	f	%
Basic education down	11	73.3	0	0	7	77.8	22	57.9
Senior High School	3	20.0	9	64.3	2	22.2	14	36.8
University	1	6.7	5	35.7	0	0	2	5.3
Total	15	100.0	14	100.0	9	100.0	38	100.0
Work								
Farmers	10	66.7	6	42.9	5	55.6	21	55.3
Not Famers	5	33.3	8	57.1	4	44.4	17	44.7
Total	15	100.0	14	100.0	9	100.0	38	100.0

Source: Data of research results are processed

Ownership of Agricultural Land Ownership of agricultural land is a very important asset in sustaining the lives of rural people, because agricultural land is the main source of income for the farming family. In addition, land ownership is also a status symbol of the family that can improve their socioeconomic status. In this study it was found that not all household heads of ethnic immigrants had agricultural land, the heads of ethnic Balinese settlers had the most agricultural land (Table 3).

Table 3 Land Ownership of Agricultural Head of Upper Ethnic Family in Sidowaluyo Village

Have land	Bali	Jawa	Sunda	Total
Yes	(14) 93.3	(7) 50.0	(5) 55.6	(26) 68.4
No	(1) 6.7	(7) 50.0	(4) 44.4	(12) 31.6
Total	(15) 100.0	(14) 100.0	(9) 100.0	(38) 100.0

Source: Data of research results are processed

Types of land owned by the family varies types, namely in the form of yard land, rice fields, gardens

and in terms of ownership, not all types of land is owned by the family. There are families that only have yard, rice field, and garden only, but some also have rice fields and yards or gardens and rice fields, and there are three types of land that is yard, rice fields, and gardens. Of all types of land, the largest percentage of 24.4 percent or 11 families of all families studied have paddy fields and yard. There are only 4.4 percent or two families with yards, fields, and gardens (Table 4).

Table 4 Ownership of Agricultural Land of the Ethnic Family in Sidowaluyo Village

Type of Land	Bali	Jawa	Sunda	Total
Garden	(2)	(0)	(0)	(2)
	13.3	0.0	0.0	5.3
Rice fields	(1)	(2)	(2)	(5)
	6.7	14.3	22.2	13.2
Yard of the house	(0)	(1)	(2)	(3)
	0.0	7.1	22.2	7.9
Rice fields &	(8)	(3)	(0)	(11)
Yard of the house	53.3	21.4	0.0	28.9
Garden & Rice fields	(2)	(1)	(0)	(3)
	13.3	7.1	0.0	7.9
Garden, Rice fields, &	(1)	(0)	(1)	(2)
Yard of the house	6.7	0.0	11.1	5.3
No Land	(1)	(7)	(4)	(12)
	6.7	21.4	11.1	31.6
Total	(15)	(14)	(9)	(38)
	100.0	100.0	100.0	100.0

Source: Data of research results are processed

The process of land ownership with this inheritance turned out to be less or less encouraging the desire of families to try to increase the area of land that they have. As 52.6 % or 20 families stated that up to now their land area is the same (10 Balinese ethnic families, 6 ethnic Javanese families, 4 Sundanese families, 13.2 % or 5 families who claim their land increases the extent (3 families of ethnic Balinese, Javanese and Sundanese ethnic families each 1 family), and there are 2.6 % or 1 family of Bali ethnic whose land area is decreasing.

3.3.3 Income

Revenue is another important variable that is always discussed in the study of one's socio-economic life. Although it is the main variable to determine one's economic status, it is very difficult to obtain accurate information on how much income a person earns over time, especially in informal or agricultural jobs. As an illustration of the incomes of the heads of ethnic families of migrants in this study are presented in Table 5.

Table 5. Income of the Ethnic Family Head of Upper Village in Sidowaluyo Village

Income per month (in million)	Frequency	Percentase
< 2	25	65.8
≥ 2	13	34.2
Total	38	100.0
Average income ethnic Bali	2028	
Average income ethnic Jawa	1789	
Average income ethnic Sunda	1622	
The average income of the three ethnic immigrants	1995	

Source: Data of research results are processed

The average income of the head of an ethnic family of immigrants is Rp 1,995,000,0, with an average family size of 4.24, the average per capita income per month is Rp 470,518.0. This figure is higher than the poverty line of Lampung Province in 2015 of Rp 337,996.0 (BPS 2015: 399). Thus the entire ethnic families of immigrants in this study are not classified as poor. However, compared to the criteria used by the World Bank 2 (two) dollars per day or approximately Rp 780,000.0 per month as the lowest limit for determining a person belonging to a poor (assuming the US dollar exchange rate is 1 (one) dollar equivalent to Rp 13,000, 0 in 2016, the average income per capita of ethnic immigrants is low.

In addition, the data in Table 6 shows the average Balinese ethnicity is the highest among Javanese and Sundanese. This seems to be in line with the facts in the field when viewed from the indicators of the condition of house building and the ownership of agricultural land. The condition of ethnic Balinese house building in general is permanent, big enough, and looks good.

4. Discussion

The results of this study found differences in socioeconomic life of the three ethnic immigrants in the destination area Sidowaluyo Village Sidomulyo District South Lampung regency. The differences in the quality of interethnic life can be caused by factors that are outside the ethnic / individual and the factors within the ethnic / individual.

Factors that are outside ethnic backgrounds of different origins have different effects on life in the destination, although they belong to the same status as transmigrant offspring. The Balinese in this area are transmigrant descendants from Nusa Penida Bali. Geographical location of this area is a separate island leads in the southeastern part of Bali Island. His heavy nature shapes his resilient and hard-working attitude and character. Attitudes like this are indispensable in starting life in other areas in order to remain existing and sustainable. The ability to adapt to this new environment makes their lives more and more better.

Their homes are clustered according to their ethnicity and their identity as being of a very strong Hindu religion. This is reflected in the existence of temples (Hindu worship places) in every yard of their homes, so it is very easy to recognize the Balinese ethnic settlement environment. So even though they are already in other areas, they still retain local identity. In addition, their ability to take advantage of employment opportunities and master economic assets in the destination areas has been enjoyed in the good economic life of the children of their descendants today. Many studies show that a combination of strong ethnic identity and national identity as the best factor to be considered in assimilation (Phinney, et al., 2001).

Not so with the other two ethnic (ethnic Javanese and Sundanese), their economic life is not as good as the ethnic Balinese. But what stands out from these two ethnicities is in social life or community and interaction with local ethnic (original Lampung). Their interaction has been able to form a close social network with indigenous ethnic Lampung who seem familiar in everyday life. This is not apart from the role of predecessor immigrants who formed early in the arrival of the transmigrants of ethnic Javanese and Sundanese ethnic groups in the village of Sidowaluyo. As the study of migrants in Germany conducted by Angelini, et al (2015) uses data from the German Socio-Economic Panel (SOEP) which gains strong influence of involvement in associations in assimilating with communities in the destination areas of early migrants. They are more quickly accepted because of the similarity in their beliefs of fellow Muslims and togetherness in various activities of activities in the community.

Differences in economic life among ethnic immigrants in an area are also found in similar studies. Such differences may be due to suitability and adaptability and assimilation with the community and employment opportunities in the destination area. This is found from the results of a survey of immigrants from Northern Europe and Scandinavia in the United States (Kerr and Kerr, 2011). However, what has been achieved in the life of this migrant ethnic is inseparable from the acceptance of the local community, so that the immigrant ethnic can live a peaceful life. Basically, local people are very welcome to all arrivals, this is a reflection of their life philosophy of sakai sembayan (gotong royong and help each other and give to something that is needed by other parties),

meet the courtesy of the visitors, and nengah nyappur be open in the general public (BPS, 2015). Local environmental acceptance is also found in a study on the Quality of Life of Immigrants: Integration Experiences among Asian Immigrants in Saskatoon, that access to and education opportunities, socioeconomic and socio-cultural factors, and local environmental acceptance of immigrants have recently had an effect on quality of life migrants (Lu, et al., 2015).

4. Conclusion

This study aims to explore the lives of ethnic immigrants in the village of Sidowaluyo. The results of this study find that maintaining cultural heritage values and developing relationships with wider society strengthens the ability of social and economic life of ethnic immigrants in the destination areas.

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The Analysis of Financial Services Authority (FSA) Function in the Supervision of the Good Corporate Governance (GCG) Implementation for Banking Institutions in Indonesia

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Abstract

In terms of running the implementation of the guidelines of Good Corporate Governance (GCG), the Financial Service Authority (FSA) had a function in monitoring the implementation of the guidelines. Implementation of the Code of GCG was one key to success for growing companies and profitable in the long term while winning global business competition, especially for companies that had been able to grow at the same time being open, GCG Principles were needed to achieve bank business continuity (sustainability) with regard to the interests of shareholders, customers and other stakeholders.

The research method uses normative and empirical research approach, using secondary and primary data, which retrieved from library research and field studies, and data were analyzed with qualitative analysis.

Based on the results, the FSA study had a function in organizing the system of regulation and supervision was integrated to the overall activity in the financial service sectors, as set out in Article 5 of FSA regulation. In the implementation of GCG for banking institutions in Indonesia, there were indicators that regulate governance corporations, so as to assess whether these banks had or had not implemented GCG is to look these indicators. Indonesian banking institution supervision could be divided into two (2) types of monitoring; indirect and direct supervision.

The researcher could give suggestions such as for Indonesian Bank also known as BI to provide the infrastructure especially regarding IT supervision of banking institutions to the FSA, so the FSA can supervise accurately. Implementation of GCG in banking institutions in Indonesia was expected to continue to maintain the principles of GCG. GCG should not only for banks but also applied to the RB, Capital Markets, Insurance, Finance Companies, Pension Funds, Microfinance Institutions and all other financial institutions.

Keywords: *Financial Service Authority, Good Corporate Governance, Banking Institutions.*

1. Introduction

Banking institutions are financial institutions that trusted by people and play an important role in the economic system. Besides having an important role, banking institutions have a strategic role in harmonizing and balancing equitable development, economic growth and national stability. Zulfi Diane Zaini says that the banking institutions that hold important and strategic role are one proof that the banking institution is one of the main pillars for the

economy with establishment and support the implementation of national development. Therefore, in their role, national banking institutions are required and obliged to realize the goal of national banks which set out in Article 4 of Law No. 7 of 1992 as most of the articles are amended and supplemented by Act No. 10 of 1998 (hereinafter referred to as the Banking Law) [1], and in line with the objectives of the state welfare. [2] Bank is said to be the lifeblood of the financial system since the bank serves as a Financial Intermediary major effort to collect and distribute public funds as well as providing other services in payment traffic. In monitoring the payments traffic, there should be an independent institution set up and maintain the exchange rate, and does not favor one interest or purpose which can endanger the stability of the economic and monetary. With the passing of the time, industrial developments in monetary sector in Indonesia are increasing and with the increase of industrial cross-sectoral problems, a reformation in banking law is needed.

The reason the formatting the FSA is the complexity and various increase in financial products, the occurrence of conglomeration symptoms of financial services companies, and globalization of the financial service industries. In principle, the establishment of the FSA is to become an integrated surveillance and makes the coordination easier for more effective supervision. Article 2 paragraph (2) of Law Number 21 Year 2011 on the Financial Services Authority (hereinafter referred to as the FSA) states that the FSA is an independent institution in carrying out its duties and authorities, free from interference by other parties, except for the things that are expressly provided in this Act. FSA in performing its duties based on the principles of independence, accountability, responsibility, transparency and fairness, other than that the FSA should have a structure with the principle of "checks and balances" that is a clear separation between the functions, duties and authority of regulation and supervision. [3] The banking institutions in the compulsory use of the precautionary principle in order to avoid mistakes in public fund management, besides that, banking institutions are obliged to implement the compulsory guidelines for good corporate governance (GCG). Each bank must ensure that the principles of GCG are applied to every aspect of business and at all levels of the bank. GCG principles which must be ensured its implementation include transparency, accountability, responsibility, independency and fairness. GCG principles are needed to achieve business continuity (sustainability) of banks with regard to the interests of shareholders, customers and other stakeholders. [4] In terms of running the implementation of the guidelines of Good Corporate Governance (GCG), the FSA has a function in monitoring the implementation of the guidelines. Implementation of the Code of Good Corporate Governance (GCG) is one key to success for growing companies and profitable in the long term, while winning global business competition, especially for companies that have been able to grow at the same time being open, GCG Principles needed to achieve business continuity (sustainability) bank with regard to the interests of shareholders, customers and other stakeholders.

Research problems that will be discussed in this paper is: How does the function of the Financial Services Authority (FSA) as an independent watchdog of banking institutions, how the implementation of Good Corporate Governance (GCG) at the banking institutions in Indonesia, how the supervision of the Financial Services Authority (FSA) on the implementation of Good Corporate Governance (GCG) at the banking institutions in Indonesia. The research method is normative and empirical, using secondary and primary data, which retrieved from literature study and field studies, and data are analyzed with qualitative analysis.

2. Discussion

Based on the results of the study, FSA has a function in organizing the integrated system of regulation and supervision to the overall activity in the financial service sectors, as set out in Article 5 of Law FSA. In its surveillance on the financial industry FSA oversees banks and non-banks which have now been located in one roof or integrated monitoring system so that the monitoring system can exchange information easily. The integrated control system is expected to minimize the possibility of colision of inter-agency coordination. FSA is an

independent organization and free from interference by other parties, which has functions, duties, and authority of regulation, supervision, inspection, and investigation as referred to this Act, in accordance with the contents of Article 1, paragraph 1 of FSA Law. Independence of each party in question is forbidden to interfere in the implementation its function, duties and authority of the FSA, it is intended to ensure the implementation of the FSA Part of the task set out in Article 6 of the Act, namely the FSA, FSA regulation and supervision duties to:

1. The financial service sectors of Banking Activities
2. The activities in the financial service sectors, the Capital Market; and
3. The financial services sector in Insurance, Pension Funds, Finance Institutions, and Other Financial Service Institutions.

Based on the results of interviews for research in Lampung with the FSA representative Mr. Iwan Kurniawan as bank supervisors, they conclude that the FSA is an independent institution. There is a strict separation between the FSA and BI tasks, FSA regulate and supervise on institutional, health, aspects of the prudential and bank inspection are the scope of regulation and microprudential supervision (supervision of banks in person), or the FSA focuses more on the health of financial institutions in private , As for the scope of BI is the policy administration that has the main purpose of maintaining the stability of the financial system as a whole in order to mitigate systemic ratio and crisis costs (macro prudential). Furthermore, according to Iwan Kurniawan, FSA's independence is manifested in two ways, namely: FSA institutionally is not included Indonesian government and the FSA leaders have the certainty of his position. Independence of FSA will be effective, if there is good corporate governance in the area of finance and banking. Because the application of the system GCG consistently proven to improve quality and also can be a barrier performance engineering activity which results in the financial statements do not describe the fundamental value of the company. Furthermore, Iwan Kurniawan explained that there are some things about FSA independence regarding:

1. Dismissal of members of the institution that can only be done by the causes set forth in the law
2. Problems dismissal which is free from intervention of President, the independent nature is also reflected in:
   a. Leadership institution is collective, not just one leader. Collegial leadership is useful for internal processes in making decisions, in particular to avoid the possible politicization of the decision as a result of the membership selection process;
   b. Leadership is not controlled or not majority comes from a several political parties; and
   c. Tenure of the leaders of institutions do not run out simultaneously, but alternately (staggered terms).

Based on Chapter IV on the Board of Commissioners, regarding the structure of Article 10 of the FSA, it regulates:

1. The FSA is led by the Board of Commissioners
2. The Board of Commissioners as referred to in paragraph (1) is collective and collegial
3. The Board of Commissioners consists of nine (9) members as determined by the President
4. Composition of the Board of Commissioners as referred to in paragraph (3) shall consist of:
   a. A Chairman concurrently as a member;
   b. A Vice Chairman as Chairman of the Ethics Committee concorrently as a member;
   c. A Chief Executive of the banking supervisor concurrently as a member;
   d. A Chief Executive Officer and member of the Capital Market supervisory;
   e. A Chief Executive Supervisor of Insurance, Pension Funds, Financing Institutions, and Other Financial Services Institutions concurrently as a member;
   f. A Chairman of the Board of Audit concurrently as amember;
   g. A member in charge of education and consumer protection;
   h. An Ex-officio member of Bank of Indonesia, which is a member of the Board of Governors of Bank Indonesia; and

i. An Ex-officio member of the Ministry of Finance which is the first echelon officials of the Ministry of Finance.

5. Members of the Board of Commissioners as referred to in paragraph (4) have the same voting rights.

Article 11 of the Law FSA regulates the appointment of the Board of Commissioners are:
1. Members of the Board of Commissioners as referred to in Article 10 paragraph (4) letter a to letter g elected by the House of Representatives based on prospective members proposed by the President.

Article 17 of Law FSA regulates the discharge of the Board of Commissioners are:

1. Members of the Board of Commissioners can not be discharged before his tenure expires, except if it meets the following reasons:
   a. Death;
   b. Resignation;
   c. Term has expired and not been revoted;
   d. Remains incapacitated so he can not execute a task or an estimated medically unable to carry out the task more than six (6) consecutive months;
   e. Do not carry out their duties as members of the Board of Commissioners of more than three (3) consecutive months without reasonable excuse;
   f. No longer a member of the Board of Governors of Bank Indonesia for Ex-officio members of the Board of Commissioners from Bank Indonesia as referred to in Article 10 paragraph (4) letter h;
   g. No longer a first echelon officials at the Ministry of Finance for Ex-officio members of the Board of Commissioners that comes from the Ministry of Finance as referred to in Article 10 paragraph (4) letter i;
   h. Has a family relationship to the second degree and / or marriage with other members of the Board of Commissioners and none resigns from his post;
   i. Violate the code of ethics; or
   j. No longer meets one of the conditions referred to in Article 15 and in violation of the prohibition referred to in Article 22.
2. Termination as referred to in paragraph (1) proposed by the Board of Commissioners to the President to be confirmed.

Based on the above provisions, it can be analyzed that the Board of Commissioners is the supreme leader of the FSA, the Board of Commissioners can not be dismissed by the president, the Board elected by the Parliament on the basis of a proposal from the president, this is where the visible independence of the FSA as financial services supervisory department. Based on research in the representative of FSA Lampung, Iwan Kurniawan states that the regulation of Bank of Indonesia No. 8/14 / PBI / 2006 on Amendment to Bank Indonesia Regulation Number 8/4 / PBI / 2006 on the Implementation of Good Corporate Governance, so that each bank is required to apply GCG , including to conduct self-assessment and submit a report the GCG implementation. GCG self assessment is done by filling the GCG Self Assessment Working Paper that has been established, which includes 11 (eleven) Factor Assessment. The procedures for assessment of self-assessment are as follows:

1. Setting a Value rating per Factors, by conducting Self Assessment analysis by comparing objective and criteria / indicators that have been determined by the actual condition of the Bank;
2. Assign Value Composite results of self assessment, by weighting the whole factor, summing and further provides composite predicate; (C) In determining predicate, please note the following limitations: (1) If there is a factor in the assessment of all factors with a value rating is 5, then the predicate Composite highest attainable Bank is "Good Enough" and (2) If the assessment of all factors are Factor with Value Rank 4, the Composite Predicate highest attainable Bank is "Good".

Furthermore Mr. Iwan Kurniawan as superintendent Bank Lampung FSA representative says that, there are some indicators that regulate corporate governance, so as to assess whether these banks have or have not implemented GCG, it will be judged from these indicators. Basically GCG between Conventional Bank and Islamic ones is the same, namely: transparency, accountability, responsibility, independence and fairness, but there are several different assessment indicators according to the needs and policies. Based on Bank of Indonesia Circular Letter No. 15/15 / DPNP on Circular Letter to All Conventional Commercial Banks In Indonesia, in Point 1 (B) is in order to ensure the implementation of five (5) basic principles of good corporate governance as mentioned above, the bank must perform its own assessment (self assessment) periodically which at least includes 11 (eleven) Factor Assessment GCG implementation, namely:

1. The implementation of tasks and responsibilities of the Board of Commissioners;
2. Implementation of the tasks and responsibilities of Board of Directors;
3. The completion and implementation of the tasks of the Committee;
4. Handling conflicts of interest;
5. Implementation of compliance;
6. Implementation of the internal audit functions;
7. Implementation of the external audit functions;
8. Implementation of risk management including internal control systems;
9. Provision of funds to related parties) and penediaan large fund provision (large exposures);0. Transparency of banks' financial and non-financial condition GCG implementation report and internal reporting; and 11. The bank's strategic plan [4]

Below is a table giving scores on Good Corporate Governance Corporate based on the Governance Self-Assessment Bank namely:

Table 1 Provision of Score GCG

No	Aspek Penilaian	Bobot (%) (a)	Peringkat (b)	Nilai/Skor (a) x (b)
1	Pelaksanaan tugas dan tanggung jawab Dewan Komisaris;	10%	2	0,2
2	Pelaksanaan tugas dan taggung jawab Direksi;	20%	2	0,4
3	Kelengkapan dan pelaksanaan tugas Komite;	10%	2	0,2
4	Penanganan benturan kepentingan;	10%	1	0,1
5	Penerapan fungsi kepatuhan;	5%	2	0,1
6	Penerapan fungsi audit intern;	5%	2	0,1
7	Penerapan fungsi audit ekstern;	5%	1	0,5
8	Penerapan manajemen risiko termasuk sistem pengendalian intern;	7,5%	2	0,15
9	Penyediaan dana kepada pihak terkait (related party) dan penediaan dana besar (large exposures);	7,5%	2	0,15
10	Transparansi kondisi keuangan dan non keuangan bank, laporan pelaksanaan GCG dan pelaporan internal; dan	15%	1	0,15
11	Rencana strategis bank	5%	2	0,1
12	Jumlah nilai komposit	100%		1,7

Source: adapted from Bank Indonesia Circular Letter No. 9/12 / DPNP Date May 30, 2007

After all stages of the assessment of Good Corporate Governance Index (CGPI) ae done, which in the example above of 1.7, the results obtained will be discussed in a forum panel of experts to determine

the results of research and rating CGPI. The ranking is designed to be five (5) categories according to the degree (level) reliable through the balanced application of GCG shown in the following table.

Table 2 Ranking of Good Corporate Governance Perception Index (CGPI) Practice of Good Corporate Governance (GCG) Commercial Bank

Tingkat/Nilai Peringkatan Komposit	Predikat (Kualitas)
Nilai Komposit < 1,5	Sangat Baik
1,5 ≤ Nilai Komposit < 2,5	Baik
2,5 ≤ Nilai Komposit < 3,5	Cukup Baik
3,5 ≤ Nilai Komposit < 4	Kurang Baik
4,5 ≤ Nilai Komposit < 5	Tidak Baik

Source: Bank Indonesia Circular Letter No. 9/12 / DPNP Date May 20, 2007

Based on the results of interviews over at Metro Bank Mandiri branch with Mr Daryanto as head of the branch, he says that in the implementation of GCG, it is divided by 2; Internal supervision, 2. External supervision

a. Internal controls done are:

1. Consistently doing a briefing everyday, and chanting the TIPCE Culture (Trust, Integrity, Professional, Customer Focus and Excellent)
2. Providing punishment in the form of termination of employment to employees who perform Fraud (whatever the number is) and proved although only Rp. 10,000; (Ten thousand Rupiahs), there are employees who was discharged from Bank Mandiri

b. External supervision done are:

1. Providing education to all the customers that in addition to official fees corresponding memorandum and commitment, the debtor is prohibited to pay anything
2. Each transaction must be based on the availability of a memorandum of books (deposit note, receipt, advice debit / credit, etc.)
3. In the document published by the Bank for partners (e.g. Wood Seller, goods Order / services) has always been and must be included the phrase "in order to implement good corporate governance, you are not allowed to give gifts or compensation of any kind to the ranks of employees of Bank Mandiri related to employment or the provision of credit facilities and other facilities ".

Based on the description above can be analyzed that the Bank Mandiri Branch Metro has implemented GCG principles in the form of transparency that provide information according to predefined rules, accountability that anyone with no any exceptions have to account for its performance, if one must be declared wrong in order not to affect the other. It is the same as the Islamic Bank that in this study, the authors interviewed the Operational Head Manager of Bank Muamalat Center, Lampung province, Mr Sutisna states in the implementation of GCG applied for a bank is not permitted for any party to give a gift in any form and at any time. Each officer has to say hello to the consumer who comes, if the officer does not say hello he will immediately get a warning. The principles on corporate governance in Islamic (sharia) and in accordance with the best practices applicable in national and international banks and values that exist in Bank Muamalat Indonesia, is the basis for the company to continue the best form implementing of GCG, these values are reflected in the following aspects: transparency, accountability, responsibility, professional, fairness and caring attitude. Mr. Sutisna as Head Operational Manager of Bank Muamalat under Article 2 of Regulation of Bank Indonesia Number 11/33 / PBI / 2009 on the implementation of Good Corporate Governance for Islamic Banks and Sharia Business Unit says that:

1. Banks are required to implement GCG in all its business activities at all levels of the organization
2. Implementation of GCG as referred to in paragraph (1) for at least BUS must be realized in:
   a. Implementation of the tasks and responsibilities of the Board of Commissioners and Board of Directors;
   b. Completeness and implementation of tasks and functions of the committees who run the internal control BUS;

c. the implemntation of duties and responsibilities of the Shariah Supervisory Board;
d. Implementation of compliance, internal audit and external audit;
e. The maximum limit of the distribution of funds; and
f. Transparency of BUS financial and non-financial condition.

3. Implementation of GCG as referred to in paragraph (1) for at least UUS must be realized in:
a. Implementation of the tasks and responsibilities of the Director of UUS;
b. Implementation of the tasks and responsibilities of the Sharia Supervisory Board;
c. Channelling funds to core customer financing and storage of funds by depositors core; and
d. Transparency of UUS financial and non-financial condition.

Based on the description above the BUS is that Islamic Conventional Banks, which provides services in payment traffic as referred to in Law Number 21 Year 2008 on Islamic Banking (Article 1 paragraph 1 of Law No. 21 of 2008 concerning Islamic Banking: Islamic banking is everything concerning the Islamic banks and Islamic business units, covering institutional, business activities, as well as the manner and process of carrying out their business activities).
Below is a table giving weight to the assessment of the GCG Islamic Banks:

Table 3 Weight Rating Good Corporate Governance Islamic Banks

No	Faktor Yang Dinilai	Bobot Penilaian
1	Pelaksanaan tugas dan tanggung jawab Dewan Komisaris	12,5%
2	Pelaksanaan tugas dan tanggung jawab Direksi	17,5%
3	Kelengkapan dan pelaksanaan tugas komite-komite	10%
4	Pelaksanaan tugas dan tanggung jawab Dewan Pengawas Syariah	10%
5	Pelaksanaan prinsip syariah dalam kegiatan penghimpunan dan penyaluran dana serta layanan jasa	5%
6	Penanganan benturan kepentingan	10%
7	Penerapan fungsi audit intern	5%
8	Penerapan fungsi kepatuhan	5%
9	Penerapan fungsi audit ekstern	5%
10	Transparansi kondisi keuangan dan non keuangan, laporan pelaksanaan GCG, dan pelaporan internal	15%
11	Batas maksimum penyaluran dana	5%
	Total	100%

Source: Bank Indonesia Circular Letter No. 12/13 / DPbS Year 2010

Based on the table above are the weight or value in percentage given to indicators for assessing a sharia GCG at Commercial Bank, the largest found in the implementation of the duties and responsibilities of the management, it is because the Board of Directors is authorized organ and is responsible for managing the company and represents the company's outside and inside the court, so the responsibility of the amnagement is very large and high risk. Similarly, commercial conventional banks, after self-implemented, then the next stage is to find the value of the composite, which is ranked by the weight multiplying assessment to determine the predicate quality of GCG implementation in Islamic banks described in the following table.

Table 4 Ranking of Good Corporate GovernancePeception Index (CGPI) Practice of Good Corporate Governance bank Sharia

No	Nilai Komposit	Predikat (Kualitas)
1	Nilai Komposit < 1,5	Sangat Baik
2	15 < Nilai Komposit < 2,4	Baik
3	2,5 < Nilai Komposit < 3,4	Cukup Baik
4	3,5 < Nilai Komposit < 4,4	Buruk
5	4,5 < Nilai Komposit < 5	Sangat Buruk

Source: Bank Indonesia Circular Letter No. 12/13 / DPbS Year 2010

Related to bank supervision, it can be divided into two types, namely indirect supervision and direct supervision. Indirect supervision is supervision conducted by bank supervisors through research and analysis of the reports which are to submitted by the Bank to BI. The report is used to diagnose the condition of the bank. The activities mentioned above are intended to assess the factors that affect the performance and development of the bank, compliance with applicable regulations and the implementation of an early warning system (early detection), to determine the degree of difficulty faced by the bank earlier. Based on the above information, it can be analyzed that the results of the indirect supervision is that the supervisor can determine the necessary steps to follow-up, such as, reminding the bank's management on the performance and problems faced and or conduct field checks on the bank concerned. Direct supervision performed by the FSA, with the aim to confirm the correctness and accuracy of submitted bank statements. Examination carried out based on the identification of risks and indicators that have been determined by the FSA. Basically a good bank is a bank that can perform its functions properly. The regulation of bank goodness followed up with the BI regulation No. 6/10 / PBI / 2004 (for shortened by PBI No. 6/10 / PBI / 2004) on the Bank rating system General, on 12 April 2004. Where the general purpose of the investigation of the bank to be used as:

1. benchmarks for the management of the bank, whether management has been carried out in accordance and in line with the principles of good banking, the provisions in force and most importantly, must be based on the precautionary principle;
2. Benchmarks to set the direction of the coaching and development of both individual banks overall banking.

Implementation of checks are used to ascertain the accuracy of reported data from the bank, digging further information / problems faced, monitoring the implementation of the action program, as well as for other purposes in the framework of bank supervision accurately. Inspection activities carried out all the time, but at a time when certain times made directly depends the extent to which the bank is deemed to contain potential problems that require examination.

3. Conclussion

FSA has a function in organizing the regulatory and supervisory system which is integrated to the overall activity in the financial service sectors, as set out in Article 5 of Law FSA. In its oversight on the financial industry, FSA oversees banks and non-banks that have now been located in one roof or integrated monitoring system so that the monitoring system can exchange information easily. There is a strict separation between the FSA and BI tasks, FSA regulate and supervise on institutional, health, aspects of the prudential and bank inspection is the scope of regulation and micro prudential supervision (supervision of banks in private), or the FSA more focused on the health of financial institutions in private. As for the scope, BI is the policy administration that has the main purpose of

maintaining the stability of the financial system as a whole in order to mitigate systemic ratio and costs crisis (macro prudential). The independence of the FSA is manifested in two ways, namely: FSA institutionally is not included Indonesian government system and the leadership of the FSA has the certainty of his position.

Implementation of GCG implementation in banking institutions in Indonesia is very good, Bank Mandiri as a representative of a conventional bank has implemented GCG principles in the form of transparency that provide information in accordance with predetermined rules, accountability is that no exception should be accountable for its performance, if one must be declared wrong so as not to affect the other. The principles on corporate governance in Islamic (sharia) and in accordance with the best practices applicable for national and international banks and values that exist in Bank Muamalat Indonesia, is the basis for the company to continue to form the best banks in the implementation of GCG, these values are reflected in the following aspects: transparency, accountability, responsibility, professional, fairness and caring attitude. Indonesia supervision of banking institutions can be divided into two (2) types of monitoring indirect and direct supervision. Indirect supervision is supervision conducted by bank supervisors through research and analysis of the reports to be submitted by the Bank to the supervisor in this case is BI. Direct supervision is the direct examination of the bank in question if after analyzed there are things that are not included in the standard parameters of the FSA.

The Influence of Segmenting Strategy and Brand Positioning Strategy on Consumer Purchasing Decision (Study at Smartphone Samsung in Indonesia)

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Abstrak

Determination of market segments is important in recognizing the prospective customer and determine who the potential customers. Segmentation can be divided by location, age, gender, income level, habits and so on. Determination of targeting depends on things like character of the product, and the level of competition in the segment is already selected. Positioning is an action or measures from the manufacturer to design the company's image. Purchasing decisions are consumer action in an effort to meet the wants and needs is a process of determining the attitude or the purchase of goods and services. This research aims to know which Segmenting and Brand Positioning on purchasing decisions at Samsung Smartphone in Indonesia. The method used in this research is multiple regression.

The result is the effect of segmenting stratgy and brand positioning strategy on purchasing decisions is shown by the equation Y = 0.268 X1 + 0.577X2. Partially Segmenting, and Positioning significantly influence on purchasing decisions. Based on the results, the regression positioning has a big influence on consumer purchasing decisions, then the sub-variables of positioning an appropriate strategy for developing Smartphone Samsung.

Keywords: *Segmenting, Positioning, Purchasing Decisions.*

1. Introduction

1.1. Research Background

According Kotler and Amstrong (2012:6) marketing is all about creating value for customers. So, as the first step in the marketing process, the company must understand how the consumers and marketplace operate. Individual consumers obtain or purchase goods through the process; firstly through advertisements or references from others and secondly by comparing one product with another until they have a purchasing decision. Marketers need to understand each side of the consumers' behavior. According to Kotler and Keller (2012:213) companies cannot connect with all customers in large, broad, or diverse markets, but they can divide such markets into groups of consumers or segments with distinct needs and wants. A company then needs to identify which market segments it can serve effectively. This decision requires a keen understanding of consumer's behavior and careful strategic thinking. To develop the best marketing plans, managers need to understand what makes each segment unique and different. Identifying and satisfying the right market segments is often the key of marketing success.

The whole marketing strategy is built upon STP which stands for Segmenting, Targeting, and Positioning. Companies are looking for a number of different needs and groups in the market, targeting the needs and groups that can be satisfied in a certain manner, and further positioned in such

way that its offer will be comprehended by the target market and offer the brand figure of the company. According to Ray and Choudhury (2015), consumer tastes can change very rapidly; creating new business opportunities and strategies marketers are very important. There is a threat of failure to adopt changes because the standard of living or style based on the background, educational standards, and family. Therefore it takes a segmentation strategy for making purchasing decisions made in Kolkata. In this study used three variables, namely demography, psychograph and benefits sought. The variable that has the most significant influence is psychograph. On the other hand, Hasan and Craft (2012) describe the relationship between segmentation and brand positioning as a center for the development of global branding strategy. Therefore, positioning is described as a strategy to identify and direct marketing resources between segments of the target market.

According Solomon (2012:185), segmenting is the process of dividing a larger market into smaller pieces based on one or more meaningfully shared characteristics. This process is a way of life for almost all marketers in both consumers and business-to-business markets. The truth is that you cannot please all people all the time, so you need to take your best shot. The next step is targeting. Solomon (2012:198) describes targeting as a strategy in which marketers evaluate the attractiveness of each potential segment. According to Solomon (2012:201), the final stage of this strategy is positioning. Positioning means developing a marketing strategy to influence how a particular market segment perceives a good or service in comparison to the competition. To position a brand, marketers have to clearly understand the criteria of target consumers to evaluate competing products and then convince them that their product, service, or organization will meet those needs. Therefore, the strategy STP (Segmenting, Targeting, and Positioning) is a major factor in influencing consumers' purchasing decisions.

Samsung considers that every parts of the business are important. Samsung Company's management understands that segmenting strategy and brand positioning have important roles in influencing consumers to make purchasing decisions. Samsung until today become one of the biggest brands in the world by releasing smartphones that became champion in the gadget market competition. One of them is the Samsung Galaxy. Samsung's success in the field of technology particularly has made it among the top five in the world. Based on preliminary observations, the researcher used secondary data to provide authentic data about the Samsung Company. Researchers refer to the data presented by Trend Force.

TABLE 1.1. GLOBAL TREND FORCE SURVEY IN 2015-2017

Rank	2015	Market Share	2016	Market Share	2017	Market Share
1	Samsung	24,7%	Samsung	22,80%	Samsung	22,60%
2	Apple	18,2%	Apple	15,3%	Apple	15,60%
3	Huawei	8,30%	Huawei	9,60%	Huawei	11,10%
4	Lenovo	5,40%	Oppo	7,2%	Oppo	8,50%
5	LG	5,20%	Vivo	6,00%	Vivo	7,10%
6	Xiomi	5,20%	LG	5,5%	LG	5,50%
7	Oppo	3,80%	Xiomi	3,70%	Xiomi	3,80%
8	TCL	3,70%	Lenovo	3,70%	Lenovo	3,80%
9	Vivo	3,60%	TCL	3,70%	TCL	3,20%
10	ZTE	3,40%	ZTE	3,50%	ZTE	3,00%
11	Others	18,50%	Others	18,90%	Others	15,90%

Source: Trend Force, January 2017

Conversely, according to Table 1.1. although Samsung is in the top five of the world, stock movements decreased from year to year, in 2015 by 24.7% until the beginning of January 2017 by 22.6%. On the other hand, competitors like Oppo managed to rise from the ranks 7 to rank 4.

TABLE 1.2. INDONESIA'S TREND FORCE SURVEY IN 2013-2015

NO	2013	Market Share	2014	Market Share	2015	Market Share	2016	Market Share

1	Samsung	32.5%	Samsung	28.0%	Samsung	26.6%	Samsung	22,2%
2	Apple	16.6%	Apple	16.4%	Apple	16.4%	Apple	16.8%
3	Lenovo	4.9%	Lenovo	7.9%	Lenovo	7.4%	Huawei	9.3%
4	Huawei	4.4%	LG	6.0%	Huawei	6.6%	Lenovo	6.2%
5	LG	4.3%	Huawei	5.9%	Xiomi	6.5%	Xiomi	5.8%
6	Sony	4.1%	Xiomi	5.2%	LG	6.1%	LG	5.0%
7	Coolpad	3.6%	Coolpad	4.2%	TCL	4.1%	TCL	4.0%
8	ZTE	3.2%	Sony	3.9%	Coolpad	4.0%	Oppo	3.9%
9	Nokia	3.0%	ZTE	3.1%	ZTE	3.4%	Vivo	3.4%
10	RIM	2.5%	TCL	2.7%	Sony	3.1%	ZTE	3.1%

Source: Trend Force, Jan 2016

Based on the survey results in Table 1.2 in 2013 to 2016, Samsung is the market leader in Indonesia with a market share of 32.5% in 2013 which is the highest point of Samsung in the last three years, but at the end of 2016, Samsung's market share dropped to 22.2 % in which Samsung remains the market leader. It might happen because of its competitor, Lenovo, which started at 4.9% and rose to 6.2%. According to the data, although Samsung ranked number one each year, Samsung's market share decreased. Subject shows that the indication of the problems that occur in the company. Thus making the number of the company's market share decrease each year.

FIGURE 1.1. LOGO AND SLOGAN OF SAMSUNG SMARTPHONE

Source: www.wikipedia.com

The philosophy of the Samsung logo is oval background that aims to create a sense of dynamic and blue means responsibility and commitment, which means that the segmentation Samsung smartphone is positioned as a dynamic and elegant lifestyle. Samsung slogan is "The Next Big Thing Is Here". That means Samsung smartphone is a product expected by everyone because it has a very good quality and have continuous improvement throughout the process of innovation itself. This product is purposely created to meet consumers' needs. Samsung's segmentation is divided into four parts:1) Geographic: the products are aimed in all regions throughout Indonesia, especially in large cities, as well as some other developing countries such as Malaysia, India, Singapore, etc. Even some market are specialized and accustomed to mobile phones exclusively. This phone can be found within that market; 2) Demographic: divided into several sections such as age, gender, income, etc. These products are used by teens and adults alike ranging from 13-60 years of age. This product can also be used for women and men. Samsung Smartphone is devoted to the middle class and above, since the price of Samsung's smartphone from Rp. 2.000.000 – Rp. 7.750.000 ; 3) Psychographics: based on personality and lifestyle which are deemed differently that result in the product individualization as every product represents customer differences. For example is the Samsung Galaxy Young, suggested from the name Young, the phone is for those who are young. There was also a special edition Samsung Galaxy Y is the Samsung Galaxy Y Hello Kitty, with a design that is very girly. This makes the Samsung Galaxy Y Hello Kitty is suitable for use by young women, especially those who love Hello Kitty. So is the Samsung Galaxy S6 has a high capacity with large memory because of the expensive price reserved for the elite; 4) Behavior: those who purchase this phone are those who need a sophisticated phone with good features and elegant design, and those who always need connection to the internet. Usually they are loyal consumers who are accustomed to using the Android phone.

For positioning strategy, the company is using the advantages of product attributes, competition by competitors, product category and price. It is a strategy to get a good position.

1.2. Problems Formulation

Based on data obtained from TrendForce on January 2017, Samsung has decreased the percentage of market share in 2015 to 2017 in the world. On the other hand, compared to Xiomi, the growth from year to year has increased. Likewise, based on data TrendForce, Samsung also suffer a decrease in the market share of four consecutive years from 2013-2016 in Indonesia (Table 1.1 and 1.2). There was a decrease on the market share of Samsung smartphones from year to year, although Samsung's market share still ranks among the top five. Based on the above problems, the formulation of the problem of this study are as follows:

1. Does segmenting strategy influence purchase decisions at Samsung smartphones in Indonesia?
2. Does brand positioning strategy influence purchase decisions at Samsung smartphones in Indonesia?

2. Literature Review and Hypothesis

According to Epetimehim (2011), market segmentation involves the grouping of customers with similar needs and buying behavior into segments, each of which can be reached by a distinct marketing program. The concept attempts to reconcile differing customer needs with limited company resources, and allows product and marketing offerings to be adjusted to suit different customer groups. In line with Kotler and Keller (2012:214), market segmentation divides a market into well-defined slices. A *market segment* consists of a group of customers who share a similar set of needs and wants. The marketer's task is to identify the appropriate number and nature of market segments and decide which one(s) to target.

According to the marketing literature, by segmenting helps companies to identify market opportunities and improve the allocation of resources, this should help in the development of a sustainable competitive position and ultimately lead to better customer satisfaction in Epetimehim (2011). As stated by Simanjuntak (2012), segmenting the market can be done by grouping the appropriate activity. Efforts are being made to clarify and define market segmentation, using a wide range of variables, ranging from consumer classification based on products to their needs. There are two methods commonly used in segmenting the market:

a) Breakdown Method, in which assume market consists of the same consumer groups, so that there are major problems in the identification of a group that has specific differences.
b) Build-up method, in which considers the market consists of different consumer needs, so that the efforts are to find similarities between them.

According to Kotler and Armstrong (2012: 191) the fundamentals of the market segment comprised of: 1) Geographic Segmentation: this segment divides a market into some different geographical units, such as nations, states, regions, counties, cities, or even neighborhoods; 2) Demographic Segmentation: Mooiji (2004) in Laroche (2011) four of the most common demographic variables employed in domestic and international segmentation include age, gender, income, and education. According to Wijaya (2006) demographic factors often used as the basis for segmenting consumer groups because of the needs, desires and consumer usage rate is closely related to demographic variables. The demographic data is needed among other things to anticipate changes in consumer marketing; it involves how consumers assess the available potential in each geographical area that can be reached. Demographic variables can be explained as follows: age, gender, profession, education, income; 3) Psychographic Segmentation based on lifestyle and personality. Lifestyle affects a person's behavior, and ultimately determines a person's purchasing decision. Lifestyle reflects how people spend time and money in their daily activities and interests; 4) Behavior Segmentation divides buyers into segments based on knowledge, attitudes, usage, or their response to a product.

After dividing the market into several market segments based on specific indicators and selecting one or some of the market segments to be used as target markets, the next step is determining the position to be created in the minds of consumers. According to Solomon (2012:201), positioning strategy is designing an offer and a corporate figure that occupies a distinguished position between competitors in the minds of customers. While Bovee in Srivastava (2013) defines positioning

as ‘the process of promoting buyers to form a particular mental impression of our product relative to our competitors’. Similar with that, Aaker in Olsanova (2013) states that brand position is part of the brand identity and value proposition that is to be actively communicated to the target audience and that demonstrates an advantage over competing brands. According to Wijaya (2006), positioning is how a company's brand can go in and dominate the minds of customers. Too many consumers are faced with information about products and services. Consumers are unlikely to re-evaluate the product at any time to decide purchase, otherwise in the minds of consumers every product or brand will be grouped into several categories. Positioning is not the activities that marketers do with the product, but the activities that carry marketers on the minds of potential customers with the right position so that the product can be implanted in the minds of customers.

Consumer buying behavior refers to the buying habits of the consumer. Many factors, specifications, and characteristics could affect individual decision-making process, spending habits, and purchasing behavior. According to Kotler and Armstrong (2012: 152), definition of the purchase decision is the stage in the buyer's decision process in which consumers actually buy. in line with Kotler and Keller (2012:152), the buyer decision process consists of five stages: need recognition, information search, evaluation of alternatives, purchase decision, and post-purchase behavior.

In a large market has a wide range of buyers. Generally, each buyer has motives and behavior in purchasing. The difference shows the motives and behaviors of the market that heterogeneous products with many consumers have a variety of needs, the desire, the ability to buy, and buying behavior. It is extremely difficult for a company to serve the entire market with different consumer. According to Ray and Choudhury (2015) find a positive relationship between segmenting and purchase decision.

Hypothesis 1: Segmenting Strategy has a significant influence on purchasing decisions.

Marketers should determine the position, the positioning in the context of marketing is the way a product, brand or company organization is perceived in relative terms compared with competitors by current customers or prospective customers. According to Solomon (2012: 201) positioning strategy is the act of designing an offer and the company's figure that occupies a distinguished position in the minds of customers. If the position is perceptions of products, so positioning it is mean designing corporate figure to get a special and unique place in the minds of the target market lead more advantages rather than competitor. It can be concluded in the presence of the correct positioning will make the company have the advantage for offering a corporate figure that will make consumers prefer making purchasing decisions in the company compared to competitorsAccording to Razak’s research results (2014), there is a positive relationship between the positioning of the purchasing decision.

Hypothesis 2: Positioning Strategy has a significant influence on purchasing decisions.

FIGURE 2.4 FRAMEWORK OF RESEARCH

3. Research Methodology

3.1 Research Design

This research used descriptive and verification design. Model descriptive analysis is a method that is carried out to explain the characteristics of the variables examined in a situation, as according to Sekaran (2010: 158). This study also used verification, a method that aims to test mathematically suspicion about the relationship between the variables of the problem that is being investigated in the hypothesis, in the other words as study for testing a hypothesis.

3.2 Population and Sample

According to Sugiyono (2013: 80), population is a generalization region consisting of objects or subjects that have certain qualities and characteristics defined by the researchers to learn and then drawn conclusions. The population used in this study is consumers of Samsung Smartphone in Indonesia.

The procedure used for data collection is *a non-probability sampling* method, where this technique gives a different opportunity or chance for each element or member of the population to be selected into the sample. Selection of elements based on researcher sample discretion. In this procedure, each element does not recognize the chance to become element sample. *Purposive sampling technique* is essential when the researchers are studying a specific characteristic, feature or function. This type of sampling results in a group of responses does not represent the entire population, but instead represents a group that has a specific characteristic in common. Market research is a common example of purposive sampling because these researcher looks almost exclusively at people who use a particular product or use a specific store or company. , the numbers of respondents in this research were 200 respondents to represent consumers of Samsung smartphone in Indonesia which is exactly not known.

Collecting data in this study is using field research techniques (survey) with distributing a questionnaire containing sheet statements of Indonesian society in order to obtain some of the information required.

3.3 Validity Testing Instrument

Validity in this study conducted with SPSS 20.0. According Sekaran (2010: 311), if the result of factors model analysis shows the significance under 0.05 and Kaiser-Meyer-Olkin (KMO), anti-image, communalities and factor loading ≥ 0.5 it is then declared valid conditions and the sample can be investigated further.

3.4 Testing Instrument Reliability

Reliability test in this study using the coefficient Cronbach's Alpha with SPSS. According to Sugiyono (2013: 132), reliability is shown by the coefficient of reliability testing Alpha Cronbach and it can be processed with SPSS 20.0. If there is a statement that has a Cronbach's Alpha value if item deleted greater than Croanbach's Alpha then the statement is not reliable and should do further testing. The test results is said to be reliable if the value of Alpha Croanbach > 0.6 and Alpha Croanbach count value is greater than the Croanbach's Alpha if item deleted (Sekaran, 2010: 182).

3.5 Hypothesis Testing

Testing the hypothesis is equivalent to a significant test multiple linear regression coefficient and is partially related to the research hypothesis statement (Sanusi, 2014: 144).

4. Results and Discussions

4.1 Respondents characteristics by province

Respondents came from 20 different provinces. The percentage of respondents originated from the province of Lampung and West Java are respectively 43.5% and 22.5%. Provinces with the fewest respondents are Bali, South Kalimantan, Gorontalo, and Jambi that are all equal to 0.5%. This shows that although the Samsung Smartphone were distributed to various regions in Indonesia, there are differences in the percentage of respondents that a significant number of Lampung respondents at 43.5% with Gorontalo, Jambi by 0.5%. This is probably due to the uneven spread of the questionnaire, which is that the percentage of respondents outside of Lampung and West Java has differences in the amount given, but the province is one of the indicators that are important in segmenting due to the different culture of each region and Samsung smartphones should adjust the culture in media campaign from each region, for example, media promotion in Lampung and Jakarta are different. If it is in Jakarta, Samsung smartphones are often promoted by social event, in contrast to the situation in Lampung which is held by discounts in supermarkets.

4.2 Respondents characteristics by District

The majority of respondents live in the city by 90.5%. This indicates that consumers Samsung are located mainly in urban areas than in rural districts. This is because people who live in urban areas are quicker in grasping on the latest information about technology than those who live outside the city. They are also more concerned about the lifestyle, style, fashion, and the types of smartphones in particular, they are more likely to see famous brand and quality of the camera as a primary consideration in choosing a smartphone. On the other hand, the people who live in the countryside just buy what they need regardless of the brand, types, and specifications of a particular smartphone.

4.3 Respondents Characteristics By Gender

Respondents by gender was 27,5% male, while the female are 72,5%. It shows that most respondents are dominated by women because of some Samsung products are designed specifically for women such as Samsung La Fleur Series and Samsung Hello Kitty. Since that segmentation, Samsung smartphone is more devoted to women but to men does not cease to become Samsung's customer, which is why most of its products are designed to all gender. The other reason that men still choose Samsung is because they prefer the quality of existing specifications on the smartphone; they usually compare brands of smartphones and the disadvantages and advantages, and then choose one of the smartphones that are being considered according to the requirements, price and quality.

4.4 Respondents characteristics by age

Respondents who use smartphone from Samsung brand are mostly at the age of 17 to 26 years by 86% and the oldest respondents who use Samsung are at least at the age of 57 years. This is due to the age level that has different tastes and different styles as well. At the age of 17 to 26, customers tend to choose more modern product and still have inquisitive tendency to try new things in the world of technology and always try to look modern to follow the trend of the development of time, compared to the mature and older ones who limit themselves to try and accept new technological developments. Respondents with age over 57 years are only 1% because at that age people are more likely to limit themselves about technology; instead they are more likely to learn about religion.

4.5 Respondents characteristics by family size

Respondents are dominated by family size with 3-4 people in a family, amounted to 47.5%, and in the second position is a family with size of 5 – 9 person that is amounted to 41.5%. This is because the fewer the number of people in the family, the more a family are able to buy luxury goods such as smartphones and cars. If it is compared to respondents with family size amounted to more than 6, it will be very difficult to buy goods or the need that have a lot of costs so that they will buy a smartphone based upon the benefits of usability and price according to their abilities, the brand is not the main reason in choosing a smartphone because their expenses should be divided by the number of family members so that they are putting necessities such as tuition, books, staples, etc.

4.6 Respondents characteristics by status

The status of married respondents which are amounted by 11.5%, while respondents with unmarried status are 88.5%. This is because respondents that are not married do not have a child so that their income can be used to buy other stuffs, and it is different from the respondents who are married which their main focus is children so that when they want to buy an item they will be more selective if the goods are really needed or not. On the other hand, the respondents with married status have more consideration on the price of the smartphone. They would prefer to buy a smartphone that has quality and good features but has a cheap price.

4.7 Respondents characteristics by expenditure

The majority of respondents are spending less than Rp. 2,500,000 which is 71%. Based on these data, Samsung Smartphone users come from all segments of society although most come from the level of spending less than Rp. 2,500,000.

4.8 Respondents characteristics by occupation

Most of the respondents are occupied as a college student, amounting to 74%. Respondents with the least amount of occupation are housewives. This condition is because students are always updated about the latest information in the field of technology and always follow the trend. On the other hand Samsung is also a smartphone that has the most variety of types and prices, from the lowest to the utmost, such as the Samsung Galaxy Fame, Galaxy Young Galaxy Duos and Galaxy J1 that has priced below Rp 2,000,000. Samsung Galaxy Grand, Galaxy Grand Prime and Galaxy Grand Duos which has a price of Rp 2,800,000 to Rp 3,000,000 and Samsung Galaxy S Series has a price above Rp 5,000,000, making the students easier to choose the type of student Samsung Smartphone depends on how much money their parents have.

4.9 Respondents characteristics by education

The majority of respondents are from S1 education which amounted for 56.5%, and on the second position is senior high school which amounted for 34%. If it is associated with the majority of respondents on are students who come from the age of 16-24 years. At that age they still have tendency to eagerly know and try something new in the world of technology and to follow the trends. On the other hand, there are still many S1 students who still do not have a job and still rely on financial support from their parents, so that they choose the smartphone that has a variety of types and prices start from about Rp 2,000,000 to above Rp 5,000,000. Respondents with education level S2 will choose a smartphone based on the quality. The quality of smartphone like the Iphone, with high security system and not easily infected by malware so that data that is privacy are not easily exposed, is not financially burdened for the majority of students S2 who have never worked or are working.

4.10 Responses About Segmenting Strategy

TABLE 4.1 RESULTS OF RESPONDENTS ANSWER ABOUT SEGMENTING STRATEGY (X1)

No	Questions	Answer				
		SD	D	N	A	SA
1	Using a mobile phone Samsung improve my social status	21 (10,5%)	29 (14,5%)	74 (37%)	42 (22%)	34 (17%)
2	Using a Samsung mobile phone is a part of my lifestyle	19 (9,5%)	44 (22%)	62 (31%)	45 (22,5%)	30 (15%)
3	My faithful / loyal with Samsung smartphone	15 (7%)	48 (24%)	67 (34,5%)	35 (17,5%)	35 (17,5%)
4	I use a Samsung smartphone all day	12 (6%)	31 (15,5%)	52 (26%)	57 (28,5%)	48 (24%)

In table 4.1, statement number 1 is Samsung smartphones boost my social status. The majority of respondents 37% said neutral. This is because the smartphone Samsung could not be categorized as upper middle class smartphone or rarely used by famous personalities such as artist and government officials.

The second statement about Samsung is part of the lifestyle. There is diverse answer but the majority of respondents, as many as 31%, said neutral. This could be due to Samsung Smartphone could not be categorized as upper middle class so that the majority of respondents answered that Samsung smartphone is not a lifestyle. The third statement is about loyalty to Samsung, with total 34.5% respondents answered neutral. Consumers switch from Samsung smartphone to other brands due to some hardware error of the Samsung smartphone, and features that are incomplete, such as the Samsung Galaxy Note 7 that are now withdrawn from the market by the Samsung because there is a problem with the battery, and Samsung Z10 which has less enthusiasm from consumers and they switch to other brands because it is not equipped with good battery. The fourth statement regarding the level of usability is that Samsung Smartphone's majority users as many as 28.5% answered agree

in this aspect. This is because Samsung smartphone is a product that is easy to use from young children to adults, from the elementary S2-level education. On the other hand, Samsung provides the best products to meet the needs of consumers, such as the OS used is always up to date, from the OS Android Ginger Bread until the newest named Lollipop, moreover the basic features are very helpful users, such as daily weather, reminder and master planner, and also some applications such as by using a screen lock pattern, face detection and many more.

4.11 Response About Brand Positioning Strategy

TABLE 4.2 RESULTS OF RESPONDENTS ANSWERS ABOUTBRAND POSITIONING STRATEGY (X2)

No	Questions	Answer				
		SD	D	N	A	SA
5	I know Smartphone Samsung as a mobile phone brand with excellent quality	8 (4%)	26 (13%)	55 (27%)	68 (34%)	43 (21,5%)
6	Samsung has a unique packaging form	7 (3,5%)	27 (13,5%)	72 (36%)	55 (27,5%)	39 (19,5%)
7	I easier to know logo and brand Smartphone Samsung	7 (3,5%)	17 (8,5%)	50 (25%)	68 (34%)	58 (29%)
8	Smartphone Samsung has an advantage over competitors	3 (1,5%)	28 (14%)	65 (32,5%)	61 (30,5%)	43 (21,5%)
9	Promotion Samsung Smartphone is more attractive than other brands	6 (3%)	34 (17%)	72 (36%)	51 (25,5%)	37 (18,5%)
10	Samsung Smartphone features more attractive than other brands	2 (1%)	29 (14,5%)	70 (35%)	65 (32,5%)	34 (17%)
11	Samsung is a brand that think to my mind when talking about smartphone	10 (5%)	19 (9,5%)	55 (27,5%)	71 (35,5%)	45 (22,5%)
12	There are various types of products Samsung Smartphone, so easier for me to choose what I want	5 (2,5%)	24 (12%)	51 (25,5%)	70 (35%)	50 (25%)
13	Samsung smartphone has affordable price	13 (6,5%)	27 (13,5%)	58 (29%)	71 (35,5%)	31 (15,5%)
14	Samsung gives discount prices to customers at certain times	6 (3%)	29 (14,5%)	72 (36%)	57 (28,5%)	36 (18%)

The sixth statement is about the uniqueness of the shape of Smartphone Samsung design. The majority of respondents 36.5% believe this is because the neutral Samsung smartphone has a consistent form in all types of smartphone, such as the shape of a box and main switch, lengthwise in the middle, only the screen size varies for each type of smartphone Samsung. The seventh statement is regarding easily recognize brand logos and pronunciation of Samsung Smartphone. The majority of respondents agreed as much as 34%. This indicates that the smartphone Samsung are easily recognizable by the public due to Samsung smartphone has a characteristic in shape that is elegant and Samsung logo is always displayed at the front and back of the product. Easily recognized logo, brand and pronunciation is one of Samsung's strategic positioning, so that the Samsung products are

memorable. The eighth statement is that Smartphone Samsung has an advantage over competitors. As many as 32,5% of respondents answered neutral. This is because many smartphones of other brands also have a quality that is better than the Samsung. The majority of respondents answered neutral as much as 36%. This is because Samsung has a few promotional publications in printed and online version. Tenth statement is concerned with the more interesting features of Samsung Smartphone with other brand. Majority of respondents are neutral as much as 35%. That's because many other smartphones have more attractive feature than Samsung. Eleventh statements is regarding brand Samsung Smartphone that comes in consumer memory when talking about smartphones. The majority of respondents agreed as much as 35.5%. This is because the smartphone Samsung is the leading brands and come from developed countries, namely South Korea, Samsung is also a smartphone that has the most variety of types and prices, from lowest to highest price, so that all people can have a Samsung smartphone. The twelfth statement is on the availability of various types of Smartphone. Samsung makes it easier to choose, obtain answers to agree as much as 35%. This is because Samsung create a product line of low-end to high-end making it easier for consumers to choose according to their taste. Thirteenth statement regarding Samsung Smartphone affordable price, obtains agree answers as much as 35.5%. So it can be concluded that the majority answered agree that the price of Smartphone Samsung is affordable. Fourteenth statement is about the discounts or rebates of Samsung Smartphone at certain times. The majority of respondents answered neutral as much as 36%. That is because Samsung rarely give discounts discount brand unlike any other smartphone.

4.12 Responses About Purchasing Decision

TABLE 4.3 RESULTS OF RESPONDENTS ANSWERS ABOUT PURCHASING DECISION (Y)

No	Questions	Answer				
		SA	A	N	D	SD
15	I prefer smartphones Samsung than other Brands	8 (4%)	34 (17%)	74 (37%)	53 (26,5%)	31 (15,5%)
16	I recommend my friends to buy Samsung	10 (5%)	22 (11%)	79 (39,5%)	63 (31,5%)	26 (13%)
17	When I would buy a smartphone, I would choose to re-purchase Samsung	12 (6%)	34 (17%)	79 (39,5%)	48 (24%)	27 (13,5%)
18	When I wanted to buy my smartphone accustomed to choosing Samsung	7 (3,5%)	43 (21,5%)	69 (34,5%)	48 (24%)	33 (16,5%)

Fifteenth statement is regarding Samsung Smartphone purchase decisions than any other brand. The majority of respondents answered neutral as much as 37%. This is because other brand smartphones provide quality and competitive prices to consumers, so that consumers have many choices, for example are Oppo, Lenovo, and Xiomi. Sixteenth statement is the recommendation Samsung Smartphone. The majority of respondents answered neutral as much as 39,5%. When buying smartphones, consumers will tend to look at the brand's name first, and then find out the specifications of the smartphone, and finally compare the brand with other products before deciding to choose a smartphone. Therefore, consumers would rarely buy because of a recommendation from a friend. Seventeenth statement is regarding the re-purchasing of Samsung Smartphone. The majority of respondents answered neutral as much as 39.5%. This is because the development of technology affects many competitors to make the latest innovations in creating a smartphone that has a high qualification but with lower price. Eighteenth statement is about the buying habits Samsung Smartphone. The majority of respondents answered neutral as much as 34,5%. It relies on the behavior of consumers in choosing the products to be purchased, for example, in women, they are more likely to buy an iPhone and Samsung first because they have well-known brand, and less

concerned about the specifications of the smartphone advantages and disadvantages. While men are more likely to learn the advantages and disadvantages of the features, quality and price of the smartphone as considerations, but they tend to care less about brand.

4.12 Multiple Linear Regression Analysis

TABLE 4.4 MULTIPLE LINEAR REGRESSION

Coefficients[a]

Model		Unstandardized Coefficients		Standardized Coefficients	t	Sig.
		B	Std. Error	Beta		
1	(Constant)	,536	,817		,656	,512
	X1	,263	,054	,268	4,918	,000
	X2	,263	,025	,577	10,572	,000

Regression coefficient of Segmenting Strategy is (β = 0.268). It means that, if there is an increase in the value of Segmenting Strategy, it will influence purchasing decision as 26,8%. It causes a positive relationship between the variables X2 with variable Y. It means that with a better Segmenting Strategy, the consumer will make a purchase decision. Regression coefficient of Positioning Strategy is (β = 0.577). It means that, if there is an increase on the value of Positioning Strategy, it will influence purchasing decision as 57,7%. It occurs a positive relationship between the variables with variable Y. The better the positioning strategy is, the better it will be for the consumer to make a purchase decision of the product.

4.13 Test T (Hypothesis Testing Partially)

TABLE 4.5 HYPOTHESESs TESTINGTHE EFFECT OF VARIABLE X TO Y

Hypothesis	**Significance**	**Alpha 0,05**	**Conclusion Sigf <0.05**
There is a significant influence on purchasing decisions segmenting strategy	0,000	0,05	Supported
There is a significant influence on purchasing decisions positioning strategy	0,000	0,05	Supported

Hypothesis statement:
H0: Partially no significant effect of variable X to variable Y
Ha: Partially significant effect of variable X to variable Y

Table 4.5 shows that the number of all significant value of X is smaller than 0.05 so Segmenting Strategy (X1), and Brand Positioning Strategy (X2) partially have a significant influence on the Purchasing Decision (Y).

***4.14* F Test**

TABLE 4.6 F TEST

ANOVA[a]

Model		Sum of Squares	df	Mean Square	F	Sig.
1	Regression	1513,188	2	756,594	125,652	,000[b]
	Residual	1186,207	197	6,021		
	Total	2699,395	199			

Because the F count larger than F table (125,625 > 3,04), then Ho is rejected and Ha accepted and it is significantly below the value specified alpha of 5% then it can be statistically concluded that

X1 (Segmenting), X2 (Brand Positioning), positive influence on the decision Samsung smartphone purchases in Indonesia.

4.15 Determination Test Adjusted

TABLE 4.7 DETERMINATION ANALYSIS ( )

Model Summary[b]

Model	R	R Square	Adjusted R Square	Std. Error of the Estimate
1	,749[a]	,561	,556	2,45384

a. Predictors: (Constant), X2, X1
b. Dependent Variable: Y

Table 4.19 shows the value of = 0,556. This means that segmenting strategy, targeting strategy, positioning strategy have contribution to the purchasing decision variables as 55,6%. The remains, which is 44,4%, are influenced by other variables that are not examined in this study, for example the promotion mix, corporate social responsibility, brand equity, and the others.

5. Conclusion

Based on the results and discussions that have been carried out, the conclusion of this research is that Segmenting Strategy (X1) and Brand Positioning Strategy (X2) have a significant influence on the Purchasing Decision (Y) based on the following considerations:

1. The results of significant level in the T-test obtained by Segmenting Strategy (X1) is 0,000 and Positioning Strategy (X2) is 0,000 which are both under 0,005 so they have partial influence on purchasing decision variable.
2. The F-test in the ANOVA table test shows that the independent variables statistically significantly predict the dependent variable. F Count is lower than F Table (125,652< 3,04).
3. The test results adjusted R2 has a value of 0.572. This means that the variable Strategy Segmenting, Targeting Strategy, and Positioning Strategy have role in contributing as Purchase Decision variable by 55,6% and the 44,4% remains are influenced by other variables not investigated in this study; for examples are the promotion mix, corporate social responsibility, and brand equity.

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For further researchers who will develop this research, they should use other variables that are not used in this study, in order to know other variables that also influence the Purchase Decision on Samsung Smartphone.

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Resolution Model on Horizontal Violence Conflicts In Local Multicultural Communities in Lampung Province, Indonesia[1]

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Abstract

The special characteristic of Indonesian society is multicultural and vulnerable to horizontal violent conflict, so a separate solution is required. These two special characteristics are also inherent in the existence and dynamics of Lampung people's lives. Various efforts to solve horizontal violence conflict in Lampung can not be separated from the model used, including the values and roles of the actors. This study aims to discuss the resolution model on horizontal violent conflicts in local multicultural communities, by taking empirical data in Lampung province. The eclective approach (quantitative and qualitative) is used to collect data through surveys, interviews and documents. The survey was conducted on the community in five districts that are categorized as vulnerable to horizontal violence conflicts. Each district was selected two villages that had been in conflict, and the respondents were randomly selected. In-depth interviews were conducted on proportionally selected informants, while documents were obtained from mass media and related institutions. The results of the study found that the resolution of horizontal violence conflicts, firstly, tends to put forward the traditional model by involving various stakeholders; Second, paying great attention to the importance of the local wisdom values of the local community; And third, the role of the state as a mediator was very dominant.

Keywords: *conflict resolution, violence, horizontal, local wisdom, multicultural*

1. Introduction

Lampung society is multicultural consisting of various ethnic groups. Historically, such diversity has occurred due to the rapid development of population and residential areas, the rapid flow of migration through colonization, transmigration, and independent migration (Sajogyo, 1982; BPS: Population Census, 1990, 2000).

In addition, in the province of Lampung in the last decade also often occur violent conflict between community groups (horizontal conflict). Horizontal violence conflicts occur in all districts and cities. The results of research from Brunner (1974), Aloysius (1994), Koentjaraningrat (1986), Berge (Nasikun, 1991), and O'Donnell (1991), found that violent conflicts are often related to the character of a diverse society. According to Horton (1980), the condition of such societies needs to be well managed, as it is difficult to find a proper model of social conflict management.

Indonesia has ratified Law No. 7 on the Handling of Social Conflict. In 2013 Presidential Instruction No. 2 Year 2013 has been issued on the Handling of Domestic Security Disorders. Then in 2015 has been issued Presidential Regulation No. 2 of 2015 on the Implementation of Act No. 7 of 2012. At the implementation level, the policy has been supported by various efforts to build peace,

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especially in the reconstruction and revitalization of various aspects of community life damaged by violent conflict.

The frequent inter-group violence conflicts in Lampung province are thought to be, first, not spontaneously appearing (suddenly), but occurring accumulatively. Second, conflict management is not effective or does not solve the problem completely in the field. Third, there is no conflict resolution model that has become a common reference. In fact, every local community has a conflict management system, as local wisdom, which has been effective in resolving any inter-group conflict.

It is suspected that horizontal conflict management strategies (especially violent conflict resolution) in multicultural societies in Lampung province have not utilized local values optimally. In addition, there is no comprehensive formulation as a model for resolving horizontal violent conflicts that can be the basic reference of decision makers and policy actors.

This study aims, first, to explain the horizontal violence conflict resolution model. Second, second, the importance of local values of local communities in the resolution of horizontal violence conflict; and third, the role of stakeholders in solving horizontal violence conflicts.

2. Method

The type of this study is descriptive - qualitative, aiming to reveal cases of horizontal violent conflict resolution that occurred in Lampung province during the period of 2010 - 2016. This research seeks to reconstruct the resolution model, the role of local values, and the role of stakeholders in resolving horizontal violence conflicts. The data collected is the number of horizontal violent conflicts that have occurred in Lampung Province; the importance of local values; and the role of stakeholders in resolving horizontal violence conflicts. Key informants were obtained based on their involvement in conflict resolution either directly or indirectly.

Data analysis is more focused during the process in the field along with the collection, data processing and after in the field. Analysis of data after in this field does not mean the data collection in the field is completely completed, but physically researchers are no longer intensively in the field. Data collection is still done assisted by using electronic communication devices (handphone and internet). Stages of data analysis follow the process of data reduction, data presentation, conclusion and verification.

3. Result and Discussion

3.1 Horizontal violence conflicts

Horizontal violence conflicts focused on conflicts between groups of people due to ethnic, religious, political, economic, social segregation, and sociocultural factors. The data in Figure 1 shows that horizontal violence conflicts that have occurred in Lampung Province in 2010-2016 recorded as many as 111 cases (Lampung District Police, 2013; Dinas Sosial Provinsi Lampung, 2013, 2014, 2015; Hartoyo, 2016). The data in Figure 1 show that the most frequent horizontal violence conflict in Lampung Province is due to political, economic, and sociocultural factors.

However, it does not mean that the differentiation of these factors applies strictly. The reality is that many of the conflicts that occur in them are various other elements. For example, conflict due to social segregation factors can also occur in different ethnic and religious groups. Another example is the conflict that occurs because economic factors can occur in different ethnic and religious groups, and so on.

Figur 1. Horizontal Violence Conflicts in Lampung Provinve
Period 2010 - 2016

3.2 The Model of Horizontal Resolusi Konflik Kekerasan Horizontal

There are three models of horizontal conflict resolution, namely traditional model, rational model, and mixed model (Effendi, 1992: 30). Traditional models are conducted by involving various parties to resolve conflicts. This model is more concerned about the role of local values. The rational model is performed when cases of conflict are resolved through the court. While the mixed model refers to conflict resolution using a mixture of both traditional and rational models.

Figur 2. The Model of Horizontal Conflict Resolution

The data in Figure 2 shows that the resolution of horizontal conflict in Lampung Province mostly uses the traditional model. Conflict resolution traditional models, in addition to involving the parties in conflict also involves the parties outside (stakeholder). Traditional conflict resolution is not only done if violent conflict occurs. This model is also applied to cases of tension between conflicting parties before it develops into violent conflict.

Traditional models of resolving horizontal violent conflicts exist that use customary ordinances (from simple to more complex ways), but are mostly done in the form of peace meetings involving multiple stakeholders. Whether by using traditional ceremonies or in the form of peace meetings, they are always accompanied by a letter "Peace Agreement" between the conflicting parties.

However, reality shows that the conflict has been resolved by using this traditional model, in the future there is still much more conflict going on. That is, in addition to having advantages, the resolution of this traditional model of conflict also has weaknesses. The main disadvantage of this model is that it tends not to accommodate the problems that arise as access to a diversity of modern life, and is officially unenforceable or considered to be contrary to official law.

The weakness of traditional models can be masked by rational model excellence. In the rational model, the settlement of conflicts by the state is through the judicial system or through other channels which have permanent legal force. In addition, the state has a coercive force set up for the purpose of safeguarding state security. There are two possible uses of this rational model, namely the consciousness of the people themselves (the parties in conflict) or the decision of the local government (Effendi, 1992).

In general, traditional model conflict resolution is done with the help of a third party who serves as a mediator. The mechanism of conflict resolution through mediation is quite diverse as it is more casuistic. This is included in the Alternative Dispute Resolution (ADR) approach. The importance of this approach is because, firstly, as a more flexible and responsive settlement mechanism to the needs of each of the conflicting parties. Second, take into account the active participation of the parties to the conflict. Third, expanding equitable access to achieve equitable outcomes. Fourth, judging from several cases shows that the settlement of these traditional model conflicts is casuistic and yields several unequal solutions. This means that each conflict has its own distinctive features and when it is not appropriate to use a single settlement alternative, it is possible to use other suitable alternative solutions so that each party can choose the best settlement mechanism (Mu'adi 2010) .

Traditional model conflict resolution using mediation strategy still takes into account the negotiation process. In principle, mediation strategy with negotiation involves a third party as a mediator. Without negotiation there is no mediation, because mediation is an extension of the negotiation process as a mechanism for conflict resolution. The mediator must actively participate in the mediation process, behave in an impartial manner, and can help each of the conflicting parties to bargain equally, in a forum of deliberation (negotiation) to reach a peace agreement.

Thus, the mediator's role is limited to providing substantive and procedural assistance to the conflicting parties to resolve the issue. The disadvantage of this mediation strategy is that the mediator is limited to giving advice, not having the authority to break or implement a peace agreement. Conflicting parties who have the authority to make decisions based on the consensus that has been done.

The process of negotiation through mediation is said to be ideal when it meets three satisfactions, namely: substantive, procedural and psychological satisfaction. Substantive satisfaction relates to the specific satisfaction of the conflicting parties. For example compensation can be met, and also negotiations can be done properly and briefly. Procedural satisfaction occurs when conflicting parties have the same opportunity to convey their ideas during the negotiations, or a written agreement has been made before the negotiation takes place. While the psychological satisfaction regarding the emotional level of the parties in conflict can be controlled, mutual appreciation, full of openness and done with a positive attitude in maintaining the relationship in the future

The choice of solving horizontal violence conflicts using traditional models through mediation strategies has advantages over the rational model through the court. Rational model takes a long time, cost, energy and mind. Weak confidence in the independence of the judiciary and administrative obstacles in the conflict resolution process, so the court is the last resort to be used in resolving conflicts. Mediation gives the parties the feeling of equal status and the determination of the final outcome of the negotiations achieved by mutual agreement without pressure or coercion. The resulting solution leads to a win-win solution. The efforts to achieve a win-win solution are determined by several factors, among others, the first process of an objective approach to the source of the conflict is more acceptable to the conflicting parties and provides a mutually beneficial result, noting that this approach should focus on the interest being source of conflict and not on the position of the conflicting parties (Rahmadi,1998). If the interests are the focus, the parties to the conflict will be more open to various interests. Conversely, if the focus is on the position, then the parties to the conflict will be more likely to close themselves because it concerns their self-esteem. Second, it is necessary to have a balanced capacity in the negotiating process. Differences in bargaining power in the negotiating process can lead to pressures by one side against the other (Sumarjono, 2008).

However, mediation based on cooperative paradigm also contains weaknesses. First, the possibility of collusion between one party in conflict because the nature of the mediation is voluntary and not mandatory. Secondly, the agreement reached in mediation also does not have to be

implemented, because it has no power. Third, the agreement reached in mediation can be misused. Efforts to resolve the conflict through mediation are closer to the sphere of community life and are supported by local cultural values and respected in daily social interaction. However, the consideration is more emphasized to maintain the peacefulness of the relationship between groups (social integration) and sometimes ignore the interests of the parties in conflict (Mu'adi, 2010).

3.3 The Role of Local Wisdom In Conflict Resolution

Local wisdom is one of the titles expressed by experts. In addition, many also call it with traditional knowledge, local knowledge, or indigeneous knowledge. Local wisdom not only refers to the local knowledge system of the environment, but also about technology, customs, conflict management mechanisms, etc.

Local knowledge systems are flexible, adaptable to change, and able to utilize local resources and the environment to stay sustainable. Local knowledge also leads to more adaptation to local ecological systems, so as to maintain the sustainability of the ecological system (Benyamin Orlove, 2010: 3).

With regard to indigenous peoples, Syafa'at (2008) argues that local communities are able to develop ways to sustain life by creating value systems, lifestyles, institutional systems, and laws that align with the conditions and availability of surrounding resources. Therefore, a community that wants to live sustainably should develop its ability to adapt to its surrounding environment.

The resolution of horizontal violence conflicts in Lampung Province mostly uses the traditional model (Figure 2). These traditional models mostly use mediation strategies. In addition, the dominant participation in conflict resolution is from community leaders and local village officials. In addition, the dominant participation of external stakeholders is from the police (Figure 3). This data also shows that the dimension of locality is a major concern in conflict resolution. That is, most of the value systems and norms used in conflict resolution are localistic, conforming to the system of values and norms prevailing within the local community

For example, resolving horizontal violence conflicts that occurred in Lampung Selatan (2012) and Lampung Timur (2013) districts, although both apply the concept of "muakhi" or fraternity (concept of Lampung indigenous people), but substantively and technically there are differences. The parties involved in the conflict in South Lampung District are between Lampung ethnic and ethnic Balinese, while in East Lampung is between Lampung ethnic with ethnic Javanese

Local factors and demographic characteristics (tribes, customs, religions, races, occupations, and ages) form the basis of consideration in the process of resolving conflicts, because not only can solve the problem of strengthening socio-cultural values but also the issue of moral values. Social bonds and moral bonds are more easily rebuilt if the peace process utilizes local values and norms.

3.4 Stakeholder Participation In Conflict Resolution

Data In Figure 3 shows that stakeholder participation in conflict resolution is determined by the scale and intensity of the conflict. The greater the scale and intensity of the conflict the more stakeholders are involved. Likewise on the contrary, that the smaller the scale and intensity of the conflict, the fewer the stakeholders are involved.

Village autonomy is still strongly applied in conflict resolution. That is, if conflict resolution can be resolved at the village level, there is no need to involve stakeholders at the above levels. State involvement in conflict resolution depends on the scale and intensity of the conflict. The broader the scale and the higher the intensity of the conflict the higher the state's role, and vice versa, the role of the state is only limited to stakeholders at the village level.

4. Conclusion

Based on the above results and discussion it can be pointed out that most horizontal conflict resolution uses the traditional model. Most of the conflict resolution strategies used are mediation strategies, involving third parties as actors and as stakeholders.

The actors involved in the conflict resolution process are determined by their intensity and scale. The higher the intensity and the wider the scale, the more stakeholders involved in the peace process. The role of the state is deeply embedded in traditional conflict resolution models using mediation strategies. The reality, local values and norms as determinants of the conflict resolution process, is supported by the demographic characteristics of conflicting parties

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Livelihood Assets Changes Of Community Forest Farmers On Protection Forest

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Abstract
Community forest program on protection forest has been launched by Indonesian governance since 1998. The program accomodate local community living around to acces the state forest. They get many benefit from the state forest and use it to improve their livelihoods. Case studies was used to evaluate livelihood assets in the process of community forest management on state forest. Objective of this research are to understand the changes of livelihoods assets of community forest farmers during the community forest program. Livelihoods assets should be better to reach sustainable livelihoods.

Keywords: livelihoods assets, sustainable livelihoods, protection forest, community forest, Indonesian's state forest.

1. Background

The management of state forest in Indonesia changes many times. In Soeharto era, centralized of state forest management was running. In this era, management of state forest of Indonesia, consentrated to forest companies. Indonesian governance were not included the poor people living in and around forest. This resulted recurrent conflict and worsened local poverty, whereas the state forest land itself continued to be degraded (Suyanto, et.al., 2007). After the reformation, the government empowered the community in the management of state forests.

Community Forestry Program (HKm) is a community forest empowerment program in state forest management. The Government of Indonesia started the HKm program in 1999 and is now the most widely implemented Social Forestry program in Lampung Province. A total of 149 PAK permits (Appointment of Working Areas) have been issued by the Minister of Forestry until August 2014. These permits cover a total area of 96,072.61 hectares, covering 8 districts, 149 PAK permits and 470 HKm groups with 49,620 members running in Lampung.

Research on the Impact of HKm Program on the welfare of local communities and the achievement of forest sustainability has not been done. Therefore, this research is generally intended to know the implementation and results of the Community Forestry program (HKm) in protection forests in Indonesia for local communities, local government and the preservation of protection forests. The specific objectives of this research are to know the dependence of local communities on protection forests, to know the progress of the HKm program implementation in the Protection forest in Lampung Province and the constraints in implementing the HKm program, and to analyze the impact of Community Forestry programs on the livelihoods of local people using Sustainable Livelihood Approach / SLA Sustainable Lifestyle approach) that has been adjusted.

2. Method

2.1. Study site and research time

This study was conducted in two HKm farmer group area, i.e. Beringin Jaya farmer group and Sidodadi farmer group areas. Their areas were located on Kota Agung Utara Forest Management Unit in Tanggamus District, Lampung Province. Both of farmer groups were selected for the award 1st winner of the national of forest sustainable management for HKm farmer group from the Ministry of Environment and Forestry in 2016 and 2017. The research sites are listed in Figure 1. Research was done on June-October 2017.

Fig 1. Location of study site (Source: Ministry of Environmental and Forestry, 2017).

2.2. Data, data collection and analysis

Data was collected using interview by open ended and semi structured questionnaire, direct observation, documents and archival reviews. The discussion was conducted with individual officers at their office

The study used and analyzed primary and secondary data. Primary data was collected through observation, questionnaires and direct interviews of selected respondents and key informants, related to community forest management in Tanggamus District. Secondary data is collected from several agencies such as Forestry Service, Regional Development Planning Agency (Bappeda), Central Bureau of Statistics (BPS), and other related institutions. The data obtained were processed and analyzed both quantitatively and qualitatively descriptively.

Respondents were taken as samples by purposive sampling method. According to Patton (1990), Cochran (1991) and Iskandar (2008), purposive sampling is a deliberate sampling

technique based on subjective assessment of researchers on the basis of certain characteristics considered to be related to previously known population characteristics. Total respondents are 150 HKm farmers (75 members of each Beringin Jaya and Sidodadi forest farmer group) in Tanggamus District, 10 employees of relevant agencies in Tanggamus District and 20 employees in Lampung Province.

The Sustainable Livelihood Framework approach is used to identify the expected levels of life in groups by looking at the activities undertaken by each community using capacity capability and asset ownership.. Livelihood is understood as the assets, activities and access to the assets, which are mediated by institutional and social relations that together determine the living gained by individual or household (Ellis, 2000). A livelihood is the set of capabilities, assets and activities, that furnish the means for people to meet their basic needs and support their well-being (Chambers and Conway, 1992).

The SLA has been developed by DFID and was used to know the change of condition before and after existence of community empowerment program through HKm. This analysis involves the analysis of assets owned by local communities around protection forests in the form of human assets, physical assets, natural assets, financial assets and social assets. In addition the SLA approach will also analyze changes in the structure and processes related to government and private sector covering legal, cultural and political aspects.

In analyzing the management of state forests through community forestry schemes, the SLAs shall be adjusted in accordance with existing conditions in protection forests in Indonesia. It is intended that the analysis carried out in accordance with the actual conditions and the resulting conclusions can be appropriate. An adjusted SLA chart used in this study is showed in Figure 2.

3. Results

3.1. HKm farmer activities on protection forest

The dependence of respondents on protection forests can be seen from the activities undertaken by the respondents (Table 1). All the respondents (100%) own the land and work as HKm farmers by cultivating on HKm land. The respondent owns arable land acquired by compensation to others. The number of respondents who own land between Gapoktan Beringin Jaya and Sidodadi almost the same amount. Less than 5 percent of respondents do activities such as hunting pigs and bird hunting. This is because the community realizes the importance of preserving wildlife in nature. Those who engage in pig hunting activities are caused by disruptions by wild boars to cultivated plants, especially young plants. People hunting birds aim to earn money from the sale of hunted birds and to be kept at home. Bird hunting activities are not done routinely but usually done at least 2 months. This bird hunting activity is an interlude activity for entertainment.

Figure 2. Sustainable Livelihoods Framework for HKm in Protection Forest

Another activity is to look for firewood and fruits. People who are looking for firewood are those who have not used gas stoves and those who claim that cooking with firewood is more tasty than gas cookers. Respondents harvested the fruits of the Multi Purpose Tree Species (MPTs) such as coffee, cacao, jackfruit, kingfruits, etc..

Table 1. Activities or livelihood of respondents

No	Aktivitas	Respondents (person)	Percentage (%)
1.	Budidaya di lahan garapan	150	100
2.	Berburu babi di hutan	2	1,33
3.	Mencari burung di hutan	3	2
4.	Mencari kayu bakar di hutan	15	10
5.	Mencari buah-buahan di hutan	120	80
6.	Bekerja sebagai pedagang	11	7,33
7.	Bekerja sebagai pegawai	4	2,67

3.2. HKm program implementation and its obstacles in Tanggamus District

Implementation of HKm program in Lampung Province has been running well. This is because the HKm program has been socialized since 1998 and has many HKm groups established and licensed HKM in Lampung Province. Tanggamus Regency is one of the districts in Lampung

Province which already has 5 HKm groups that have been licensed to manage HKm in 2008 (Kagungan, 2012). The successful implementation of HKm in Tanggamus District is due to the support from the government (central, provincial and district), companions (NGOs and universities) and the community / group.

Although the implementation of HKm program in Tanggamus Regency has been running well but there are still some obstacles in the implementation of HKm program, among others: the lack of escort personnel especially after the HKm management permit is given (especially related to the making of management plans, reporting activities, processing of crops and payment restribusi of HKm crops). Implementation problems HKm program appears also due to the many changes that occur in HKm policy. Dwiprabowo dkk (2013) and Kaskoyo et al (2014) stated that there has been 9 times changes in HKm policy in the period 1998 to 2011. In 2014 there is another regulation change related HKm. In 2016 Community Forest (HKm) is incorporated in or as part of the Social Forestry program.

3.3. Livelihoods Assets and Its Changes

Livelihood capitals are the resources on which people draw in order to carry out their livelihood strategies (Farrington, Ramasut and Walker, 2002). Capitals are not just a thing that go into a production process but also a basis for power to act and ultimately to bring about change in society (Morse and McNamara, 2013). These asset types are human, natural, financial, physical, and social capital. Human capital is, for instance, the amount and quality of labor available, whereas natural capital comprises the natural resources from which a livelihood can be derived. Physical capital refers to the basic infrastructures and means of production, and financial capital encompasses the financial resources needed to support a livelihood. Social capital assets indicate the involvement of the household in social activities and networks for both political and economic purposes. The capital types available to individual households reflect their ability to gain access to systems, including the resource base, financial system, and agencies through which these capital types are produced.

The human assets used in this analysis were the average family members, formal education of the respondents, non formal training / education and the number of school children (Table 2). Following the HKm program, significant changes in human assets occurred for the non-formal training component / education that respondents had and the number of children in school. There are 2 things that change significantly in human assets that is the amount of training received by the respondents and the number of children who attend school.

These trainings include conservation farming, coffee cultivation, rubber cultivation, brown cultivation, conservation building, agroforestry, coffee processing, rubber latex tapping, mapping, institutional, and so on. This training is expected to improve the ability of respondents to be efficient in using other assets of natural assets and improve the productivity of respondents. Usually in the training there are those who provide assistance in the form of equipment for processing HKm products produced from arable land.

The number of children enrolled in school increased significantly due to the increased attention of respondents in education. Respondents assume that the higher the education level of their children will make the better life of their children later. The cost of education is derived from the proceeds from the sale of crops obtained from cultivated crops in the forest in protection forest. The proceeds of the sale are also used to finance the daily needs of the respondents

Tabel 2. Changes in human assets

No	Human Assets	Mean of human assets	
		Before	After
1	Number of family members	3,1	3,2
2	Education of household, primary school (%)	48	37
3	Education of household, secondary school (%)	44	51
4	Education of household, graduate school (%)	8	12
5	Training/non formal education (%)	12*	28*
6	Children going to school (%)	82*	95*

Note: * Significant difference between before and after ($p < 0,05$)

Social assets include: number of organizations followed, members of HKm, sub-gapoktan (group), gapoktan board, trust among villages (scale 1, 2, 3), trust in village officials (scale 1, 2, 3) and gotong royong activities (Table 3). With regard to social assets, the only significant change is the trust between villagers. This is different from the results of research Kaskoyo et al (2017), where there is no significant change in social assets. Increasingly significant inter-community confidence can occur because after the respondent follows the HKm program, more frequent meetings are held to discuss matters related to the HKm program.

Meetings conducted among others discuss the preparation of programs related to HKm management activities. The preparation of the program was conducted in two stage meetings, namely the sub-level meeting of gapoktan and gapoktan level meeting (Kagungan, 2012). The meetings were held to discuss institutional, management of arable land, rules of play in gapoktan and sub gapoktan, mapping, licensing, cultivation of plants, preparation of planning, and so forth. Meetings are also held during training held by other parties.

Table 3. Changes in Social Assets

No	Social Assets	Mean of natural assets	
		Before	After
1	Number of organizations involved	2	2
2	Member of sub group	0	120
3	Caretaker of sub group	0	12
4	Caretaker of group level	0	4
5	Trust between villager/farmer (in scale 1, 2, 3)	2,1*	2,6*
6	Trust to village leader (in scale 1, 2, 3)	2,4	2,6
7	Mutual aid activities (%)	100	100

Note: * Significant difference between before and after ($p < 0,05$)

Natural assets analyzed include: the area of arable land in protection forest, the size of the land owned, the number of coffee trees, the number of rubber trees, the number of timber trees in the owned land and the sense of security in managing the land and trees (Table 4). Many things are natural assets that change significantly. Cultivated area in protection forest increased significantly. The additional arable land is usually obtained by making a purchase (the term in the field is a compensation) to the farmer who moved the residence or need a cost to their daily life.

The money of respondent used for the compensation is obtained from the sale of cultivated crops in the cultivated fields in the form of coffee, cocoa and rubber. There are also respondents who get the results from the labor of the farm laborers although only a few of them. The area of land owned by farmers purchased outside state forest areas also increased significantly. Respondents are aware that managing land areas is only temporary so that they purchase land that can be managed much longer than land claimed. The land is generally located not far from where the respondent lived and planted timber trees as a savings that will be used when harvested / harvested. This is done by the respondents because the timber crops that exist in the arable land in the protection forest should not be felled. The provision is a provision of the government to keep the function of protection forest can run continuously. It also encourages the number of timber trees in the property to increase significantly. Safety in managing cultivated land and crops at the HKm site also increased significantly. This is because the legality / permission granted to manage the arable land in protection forest has been provided by the government. Respondents felt that the management of the cultivated land had been so that if any other party would use or seize the land they would be protected by the government. Prior to the HKm permit, respondents were often asked for some of their harvest by irresponsible people and this was similar to the results of research Kaskoyo et al (2017).

Table 4. Changes in Natural Assets

No	Natural Assets	Mean of natural assets	
		Before	After
1	Cultivated area inside protection forest (ha).	1,1*	1,65*
2	Private landholding outside protection forest (ha).	0,8*	1,6*
3	Amount of coffee trees (no.)	X	5395
4	Amount of rubber trees (no.)	X	118
5	Amount of wood trees inside protection forest (no.)	X	125
6	Amount of wood trees in private landholding outside protection forest (no.)	12*	26*
7	Security of cultivate land and trees (%)	30*	100*

Note: * Significant difference between before and after ($p < 0,05$)

Physical assets consist of: house size, number of bamboo-walled houses, number of wood-walled houses, number of wood-walled houses and walls, number of walled houses, number of wooden houses, number of asbestos roofing houses, number of roofed houses, number of cars, number of motorcycles, number of bikes, number of HP and home appliances owned (Table 5). Almost all physical assets experienced significant changes after the respondents followed the HKm program. Home size, the number of wood-walled houses and the wall rose significantly. Similarly, the number of roofed homes, the number of cars, the number of motorcycles and HP increased significantly. The number of bamboo-walled houses, the number of wood-roofed and asbestos-roofed houses has decreased significantly. Currently mobile phone or HP can be said to be the primary goods so required by respondents for communication purposes. Physical assets owned by respondents are getting better. Respondents stated that with the HKm program they can try to be more earnest so as to obtain a lot of results which are then used to increase their physical assets.

Table 5. Changes in physical assets

No	Physical Assets	Mean of Physical assets	
		Before	After
1	House size (m^2)	36*	45*
2	Amount of bamboo walled house (%)	40*	30*
3	Amount of wood walled house (%)	60	55
4	Amount of wood and brick walled house (%)	30*	42*
5	Amount of brick walled house (%)	20	23
6	Amount of wood roof house (%)	38*	20*
7	Amount of asbestos roof house (%)	35*	20*
8	Amount of tin roof house (%)	25	36
9	Amount of brick roof house (%)	52*	74*
10	Amount of car (%)	2*	10*
11	Amount of motorcycle (%)	70*	95*
12	Amount of bicycle (%)	20	15
13	Amount of mobile phone (%)	60*	95*
14	House appliances owned (%)	100	100

Note: * Significant difference between before and after ($p < 0,05$)

Financial assets include: the number of cows, the number of goats, the number of savings respondents, the number of respondents who have loans, the frequency of borrowing, the average income and the adequacy of food (Table 5.7). Some financial assets changed significanly after the respondents joined the HKm programsuch are the number of cattle, the number of goats, the number of savings respondents, the number of food sufficiency respondents and the number of food-deficient respondents. The number of livestock can increase significantly due to the existence of livestock support to HKm groups channeled by the central government through local and regional government through KPH Kota Agung Utara which is an extension of Tanggamus district government. The increase in the number of livestock is also influenced by the availability of adequate livestock feed that can be obtained from respondents' land.

Respondents who are short of food and sufficient food significantly changes. The HKm program implemented by the government provides the legality of managing the protection forest to the respondents. This causes the respondents to try farmers more calm so as to do better planting, maintenance and harvesting (Kaskoyo *et al.*, 2014). Overall, the change in financial assets in Beringin Jaya and Sidodadi gapoktan significantly more than the changes that occur in HKm gapoktan in Lampung Barat and Way Kanan (Kaskoyo *et al*., 2017).

Table 6. Changes in Financial Assets

No	Financial Assets	Mean of financial assets	
		Before	After
1	Amount of cow (no.)	1*	6*
2	Amount of goat (no.)	50*	61*

No	Financial Assets	Mean of financial assets	
		Before	After
3	Household with saving (%)	63*	73*
4	Household with loans (%)	52	54
5	Number of loans per year (%)	3	5
6	Mean annual income (Rp)	X	56.725
7	Food surplus (%)	51	54
8	Food sufficient (%)	64*	72*
9	Food shortage (%)	35*	24*

Note: * Significant difference between before and after ($p < 0,05$)

4. Conclusion

The results showed that:

a. The community's dependence on protection forests is very high, where all (100%) of respondents have HKm cultivated land in the working area of KPH Kota Agung Utara.

b. The implementation of HKm program in Lampung Province especially in Tanggamus Regency, including the most advanced in Indonesia.

c. There are still many encountered by the community constraints in the implementation of HKm program. In addition to licensing, constraints are also faced by respondents post licensing, which is related to institutional continuity, processing results, making HKm management plans, land resource development, marketing results, standardization of quality results and cooperation with other parties in order to develop HKm results.

d. The HKm program has a positive impact on the respondents and regional development. Many livelihood assets are undergoing significant changes that can improve the standard of living of HKm participants.

5. Recommendations

Further research is needed related to the marketing and processing of crops produced by the participants of HKm. In addition, it is necessary to conduct research related to the potential of forest resources that can be developed by HKm community such is environmental services

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Mapping the Indigenous Conflict of Indonesia: 1945-2017

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Abstract
The regional chief election was potential to bring a dispute on its every execution. The existence of an institution for resolving the regional chief election dispute is indispensable to settle the dispute. The institution was established since the citizenry have to directly elect the regional chief, it was on 2004. On this context the purpose of this writings are to know the dynamics of the institutions for regional chief election dispute settlement in Indonesia and to evaluate judicial institution for regional chief election dispute ever, so it can be a basic consideration for establishment of a special election court in the future. This study uses a juridical normative approach (*doctrinal*) the study will be carried out by inventorying and reviewing some legal documents and other papers. The result of this study shows that there is a change in the dynamics of the institution for regional chief election dispute settlement, the change is on the authority of regional chief election dispute that have been occurred in the Supreme Court is turning to the Constitutional Court. Such provisions have been amended several times, while this time the authority has been restored to the Constitutional Court until the special election court established as mandated by the law.

Keywords: *Dynamics, Justice Institute, Election Dispute*

1. INTRODUCTION

Democratic countries have become mainstream for modern countries.[1] Democracy stands on the principle of equality, every nation has the same rights and position in government, in this case the people are given the power to participate in power by the rulers derived from the legitimacy of the people.[2] One means to channel it is. In general, the election is a media and a tool of the realization of the sovereignty of the people either directly (direct democracy) or indirectly (indirect democracy) to participate in governance.

The development of the state administration has brought several phases in the development of elections existing in Indonesia, it is then realized not only to elect the president and vice president but also to elect the regional head either directly or indirectly. The 1945 Constitution of the State of the Republic of Indonesia (hereinafter referred to as the 1945 Constitution) Article 18 paragraph (4) has stipulated that "Governors, Regents and Mayors respectively as provincial, district and municipal government heads are elected democratically",

[1] Janedri M Gaffar, *Demokrasi Dan Pemilu Di Indonesia,* Jakarta: Konstitusi Press, 2013, hlm. 1
[2] *Ibid,* hlm. 14.

the provision has encouraged the spirit of democracy at the regional level[3] (Provincial, District, City) so that the regional head can be elected directly by the people or indirectly through the Regional House of Representatives, but still sovereignty is in the hands of the people.

The implementation of election head in its journey does not always go as expected, in every implementation there is always a dispute or election disputes. [4] The change of the post-amendment system of the 1945 Constitution of the Republic of Indonesia is the granting of authority of the Judicial Authority[5] executive to settle disputes over election results, both legislative and executive elections. The authority for the settlement of Disputes on the Results of General Elections for The House of Representatives, the Regional Representative Council and the House of Representatives members, and the President and Vice President shall be granted to the Constitutional Court, while the dispute resolution authority of the regional head is granted to the Supreme Court and the jurisdiction of the High Court for the election of the Regent [6]

However, in this development there has been a change in the authority of election dispute settlement institutions from both the regulation and the institution. This can be seen from the start of the formation of Law Number 22 Year 1999 on Regional Government up to the latest Law Number 10 Year 2016 About The Second Amendment to Law Number 1 Year 2015 About Stipulation of Government Regulation in Lieu of Law Number 1 Year 2014 On the Election of Governors, Regents, and Mayors Become Law. This research study has proved that in Indonesia there has been the dynamics of election dispute settlement institutions.

2. MATERIALS AND METHOD

This paper will use normative legal research, or often known as the normative juridical approach.[7] Legal research is research conducted by reviewing and researching library materials in the form of primary legal materials and secondary legal materials. In this case the data obtained will be comparative in order to see the dynamics of the development of existing election dispute settlement institutions, either from the side of the regulation or the form of institutions that regulate it. At the end of this paper will be able to show that Indonesia has experienced the dynamics of election dispute settlement institutions evidenced by the changes in regulation and transfer of authority between the Supreme Court institutions with the Constitutional Court.

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[3] Hamdan Zoelva, *Problematika Penyelesaian Sengketa Hasil Pemilukada oleh Mahkamah Konstitusi* dalam Jurnal Konstitusi Volume 10 Nomor 3, Jakarta: Mahkamah Konstitusi Republik Indonesia, 2013, hlm. 378.

[4] The data recorded that the dispute on Dispute over Election Result of General Election Result (PHPU) from 2008 to 2013 is 524 cases, in 2008 there were 27 cases, in 2009 as many as 3 cases plus 12 cases that have not been resolved in the previous year , in 2010 as many as 230 cases, in 2011 as 132 cases, in 2012 as many as 105 cases plus 7 cases that have not been resolved in the previous year, in 2013 as many as 27 cases in 8 cases that have not been resolved in the previous year. (The Constitutional Court of the Republic of Indonesia "Recapitulation of Dispute over Election Result of Regional Head and Deputy Regional Head" is downloaded from the website http://www.mahkamahkonstitusi.go.id/index.php?page=web.RekapPHPUD is accessed on 2 December 2015 at 14:07 WIB)

[5] Judicial power which is an independent power to organize the judiciary to enforce the law and justice for more details see the provisions of 24 paragraph (1) of the 1945 Constitution of the State of the Republic of Indonesia and Law Number 48 Year 2009 on Judicial Power.

[6] *Op. Cit,* hlm. 379

[7] Furthermore, normative legal notions can be read at Suratman dan H. Philips Dillah dalam *Metode Penelitian Hukum ,* Bandung: Alfabeta, 2013, hlm. 54.

3. RESULTS/DISCUSSION

Implementation of elections in the history of Indonesian state administration starting from Law Number 22 Year 1999 on Regional Government. At the beginning of the implementation process tela led to the emergence of electoral dynamics. This can be seen in the regulatory changes that set about the election dispute resolution institutions from 1999 to the establishment of Law Number 10 Year 2016 About the Second Amendment to Law Number 1 Year 2015 On Stipulation of Government Regulation in Lieu of Law Number 1 Year 2014 On the Election of Governors, Regents, and Mayors Become Law.

Tabel. 1. Dynamics of Dispute Settlement Institution Based on Law Number 22 Year 1999 up to Law Number 10 Year 2016

Terms of Legislation	Explanation
1. Law Number 22 Year 1999 regarding Regional Government	The election is conducted indirectly through the Regional People's Representative Council, there is no election dispute in this case election is formulated as legal regime of local government. The provisions of this law have not recognized the existence of election dispute settlement institutions.
2. Law Number 32 Year 2004 regarding Regional Government	The election was conducted directly by the people, the type of election violation consisted of violation of the determination of election result in this case election was formulated as legal regime of local government. The provisions of this law stipulates that the competent authority to handle electoral dispute is the Supreme Court and may delegate its authority to the higher courts of the provisions stipulated in Article 106.
3. Law Number 12 Year 2008 regarding the Second Amendment to Law Number 32 Year 2004 regarding Regional Government	The election is conducted directly, the type of election dispute is the election result disputes (PHPU) in this case the election is formulated as part of the election law regime such provisions are contained in Article 1 paragraph (4) of Law Number 15 Year 2011 on the Implementation of General Elections. The provisions of this law stipulates that the Constitutional Court is the agency authorized to deal with election disputes, the provisions mentioned in article 236C and Article 29 paragraph (1) letter e of Law Number 48 Year 2009 regarding Judicial Power.
4. Decision of the Constitutional Court Number 97 / PUU-XI / 2013	The filing of judicial review against Article 236C of Law Number 12 Year 2008 and Article 29 paragraph (1) letter e with the provision of the cancellation of the provisions of the article and stating that the election is not part of the election law regime. after the issuance of this ruling, the Constitutional Court is an institution authorized to adjudicate disputes over the results of general elections of regional heads as long as there is no law regulating the matter, such provisions are listed in the verdict of number 2.
5. Law Number 22 Year 2014 on the Election of Governors, Regents and	The election is conducted indirectly through the Regional House of Representatives , the provision is reinforced by the provisions of Article 101 letter d and Article 154 letter d of Law Number 23 Year 2014 on Regional Government. This provision has governed the existence of a

Mayors	simultaneous election head mechanism. The provisions of this law stipulate that in case of violation of the election, the settlement shall be followed up by law enforcement officials in accordance with laws and regulations such as the Corruption Eradication Commission, the Attorney General Office and the Police, the provisions mentioned in Article 33 paragraph (9) .
6. Law Number 1 Year 2015 on Stipulation of Government Regulation in Lieu of Law Number 1 of 2014 on the Election of Governors, Regents, and Mayors Becoming Laws	The election is conducted directly by the people. The provisions are regulated in Government Regulation in Lieu of Law Number 2 of 2014 on Amendment of Law Number 23 Year 2014 on Regional Government, in this case the form of violation of regional election is divided into several types, namely: 1) Violation of the code of conduct of the organizer. The election shall be settled in the General Elections Administrator's Council of the provisions mentioned in Article 137 paragraph (1); 2) Administrative violations Elections shall be settled in General Election Commissions based on Recommendation Electoral Supervisory Bodies this provision is contained in Article 139 paragraph (3); 3) Inter-Voter Dispute Disputes and Disputes Among Voter Members With Voter Organizer settled in Electoral Supervisory Bodies such provisions are contained in Article 143 paragraph (1); 4) Election crime shall be submitted by the National Police Investigator of the Republic of Indonesia to the Public Prosecutor and resolved in the District Court which in this case has the authority to examine, hear and decide cases of election crimes using the Criminal Procedure Code (Article 147) by forming the Assembly Special Criminal Act (Article 151) in this case law enforcement officers also form an Integrated Law Enforcement Sentra; 5) State Administration Dispute The election shall be settled at the State Administrative High Court after all administrative efforts in Provincial Electoral Supervisory Bodies and / or District / Municipal The Supervisory Committee have been conducted (Article 154) by Establishing the State Administration's Special Assembly (Art. 155); 6) Dispute over election results resolved in the Court of Appeal with the composition of an ad hoc judge established by the Supreme Court (Art. 157) The provisions on the Government Regulation In Lieu Of Law are then stipulated by Law Number 1 Year 2015 on Stipulation of Government Regulation in Lieu of Law Number 1 of 2014 on the Election of Governors, Regents and Mayors Becoming Laws. The provisions of this Government Regulation In Lieu Of Law have regulated the existence of simultaneous election head mechanism.

7. Law Number 8 of 2015 on Amendment to Law Number 1 Year 2015 on Stipulation of Government Regulation in Lieu of Law Number 1 of 2014 on the Election of Governors, Regents, and Mayors Becoming Laws	The election is done directly, in this law there is a provision to form a new institutional court that is the election special court as one of the efforts to meet the implementation of the election head simultaneously which will begin in 2020. With regard to the Case of dispute determination of vote acquisition result of election examined and tried by the Constitutional Court until the establishment of a special judicial body of this provision is contained in Article 157 paragraph (3).
8. Law Number 10 Year 2016 Concerning the Second Amendment to Law Number 1 Year 2015 Concerning Stipulation of Government Regulation in Lieu of Law Number 1 Year 2014 on the Election of Governors, Regents, and Mayors Becoming Laws	Completion of election disputes Election disputes cases are examined and tried by a special judicial body in which the Special Court is established prior to the implementation of the national Selection. With regard to the case of dispute over the final stages of vote election result shall be examined and tried by the Constitutional Court until the establishment of a special judicial body. The provisions have been regulated in Article 157 paragraph (1), (2), and (3)

A. Dynamics of Election Head Dispute Resolution Institution in Indonesia

The implementation of elections in the history of Indonesian state administration starting from Law Number 22 Year 1999 on Regional Government has led to the dynamics. This happens because in the implementation there is a dispute election, the dynamics of the implementation of this election is marked by the continuous changes to the dispute resolution dispute institutions. The change of the regional election institution is influenced by the electoral mechanism of local head election directly by the people and the local head election indirectly through the Regional People's Representative Council (DPRD).

The competence of the Supreme Court as an election dispute resolution institution arises when the electoral mechanism is implemented directly by the people. This provision is then regulated in Law Number 32 Year 2004 regarding Regional Government Article 106 paragraph (1) stating that "the objection to the determination of the result of the regional head election And

the deputy regional head can only be submitted by the candidate pairs to the Supreme Court within no later than 3 (three) days after the determination of the election result of the regional head and deputy head of region ", in which case the election head is categorized as the local government legal regime.[8]

The dynamics of election head institutions continue to roll since the creation of Law Number 12 Year 2008 regarding the Second Amendment to Law Number 32 Year 2004 regarding Regional Government which in this case has happened the transfer of authority of election dispute settlement that is from the Supreme Court to the Constitutional Court the regulation is regulated in Article 236C stating that "the handling of disputes over the vote count results of the election of regional heads and deputy heads of regions by the Supreme Court shall be transferred to the Constitutional Court at the latest 18 (eighteen) months since the law is enacted", in this case election head is categorized as a legal regime elections[9] as stipulated in Law Number 15 Year 2011 concerning the Implementation of the 1 st election article (4) which states that "The election of Governors, Regents and Mayors is the Elections to elect democratically governors, regents and mayors within the Unitary State of the Republic of Indonesia based on Panc asylum and the 1945 Constitution of the State of the Republic of Indonesia ".

The regulation on the competence of the Constitutional Court as an election dispute resolution institution is also affirmed in Article 29 paragraph (1) sub-paragraph e of Law Number 48 Year 2009 regarding Judicial Power which explains that the Constitutional Court has other authority granted by law including in handling dispute election. Along with the development of the constitutional system, judicial review has been conducted on the articles regulating the competence of the Constitutional Court in handling the election dispute namely Article 236C of Law Number 12 of 2008 and Article 29 paragraph (1) letter e. The provisions on the test are then set forth in the decision of the Constitutional Court Number 97 / PUU-XI / 2013 with the provisions of the ruling declaring that article contradictory to the 1945 Constitution, but in the subsequent verdict the Constitutional Court also states that the Constitutional Court remains authorized to adjudicate disputes the results of general elections of regional heads as long as there is no law regulating the matter.

The creation of Law Number 22 Year 2014 has projected the indirect mechanism of elections through the Regional People's Representative Assembly which was then affirmed in Law Number 23 of 2014 on Regional Government Article 101 letter d stating that one of the tasks of Regional People's Representative Assembly is "to elect the governor" and Article 154 letter d which states that one of the duties of Regency and Municipal Regional People's Representative Assembly is "to elect the regent / mayor", this has resulted in constitutional fluctuation, the culmination is the creation of 2 (two) Government Regulation in Lieu of Law

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[8] The Supreme Court adjudicates the dispute over vote count results as of 14 (fourteen) days after the receipt of the objection petition by the final and binding Supreme Court / Supreme Court / Court, in which case the Supreme Court in exercising its authority may delegate to the High Court to decide dispute over vote count result of regional head election and deputy head of regency and municipality with the provision of decision is final. The authority to settle the dispute is given to the Supreme Court, because the election by the legislators is categorized as the legal regime of regional government as regulated in Article 18 of the 1945 Constitution and not as an election law regime as regulated in Article 22E of the 1945 Constitution, legislative elections, in Maria Farida, *Sengketa Pemilukada,Putusan Mahkamah Konstitusi dan Pelaksanaan Putusan Mahkamah Konstitus*i, Jakarta: Konstitusi Press, 2013, hlm. 51-52.

[9] In the provisions of the 1945 Constitution Article 24C Paragraph (1) it is stated that the Constitutional Court has the authority to hear at the first and final level the decision is final, to examine the law against the Constitution, to decide the dispute over the authority of the state institution whose authority provided by the Constitution, decide upon the dissolution of political parties and decide upon disputes concerning election results,in Jimly Asshiddqie, *Menuju Negara Hukum yang Demokratis,* Jakarta: PT Bhuana Ilmu Poluler kelompok Gramedia, 2009, hlm. 306

(Government Regulation In Lieu Of Law) namely Government Regulation In Lieu Of Law Number 1 Tahun 2014 on the Election of Governors, Regents, and Mayors and Government Regulation In Lieu Of Law Number 2 of 2014 on Amendment to Law Number 23 of 2014 on Regional Government. Based on the provisions of this Government Regulation In Lieu Of Law, the electoral mechanism is returned to the election directly through the people affirmed in Government Regulation In Lieu Of Law Number 2 of 2014, while Government Regulation In Lieu Of Law Number 1 of 2014 has provided new arrangements on the form of violations of regional election and its settlement agencies.

The form of violation of regional head election and its settlement as regulated in Government Regulation In Lieu Of Law Number 1 Year 2014 as regulated in the provisions of Article 137 to Article 157 is a violation of the code of conduct of elections completed by the General Elections Administrator Board, Electoral Administration Offenses resolved in General Election Commissionsbased on Recommendation Electoral Supervisory Bodies , Inter-Voter Dispute Dispute and Inter-Voter Dispute With Voter Organizer settled in Electoral Supervisory Bodies, Crime of election submitted by National Police Investigator to the Public Prosecutor and resolved in District Court by forming Special Assembly of Crime and forming Integrated Law Enforcement Sentral, Tata Dispute The efforts of the State of election shall be settled at the State Administrative High Court after all administrative efforts in the Provincial Electoral Supervisory Bodies and / or the Regency / Municipal The Supervisory Committee have been made by establishing the Special Administrative Assembly of the State, and the Dispute h The final election is settled in the High Court with the composition of an ad hoc judge set by the Supreme Court.

Government Regulation In Lieu Of Law Number 1 Year 2014 is then established through Law Number 1 Year 2015 on Stipulation of Government Regulation in Lieu of Law Number 1 of 2014 on the Election of Governors, Regents, and Mayors Become Act. Whereas there has been a change in the form of election head court after the formation of the latest Law on Election Number 8 of 2015 on the Amendment of Law Number 1 Year 2015 on Stipulation of Government Regulation in Lieu of Law Number 1 of 2014 on the Election of Governors, Regents and Mayor Becomes a Law whereby in this new provision the dispute resolution mechanism is conducted by a special judicial institution as set forth in Article 157 paragraph (1) stating "Case of Dispute over Election Result is examined and tried by a special judicial body".

However, in this case, before the special court is formed for a while the dispute resolution process shall be returned to the Constitutional Court as stated in Article 157 paragraph (3) stating that "Case of dispute over vote acquisition result of Elections shall be examined and tried by the Constitutional Court until the establishment of a special judicial body ". The provisions stipulated in Article 157 paragraph (3) may also be assumed that the dispute resolution authority given to the Constitutional Court has not been completely perfect because it has been due to the form of granting this authority only temporarily until the establishment of a special election court.

In additional, the efforts made by the government to follow up the special election courts have been set forth in the formulation of Law Number 10 Year 2016 About the Second Amendment to Law Number 1 Year 2015 Concerning Determination of Government Regulation in Lieu of Law Number 1 of 2014 The election of Governor, Regent, and Mayor Become Article 157 paragraph (1) to paragraph (9) which in the provisions of this amendment has been mentioned that the Case of Dispute over the Elections results is examined and tried by a special judicial body. The special justice body was formed prior to the implementation of the national Selection. With regard to the case of dispute over the final stages of vote election result shall be examined and tried by the Constitutional Court until the establishment of a special judicial body.

In this case, the Election Contestant may submit an application for cancellation of the determination of the vote count result by the Provincial General Election Commissionsor Regency/City General Election Commissions to the Constitutional Court at the latest within 3

(three) working days after the announcement of the vote acquisition result by the Provincial General Election Commissions or Regency/Municipal General Election Commissions by completing the tool/proof document and the decision of the Provincial General Election Commissions or Regency/Municipal General Election Commissions regarding the result of the vote count recapitulation. If, in the event that the submitted application has been incomplete, the applicant may correct and complete the application within 3 (three) working days of receipt of the application by the Constitutional Court. In this case, the Constitutional Court adjudicates the dispute over the result of the election result not later than 45 (forty five) working days from the receipt of the final decision and binding.

4. CONCLUSION

The implementation of elections in the history of Indonesian state administration starting from Law Number 22 Year 1999 on Regional Government has led to the dynamics. This is because in the implementation there has been a dispute over the election, the dynamics of the implementation of this election is marked by the continuous change of the dispute resolution institution, starting from the Supreme Court then the jurisdiction of the judiciary is transferred to the Constitutional Court and after the decision of the Constitutional Court and the new arrangement of authority is returned to the Supreme Court. Whereas following the latest electoral regulation on the election, the authority of the current election dispute resolution has been returned to the Constitutional Court until the establishment of a special judicial institution as mandated by Law Number 10 Year 2016 on the Second Amendment to Law Number 1 Year 2015 Determination of Government Regulation in Lieu of Law Number 1 of 2014 on the Election of Governors, Regents, and Mayors Became the Law before the national elections. The existence of such changes has shown that Indonesia is establishing an electoral dispute resolution institution which is in line with the expectation to be effective for the settlement of the local election dispute.

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Regulations

Law Number 22 Year 1999 regarding Regional Government.
Law Number 15 of 2011 concerning the Implementation of General Election.
Law Number 32 Year 2004 regarding Regional Government.
Law Number 48 Year 2009 regarding Judicial Power.

Law Number 12 Year 2008 regarding the Second Amendment to Law Number 32 Year 2004 regarding Regional Government.

Law Number 22 Year 2014 on the Election of Governors, Regents and Mayors.
Law 23 of 2014 on Regional Government.

Law Number 1 Year 2015 on Stipulation of Government Regulation in Lieu of Law Number 1 of 2014 on the Election of Governors, Regents, and Mayors Becoming Laws.

Law Number 8 of 2015 on Amendment to Law Number 1 Year 2015 on Stipulation of Government Regulation in Lieu of Law Number 1 of 2014 on the Election of Governors, Regents, and Mayors Becoming Laws.

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IMPLEMENTATION OF SYARI'AH ECONOMIC PRINCIPLES ON THE MANAGEMENT OF SYARI'AH MUTUAL FUND IN INDONESIA

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ABSTRACK

Syari'ah Financial Institution is one of the institutions of Islamic doctrine that is currently mushrooming in the midst of modern Indonesian society. Along with the growth of *syari'ah* financial institutions, MUI issued that interest is usury which is unlawful. The entry of *syari'ah* financial institutions in Indonesia made a new breakthrough in the *syari'ah* capital market. One of the products of *syari'ah* capital market is *Syari'ah* Mutual Fund. *Syari'ah* mutual funds are defined as mutual funds as referred to in the Capital Market Law and its implementing regulations whose management does not conflict with the principles of *syari'ah* in the capital market. The problem of this research is how is the interpretation of the regulation of *syari'ah* economic principle in Indonesia and how is the management of *Syari'ah* Mutual Funds based on *syari'ah* economic principle in Indonesia.

This research is normative research with descriptive research type. The approach used is normative juridical. The data collection was done by literature study and document study. The data used are secondary data consisting of primary legal materials, secondary legal materials, and tertiary legal materials. The collected data is then analyzed qualitatively.

The findings of the research show that there are 3 (three) principles of *syari'ah* economy namely the principles of *Tauhid*, Justice, and Benefits. The regulation of *syari'ah* economic principles in Indonesia is regulated in the DSN-MUI and compilation of Islamic law. Basically *syari'ah* economic principles are in the field of Bank financial institutions and Non-Bank financial institutions. The arrangement of *syari'ah* economic principles, as well as regulated in law but also governed by *Syar'i* Law and *Fiqh* law through *Ijtihad*, by the method of *Mashlahah Mursalah*. Implementation of investments in *Syari'ah* Mutual Fund transaction mechanism in investing through *Syari'ah* Mutual Funds should pay attention to things that are not against the Islamic Syari'ah. Implementation of the transaction contract should not be contrary to the Islamic *Syari'ah*, whether prohibited because (1) Forbidden in addition to the substance, which contains *tadlis*, *ihtikar*, *ba'i najasy, garar*, and usury, as well (2) Because unauthorized, i.e. the order and conditions are not met, there *ta'alluq*, and there are two contracts in one transaction simultaneously. The idea of *syari'ah* economic principles recommends to the *Syari'ah* Banking Supervisory Board to make further regulation in the development of investing through *Syari'ah* Mutual Funds in Indonesia.

Key Words : *Syari'ah* Economics Law, *Syari'ah* Mutual Funds, Management, *Syari'ah* Economics Principles.

A. INTRODUCTION

1. Background

The life of Muslims is described in *fiqh*, not least in economic activity; Islam has given its own guidance.[1] To realize the Islamic lifestyle system and institutions are required that embodied the values of Islamic *syari'ah*. One form of embodiment of Islamic *syari'ah* value is the establishment of *syari'ah* financial institutions. The establishment of *syari'ah* financial institutions is an effort toward the Islamic life order especially on economic aspects. *Syari'ah* Financial Institution is one of the institutionalization of Islamic doctrine that is currently mushrooming in the midst of modern Indonesian society.[2] The sociological formation of institutions in the life of society is a process of crystallization of continuum types of norms. Institutionalization does not happen by chance and haphazard but through a long

[1] Alie Yafie dkk, Fiqh Perdagangan Bebas, (Jakarta: Teraju, 2003), pg. 2-3.
[2] One of the fastest growing LKS is BMT, according to PINBUK data of 2001 in Indonesia there are 2938 BMTs, Look Heri Sudarsono, Bank and Syariah Mutual Fund, (Yogyakarta: Econosia, 2005), pg. 99

evolutionary process. *Riba* is forbidden in the *nas* after being understood by Muslims is the norm after the process of usage, folkways, mores, and custom that became the guidelines of behavior of Muslims then become part of social institutions.[3] Since the operation of Islamic financial institutions in Indonesia in 1992 which marked with the establishment of Bank Muamalah Indonesia (BMI) means the Indonesian nation has had a new financial system free of *riba* (bank interest) that is using the system of profit sharing.[4]

Syari'ah Financial Institution have not been so familiar in the midst of Indonesian society due to the new condition, is something reasonable if not widely known then *Syari'ah* Financial Institution still lose many consumers than conventional financial institutions. In addition to the still new understanding of the Indonesian people about *syari'ah* economy is also still minimal. Simply put, religious studies often done by Muslims rarely discuss the economy of *syari'ah*.[5] Along with the growth of financial institutions *syari'ah* MUI issued a fatwa that interest, is *riba* is unlawful law. Set up a friend in a conventional financial institution for an existing region of *Syari'ah* Financial Institution forbidden.[6] Observing the MUI pronouncement on bank interest gives an illustration that bank interest forbid pay attention too many aspects not based on the normative aspects of Islamic law alone. In pronouncements issued by Islamic mass organizations such as NU, Muhammadiyah, is also very concerned about other aspects. Like conventional markets in general, the stock market is a meeting place for sellers and buyers, since the definition of a market is a means of bringing together buyer and seller activity for a commodity or service. What is traded in capital markets is capital or funds.[7] Thus, capital markets bring together the seller of capital / funds with the buyer of capital or funds.[8]

Based on the provisions of the *syari'ah* system, the capital market is part of muamalah activity. Transactions within the capital market are permitted so long as there are no transactions that are contrary to the provisions outlined by the *syari'ah*. If viewed from the history in Indonesia, *syari'ah* capital market is a new market and newly known by the people of Indonesia when compared with capital markets that have been there. Nevertheless, in the presence of *halal* from the market to increase the participation in the *syari'ah* capital market, then in the future *syari'ah* capital market Indonesia is very wide open to become one of the best investment world choice. Fathurrahman Djamil explained[9] that the syariah capital market was officially launched in Indonesia on March 14, 2003 simultaneously with the signing of MOU between BAPEPAM-LK and the National *Syari'ah* Council of Indonesian Ulama Council (DSN-MUI). Although it was launched since 2003, but syariah capital market instruments have been present in Indonesia in 1997. This is marked by the launch of Danareksa Syari'ah on July 3, 1997 by PT. Danareksa Investment Management.

The development of syariah capital market of Indonesia started with the issuance of syari'ah mutual fund in 1997. Then followed by the emergence of Jakarta Islamic Index (JII) in 2000 and the issuance of mudharabah syari'ah bonds in 2002. In order to provide legal certainty, Bapepam - LK issued a package of syariah capital market regulation in 2006 and List of Syari'ah Securities (DES) in 2007. This has strengthened the infrastructure of syari'ah capital market. In 2008, the government first issued Government Syari'ah Securities (SBSN). Furthermore, to facilitate investors who want to transact syari'ah securities such as Syari'ah and Syari'ah Exchange Traded Funds (ETF) syari'ah has launched syari'ah online trading system in 201[10]1 under 5% compared to total product (Syari'ah and conventional) in circulation.

Many Muslims in Indonesia are still hesitant *halal-haram* investing mutual funds. Many are not yet sure whether mutual funds are not against Islamic norms. To answer this doubt, the National Syari'ah Council of the Indonesian Ulema Council (DSN MUI) has actually issued a fatwa. 20 / DSN-MUI / IV / 2001 which allows Muslims to invest in mutual funds, especially syari'ah mutual funds. Bapepam and LK Rules Number IX.A.13 syari'ah Mutual Funds are defined as mutual funds as referred to in the Capital Market Law and its implementing regulations whose operations are not inconsistent with the principles

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[3] A. Djazuli dan Yadi Janwari, Lembaga-Lembaga Perekonomian Umat, (Jakarta: PT Raja Grafindo Persada, 2002), pg. 6-9.

[4] http://library.walisongo.ac.id/digilib/files/disk1/120/jtptiain-gdl-ellynurroh-5999-1 skripsi-p.pdf accesed on 25th November 2016 at 20.00 pm.

[5] A. Qodri Azizy, Membangun Fondasi Ekonomi Umat, (Yogyakarta: Pustaka Pelajar, 2005), pg. 32

[6] Decision of Fatwa of Indonesian Ulema Council Number 1 of 2004 on Interest (Intersat / Fa'idah), "accessed from http://www.mui.or.id, dated June 14, 2007.

[7] Nasarudin Irsan dan Indra Surya, Aspek Hukum Pasar Modal Indonesia, (Jakarta: Kencana, 2007), pg 10.

[8] Sumantoro, dalam Khaerul Umam, Pasar Modal Syari'ah dan Praktik Pasar Modal Syari'ah, (Bandung: Pustaka Setia, 2013), pg 34

[9] http://jurnalmiqotojs.uinsu.ac.id/index.php/journalmiqot/article/viewFile/175/165 accessed on November 25, 2016

[10] ibid

of syari'ah in the capital market. Syari'ah mutual funds, like mutual funds, are generally an investment alternative for investors, especially small investors and investors who do not have much time and expertise to calculate risks to their investments. Mutual funds designed as a means to raise funds from people who have the capital, have a desire to make investments, but only have the time and knowledge are limited. Compared with conventional types of mutual funds, the development of Syari'ah mutual funds can still be said to lag far behind. Asset Under Management (AUM) / The amount of Managed Funds for syari'ah mutual funds actually shrank from Rp 12 trillion in early April 2015 to Rp 10.2 trillion in April 2016 or declined by about 15%. The decline was driven by the performance of syari'ah mutual funds that are declining followed by investors who attract funds. Compared to the total managed funds of the entire Mutual Fund industry which reached Rp 288 trillion, the market share of syari'ah funds is only about 3.5%.

Despite declining the last 1 year development RDSy 10 years since 2006 is arguably phenomenal. Beginning in April 2006 there were only 17 RDSy with managed funds of Rp 474 billion, in April 2016 this number grew to 90 RDSy with a managed fund of Rp 10.2 trillion or growing 20 times, a fantastic figure. Growth in managed funds is supported by the yield of syari'ah sector which had skyrocketed the commodity boom period 2007-2012 thus attracting the public interest to start trying to invest into RDSy. Plus RDSy can also be obtained through several Banks as a sales agent so as to expand its distribution.[11] The Financial Services Authority as a regulator is continuously committed to encouraging the syariah mutual fund industry to continue to grow, as seen from the Financial Services Authority Regulation NUMBER 19 / POJK.04/2015 On Issuing and Requirements of Syari'ah Mutual Funds. In this regulation, the new breakthrough is about syari'ah-based sukuk and syari'ah-based syari'ah-based securities (known as global syari'ah funds) Syariah-based syari'ah funds themselves are similar to fixed income mutual funds Syari'ah which already exists but in addition to investing in *sukuk* and securities syari'a countries are also permitted to invest in commercial syari'ah securities. This regulation opens the way for syari'ah mutual funds to provide funding for real sector projects to small and medium enterprises in accordance with syari'ah principles, the requirement that these securities get investment grade ratings from rating agencies. Although the concept is interesting but until now there is no investment manager who publish it because the financing of the real sector has a more complex risk.

2. ISSUES

a. What is the interpretation of the regulation of sharia economic principles in Indonesia?

b. How is the management of Syari'ah Mutual Funds based on Syari'ah economic principles in Indonesia?

3. REVIEW

a. Syari'ah Capital Market

1. Definition of Syari'ah Capital Market

The definition of capital market in accordance with Law Number 8 of 1995 concerning Capital Market (UUPM) is an activity concerned with the Public Offering and Securities trading, Public Company related to the Securities it publishes, as well as institutions and professions relating to *muamalah* securities. Implementation of Syari'ah principles in the capital market must be based on Al Quran as the highest source of law and Hadith of Prophet Muhammad SAW. Furthermore, from both sources of law, the scholars do the interpretation of syari'ah capital market which is then called the science of jurisprudence. One of the discussions in the science of *fiqh* is the discussion of muamalah, namely the relationship among fellow human-related trade. Based on that the activities of syari'ah capital market developed with the basis of *fiqh.*

b. Capital Market Instruments in Indonesia

Capital Market Instruments in Indonesia is:

1) Shares

Stocks or stocks are proof of ownership of capital in a limited liability company. In transactions purchased on the Stock Exchange, stocks are often also called shares is the most dominant instrument traded.

2) Bonds

Bonds are proof of debt from an issuer that is guaranteed by the insurer containing the promise of

[11]https://www.infovesta.com/index/article/articleread;jsessionid=824D43AD7A189857BAF42541C1D9071A.NGXA/32940439-c91d-4570-a8f7-3c8577f1222e accessed on November 25, 2016

interest or other appointments and repayment of the principal on the due date.

3) Mutual Fund

According to Law Number 8 of 1995 Concerning Capital Market, Mutual Fund is a vessel used to raise funds from the investor community to be invested in securities portfolio by the investment manager.

4) Warrant

Warrant by law is the securities issued by a company, which entitles the securities trader to order shares of the company at a specified price, with a period of six months or more.

The syari'ah capital market instruments in Indonesia are:

1) Syari'ah Share[12]

The term stock can be interpreted as a certificate of capital participation from a person or a legal entity against a company. Shares are a written proof for investors to the ownership of a company that has gone public. Through the purchase of shares in certain amounts, the stakeholder has the right and obligation to share the results and risks with the entrepreneurs, attend the General Meeting of Shareholders and even take over the ownership of the company.

2) Syari'ah Bonds

Syari'ah bonds are letters of cooperation that have a more diverse scope than just a letter of recognition of debt. The diversity is influenced by the various contracts that have been used. *Such as mudaraba, murabaha, salam, istishna* and *ijara.*

3) Syari'ah Mutual Fund

Shari'ah Mutual Funds are Mutual Funds operating under the terms and principles of Islamic Sharia, either in the form of a contract between the Custodian Bank as the owner of the property *(shalib al-mal/rabb al-mal)* with the Investment Manager, as well as the management of the investment fund as the representative of *shalib Al-mal*, or between the Investment Manager as the representative of *shalib al-mal* with the holders of the participation unit.

4) Syari'ah Asset Backed Securities

Syari'ah Asset Backed Securities are securities issued by the EBA Sharia Collective Investment Contract whose portfolio consists of financial assets in the form of claims arising from commercial paper, invoices arising in the future, the sale and purchase of physical assets held by a financial institution, Investments guaranteed by the government, means of increasing investment or cash flows and equivalent financial assets, in accordance with the principles of syari'ah

5) Pre-emptive Rights (Rights Issue)

The Fatwa DSN-MUI Number: 65 / DSN-MUI / III / 2008 regarding Pre-emptive Rights (HMETD) ensures that the halal investment in capital markets does not stop only on securities instruments named shares, but also on derivative products. The derivative product (derivative) rated according to the DSN criterion is (HMETD). Products that are inherent and inherent with the parent product it becomes investment products that already meet the criteria of DSN.

6) Syari'ah Warrant

The Fatwa DSN-MUI Number: 65 / DSN-MUI / III / 2008 regarding Pre-emptive Rights (HMETD) ensures that the halal investment in capital markets does not stop only on securities instruments named shares, but also on derivative products. The derivative product (derivative) rated according to the DSN criterion is (HMETD). Products that are inherent and inherent with the parent product it becomes investment products that already meet the criteria of DSN.

4. METHOD

This research is normative research with descriptive research type. The approach used is normative juridical. Data collection was done by literature study and document study. The data used are secondary data consisting of primary legal materials, secondary legal materials, and tertiary legal materials. The collected data is then analyzed qualitatively.

B. DISCUSSION

1. Interpretation of Sharia Economy Principles in Indonesia

According to M. A. Mannan Shari'ah economy is a social science studying the economic problems of society inspired by Shari'ah values. So in his journey according to mannan argue that Shari'ah economics is positive and normative economics, because both are interconnected in forming a good economy in its

[12] Burhanuddin S, *Aspek Hukum Lembaga Keuangan Syari'ah*, (Jakarta: Graha Ilmu, 2010), pg.35.

evaluation later.[13] However, in many ways related to finance, Islam has several principles that distinguish it from other economic systems[14]:

1. Principle of Tawheed, good Tawheed is expected to form integrity that will help the formation of good goverment. The principle of faith becomes the ultimate foundation that sustains for other principles. The awareness of tauhid will lead to the belief of the afterlife simultaneously, so that an economic actor does not pursue material gain alone. Another positive impact of the principle of monotheism in the Islamic economic system is the anticipation of all forms of monopoly and concentration of economic power in a person or one group only

2. Principle of Justice, Implementation of justice in economic activity is in the form of rules of interaction and transaction principle that prohibits the existence of elements:[15] (a) *Riba*, is one hurdle that is often tempting many people to gain profit. Islam forbids usury in all its forms, as it contradicts the principles of humanity, brotherhood and compassion, (b) *Maysir*, *Maysir* language with the meaning *qimar*, meaning gambling, that is all forms of speculative behavior or the chances. Islam forbids all forms of gambling. This is because gambling with all its forms contains speculative elements and leads to a great deal of harm. (c) *Gharar*, it is simply concluded that the *gharar* is related to the lack of clarity about something in a transaction. (d) *Haram*, Economic activity, in the *syari'ah* financial system, as a subdivision of *mu'amalah* study entered into the *ammah* worship group. Where, the rules of governance are more general. According to the Hanafi cleric, the prohibition within Islamic law consists of two categories, namely material prohibitions (matter, substance, or object) and prohibition due to external factors.

3. Principles of Maslahat, Economic activity is considered to meet the maslahat if it meets two elements, namely the obedience (kosher) and useful and bring goodness (thayyib) for all aspects are integral. Thus, such activity will certainly not cause harm.

The regulation of *syari'ah* economic principles in Indonesia is regulated in Al – Qur'an, Sunnah Rosul, Ijtihad, and the DSN-MUI Fatwa and compilation of Islamic law. Basically sharia economic principles are in the field of financial institutions of Banks and Non-Bank financial institutions. Because it is regulating the principles of syari'ah economy is not only regulated by a single law.

1) Legislation in the field of Bank Financial Institution

a. Law: Law No.10 of 1998 on Amendment to Law No.7 of 1992 on Banking.

b. Law No.21 Year 2008 on Syari'ah Banking

c. Bank Indonesia Regulation

2) Legislation in the field of Bank Financial Institutions

a. Insurance: Law No.40 of 2014 on Insurance, PP No.39 of 2008 on the Second Amendment of PP No.73 of 1992 on the Implementation of Insurance Business

b. Syari'ah Pawnshop (Rahn): Fatwa DSN-MUI Number: 25 / DSN-MUI / III / 2002 on Rahn and Fatwa DSN-MUI Number: 26 / DSN-MUI / III / 2002 on Rahn Gold.

c. Syari'ah Mutual Funds and Shariah Capital Markets: Law no. 8 of 1995 and Decision of Bapepam LK

2. Management of Sharia Mutual Funds Based on The Sharia Economics Principles in Indonesia

There are two important things to consider in measuring the performance of sharia mutual funds, namely:[16]

1. The rate of return obtained is equal to or greater than a certain portfolio yield rate with a risk equal to or less than the market risk level.

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[13] Mustafa Edwin Dkk (2006), Pengenalan Eksklusif ekonomi Syari'ah, kencana perdana media group, Jakarta, pg. 17

[14] Mursal dan Suhadi,2015,"*Implementasi Prinsip Islam dalam Aktivitas Ekonomi:Alternatif Mewujudkan Keseimbangan Hidup*", Jurnal Penelitian, Vol. 9, No. 1, Februari 2015, pg.71-72

[15] Ibid

[16] Nur Aini Kandarisa, "Perkembangan Dan Hambatan Reksadana Syari'ah Di Indonesia: Suatu Kajian Teori", Universitas Negeri Surabaya, pg.8-9

2. Diversify so as to minimize the risk that is not systematic measured by calculating the correlation between the level of mutual funds yield syari'ah with the results of capital market portfolio

Syari'ah mutual fund performance does not always guarantee good performance, but syari'ah mutual funds guarantee performance in accordance with the principles of syari'ah and lawful. Syari'ah mutual fund performance depends on how the role of investment manager to operate its performance system and maintain creditability. Good and bad performance of mutual funds can affect the growth of net asset value; if the performance is good then the value of net assets will rise so as to increase the investment value to the holder of participation unit. While the investment performance is bad then the net asset value will decrease, thus decreasing the investment value owned by the investor. In the character of the instrument of mutual fund investment syari'ah is not much different from conventional mutual fund.[17]
Syari'ah mutual funds are based on sharia principles, a simple process of mutual fund investment management syari'ah can be described as follows:

Above picture describes the process of managing syari'ah mutual funds, the supervisor of syari'ah is an institution authorized to examine, explore and formulate the value and principles of sharia law in the form of fatwa to be used as guidance in transactions activities that occur in syari'ah financial institutions' Ah and agree on the effects in accordance with the principles of syari'ah. The guidelines are used by the investment committee to formulate the objectives, policies and investment strategies which are then implemented by the investment team in the form of securities portfolio in accordance with the principles of syari'ah.[18]
In mutual fund contracts involves two parties who each have certain rights and obligations. The relationship between the parties in mutual funds is not a creditor relationship with the debtor, but a partnership relationship between the parties of investors/investors with the investment manager who acts as a fund manager (mudharib).[19]
In general, the operational mechanism in shariah mutual funds can be divided into two, namely between the investor and the investment manager and between the investment manager and the investment user. The operational mechanism between investor and investment manager is done by wakalah system. While the operational mechanism between investment managers and investment users is done with mudarabah system.[20]

In conducting transactions *Syari'ah* mutual funds are not allowed to perform speculation actions, which contain *gharar* such as *najsy* (bogus supply), *ihtikar* and other speculative acts. "Bukhari and Muslim narrated from Ibn Umar who said that Prophet Muhammad SAW forbade an-Najsy (bid something not to buy but raise prices)" Mutual fund transaction products in general such as Spot, Forward, Swap, Option and other products Usually done mutual funds should be the subject of research and assessment of *Shariah* mutual funds. To discuss issues that require research and assessment, such as selecting investment companies, income purification, and profit sharing formulas and so on, a Sharia Supervisory Board appointed by the MUI should be established.

[17] Ibid
[18] Nur Aini Kandarisa, Op.Cit pg.7
[19] M. Rasyid Ridha, *Peranan Reksadana Syari'ah Dalam Peningkatkan Investasi Di Indonesia,* Transparency, Jurnal Hukum Ekonomi, Juni 2013, Volume II Nomor 2, pg.4
[20] Hanif**,** *Reksa Dana Syari'ah,* Fakultas Syari'ah IAIN Raden Intan Lampung, Vol.2, No.1, Januari 2010 pg.27

The return on investment in mutual property owned by investors in Syari'ah Mutual Fund is distributed proportionally to the investors. The investment proceeds should be cleared from non-halal elements, so the investment manager must separate the income share that contains the non-halal elements of the halal (*tarfiq al-halal min al-haram*). revenue. Therefore, short term placements on unconventional conventional giro will be cleared through the cleansing process. Economics. syariah which are applied in regulations and management mutual funds syariah based on a postulate Ar- ro'yu or with ijtihad with the methods ijtihad problems for public interest

C. CONCLUSION

Based on the results of research and discussion above, it can be concluded as follows:

1. There are 3 (three) principles of shari'ah economy namely the principles of Tawheed, Principles of Justice, and the Principles of Welfare. The regulation of syari'ah economic principles in Indonesia is regulated in the DSN-MUI Fatwa and compilation of Islamic law. Basically sharia economic principles are in the field of financial institutions of Banks and Non-Bank financial institutions. Because it is regulating the principles of shari'ah economy is not only regulated by a single law. Economics. syariah for the management mutual funds syariah in ijtihad through Ar - ro' yu or with ijtihad to the question of the problem
2. The mechanism of transactions in investing through mutual funds Shari'ah should pay attention to things that are not against the Islamic Shari'a. The application of the transaction contract must not be contradictory to the Islamic Shari'ah, whether prohibited because (1) haram other than its substance, which contains tadlis, ihtikar, ba'i najasy, garar, and usury, or (2) due to unauthorized akadnya, Unfulfilled conditions, ta'alluq occurs, and there are two contracts in one transaction simultaneously.

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