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EDITORIAL

Special Issue on Good Governance and Public Policy on Sustainable Development

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Welcome to the special issue of the *World Journal of Entrepreneurship, Management and Sustainable Development* (*WJEMSD*) entitled **Good Governance and Public Policy on Sustainable Development**. This special issue consists of selected papers presented at the Third International Conference on Law, Governance and Globalization (ICLGG) on 3-4 November 2021 at the Faculty of Law, Universitas Airlangga, Surabaya, Indonesia. The conference theme was *The Challenge of Sustainable Development: Present and Future*.

THE THEME OF THE SPECIAL ISSUE

The theme for this special issue was chosen due to the global challenges to sustainable development agendas, including building strong governance institutions and supporting the rule of law. The academic literature on good governance, public policy and sustainable development has grown rapidly, where the role of governance for the Sustainable Development Goals (SDGs) has mainly been addressed from a conception and normative point of view. However, the Asia and Pacific SDG Progress Report for 2019 showed that the region lagged behind in implementing most SDGs. The problem is that governments in some countries are relatively passive and face various challenges. Meanwhile, governments are the accelerator of SDGs to collaborate across policy sectors and set inter-related economic, social and environmental objectives beyond short-term political cycles. Therefore, by providing ideas and solutions for building a strong policy on sustainable development,

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this special issue can ultimately contribute to more effective SDG implementation in developing countries, especially Indonesia.

CONTENT OF THE SPECIAL ISSUE

The first paper in the special issue defines State Economic Loss Due to Corruption within Indonesian Law. Taufik Rahman, Nur Basuki Minarno, Sapta Aprilianto and Hanif Muzaki elaborate and identify the phrase "state economy" under the Indonesian Anti-Corruption Act. The purpose is to provide standards to determine the ratio of state economic losses due to corruption. The authors find that judges could use these standards to interpret the state of the economy under the Anti-Corruption Act.

The second paper is the Determination of Fishing Rights Allocation as a Strategy for Sustainable Fisheries Management Realisation in Indonesia. In this paper, Enny Narwati and Masitha Kumala argue that the Total Allowable Catches (TACs) system is ineffective in tackling the problem of overfishing and maintaining the sustainability of fisheries in Indonesia. Therefore, the authors find that Indonesia could use Individual Non-Transferable Quotas (INTQs) to ensure fisheries' sustainability. To impose INTQs, the government must determine INTQs under fisheries' management policies to achieve sustainable and equitable fisheries in Indonesia.

In the third paper of the special issue, Henry Sinaga, Yudha Pramana, and Anis Hermawan find that the current tax regulation in the construction industry in Indonesia is still insufficient to prevent and overcome tax fraud. On the other hand, tax fraud jeopardises sustainable development since it decreases state tax revenues. The authors argue that it is important to renew income tax laws to tackle tax fraud in construction services, including restoring and modifying Construction Industry Scheme regulations by adding sanctions for fraud and revoking the final income tax in Indonesia.

The fourth paper is entitled, Indonesia Inspection Mechanism: A Way to Comply with Maritime Labour Convention, by A. Indah Camelia and Lina Hastuti. The authors examine the necessity for the Indonesian Government to establish a national legal framework and inspection mechanism based on the Maritime Labour Convention (MLC). The MLC plays a critical role in applying seafarers' working rights by emphasising the rule for flag state, coastal state, labour supplier state or port state.

The fifth paper discusses problems related to food estate programmes to achieve food security in Indonesia. Sri Hajati, Sri Winarsi, Xavier Nugraha, Rahajeng Dzakiyya Ikbar and Stefania Arshanty Felicia argue that although the programmes are designed to ensure food security, the implementation of the programmes affects the right of land ownership for specific people. Therefore, the authors examine the balance of the right to food for food security and the right of land ownership must derive from specific policies where land acquisition includes a form of compensation to protect the interests of the inhabitants, predominantly the minority.

Wilda Prihatiningtyas, Zuhda Mila Fitriana, Suparto Wijoyo and Ardhana Christian Noventri discuss the ideal model of village regulation to achieve SDGs. They elaborate on the importance of village funds to achieve SDGs in certain East Java villages. Using an empirical study, the authors

suggest the strategy of planning, budgeting, distribution and management of village funds to achieve SDGs in East Java.

Iman Prihandono and Ekawestri Prajwalita Widiati analyse the political capture in the Indonesian law-making process to find the link between the interests of the coal and mining business sectors and the protection of the environment. The authors conclude that business and political interests undeniably infringe on the environment's protection by excluding FABA and slag from lists of hazardous waste. At the same time, obligations to corporations are reduced, whereby coal industry-related politicians benefit from the changing criteria of hazardous waste. Environmental problems are left unanticipated, and remedies for victims remain unresolved.

The eighth paper examines the participation of smallholder coffee farmers in achieving SDGs through voluntary certification. Iman Prihandono and Cenuk Sayekti discuss the problem to encourage farmers to participate in voluntary certification. The findings conclude the importance of providing technical and financial assistance to achieve sustainable coffee production. In addition, certification schemes require clear standards, continuous capacity building, low-cost certification, including providers in high-level decision-making, and less demanding rules, with the help of multi-stakeholders such as private actors and the Government to help maximise certification benefits for smallholder farmers.

In the penultimate paper, Mailinda Yuniza, Ni Nengah Nandita, Gilda Putri and Ni Putu Maharani examine Regulatory Impact Analysis (RIA) as a Mandatory Legislative Drafting Method for Achieving Sustainable Development Goals in Indonesia. The paper focuses on the importance of Regulatory Impact Analysis as a method of constructing regulations to achieve SDGs. The authors argue that implementing RIA is essential since it analyses the impact of policies using consultation with various stakeholders and cost and benefit analysis. Using RIA to evaluate the quality of laws can be a parameter to attain SDG 16 (peace, justice and strong institutions).

The final paper in this special issue examines the potential to achieve SDGs in two villages in West Java, Indonesia. Yustinus Suhardi Ruman, Hudiarto Sukarman, Siswono Akuan Rokanta, CSA Teddy Lesmana, Anang Suryana and Muhamad Muslih analyse the management of freshwater fish in Selajambe and Cisaat Villages using the endogenous approach. The purpose is to create a thematic village to alleviate poverty following SDGs.

CONCLUSIONS

Good governance and public policy have a significant and positive impact on sustainable development, especially for developing countries. This special issue aims to assemble a coherent set of papers based on research and discussion on how and to what extent good governance and public policy can support sustainable development. The key features of this special issue are discussion on how good governance and public policy can promote accountability, transparency, efficiency in managing human, natural and economic resources, democracy and the rule of law at all levels incorporated in government strategies.

BIOGRAPHY

Dr Intan Soeparna is a senior lecturer at the Faculty of Law, Universitas Airlangga, Surabaya Indonesia, where she teaches International Law, International Trade Law, ASEAN Law, SDGs Law, Cyber Law and Nuclear Law. She has a PhD from Vrije Universiteit, Brussels, and Ghent Universiteit, Belgium. Her research interests are the development of International Trade in WTO and ASEAN, SDGs and ASEAN Law. Her latest publications are related to the WTO Dispute Settlement and ASEAN Law. Her current position is Director of the Centre for Development of Research, Community Service and International Publication at the Faculty of Law, Universitas Airlangga. She is an advisor for the Indonesia Entrepreneur Association (APINDO) for the International Trade Forum. In addition, she is also a research fellow at the Centre of Private Law and Economics, Faculty of Law and Criminology, Vrije Universiteit Brussels, Belgium.

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RESEARCH PAPER

Land Acquisition for the Public Interest as an Alternative to Building a Food Estate in Indonesia: An Effort to Achieve Proportional Justice

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ABSTRACT

PURPOSE: To ensure the right to food, Indonesia has implemented the Food Estate programme, using the State's right to control land acquisition in the public interest. However, land acquisition for the Food Estate programme affects people's right of ownership. In that context, this article discusses the proportionality of the right to food and right of ownership in relation to land acquisition for the Food Estate programme.

DESIGN/METHODOLOGY/APPROACH: Legal research, with a statutory and conceptual approach.

FINDINGS: The paper outlines the urgent need for the Food Estate programme, characterises the right to food and right of ownership, and describes the concept of land acquisition in the public interest based on Indonesian Law.

CITATION: Hajati, S., Winarsi, S., Nugraha, X., Ikbar, R.D. and Felicia, S.A. (2023): Land Acquisition for the Public Interest as an Alternative to Building a Food Estate in Indonesia: An Effort to Achieve Proportional Justice. *World Journal of Entrepreneurship, Management and Sustainable Development*, Vol. 19, No. 1/2, pp. 3–14.

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RESEARCH LIMITATIONS/IMPLICATIONS: Focused solely on discussing how to fulfil citizens' rights while proceeding with land acquisition for the Food Estate programme.

ORIGINALITY/VALUE: This work presents a recent analysis of land acquisition for the public interest, as part of the National Strategic Projects, which was only recently included in Indonesian legislation.

KEYWORDS: *Food Estate; Right to Food; Right of Ownership; Land Acquisition for Public Interest*

INTRODUCTION

Food represents a primary need for humans that must be fulfilled at all times (Mohamed and Patwary, 2021). On this basis, food is classified as a human right guaranteed in Article 27 Section 2 of the 1945 Constitution of the Republic of Indonesia, as well the 1996 Rome Declaration. To ensure the fulfilment of this right, the Government of Indonesia established Law 18 of 2012, the Food Law. In Article 1 Point 4 of the Food Law, food security is described as fulfilment by the state of its provision of food to individuals; this is reflected in the availability of sufficient food, both in quantity and quality. This food should be safe, diverse, nutritious, equitable, and affordable. It must not conflict with any religion, belief, or culture of the community. The food provided should sustainably support healthy, active, and productive lives for everyone in the community. As set out in the Food Law, Indonesia strengthens its food security and safety by upholding food sovereignty (Uddin *et al*., 2020).

In addition to the Food Law, Indonesia is committed to the Sustainable Development Goals (SDGs).[1] One of the SDGs is to achieve zero hunger through long-term agricultural productivity and by implementing a sustainable food production system that achieves food security and improves nutrition over time. National and international commitments to fulfil food security are based on the need to (i) fulfil human rights, (ii) develop the quality of the nation's human resources, and (iii) establish the foundations of national security. In reality, however, food security in Indonesia has still not been fully realised, with the current risk of a food crisis representing a critical issue for the nation (Yestati and Noor, 2021).

Achieving zero hunger and food security, as legal ambitions in Indonesia (*rechtide*), are still new if understood solely through the 'law in the book' (*das sollen*), although they are long-established in terms of the 'law in society' (*das sein*). Presently, Indonesia is at high risk of falling into a food crisis due to the COVID-19 pandemic. As with other existing pandemics, COVID-19 is threatening to create food issues for the nation. Strategic policies in the food sector are absolutely necessary if a crisis is to be avoided, as emphasised by the Food and Agriculture Organization (FAO), a specialised agency of the United Nations that leads international efforts to defeat hunger. The FAO has described several ways of noting the impact of a pandemic on the world's food, which can cause a domino effect for the global food supply chain. For instance, if food supplier countries

[1] See Government Regulation 59 of 2017 on the Implementation of Achieving Sustainable Development Goals.

lockdown and pause their supply activities, this can cause immediate disruption in the food industry and to agriculture, resulting in a potential economic downturn (Schmidhuber, 2020).

To avoid such a scenario, several policies in Indonesia support food availability, affordability, and security, such as by developing "agropolitan" areas, implementing urban farming, and creating Food Estates (Marwanto and Pangestu, 2021). Of these various policies, the one policy that is believed to best support all three aspects of food provision is the Food Estate. In 2014-2019, this idea featured in Indonesia's National Medium-Term Development Plan, but it was only in 2020 that President Joko Widodo's government began developing Food Estates in response to the threat of a food crisis brought on by the COVID-19 pandemic. As well as Central Kalimantan and North Sumatra, Food Estates are also planned for development in provinces such as South Sumatra, East Nusa Tenggara, and Papua. As a follow-up to this policy, the Ministry of the Environment and Forestry of Indonesia issued a release, Regulation P.24/MENLHK/SETJEN/KUM.1/10/2020, about the Provision of Forest Areas for Food Estate Development (Ministerial Regulation LHK 24/2020). In its release, the Ministry guaranteed that the development of Food Estates would be carried out while considering sustainability and preserving the environment, as reflected by various provisions that must be met according to LHK 24/2020 (Basundoro and Sulaeman, 2020).

In this, Article 1 Number 10 states that Food Estates are large-scale food supply initiatives that utilise natural resources through human efforts supported by capital, technology, and other resources, to produce food products to meet human needs. The overarching initiative covers food crops, horticulture, plantations, animal husbandry, fisheries, and forestry. The Food Estate concept was developed in keeping with strategic plans to make Indonesia a centre for food agriculture and to improve the nation's food reserves, to support food security with a resulting benefit for national defence. The food commodities that will be produced on Food Estates include rice, cassava, corn, and other such strategic commodities depending on land conditions in the area.

In 2020, President Joko Widodo decided on three Food Estate locations in Indonesia: South Sumatra, Central Kalimantan, and Papua. On 26 June 2020 in Central Kalimantan, the Government of the Republic of Indonesia designated 770,601 hectares of former peatland development area, in the Pulau Pisang Regency and Kapuas Regency (WALHI Central Kalimantan, 2021), as a Food Estate. According to the Financial Note of the 2021 State Revenue and Expenditures Draft, its development, at first across 165,000 hectares of the land, was organised using an empowerment programme for transmigration and farmers, with a budget of Rp. 2.55 trillion (US$163,308,696) (Nasution and Bangun, 2020).

To generate sufficient food production to execute the Food Estate programme, the state must first provide land; because of this, various elements of people's human rights are affected by the implementation of Food Estates. This creates a conflict between the right to food and right of ownership. On the one hand, procuring Food Estates fulfils citizens' rights to food provision that supports the nation's sovereignty (WALHI Central Kalimantan, 2021). The right to food is a manifestation of the mandate of Article 28H of the 1945 Constitution of the Republic of Indonesia

on the right of every citizen to live in physical and spiritual prosperity. The Universal Declaration of Human Rights (1948) and The International Covenant on Economic, Social, and Cultural Rights (1966) ensure that food is a human right. The need for food is primary to our survival as it cannot be replaced; it affects all other aspects of human life, be they economic, social, political, or cultural (Krisjanti and Quita, 2020).

However, creating Food Estates to support food security is not without issue. Although currently the land acquisition for the initial Food Estate only affects former peatland, we cannot rule out the possibility that more land will need to be acquired to make the programme a success. To that end, the state could use its authority in the State's Right to Control to take possession of land that belongs to the community, as part of land acquisition in the public interest (WALHI Central Kalimantan, 2021). The State's Right to Control refers to the mandate of Article 33 in the 1945 Constitution of the Republic of Indonesia; this sets out that there is no issue as long as the use of the land is in the public interest, as it is in this case for food security.

A problem arises when the land in question is owned by the people, as Article 28H Section 4 of the 1945 Constitution of the Republic of Indonesia guarantees that it cannot be taken over arbitrarily by anyone. Moreover, the right of ownership is described as the strongest and most complete right that a person can have on land in Article 20 Section 1 of Law 5 of 1960 about the Basis of Agrarian Land Law. This creates a dilemma because, on the one hand, land acquisition for Food Estates is necessary to benefit the majority of the people, but on the other hand, there are minority interests related to land rights. Does upholding the interest of the community justify derogating the rights of existing community minorities?

A legal policy construction is needed for proportional protection of rights, i.e., both the right to food through Food Estates, which is guaranteed in Article 27 Section 2 of the 1945 Constitution of the Republic of Indonesia and reflects the interests of the majority of the community, and the land property rights guaranteed in Article 28H Section 4 of the 1945 Constitution of the Republic of Indonesia, which reflects the interests of community minorities. In that context, this paper will discuss how to create land acquisition policies in the public interest for Food Estates, as a manifestation of proportional protection of both the right to food and the right of ownership. To that end, this paper investigates: 1) the legal basis for the right of ownership, 2) land acquisition for the public interest, and 3) land acquisition for the public interest as a Food Estate development procedure.

In terms of practicality and/or research implications, this paper supports land acquisition for the public interest in the context of the urgent need to develop Food Estates in Indonesia, with implications for citizens' rights to food and land ownership. Setting the premise for this research, two works have previously been published on a similar topic to that of this paper.

1. A thesis written in 2018 by Mestika Dewi Sari Sagala, titled "*Peralihan Hak atas Tanah Petani melalui Program Food Estate dikaitkan dengan Batas Tanah Maksimum Kepemilikan Tanah*"

(Transfer of Farmers' Land Rights through the Food Estate Program related to the Limitation of Maximum Land Ownership):
This thesis analysed several issues, including how the law regulates the transfer of farmers' land rights and how those transfers of land have benefitted the investors in cultivation businesses related to Government Regulation 18 of 2010 about the cultivation business and legal protection of farmers' land rights regarding Food Estates and land law in Indonesia. Although it was written in 2018, this thesis came the closest to discussing the topics covered in this paper. However, several factors differentiate the thesis from this paper. First, the thesis limits its discussion to just farmers, while this paper has a wider scope, taking into account all Indonesian citizens who own land and might therefore be affected by Food Estates. Second, the legal basis for the conclusions of the thesis is outdated. The writer concluded that there was no justification for the transfer of land rights (including land acquisition) for Food Estates since there was no clear provision for the Food Estate programme in any legislation as a justification for land acquisition through the states' right to control. However, this paper is written in the context of the updated legal basis for land acquisition, taking into account the enactment of the Job Creation Law that justifies the Food Estate programme as being in the public interest.

2. An article published in 2021 by Syahruddin Nawi Salmi, Sufirman Rahman, and Ilham Abbas, titled "The Legal Nature of Land Acquisition for Development for the Public Interest in Indonesia":
This article generally discussed the legal nature of land acquisition for the public interest in Indonesia, as regulated through the Job Creation Law and Land Acquisition Law, and then explained its mechanism and the role of the government in using imperative law principles. The writers of this article only briefly mentioned Food Estates as justifying land acquisition, without clearly dissecting each type of land right that can be counted as being in the public interest. Therefore, this paper builds on the work of the article by further contributing to analysing in detail how the right of ownership, as part of the land rights in Indonesia, can justifiably be overridden for land acquisition in the public interest to support the Food Estate programme.

Based on the two legal issues mentioned above and the foundational research presented in previous works, this paper looks to fill the gaps in our existing knowledge that warrant holistic research into the legal implications of continued development of the Food Estate programme. Looking ahead, since this paper only focuses on the right of ownership, which is one of many land rights, other interesting lines of inquiry concern analysis of further types of land rights in Indonesia. Second, although historically many cabinets have worked on a similar initiative but using different names, the Food Estate proposed by President Joko Widodo is undeniably still in its early stage. In the future, therefore, researchers may be better positioned to investigate factual cases of land acquisition for the Food Estates, seeking to determine whether the law has provided sufficient regulation to protect citizens' rights.

Legal Basis for the Right of Ownership

In Article 28H Section 4 of the 1945 Constitution of the Republic of Indonesia, it is decreed that: "Everyone has the right to have ownership rights and such Right of Ownership may not be taken over arbitrarily by anyone". Article 28H Section 4 has a constitutional consequence, as it establishes the right of ownership as the only primary right among other land property rights, thus placing it in the strongest position and ensuring that no one (not even the government) can instantly confiscate a person's land. This is also reaffirmed in Article 20 Section 1 of the Land Law; this states that the right of ownership is hereditary, and the strongest and most complete of rights possessed by people in terms of their land. The provisions of Article 6 further distinguish the right of ownership from other types of land property rights. However, the right of ownership is not absolute, unlimited, or inviolable. As with other land property rights, such as the rights to build, use, and cultivate, only individuals are entitled to the right of ownership, and they must be Indonesian citizens. Article 20 Section 2 of the Land Law stipulates that the right of ownership can then be transferred to other parties in circumstances where there is a legal event.

The right of ownership, as stipulated in Article 22 of the Land Law, is upheld by customary law; this is either regulated by a government regulation or through a government determination based on the methods and conditions stipulated by a government regulation. Land property rights that are upheld by a government stipulation are processed through the procedure whereby they are granted. Article 27 of the Land Law states, in essence, that the abolition of the right of ownership can occur when the land falls to the state. This might happen due to the revocation of the right of ownership based on Article 18 of the Land Law; this states that for the public interest (including the interests of the nation and the state as well as the common interests of the people) land property rights can be revoked according to the method regulated by law and with the landowner awarded appropriate compensation. This provision guarantees for people that their land property rights may only be revoked under certain conditions, i.e., for the sake of the public interest, when providing appropriate compensation, and according to the method regulated by the law (Dirgantara *et al*., 2020).

Further to this, Article 6 of the Land Law states that all land property rights have a social function. There are several primary principles to this (Sulaiman, 2021), which are:

1. Formulating the collective and social nature of land property rights according to the principles of the Land Law. This has a religious, communalistic nature, underpinned by the notion that the earth, water, and space, including the natural resources contained within the territory of the Republic of Indonesia, are a gift from God Almighty and the nation of Indonesia is a national treasure;
2. Land that is occupied by a person not only has a function for the person with the right to it but also for the nation as a whole. As a consequence, when using that land, not only should individual interests be accounted for but also the interests of the community. Accordingly, a balance should be struck between personal and public interests;

3. The social function of land property rights means they depend on certain circumstances, including the condition of the land, its nature, and the purpose of granting the rights. It is intended that the land must be properly maintained and the quality of its fertility and soil conditions upheld so that the benefits of the land can be enjoyed not only by the owner of land property rights but also others in the community. Therefore, the obligation to maintain the land is not only borne by the owner or holder of the right in question but also becomes a burden for every person, legal entity, or agency that has a legal relationship with the land.

The social function of land property rights is technically regulated by Law 2 of 2012 on Land Acquisition for Development in the Public Interest, as amended by Law 11 of 2020 on Job Creation; Government Regulation 19 of 2021 on Implementation of Land Acquisition for Development for Interest, and Regulation 5 of the Head of the National Land Affairs Agency of 2012 on Technical Guidelines for the Implementation of Land Acquisition.

Regarding Land Acquisition for Public Interest

One of the mandates of Law 1 of 2020 about Job Creation (the Job Creation Law) is that land may be acquired for development in the public interest that aims to improve the community's or people's welfare or support economic activity/development, the ease of investment, infrastructure development, or basic services.

To uphold the mandate of Law 2 of 2012 about Land Acquisition for Development in the Public Interest (the Land Acquisition Law) and the Job Creation Law (in particular, Articles 123, 173, and 185-b), the government issued Regulation 19 of 2021 about the Implementation of Land Acquisition for Development in the Public Interest (the Government Regulation on Land Acquisition). According to Article 1 Point 2 of the Land Acquisition Law, land acquisition is the act of sourcing land and providing appropriate and fair compensation to the entitled party. The same thing is also stated in Article 1 Point 2 of the Government Regulation on Land Acquisition, describing land acquisition as an act of obtaining land by providing appropriate and fair compensation. Based on Article 1 Point 3 of the Land Acquisition Law, the party entitled to compensation is the one who controls or owns the land in question. Furthermore, Article 1 Point 4 clarifies that the object of land acquisition can be above ground or underground space, or other areas that can be assessed.

Based on these stipulations, land acquisition has three elements (Isnaeni, 2020):

1. activities to acquire land in the context of fulfilling development for the public interest;
2. providing compensation to those affected by land acquisition activities;
3. release of legal rights from landowners to other parties.

There are two types of land acquisition: for government purposes and for private purposes. The former can be further divided into land acquisition for the public interest and for commercial

interests. Land procured for development in the public interest by the national or local government is obtained when the private party relinquishes or surrenders their land property rights (Wijaya, 2020).

To ensure that this land acquisition is carried out in the interests of the majority of the community, not just of certain parties, the process is regulated somewhat to ensure there are reasons for using this method of land acquisition in the public interest. There are 24 such justifiable reasons, as listed in Article 123 Point 2 of the Job Creation Law, which amended Article 10 of the Land Acquisition Law. Accordingly, when the reason is one of the 24 stipulated, the landowner is obliged to relinquish their land for the public interest after the provision of compensation or based on a court decision after the power of attorney has been secured (see Article 5 of the Law on Land Acquisition).

The concept of "public interest" is defined in the Land Acquisition Law as the interests of the nation, state, and society that must be realised by the government and upheld as much as possible for the prosperity of the people. Based on that definition and the 24 reasons provided in Article 123 Point 2 of the Job Creation Law, activities categorised as being in the public interest can be understood to fulfil one of five criteria (Lestari, 2020):

1. meets the interests of all levels of society;
2. conducted and owned by the government;
3. not-for-profit usage;
4. qualifies for one of 24 previously established reasons;
5. supports national or regional development plans.

Land Acquisition for the Public Interest as a Food Estate Development Procedure

The legal basis for land acquisition for Food Estates generally concerns land in areas of forest, as detailed in Ministerial Regulation LHK 24/2020; it may sometimes override the right of ownership in the public interest, therefore necessitating the transfer of ownership rights. Currently, the legal basis for this is regulated by the Land Acquisition Law, as amended by the Job Creation Law. Changes to the provisions of this law were followed-up by Government Regulation 19 of 2021 regarding the Implementation of Land Acquisition for Development in the Public Interest. Previously, when the Food Estate programme was included in National Strategic Projects, the Attachment to Government Regulation 109 of 2020 on the Acceleration of the Implementation of National Strategic Projects stated that land acquisition was expected to be necessary, as justified by Article 173 of the Job Creation Law.

Article 123 Point 2 of the Job Creation Law, which amended the provisions of Article 10-w of the Land Acquisition Law. Article 2-w Government Regulation 19 of 2021, states that: "food

security areas are initiated and/or controlled by the Central Government, Regional Governments, state-Business Entity, or regional-Business Entity". Therefore, it can be understood that the Food Estate programme requires food security areas to be created that fall within the definition of development using land for the public interest, as initiated by the central government. As there is currently no precise definition for a Food Estate, this must be outlined in Ministerial Regulation LHK 24/2020, so that in the future, there can be no problems or debate. However, regardless of the precise definition, land acquisition for Food Estates is justified because it is in the public interest.

The amendment to the Land Acquisition Law in the Job Creation Law allows land to be acquired for the benefit of a Food Estate by taking away ownership rights. That process is regulated by Government Regulation 19 of 2021 and involves planning, preparation, implementation, and result submission stages.

We can understand that developing a Food Estate by acquiring land in the public interest is a manifestation of agrarian legal policy that reflects proportional protection of the interests of the majority in the community, by fulfilling their right to food as guaranteed in Article 27 Section 2 of the 1945 Constitution of the Republic of Indonesia, and the right to ownership of land guaranteed by Article 28H Section 4 of the same constitution, which reflect the interests of the community's minorities, because:

1. **There is a regulated legal procedure**
   This means that the government cannot immediately seize someone's land and take away their right of ownership, even with the aim of acquiring land in the public interest. If the established procedures are violated, the land acquisition may be cancelled. Therefore, the procedure offers legal protection for the interests of community minorities (i.e., landowners).
2. **There are various forms of compensation**
   In Article 36 of the Land Acquisition Law, it is stipulated that: "Compensation may be given in the form of a. money; b. replacement land; c. resettlement; d. shareholding; or e. other forms agreed by both parties". Therefore, it can be understood that the compensation should be appropriately tailored to suit the landowner. So, for example, if the landowner does not want money, they may be otherwise compensated according to their expectations, such as with replacement land or resettlement.
3. **There is a process for deliberation**
   To accommodate the interests of stakeholders, Section 4 on Deliberation in Compensation Determination, according to Articles 37-39 of the Land Acquisition Law, sets out a deliberation procedure. This brings together the government party in a land acquisition, reflecting the interests of the majority, and landowners, who have minority interests. The procedure means that landowners' interests cannot be ignored.

CONCLUSIONS

Food is a primary human need that must be fulfilled at all times: the right to food is a human right. Indonesia, as a country committed to SDGs through Government Regulation 59 of 2017 on the Achievement of Sustainable Development Goals, has set targets and goals to eliminate hunger. These are to be achieved by maximising agricultural productivity and developing a sustainable food production system. Food Estates are an answer to the problem of determining how to ensure food security in Indonesia, and so the Food Estate programme was included in the National Strategic Projects, as stated in the Attachment to Government Regulation 109 of 2020 on Acceleration of the Implementation of National Strategic Projects. However, to implement the Food Estate programme, the government must source land with which to support food production; this creates a potential conflict of rights between the right to food and the right of land ownership.

Referring to Article 18 of the Land Law, that states that in the public interest land property rights can be revoked (providing appropriate compensation and according to the method regulated by law), then the revocation of rights is possible. Food Estates have been determined to justify land acquisition in the public interest, which supports the transfer of ownership rights. In Article 123 Point 2 of the Job Creation Law, which amended the provisions in Article 10-w of the Land Acquisition Law. Article 2-w Government Regulation 19 of 2021, the Food Estate programme is stated to fall within the definition of development that uses the land for the public interest. Although the phrase 'Food Estate' is not explicitly stated, it matches the description of "a food security area initiated and/or controlled by the Central Government, Regional Government, State-Business Entity, or Regional-Business Entity". Ministerial Regulation LHK 24/2020 still needs to be adjusted to include the precise definition of a Food Estate so that in the future any uncertainty will not cause problems. Even so, in essence, land acquisition for Food Estates is justified because it meets the public interest as outlined in Government Regulation 19 of 2021.

The procedure of acquiring land for Food Estates reflects proportional protection, both of the interests of the majority of the community, by fulfilling their right to food, as guaranteed in Article 27 Section 2 of the 1945 Constitution of the Republic of Indonesia, and the right to ownership of land that is guaranteed in Article 28H Section 4 of the same constitution, and that reflects the interests of minority communities. Further to this, the land acquisition procedure is ratified as there are legal, regulated processes to follow in carrying it out, the forms of compensation are varied, and a deliberation procedure is included that means the interests of the minority cannot be ignored.

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RESEARCH PAPER

Political Capture in the Exclusion of FABA and Slag from Hazardous Waste List Regulation in Indonesia

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ABSTRACT

PURPOSE: This research analyses the political capture that exists in the Indonesian law-making process. It aims to show possible links between the involvement of businesses in the coal and mining sectors and politicians' personal interests that may outweigh the goal of protecting human health and environment.

DESIGN/METHODOLOGY/APPROACH: The analysis departs from a conceptual and normative approach on the law-making process in Indonesia, then juxtaposes it with facts and provisions around the enactment of hazardous waste regulation.

FINDINGS: This paper concludes that business and political influence is undeniably infringing the protection of human rights and the environment through the exclusion of fly ash bottom ash (FABA) and slag from the hazardous waste list. Despite the potential harm that FABA and slag may cause to human health and the environment, the government remains confident that they are non-hazardous materials. The debate on the benefit and drawbacks of FABA utilisation put aside the fact regarding limited access to remedy and weak environmental law enforcement.

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RESEARCH LIMITATIONS/IMPLICATIONS: This paper aims to invite more discussion to criticise the policy and law-making processes in Indonesia in which the personal interest of politicians should not outweigh the protection of human health and the environment.

KEYWORDS: *Policy Process; Law-Making Process; Politics of Law; Political Capture; Political Influence; Human Rights*

INTRODUCTION

Law as a product of policy process is obviously a result of political bargaining between competing interests (Tuori, 2002; Stefanou, 2008; Ordonez *et al*., 2021), including in the enactment of the Omnibus Bill as the Law of the Republic of Indonesia Number 11 Year 2020 concerning Job Creation (hereinafter Omnibus Law). The bill was initiated by the President of Indonesia following the governments' commitment to stimulate investment that, in turn, creates job opportunities for the workforce. The government believes that loads and overlapping regulations are the main factors inhibiting investment. By introducing the Omnibus Bill, the government tried to amalgamate numbers of legislation, simultaneously repealing and replacing norms. The Omnibus Law consists of 11 clusters with more than 1,000 provisions legislating the workforce, investment, land law, ease of doing business, industry, and national economic strategic plan. Although it repealed provisions in 79 acts, the omnibus as a legislative technique was controversial; it was completely new for the Indonesian legislative system that previously acknowledged 'one theme one act'.

The introduction of the Omnibus Bill was criticised by many civil groups, mostly those advocating environmental issues (WALHI, 2020a), farmers and labour groups. The main opposition to the omnibus bill includes:

1) the bill will be a freeway for rampant corruption in the field of natural resource management;
2) environmental destruction will be uncontrollable and difficult to prevent;
3) the climate crisis due to coal investment and coal down streaming;
4) the abolition of articles containing the principle of absolute responsibility will make it difficult for law enforcement to ensnare corporations related to forest and land fires; and
5) the coal industry that carries out utilisation and development activities will receive a lifetime extension of the mining license (Greenpeace Indonesia, 2020).

It was considered that the deliberation of the bill amid the pandemic (with a rushed schedule from April to October 2020) and the fact that it was agreed late at night discouraged public participation. Civil society was pessimistic that Members of Parliament tightly scrutinised the ample content of the Omnibus Bill. As a result, the Omnibus Law delegates power to secondary legislation, meaning the government deals with the details.

The draft bill was supported by nine out of eleven political parties in the Parliament. Since the dominant parties in the Parliament are on the same platform as the President, this makes it a mostly

governmental political agenda requiring parliamentary approval easily agreed upon by the majority. Furthermore, hundreds of delegations to enact government regulation as a response to the Omnibus Law indicate the increasing power of the President to drive the implementation of the law.

The consent seems to be coming true, as the President introduced Government Regulation Number 22 of 2021 concerning Implementation of Environmental Protection and Management (hereinafter GR 22/2021) in response to the Omnibus Law. The GR 22/2021 excludes fly ash bottom ash (FABA) and slag produced by coal mining from the toxic waste category. Previously, FABA and slag were categorised as hazardous waste according to GR 101/2014. Therefore, corporates were required to treat the toxic waste or there were legal consequences for their disobedience. According to the arguments against the Omnibus Law linked to coal mining and other environmental issues, the issuance of GR 22/2021 that relates to a new category of toxic waste in coal mining cannot be coincidence. By removing FABA from the hazardous waste category, there are indications that corporations might be trying to avoid obligations. This paper seeks to analyse the possible political capture in the enactment of GR 22/2021 by looking at: 1) the policy process; 2) the legal consequences of the exclusion of FABA and slag from the toxic waste list; and 3) adequacy of the regulations considering potential hazards of FABA and slag to human health and environment.

Political Capture in the Omnibus Law-making Process and Implementing its Regulations

Indonesia has been an important source of global coal demand since 2005 (Lucarellli, 2015), and maintained this position up to 2013 (Cornot-Gandolphe, 2017), and 2017 (Friederich and van Leeuwen, 2017). In 2018, Indonesia was the world's 5th largest coal producer; it is also the 2nd top coal exporting country. The total amount of coal production in 2018 was 548.6 million tonnes; of this, 114.55 million tonnes were utilised for domestic consumption (British-Petroleum, 2019). Coal has been the major source of energy (Baskoro *et al*., 2021); currently the coal-fired power plant capacity in Indonesia may reach 31 Gigawatts (GW) (Shearer *et al*., 2020). With this huge use of coal in the energy sector, it is estimated that these coal-fired power plants will produce 8.31 million tonnes of fly ash in 2019 with a 5% per year increase (Petrus *et al*., 2020).

The coal and mining industry is related to Indonesian politicians and government officials (WALHI, 2020b). There are at least eight MPs, seven top ranking officials and two Indonesian business elites related to the coal industry in Indonesia that are involved in the initiation of the Omnibus Law-making process (Indonesia Corruption Watch, 2020; WALHI, 2020b). This fact indicates that the issuance of FABA regulations might be influenced by the personal interest of politicians and policy-makers. This situation is also known as the 'political capture' (Transparency-International, 2014), where a group of policy-makers and regulators uses its power for the benefit of a minor constituency and shifts away the policy from the public interest towards special interest (Carpenter and Moss, 2013; Omotoye, 2019).

Primary norms on hazardous waste management in Indonesia is legislated under Article 59 of the Law Number 32 Year 2009 concerning Environmental Protection and Management (hereinafter PPLH Law). According to the PPLH Law, hazardous and toxic waste is the residue of a business and/or activity containing substance, energy, and/or other components that, due to their nature, concentration, and/or amount, either directly or indirectly, can pollute and/or damage the environment, and/or endanger the environment, health, and the survival of humans and other living things. It is mandatory on those who produce toxic waste to manage it; this includes reducing, storing, collecting, transporting, utilising, processing, and/or stockpiling.

In cases where the subject is incapable of carrying out toxic waste management, there is the possibility of passing it to another party. This could be a business entity that manages the hazardous waste, as long as the business complies with the detailed arrangement as regulated through secondary legislation of PPLH Law, that is the Government Regulation Number 101 of 2014 on Management of Hazardous and Toxic Waste (hereinafter GR 101/2014). GR 101/2014 determines several types of hazardous waste, including Fly Ash (Waste Code/KL: B409) and Bottom Ash (Waste Code/KL: B410) abbreviated as FABA. FABA is described as waste generated from the coal combustion process in coal-fired power plants facilities, boilers and/or industrial furnaces. In Appendix I of Table 4 as an integral part of GR 101/2014, FABA is listed as hazardous waste from specific sources and type of hazardous waste category two.

The enactment of GR 101/2014 has imposed a burden for companies to manage. Companies have to prepare many documents and go through complex and time-consuming licensing application procedures to utilise FABA. There were also limited accredited laboratories for toxicological testing as required in GR 101/2014. As a consequence, management costs to manage FABA were higher and became financial burdens for corporations. Hazardous waste management basically recognises the cradle to grave principle; this means from the time it is generated until it is destroyed, the waste should be handled with caution. This matter then counted as impetus to push government to make significant changes to regulations concerning the toxic waste management sector.

GR 101/2014 was revoked with the enactment of Government Regulation Number 22 of 2021 on the Implementation of Environmental Protection (GR 22/2021), which is mandated by Article 22 of the Omnibus Law. Referring to Article 274 of GR 22/2021, it is stated that everyone who generates waste, be it toxic waste or non-toxic waste, is obliged to manage the waste generated from the business and/or activities. In the provisions of Article 452 paragraph (1), GR 22/2021 states that the management of registered non-toxic waste as referred to in Article 450 paragraph (1) point a, is carried out in accordance with the technical requirements for non-toxic waste management. Article 452 paragraph (2) continues that the management of non-toxic waste is carried out by the person who produces the non-toxic waste; the details are contained in the environmental agreement. The details of the management of non-toxic waste in the environmental approval include the identification, the form, and the source of the waste generated on a monthly basis. By knowing these details, the government regulations want the implementation of the precautionary principle and accuracy in

the process of managing non-toxic waste through environmental approval. It is said that FABA, as it is excluded from the toxic waste category, requires business actors to carry out the process of preparing a comprehensive plan as the basis for issuing environmental approval as well as business permits. With that, government is confident that the process of managing FABA as non-toxic waste could still be carried out without polluting or damaging the environment.

Likewise, the determining factors that distinguish the two different classifications of FABA waste—namely FABA as a Toxic Hazardous Waste and as Non-Toxic Hazardous Waste pursuant to GR 21/2022—lies in the producing place (sources) of the FABA waste, and the different codes assigned to each type of FABA. Since coal burning in Coal Generated Power Plant (PLTU) activities is carried out at high temperatures, the content of unburnt carbon in FABA is minimum and more stable when stored. FABA that is produced by coal-fired power plants originates from the pulverised coal or chain grate stocker combustion system that burns completely and can be used for mixed construction materials. On the other hand, FABA that is produced by a system *stoker boiler*, or other industrial furnaces with combustion that does not burn completely and use outdated technology, is considered more dangerous. Therefore, this FABA is included in the list of toxic hazardous waste (CNN Indonesia, 2021).

However, the Indonesian Center for Environmental Law (ICEL) expressed criticism towards the removal of FABA from the hazardous waste category. *First*, the government does not consider the costs arising from the risk of coal ash pollution as non-toxic waste. *Second*, environmental injustice may arise due to potential risks to the environment and public health. *Third*, the loss of the power plant operator's obligation to implement an emergency response system for coal waste management; toxic hazardous waste management must comply with this obligation, but non-toxic hazardous waste management does not have this obligation. If in the business activity there is no emergency response system, then, in the event of emergency environmental pollution during the course of the activity/business, there will be lack of a system to cope with and to recover the pollution. *Fourth*, there is a potential to loosen law enforcement against coal ash management business actors. In the context of civil law enforcement, there is a risk that the manager of the coal ash may not be subjected to strict liability since FABA originated from coal-fired power plants does not fall within the hazardous waste category.

All in all, the exclusion of FABA in this case not only has implications for the way it is managed, but also has implications for legal responsibility to businesses and/or activities. Referring to the provisions of Article 88 of the Omnibus Law, businesses, and/or activities that produce non-toxic waste, cannot be held to strict liability. With such provisions, it will be profitable for business operators since FABA is no longer categorised as hazardous. These new provisions then trigger accusations regarding the businesses' involvement in the policy process around the initiation of the Omnibus Bill and government regulations, dominated by high ranking officials and politicians that have close relations to the coal-generated power plant and coal mining companies (Indonesia Corruption Watch, 2020; WALHI, 2020b).

Potential Hazard to Health and Environment

Coal mining activities generate waste as a result of the coal production process. In this case, the two most common coal wastes are FABA and boiler slag. These wastes are generated from combustion in a coal-generated power plant that uses coal (Damayanti, 2018). Research shows that coal waste contains various chemicals that threaten health, especially respiration. FABA, which is often in the form of coal dust, is a mixture of various minerals, trace metals, and organic materials with varying degrees of coal particles; this can lead to chronic diseases such as pneumoconiosis, progressive massive fibrosis, chronic bronchitis, and emphysema (Maryuningsih, 2015). The prevalence rate of coal pneumoconiosis is 1.15% in coal mining areas (Wahyuni *et al*., 2013). Other studies have also shown an increase in the number of asthmatic children around mining areas; this is thought to be due to active components that play a direct role in the pathogenesis of diseases caused by coal dust (Maryuningsih, 2015).

There are reports on a correlation between the existence of open-pit coal mining that produces coal waste and the health conditions of the people near the mining area and the environmental damage in Indonesia from 2010 until recently. *First*, research conducted on PT MBA, a coal mining company with an open-pit mining system in Mereubo district, Aceh Barat Regency, shows there are clear impacts on the environment and local residents due to coal mining activities. There are topography changes in the environment, enormous holes, hydrological disturbances, reduction in air quality and dissolution of natural ecosystems. Also there is an increase in health costs by residents around the mining area estimated at IDR 258,307,192 (US$16,751) a year as more people face respiratory disease (Fachlevi *et al*., 2015).

Second, research undertaken by PT Bukit Asam (Persero), a coal mining company with an open-pit mining system in Muara Enim Regency, shows that there is a correlation between health problems and mining activities. Based on data from the local health office of Muara Enim Regency in 2010, many residents have suffered from diarrhoea and acute respiratory infection syndrome that occurs in the dry season due to high saturation of coal dust that is easily inhaled by the community. The highest number of cases involved coughs and colds followed by fever, especially local residents who live 200 metres from the mining site (Juniah, 2013).

In addition, according to research conducted at PT Berau Coal in Tasuk Village, Berau Regency, a coal mining company with an open-pit mining system, there are environmental impacts and health problems felt by the community surrounding the mining area. Through interviews with residents, respondents said they were concerned about the air pollution and mine waste that flows to the river, makes the river muddy and causes floods; these are the most impactful for the environment. In addition, common diseases such as coughs, respiratory problems, itching, chicken pox, and diarrhoea are common. This is because the residents are surrounded by mining air pollution. Also, access to dirty water for residents due to pollution leads to the unavailability of access to clean water in residential areas near the mines (Mursyidin and Warnida, 2017).

Furthermore, in interviews conducted with residents in Suralaya Village, Banten, which is in the area of the coal-generated power plant in Suralaya, the existence of the power plant that emits FABA waste also has an impact on the lives of surrounding residents. In February 2021, ash rain occurred in residential areas, which was exacerbated by damage to the power plant's chimney. Over the past 35 years, these eight coal-fired power plants have also affected the health of Suralaya residents; a child suffered from lung disease and a number of people died due to lung disease (Syahni, 2021).

Based on a study conducted on residents in Rawaurip Village, Cirebon, who live in a coal stockpiling area, there is an indirect correlation between the presence of coal stockpiling and health issues experienced by the surrounding community. Residents from Pahing block, Rawaurip village, were severely exposed to dust produced from the coal sieving that affected the residents' salt ponds. The residents of Pahing block, Rawaurip, were also disturbed by the smell in the stockpile area, which harms human respiration. Even so, it is hard to say that the dust from the coal stockpile area does cause health problems as there are no reports or studies that have proven such correlation. However, annual data between 2009-2013 from the Pangenan health centre located in the area around the coal stockpile show an increase in acute respiratory infection syndrome; there is, therefore, an impact on the community from dust from the coal stockpiling area (Maryuningsih, 2015).

In research conducted on open-pit mining and processing workers of PT. Atoz Nusantara Mining, at Pesisir Selatan District, West Sumatera, there were complaints from workers about occupational illness, the causes of which were connected to working conditions. According to the data from Dr Muhammad Zein Painan Local Hospital, there are two types of illness due to exposure to coal dust; anthracnosis, and shortness of breath and dry cough. The noise and vibrations in the mining area result in shaking, sleeping difficulty and muscle tension. In addition, smoke, ammonia, and ultraviolet radiation in the mining area cause redness, irritation, and watery eyes. Lastly, sound and vibration cause ringing in the ears and temporary insensitivity (Maradona, 2013).

Likewise, in a study conducted on health workers at a coal yard of coal-fired power plants in Jepara, it was found that there is a correlation between total and inhaled coal dust levels with the impaired workers' lung function. Based on the Monthly Medical Report Plant Site 2012, acute respiratory infection syndrome, such as coughing that emits black phlegm, is the most common disease suffered by workers. This totalled up to 151 cases, and from February to June 2012 cases kept increasing (Wahyuni *et al*., 2013). As a result, although the average respondent works with good nutritional status and is aged around 20 to 30 years with exercise habits, it was found there are restrictive lung malfunctions. When the total dust concentration measurements at five points at the job site were compared, the results exceeded the threshold value at 11.9-16.4 mg/m^3. The level of dust inhaled by the respondents was above the threshold value with the result of 2.1 mg/m^3. Therefore, there is a significant relationship between total coal dust levels, inhaled coal dust levels, and smoking habits, with impaired respiratory function (Wahyuni *et al*., 2013).

Moreover, data have also been obtained on the impact of waste and coal mining. In Cilacap, Central Java, in the coal-fired power plants, there is a correlation between FABA waste, and the disease suffered by the surrounding community. The number of those suffereing with acute respiratory infection syndrome increased from around 8,000 residents per year in 2018 to 10,000 residents per year in 2019. Additionally, 25 children who lived within a 100 metre radius of the ash pool suffered from bronchitis, some even died. Cilacap power plants produce around 26,000 tonnes of FABA per three months, which certainly has an impact on the community (Syahni, 2021).

Although there are various negative impacts due to coal mining, especially on coal waste towards health and the environment, the government, through Government Regulation Number 22 of 2021 concerning the Implementation of Environmental Protection and Management, is confident in removing FABA from hazardous and toxic waste materials. According to the Ministry of Environment and Forestry, FABA was removed from the hazardous waste category based on scientific reasoning. They argue that the carbon content is low and tends to be stable due to the fact that the type of FABA released is only produced from the pulverised coal combustion system that uses a closed vessel with refined fuel and considering the high temperature. From the study of the toxic characteristic leaching procedure test by the Ministry from 19 coal-fired power plants, FABA waste is still considered within the parameters that fulfil the quality standards, nor does it exceed toxicity reference value in Human Health Risk Assessment. Therefore, FABA waste was removed from hazardous waste so that it can be utilised (Prasetiawan, 2021).

It is argued that there are many advantages of removing FABA waste from hazardous waste with proper utilisation. Utilisation of these wastes includes raw materials for construction, cement industry, agricultural raw materials, reclamation of ex-mining land, road construction, earthwork materials, grouting mixture, soil stabilisation, landfill base layer to reduce the acidity of ex-mining land, components of cast refractory raw materials, increase the pH of acid mine water and absorb heavy metals, raw materials for cement, and pave block (Prasetiawan, 2021). FABA could also be utilised to produce concrete protection from corrosion, ceramic additives, alumina recycling (Ekaputri and Al Bari, 2020), airport runway asphalt mixture (Widayanti and Ahyudanari, 2019), and as a mixture of solid waste biomass for coal biofuel (Marganingrum *et al*., 2021). Therefore, according to the Indonesian Employers' Association, the utilisation potential of FABA is estimated at IDR 300 trillion per year (US$19,450,530,000) (Prasetiawan, 2021).

Elimination of FABA waste from the hazardous category is also based on a comparative basis with policies from other countries. Countries that currently categorise FABA waste as non-hazardous solid waste include the United States, Canada, the European Union, Russia, Japan, China, India, South Korea, Australia, South Africa, and Vietnam. This policy shows that these countries have been able to manage and increase the utilisation of FABA reaching 44.8-46%.

In contrast, the utilisation rate of fly ash in Indonesia is relatively low at only 10-12% of the waste produced (Forest Digest, 2021). In its 2019 Sustainability Report, the State Electricity Company recorded that of 2.9 million tonnes of total FABA produced in a year, less than 50% was

reused. FABA waste that was previously classified as hazardous waste is subject to special treatment using membrane technology. Unfortunately, Indonesia has only one treatment plant in Bogor that employs this technology. Moreover, the framework for the utilisation of FABA in Indonesia does not yet exist (Forest Digest, 2021).

CONCLUSIONS

The policy process of the Omnibus Law, followed by the issuance of GR 22/2021, shows the possible influence of politicians who have a close relationship to the coal mining sector. Despite the potential harm that FABA and slag may cause to human health and the environment, the government remains confident that FABA and slag are non-hazardous materials. This argument relies on scientific measures that have not yet settled and effectively implemented in Indonesia. In fact, environmental problems are left unanticipated and even remedy for victims remains unresolved while obligations to the corporation are clearly reduced, whereby coal industry-related politicians benefit from the profit difference before and after the changing criteria of hazardous waste. It is difficult not to conclude that there is policy capture in the exclusion of FABA and slag from the toxic waste list. Further research on the competing interest between the politicians and the public in natural resource industry is needed. This is particularly important to explain how politicians' and policy-makers' personal interests should be declared when involved in a policy-making process that may affect public interest.

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RESEARCH PAPER

Determination of Fishing Rights Allocation as a Strategy for Sustainable Fisheries Management Realisation in Indonesia

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ABSTRACT

PURPOSE: This paper aims to identify fisheries management policies that can realise sustainable fisheries and equality in the fisheries sector in Indonesia.

DESIGN/METHODOLOGY/APPROACH: The paper uses an empirical research method to examine the effectiveness of the Total Allowable Catches (TACs) system implementation and considers which policies can be used by Indonesia to protect fishery resources.

FINDINGS: This study finds that TACs have been ineffective in maintaining the sustainability of fishery resources and have caused inequity in Indonesia. It considers the extent to which Indonesia can make use of Individual Non-Transferable Quotas (INTQs).

ORIGINALITY/VALUE: The paper criticises the implementation of TACs and recommends other fisheries management strategies that can be applied in Indonesia that can achieve sustainable fisheries and equity in the fisheries sector.

KEYWORDS: *Fisheries; TACs; Fishing Quota; Sustainable Development; Fisheries Management; Indonesia*

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INTRODUCTION

Indonesia is an archipelagic state with a high potential for fishery resources. The estimated potential of fishery resources in 2017 was more than 12 million tonnes. The number of potential fishery resources in Indonesia continued to increase from 1997 to 2017 (Maritime and Fisheries Affairs Ministry, 2018). However, according to the Ministerial Decree of Maritime and Fisheries Affairs of the Republic Indonesia Number 50/Kempen-KP/2017 concerning Potential Estimation, Total Allowable Catches and Utilization Rates of Fishery Resources in the Fisheries Management Area of Indonesia (MMFA Decree No. 50 of 2017), several species have been over-exploited. This was caused by several factors, including the high number of illegal, unreported, and unregulated fishing (IUU fishing) crimes in Indonesian waters, the disproportionate number of fishing vessels in each Fisheries Management Area of Indonesia (FMAI), and weak supervision of overfishing activities.

IUU fishing is a serious problem in Indonesia because of its economic and environmental impact. For example, based on a study on the latest state losses due to IUU fishing conducted by the Directorate General of Marine and Fishery Resources Supervision, it is estimated that every year Indonesia suffers a loss of more than 10 Trillion Rupiah (US$637,574,000) (Baskoro, 2014). A total of 556 fishing vessels were sunk due to the crime of IUU fishing between October 2014 and 2019 (Idris, 2020).

Additionally, IUU fishing reduces the potential of fishery resources in Indonesian waters; this has an impact on the export value of Indonesia's main fishery commodities. IUU fishing not only has impact on the potential of fishery resources, it also poses a threat of environmental damage to Indonesian waters.

The disproportionate number of fishermen in each FMAI is also a cause of the over-exploited status of several species. Based on data from the Ministry of Maritime and Fisheries Affairs, FMAIs located in eastern Indonesia have a higher estimate of fishery resources potential than those in western Indonesia. On the other hand, the number of fishermen operating in western FMAIs is higher than the number of fishermen in eastern FMAIs. The disproportionate number of fishermen in each FMAI has led to the over-exploited status of several species in all FMAIs (Hanafi, 2021).

An additional cause of over-exploited species is the weak supervision of fishing activities. The supervision referred to here is related to data on the number of catches from each fishing vessel. Further, the trans-shipment of fish is another important cause of the over-exploited status of certain species. The *modus operandi* is for fishing vessels to catch fish in Indonesian waters and then to transfer the catch to fish-carrying vessels for further transportation outside Indonesia.

Since the sustainability of fishery resources is a serious issue in the Indonesian fisheries sector, the Indonesian government has made efforts to maintain the sustainability of its fishery resources by determining Total Allowable Catches (TACs). The authority to determine the TACs is regulated in Law Number 31 of 2004 concerning Fisheries (Law No. 31 of 2004) and Law Number 45 of 2009 concerning Amendments to Law Number 31 of 2004 (Law No. 45 of 2009).

TACs are established to control the number of catches made by fishermen so that the sustainability of fishery resources is maintained. TACs are different from the allocation of fishing rights. The allocation of fishing rights is the number of catches of certain fish species that can be carried out by each fisherman or fishing vessel within a certain period and in a certain area; TACs are the total number of fish caught that can be carried out by all fishermen or fishing vessels without any allocation of fishing rights. Once the TACs were determined, the data showed that there were still several fish species with over-exploited status in all FMAIs. This demonstrates that Indonesia needs additional legal mechanisms to support TACs and, ultimately, the sustainability of fishery resources.

In principle, those vessels that can catch large numbers of fish will be the ones that fulfil TACs. However, the establishment of TACs without the allocation of fishing rights can increase the potential for inequality in fishing activities and businesses. Since the ability to catch fish in large quantities predominantly favours large vessels above 100 gross tonnage (GT), we should consider the following (based on Article 98 of the Regulation of the Minister of Maritime and Fisheries Affairs of the Republic of Indonesia Number Per.58/PERMEN-KP/2020 concerning Capture Fisheries Business (Regulation of MMFA No. 58 of 2020)):

- Fishing vessels measuring up to 10GT are granted a permit to catch fish in waters up to 12nm.
- Fishing vessels measuring >10GT to 30GT are given fishing grounds in waters above 4nm to 12nm.
- Fishing vessels measuring >30GT to 100GT are given fishing grounds in Archipelagic Waters, the Indonesian Exclusive Economic Zone (ZEEI), or the High Seas.
- Fishing vessels measuring >100GT are given a fishing area in the ZEEI or the High Seas.
- Ships with sizes above 300GT are given a fishing ground in the ZEEI at 150nm and above or the High Seas.

Thus, according to these provisions, fishing vessels measuring 30GT to 100GT will be in the same sea zone as fishing vessels measuring >100GT. These conditions can lead to inequality because the fishing capabilities between the vessels are not comparable. It is necessary then to create a system that guarantees the sustainability of fishery resources in Indonesian waters and prevents inequality in fishing activities and fisheries business in Indonesia.

According to the background described above, two legal issues should be considered. First, what is the impact and effectiveness of determining TACs in ensuring the sustainability of fishery resources in Indonesia? Second, what fisheries management policies can be set by Indonesia as an effort to protect fishery resources and prevent inequality in the fisheries sector?

Within the current literature, some studies examine the technical protection of fish resources through the supervision of fishery activities (Fikri, 2013). Some studies focus on the protection of endangered fishery resources through conservation (Pramoda and Koeshendrajana, 2012). However, this paper examines the protection of traded fishery resources by examining the strengths

and weaknesses of the TACs system that has been implemented in Indonesia to find a better legal mechanism that not only maintains the sustainability of fish resources but also prevents inequality in fishing activities.

LITERATURE REVIEW

The authority to manage fisheries by a coastal state is exercised based on the rights to explore and exploit marine resources, regulated through the United Nations Convention on the Law of the Sea 1982 (UNCLOS, 1982). The rights of exploration and exploitation of fishery resources are obtained by the coastal state from their sovereignty or sovereign rights. It is also the case, however, that the rights of exploration and exploitation of fishery resources must be accompanied by an obligation to maintain their sustainability.

Fish products commodity has culminated in today's globalised seafood market economy and corporate cross-sector ownership, from harvesting to processing as commodities. However, lack of consideration of the ecological impact has resulted in poorly managed and largely unsustainable fisheries (Lam and Pitcher, 2012). It is therefore necessary to have a fisheries policy that considers ecological aspects.

Total Allowable Catches (TACs) are one of the instruments that can be used by a coastal state in managing their fisheries to prevent overfishing or ensure their sustainability. TACs are the total number of fish caught by all fishermen or fishing vessels without any allocation of fishing rights. The implementation of TACs must take into account international obligations in the field of fisheries as regulated in Article 61 UNCLOS 1982.

METHODOLOGY

Empirical legal research makes the law an object of research and views law not only as a prescriptive and applied scientific discipline but also as an empirical or legal reality (Sonata, 2014). Using empirical research methods, this study will consider the legal reality of the impact and effectiveness of fisheries management policies in Indonesia, especially regarding the determination of TACs by the Minister of Marine and Fisheries Affairs. The research was conducted by analysing TACs regulations and their implementation. This study also considers data related to whether the rules applied are effective in ensuring the sustainability of fish resources. The data were obtained by researching the Indonesia Ministry of Marine and Fisheries Affairs in Jakarta. The findings of the effectiveness of Indonesia's fisheries management policies are then used as the basis of an argument for finding a better legal instrument than TACs.

RESULTS

The main duty of fisheries management is to ensure that fishing does not exceed the fish population's ability to survive and does not threaten or damage the sustainability and productivity of the

fish population being managed (Supriadi and Alimuddin, 2011). Fisheries that are not managed properly are susceptible to over-fishing that can lead to the extinction of fishery resources. Fisheries management must take into account the assumption that fishery resources are shared property, asserting open access to these resources (Monintja, 2005). As a fishery management system, TACs are expected to prevent over-fishing and, if there are already over-exploited species, TACs are expected to improve this condition.

TACs (the total amount of fishery resources that can be caught in FMAIs while still ensuring their sustainability) are used as a mechanism to control fishing activities and the amount of fish caught so that the sustainability of fishery resources can be maintained. In other words, TACs are the total amount of catch that is allowed for a certain species, in a certain area, over a certain period. Since the accuracy of fish resources data in each fishing ground is required to determine TACs, TACs must be reviewed and updated regularly.

TACs DETERMINATION HISTORY

In 1985, the Minister of Agriculture determined TACs in Indonesia's Exclusive Economic Zone through the Minister of Agriculture Decree Number 473a/Kpts/IK.250/6/1985 concerning Determination of TACs in the Indonesian Exclusive Economic Zone (the Minister of Agriculture Decree No. 473a of 1985). In 1999, the Minister of Agriculture determined TACs through the Minister of Agriculture Decree Number 995/Kpts/lK210/9/99 concerning Fishery Resources Potential Estimation and TACs in Indonesian Waters (the Minister of Agriculture Decree No. 995/1999).

In 2011, the Minister of Maritime and Fisheries Affairs determined the estimation of fishery resources potential in each FMAI and utilisation rates by issuing the Minister of Marine and Fisheries Affairs Decree Number KEP.45/MEN/2011 (MMFA Decree No. KEP.45/MEN/2011) concerning Potential Estimation and Utilization Rates in FMAI. Indonesia did not determine TACs in 2011.

In 2016, the Minister of Marine and Fisheries Affairs determined TACs for certain fish species throughout FMAIs by issuing the Minister of Marine and Fisheries Affairs Decree Number 47/Kempen-KP/2016 concerning Potential Estimation, TACs, and Utilization Rates in FMAIs (MMFA Decree No. 47 of 2016). In MMFA Decree No. 47 of 2016, the Minister determined TACs in each FMAI and stipulated the utilisation rate for each fish species in each FMAI. The utilisation rate shows the status of each fish species in each FMAI as moderate, fully-exploited, or over-exploited.

In 2017, the Minister of Marine and Fisheries Affairs issued the Minister of Marine and Fisheries Affairs Decree Number 50/Kempen-KP/2017 concerning Potential Estimation, TACs, and Utilization Rates in FMAI (MMFA Decree No. 50 of 2017). There are several differences in utilisation rates between 2016 and 2017 as shown in Table 1.

Table 1: Utilisation Rate of Fish Resources in Indonesia

Species Group	Utilization Rates in 2016	Utilization Rates in 2017
Small Pelagic Fish	Over-exploited in 3 FMAI	Over-exploited in 3 FMAI
Large Pelagic Fish	Over-exploited in 3 FMAI	Over-exploited in 3 FMAI
Demersal Fish	Over-exploited in 3 FMAI	Over-exploited in 0 FMAI
Reef Fish	Over-exploited in 2 FMAI	Over-exploited in 6 FMAI
Penaeid Shrimp	Over-exploited in 8 FMAI	Over-exploited in 4 FMAI
Lobster	Over-exploited in 9 FMAI	Over-exploited in 6 FMAI
Crab	Over-exploited in 7 FMAI	Over-exploited in 4 FMAI
Small Crab	Over-exploited in 7 FMAI	Over-exploited in 2 FMAI
Squid	Over-exploited in 6 FMAI	Over-exploited in 9 FMAI

Source: Minister of Marine and Fisheries Affairs Decree Number 47/Kepmen-KP/2016 and Minister of Marine and Fisheries Affairs Decree Number 50/Kepmen-KP/2017

TACs have become the instrument chosen by many states to maintain the sustainability of their fishery resources, such as members of the European Union (EU). The EU manages its fishery resources through the Common Fisheries Policy (CFP), which includes the determination of TACs. EU member states divide the TACs that have been determined into several national catch quotas. The national catch quotas are then distributed to each fisherman by each EU member state.

In May 2006, a temporary rule between the United States and Canada regarding TACs came into effect (Federal Register, 2006). Another state that also implements TACs is Japan. In 1995, the Japanese government allocated 1,200 million yen (US$8,567,400) for the assessment of fishery resources as a basis for implementing TACs (FAO, 2000a). China is highly dependent on marine resources: marine resources are a major source of China's food production, jobs, and economic activity. However, it is also noteworthy that more than 50% of China's fishery resources are reported to be over-exploited. In March 2016, the Chinese Government made The National 13th Five Year Plan for 2016-2020; this is a policy of the Chinese Government in its socio-economic development efforts. China's 13th Five Year Plan cut TACs in Chinese waters to less than 10 million tonnes in 2020, down from 13 million tonnes in 2015 (Chasis, 2017). China's 13th Five Year Plan is the first since 1978 that put issues of social justice and environmental protection as top priorities (Cao *et al*., 2017).

THE TACs SYSTEM IN INDONESIA

The application of TACs is a national fishery management system chosen by many fishery-producing countries, such as Indonesia, China, United States, EU member states, Australia (AFMA), Philippines (FAO, 2000b), and several other countries. TACs were determined by Indonesia in 1985, 1999, 2016, and 2017.

In Indonesia, the implementation of the TACs system has increased the total amount of fishery resources potential; in 2017, however, data showed that there were some species that were over-exploited in each FMAI. In line with what happened in Indonesia, the ineffectiveness of implementing the TACs system was also realised by Oceana.[1] Oceana considers that TACs are ineffective and do not provide the expected results because of the lack of supervision over their implementation. Another reason is that TACs that have been determined by these states override the scientific advice given so that the implementation of TACs becomes ineffective (Oceana, n.d.).

Another impact of the TACs implementation is the creation or exacerbation of inequality in the fisheries sector. This is because Indonesia has set TACs without the determination of the fishing rights allocation. Fishing vessels measuring 30GT to 100GT will be in the same zone as vessels over 100GT. Fishing vessels measuring 30GT can catch up to 4 tonnes of fish in one trip. Fishing vessels measuring >70GT annually can produce a catch of 1,000 to 2,000 tonnes. The difference in fishing ability between fishing vessels measuring >30GT to 100GT and large vessels measuring over 100GT is significant.

FISHING RIGHTS ALLOCATION

The allocation of fishing rights in the form of a fishing quota was first introduced by the Netherlands in 1976. In 1986 New Zealand had a fishing quota regulation (Newell *et al*., 2002). Individual fishing quotas are one form of allocation of fishing rights and are an increasingly popular mechanism used for fisheries management (Thébaud *et al*., 2015). Fishing quotas are often discussed as an effective policy instrument to increase the profitability of the fishing industry, reduce industrial overcapacity, and promote sustainable fisheries management (Stage *et al*., 2016). States that have regulations regarding individual fishing quotas are Australia, Canada, Iceland, Italy, Netherlands, and South Africa. As of this writing, Indonesia does not have regulations regarding individual fishing quotas.

Worldwide, the regulation of fishing quotas has proven to be a successful fisheries management tool (Milliken, 1994). The world's most popular individual fishing quota system utilises Individual Transferable Quotas (ITQs). ITQs are the allocation of fishing rights by dividing the assigned TACs each year into smaller individual quotas. ITQs can generally be traded, or in some cases leased, and are ideally determined annually (Buck, 1995).

ITQs are designed to provide exclusive and transferable rights to a portion of TACs. Typically, ITQs are in the form of a percentage of TACs. TACs can eliminate fishing competition among fishing actors (Sumaila, 2010). In some states, fishing quotas are defined differently from ITQs. The EU uses the term Transferable Fishing Concession (TFC), the African Union uses the term Wealth Based Fishing, while the United States uses the term Catch Share (WFFP, 2013).

[1] Oceana is a Non-Government Organisation (NGO) that concentrates on protecting the world's oceans, including fish resources

In 2017 there was some discussion that the Government of Indonesia would determine the Fisheries Management Rights (FMR) over fishery resources in Indonesian waters. FMR is a limited privilege granted by the state to communities and/or community groups to manage, including utilising fish resources for a long period (Halim *et al*., 2017). There are two types of FMR: First, FMR based on territorial use is usually applied to fish species with limited movement (sedentary and demersal fish). Second, FMR can be based on quota (catch shares): FMR in this sense is a form of fishing right allocation (Bonzon *et al*., 2010).

In 1986 New Zealand introduced ITQs and allowed them to be transferred among New Zealand communities or companies. New Zealand defines ITQs as the fishing right for a certain amount and in a certain area each year; they are given to fishing actors based on their catch history. ITQs are expressed in tonnes of fishing and not as a percentage of the total TACs, and are traded one-for-one. The quota can be sold in smaller quantities, and any amount may be leased and subleased (Kerr *et al*., 2003).

In practice, when ITQs are determined, ITQs will be purchased by companies that have sophisticated fishing gear. In the end, the number of fishing boats decreased and unemployment increased. This is because the fishing quotas owned by small fishermen are sold to large companies (Acheson *et al*., 2015). Companies preferred to buy fishing quotas from other fishermen rather than buying fish from them.

INDIVIDUAL NON-TRANSFERABLE QUOTAS IN INDONESIA

The kind of fishing quota that Indonesia should consider is different from the ITQ concept. As the name implies, ITQs are transferable, either by trading or leasing. The kind of fishing quota that Indonesia should enact is the Individual Non-Transferable Quota (INTQ). INTQs are in principle the same as ITQs that provide a quota for each fisherman for a certain fish species and a certain period; the difference between the two is that INTQs are non-transferable, either through buying or selling, or leasing.

INTQs can be determined by dividing the TACs' value by the total number of fishermen. Another way that can be done is to determine ITQs by dividing the TACs by the total number of fishing vessels. This second method does have a potential complication: when a vessel is sold to another party, there will be a question as to whether the fishing quota attached to the vessel also moves to the new owner. This problem would not arise when the new owner is also an Indonesian citizen but should be considered when the new owner is a foreign citizen or foreign company.

If the fishing quota is applied, there is a possibility that fishermen may discard some of their caught fish: in the European Union, as much as 40% of catches are discarded back into the sea to meet quota requirements (Hoppner, 2013). The FAO noted several reasons for fishermen discarding their catches, including fish that are not the target species for the catch, fish of inappropriate size, fish in damaged condition, fish of the wrong gender, poisonous or inedible fish, and lack of space onboard so that fish with high economic value will be prioritised (Clucas, 1997). The FAO estimates

that, in the period from 1999 to 2001, of the total catches of 83,805,355 tonnes, 6,824,186 tonnes were discarded (Kelleher, 2005).

INTQs are "non-transferable" so that fishing quotas cannot be transferred either by buying or selling or leasing. By not being able to transfer fishing rights, all rights holders will carry out fishing activities. While the implementation of ITQs may have the effect of reducing the number of fishing vessels and increasing unemployment due to the transfer of fishing rights from small fishermen to fish management companies, this will not occur with the implementation of INTQs. INTQs will create working partnerships between small fishermen and fish product companies. Partnership development and empowerment of fishing communities is one of the strategic policies that can be taken to ensure business continuity in the fisheries sector (Asiati and Nawawi, 2016).

Determining INTQs will make fishing activities more controlled, the sustainability of fish resources will be maintained, and it will reduce the potential for inequality between corporations and fishermen and increase the welfare of small-scale fishermen. The existence of INTQs will create equity in fishing activities. Corporations would no longer be competing with each other to exploit fishery resources because each corporation would get a fishing quota. Determination of INTQs will create legal certainty and proportionality in the fisheries business.

The determination of INTQs for each fisherman or fishing vessel is adjusted to the capacity and ability to catch fish of each fisherman or vessel. The distribution of the amount of INTQs for each fisherman or vessel is carried out based on the proportionality principle by providing equal opportunities. The provision of equal opportunities is the embodiment of the equality principle. Fishery management through the establishment of INTQs is an effort to realise sustainable fisheries management and good governance in the fisheries sector. Such fisheries management is not only based on the equitable principle, equality principle, proportionality principle, and the legal certainty principle. It should be noted that the desired results from the implementation of TACs and INTQs that have been determined will not be fulfilled if fishermen continue to catch fish even though they have fulfilled TACs and INTQs (Poos *et al*., 2010).

INTQs can also be applied not only in Indonesia but also in other coastal states, especially archipelagic states. INTQs can be chosen by archipelagic states to ensure the sustainability of their fish resources and to create equality in fishing utilisation so they may achieve sustainable development in the fisheries sector. However, further research is required to determine what considerations should be used to determine the INTQs. Determination of INTQs should also use the precautionary approach so that the objectives of the determination can be achieved. INTQs are required to truly determine by the conditions of the fishermen with their fishing vessels.

CONCLUSIONS

The application of TACs is not effective enough to overcome the problem of over-fishing that occurs in each FMAI. Determination of INTQs is required as an effort to ensure the sustainability of fishery resources in Indonesian waters. Another advantage of determining INTQs is that

it can prevent inequity in fishing activities and can create working partnerships between fish processing corporations and small-scale fishermen. The Indonesian government makes regulations for determining INTQs that are supported by discard ban regulations. Regulatory changes that have been made should be accompanied by good and serious supervision. The implementation of the INTQs system must be supervised so that the objectives of determining INTQs can be achieved.

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RESEARCH PAPER

Indonesia Inspection Mechanism: A Way to Comply with Maritime Labour Convention

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ABSTRACT

PURPOSE: The aim of this paper is to examine the necessity of the Indonesian government to establish a national legal framework and inspection mechanism based on the Maritime Labour Convention (MLC) by emphasising its role as a flag state, a coastal state, a labour supplier state, and a port state.

DESIGN/METHODOLOGY/APPROACH: This is doctrinal research that applies a system-structural analysis by identifying, selecting, and synthesising all relevant sources, data, and provisions on the intended topic.

FINDINGS: After the MLC was ratified through Law No. 15/2016, some technical provisions passed as mandated by the law. However, by 2021, insufficient comprehensive technical regulations for conducting standard inspection assessments hindered national maritime industry compliance. As a temporary measure in 2020, the authority relied on cooperation and assistance from another state/institution to conduct assessments.

ORIGINALITY/VALUE: This paper is based on research carried out in 2020-2021 and has not been published in any journal.

KEYWORDS: *Maritime Labour Convention (MLC); Seafarer; Indonesia; inspection mechanism; comply; state roles*

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INTRODUCTION

In 2014, Indonesian President Joko Widodo formally announced that the Indonesian maritime profile for the next 5 to 10 years was to be a Global Maritime Nexus (GMN) (Yani and Montratama, 2015; Neary, 2014). The government would reach this GMN goal through the development of a strategic plan that elaborated seven main pillars of Indonesia's marine policy, as emphasised in the annex of Presidential Decree No. 16/2017:

1. Developing marine and human resources;
2. Empowering maritime defence, security, law enforcement and safety at sea;
3. Creating good marine governance;
4. Focusing on building maritime economic and infrastructure for maritime connectivity;
5. Managing marine spatial and environment protection;
6. Rebuilding Indonesian maritime culture;
7. Escalating maritime diplomacy.

Indonesian marine policy is not limited to strengthening national maritime power through developing the marine economy or being an influential maritime state; it also includes maintaining a leading role in the maritime industry by empowering human resources (Kabai, 2015). International maritime trade is one of the most globalised sectors, served by sea workers across the globe (Doumbia-Henry, 2020). Therefore, the enhancement of marine labour protection and welfare is one of the primary requirements for the development of maritime sector human resources to secure the balance of the supply chain both in Indonesia and globally.

The Maritime Labour Convention (MLC) 2006 is a legal instrument created by the International Labour Organization (ILO). It was adopted in February 2006 in Geneva, Switzerland, and officially entered into force in August 2013. In 2020, the convention was ratified by 98 states that were collectively responsible for 91% of world tonnage (Mantoju, 2021; Insight, 2021).

Because of the significant role of the convention, in October 2016, the Government of Indonesia ratified the MLC 2006 through Law No. 15/2016. This law is intended to protect seafarers and escalate the competitiveness of the domestic shipping industry. Previous to this, the Indonesian government had ratified other significant International Maritime Organization (IMO) regulations, such as the International Convention for the Safety of Life at Sea 1974 (SOLAS) by Presidential Decree No. 65/1980; International Convention on Standards of Training, Certification, and Watchkeeping for Seafarers 1978 (STCW) by Presidential Decree No. 60/1986; and International Convention for the Prevention of Pollution from Ships 1973 (MARPOL) by Presidential Regulation No. 29/2012. Also, there were other rules relating to marine labour before 2016 in Indonesia, including Law No. 17/2008 concerning shipping, and Government Regulation No. 7/2000 on Marine.

Based on a report released by the International Transport Worker Federation in 2019, the demand for seafarers is expected to continue rising because of the expansion of global trade

(ITWF, 2019). However, in 2020, global seafarer demand slightly decreased due to the economic slowdown because of the COVID-19 pandemic (UNCTAD, 2021). The data show that international maritime trade slowed by 4.1% in 2020, resulting in the demand for seafarers also falling (*ibid*). In 2020, there were 1,892,720 people working in the global shipping industry, including 857,540 officers and 1,035,180 ratings (BIMCO/ICS, 2021). Indonesia is one of the largest suppliers of seafarer labour, together with The Philippines, the Russian Federation, China, and India (*ibid*).

Data from The Indonesian Migrant Workers Protection Agency (BP2MI) and the Central Bank of Indonesia (Bank Indonesia – BI) show there were 3.1 million Indonesian migrant workers in 2020 (Bank Indonesia, 2021); 38% of these workers identified as seafarers (Directorate of Marine Transportation, 2021). However, Indonesian fleet ownership only shared 1.5% of the global maritime industry (UNCTAD, 2021). As a result, most Indonesian seafarers work on foreign ships because of the lack of national vessels to accommodate national sea workers. Unfortunately, some Indonesian seafarers receive less than the minimum standard based on their contracts; they also receive other forms of unfair treatment during their work (Diana, 2021). Before MLC 2006 was set up by the ILO and IMO, the legal instruments concerning protection for seafarers' rights were piecemeal, targeting only specific issues. Such instruments included the Merchant Shipping (Minimum Standards) Convention 1976, Seafarers' Hours of Work, and the Manning of Ships Convention 1996, among others.

Based on MLC 2006, states serve two essential roles: a control function as port states and an enforcement function as flag states (Mantoju, 2021). However, trade and shipping industry development has increased the complexity of the state's role, necessitating the articulation of two additional functions: as coastal state and labour supplier state (*ibid*).

As a result, a contracting state must establish a national legal framework and mechanism to manage these roles. Indonesia formally ratified and adopted MLC 2006 in 2016 through Law No. 15/2016. Consequently, the convention is a binding legal source for minimum standard treatment for seafarers in Indonesia. Since 2006 some important changes have taken place to comply with the new requirements of the convention; these include the Director-General of Sea Transportation issued regulation No. HK. 103/3/13/DJPL-18 in August of 2018 that established a procedure for certification of seafarers, and the Ministry of Transportation Regulation PM No. 58/2021 on MLC certification. These technical regulations (mandated by the law) should serve as the practical application and responsibility of contracting flag states, as the ratification was not sufficient to give effect to fully comply with the convention (Pentsov, 2007; Zhang, 2016). However, a significant gap still exists between international standards and those in Indonesia, particularly in the standard of wages, recreational facilities, on-board complaint procedures, financial security for repatriation, and relating to shipowners' liability.

It should be noted that before the Indonesian government ratified the convention, some national ship-owners voluntarily attempted to adopt and apply MLC 2006 rules and regulations to avoid detention in contracting parties' ports (Beritatrans.com, 2015). To be able to operate

internationally, they must comply with an international standard assessment unilaterally set by the Indonesia Classification Bureau (BKI) (*ibid*). By 2021, the lack of sufficient comprehensive technical provisions for conducting standard assessments hindered the ability of the national maritime industry to ensure compliance, particularly in terms of the inspection mechanism of MLC 2006.

Research Scope and Limitations

This paper explores some of the fundamental rules of the national legal framework and mechanism for implementing MLC 2006 in Indonesia, particularly the inspection mechanism. System-structural analysis was used to assess the state role factors, problems, and circumstances affecting compliance with MLC 2006. In restricting the analysis to these state roles, in particular the inspection mechanism, the scope of the research is limited. Nevertheless, this paper provides an important focus on the establishment of a legal and technical framework concerning the MLC inspection mechanism in Indonesia.

This doctrinal research is aimed at identifying, selecting, and synthesising all relevant sources, data, and provisions on the intended topic and applying system-structural analysis. The research was conducted using three steps: First, it lays out the existing national legal framework and provisions for the inspection mechanism expressed in national law based on MLC 2006; second, the study determines a prospective resolution based on concepts that combine national rules and an international legal analysis approach; third, it recommends that the Indonesian government urgently sets up technical regulations regarding the MLC inspection mechanism based on its role as a flag state, coastal state, labour supplier state and port state.

DISCUSSION

The Main Features of the Maritime Labour Convention

Based on International Chamber of Shipping data from 2020, it is estimated that there are more than 1.5 million seafarers across the globe (BIMCO/ICS, 2021). Therefore, ensuring that seafarers' rights are protected is critical (Christodoulou-Varotsi and Pentsov, 2007; Carey, 2017). To this end, MLC 2006 is intended to establish four pillars of maritime rules and regulation, in addition to those expressed in the International Conventional for Safety at Sea 1974 SOLAS, and Protocol SOLAS 1978, International Convention on Standards of Training, Certification, and Watchkeeping for Seafarers 1978 and 1982 (STCW) and Amendment SCTW 1995, and Marine Pollution Convention 1973 and 1978 (MARPOL) (Doumbia-Henry *et al*., 2006).

The structure of MLC 2006 consists of 16 Articles, Regulations, and Codes. The Articles and Regulations set out principles, fundamental rules, and essential obligations for the states that ratified the convention. Therefore, there are two types of MLC 2006 legal structures regarded as mandatory rules with which states must comply. The Code is divided into mandatory standards (Part A) and non-mandatory matters (Part B). The MLC articles indicate the basic principles, norms

and liabilities set by the treaty (Maunikum, 2007). The regulations and code of the MLC 2006 are structured under five titles:

Title 1: Minimum requirements for seafarers to work on ships
Title 2: Conditions of employment
Title 3: Accommodation, recreational facilities, food and catering
Title 4: Health protection, medical care, welfare, and social security protection
Title 5: Compliance and enforcement

Under MLC 2006, there are many IMO rules and ILO regulations concerning seafarers that were replaced by the treaty subjected to Article X of the convention (Dewayani, 2012), such as:

1. Accommodation of Crews (Supplementary Provisions) Convention, 1970 (No 133)
2. Prevention of Accidents (Seafarers) Convention, 1970 (No. 134)
3. Continuity of Employment (Seafarers) Convention, 1976 (No. 145)
4. Seafarers' Annual Leave with Pay Convention, 1976 (No. 146)
5. Merchant Shipping (Minimum Standards) Convention, 1976 (No. 147) and Protocol of 1996
6. Seafarers' Welfare Convention, 1987 (No. 163)
7. Health Protection and Medical Care (Seafarers) Convention, 1987 (No. 164)
8. Social Security (Seafarers) Convention (Revised), 1987 (No. 165)
9. Repatriation of Seafarers Convention (Revised), 1987 (No. 166)
10. Labour Inspection (Seafarers) Convention, 1996 (No. 178)
11. Recruitment and Placement of Seafarers Convention, 1996 (No. 179)
12. Seafarers' Hours of Work and the Manning of Ships Convention, 1996 (No. 180) (*Ibid*)

SHIPPING AND SEAFARER PROFILE OF INDONESIA

Indonesia is the largest archipelagic country globally and has excellent potential to become the world's maritime nexus. The maritime nexus is a strategic idea that is intended to ensure inter-island connectivity, the development of the shipping and fisheries industry, the improvement of sea transportation, and a focus on maritime security. With this in mind, what follows is a snapshot of the current Indonesian profile as it relates to shipping and maritime workers.

Indonesian Vessels

At the end of 2020, the global trading fleet was approximately 2.033 million DWT (deadweight tonnage) and 62,100 vessels (Department of Transport UK, 2021). Despite the economic slowdown because of the COVID-19 pandemic, shipping has continued to grow since 2019 (*ibid*). Based on data released by UNCTAD 2020, Indonesia has a 1.17% share of the world total ship registry, with 2,132 vessels above 1,000 gross tonnage (GT) (UNCTAD, 2021). However, in 2019 the Indonesian

National Shipowners Association (INSA) stated that there were 32,587 units registered in Indonesia (Al Hikam, 2020). The data discrepancy appears because under Article 158, paragraph 2, and Article 29, paragraph 1 of the Law No. 17/2008 concerning shipping, there is a requirement to register any ship with a minimum of 7GT for individuals and 175GT for a company. Therefore, INSA data also include all national registry vessels under 1,000GT. It seems that only 6.5% of national vessels are above 1,000GT.

Seafarers

Seafarers are defined as any person who is employed on, engaged with, or is working in any capacity on a vessel, by the terms of the convention in Article 2 of the MLC. Based on Indonesian law, a worker is any person on board, whether on a merchant or fishing ship. It should be noted that this criterion is set by Government Regulation No. 7/2000 concerning Maritime Affairs, and Law No. 18/2017 concerning Indonesia's migrant worker protection. It seems that both laws set a similar approach to define who is a seaman.

In 2020, the total number of seafarers was 1,545,000, with 790,500 officers and 754,500 ratings (BIMCO/ICS, 2021). Indonesia is recognised as one of the biggest seafarer suppliers in the maritime industry, with 143,702 people (*ibid*). Data indicate that nearly 84,000 seamen work in a foreign shipping company, and approximately 6,060 seafarers work under Holland America Line (Maunikum, 2007).

MLC IN INDONESIA: LEGAL FRAMEWORK AND COMPLIANCE

McConnell (2011) asserts that a national government shall prioritise seafarers' rights and maritime business. In regards to Indonesia, the government should consider national interests as "national goals" based on Indonesia's long-term interests. With this in mind, MLC 2006 needs to adapt based on national goals (Rudy, 2002).

As stated, there are five Titles governing shipowners under MLC 2006. The first Title breaks down into four categories: minimum age, medical certificate, training qualification, and recruitment and placement. To satisfy the requirements of this Title, the Procedures for Issuing Maritime Employment Certificates explain the certification, procedure, and other relevant matters needed to satisfy the convention.

Previous to this regulation, these matters were governed by Presidential Decree No. 60/1986 as the ratification of the International Convention on Standards of Training, Certification and Watch Keeping for Seafarers 1978 (STCW), and the Regulation of Minister of Transportation No. 70/2013 concerning Education and Training Certification as Seafarers, also by Regulation of Director General of Sea Transportation—Transportation Ministry No. HK. 103/3/13/DJPL-18 on procedure for certification of seafarers. All seafarer certifications were already based on IMO rules and regulations, which were designed to comply with MLC 2006. Therefore, this Title has been reasonably managed by local marine companies.

Different circumstances may be said of Title 2 of the convention concerning Conditions of Employment, despite Indonesian seafarers and maritime companies being aware of the regulation. After MLC came into force in 2016, the Ministry of Transportation set up Regulation PM No. 58/2021 on MLC certification standards. These include:

2.1 employment agreement;
2.2 wages;
2.3 work hour and rest;
2.4 leave;
2.5 repatriation;
2.6 compensation; and
2.7 manning level.

Briefly, these ministry regulations place more emphasis on:

- qualifications of seafarers,
- minimum age,
- work hours or rest,
- medical care certification,
- health care safety and accident prevention on-board,
- food and catering,
- accommodation (Title 3 of MLC) and
- manning levels for the ship.

In contrast, payment of wages, recreational facilities, on-board complaint procedures, financial security for repatriation, and relating to shipowners' liability are only stated briefly in the provisions; as technical rules, these matters are not elaborated into as much detail.

These rules seem intended to enforce MLC titles as flag state roles, with minimal emphasis on their role as a port state.

Title 3 is related to facility, food, and additional crew needs during voyages. Mainly, Title 3.1 of MLC 2006 asserts an obligation to provide decent accommodation for working and living conditions on board; this is one of the main obstacles to satisfying the convention by the local maritime industry. Logically, investments should be aimed at equipping vessels based on convention standards. For instance, the standards require bigger cabins, reduced noise and vibration, and an ambient environment (Nicholson and Ridd, 2014). Indeed, shipowners should compulsorily comply with these criteria to protect seafarers' well-being as a long-term goal (Chia *et al*., 2017). This matter should be ensured and enforced by the national government since it holds the role of regulator and facilitator. For instance, the duty to inspect recreational facilities based on MLC standards lay on

the flagship hand. In these circumstances, states should provide regulations by balancing seafarers' rights without putting an undue capital burden on maritime businesses to comply.

THE CHALLENGE OF AN MLC INSPECTION MECHANISM IN INDONESIA

The MLC is interpreted as a demand to establish the particular position for the seafarer in every domestic law attributable to minimise risks resulting from hazardous living conditions at sea. It was found that shipping companies and flag states used loopholes to waive or reduce obligations created by the convention (Mantoju, 2021). This manoeuvre may create serious concerns by negatively affecting the reputation of the convention. Because of this, a state must initiate an assessment, monitoring and evaluation mechanism of its role as a flag state, coastal state, labour supplier state or port state.

According to the general territorial principles of law, a flag state has a responsibility to provide information, rules and guidance for their ships to implement MLC requirements. Indonesia has already passed some technical regulations to implement MLC. However, as of the end of 2021, there are insufficient comprehensive provisions relating to inspection assessment and a mechanism in light of the MLC.

As a temporary technical resolution, in 2019 the Directorate General of Sea Transportation developed the Ship Safety Inspection—Center for Excellence (SSI-COE), supported by the Australian Maritime Safety Authority (AMSA), to raise the standards of professionalism in ship inspections. This has led to approximately 417 Indonesian vessels being granted MLC certification based on the Regulation of the Directorate General of Sea Transportation—Transportation Ministry No. 103/3/13/DJPL-18 by the end of 2020 (Bisnisnews, 2020). However, this strategy should only be considered as interim measures to fill the lack of assessment provisions. There must be a transfer of knowledge to increase the competence of national assessors from AMSA, so that when the rule (MLC technical guidance) has been enacted, it can be implemented immediately. In June 2021, the authority passed PM No. 58/2021 as national practical implication to satisfy Title 5 of MLC on compliance and enforcement. Under the rules, two types of MLC declaration resulted from the inspection mechanism: MLC full clearance and interim declaration for above 500 GT ships. The interim certificate is a temporary declaration (six months) for a new vessel or register that is in the process of complying with MLC provisions.

It should be noted that some exemptions might be allowed by MLC provisions in particular circumstances. For instance, there is a new requirement for following shipbuilding standards, whereby new ships need to accommodate MLC rules and regulations (Chia *et al*., 2017). It means for new vessels, ship-building companies must refer to MLC even when it still at the design stage. There is also second-hand tonnage, theoretically after the convention's entry into legislation for contracting states; the regulations are legally binding and should be enforced. However, an exemption here is still permitted by law, as in the example of the Liberia exemption, based on the Marine Notice MLC-004 of 2013 issued by the Liberia Maritime Authority (*ibid*).

Such an exemption may only be granted for circumstances when seafarers' health and safety are considered essential subjects. However, the exemption is only allowed for accommodation and recreational facilities based on MLC 2006, even though the exemption for accommodation is not clearly stated in the convention. Logically, ensuring that crew cabins are healthy enough and protected from noise and vibration, and the environment overall is sufficient; living quarters need not be expansive in size. The shipowner may design some technical changes on the vessel for such a purpose. In terms of practical resolution, Indonesian authorities are supposed to apply a similar exemption strategy to comply with the protection of the national maritime industry, rather than enforce interim certification of MLC. However, a further study regarding how far the exemption remains in place in practice with the purpose of MLC and the spirit to provide decent living conditions for seafarers should be conducted.

INSPECTION MECHANISM BASED ON THE ROLES OF A STATE

A port state must act as a port state control officer (PSCO) with the authority to create and enforce rules and guidelines (Fotteler *et al*., 2020). Under an inspection mechanism, the port authority has a right to detain and force a ship to address deficiencies found during the inspection procedure. However, detention is only imposed if the deficiencies could endanger the safety or health of seafarers or cause harm to the environment (Cariou *et al*., 2008; Kiehne, 1996). As the PSCO, a state has the right to check ship documentation and MLC certification. The inspection only justifies detention if deficiencies are found on documents, complaints are received, or other suspicions are raised (Grbić *et al*., 2015).

As a flag state, the state's role is to control compliance and assessment of ships (Pineiro, 2015). In pursuing the aim of a 'decent work agenda', the general idea of labour inspection requires a framework and legal basis for the state's interference into a more strategic plan (Weil, 2008). On the other hand, there are also genuine link principles to test the originality and control based on the UN's Law of the Sea Convention 1982 (UNCLOS). The genuine link principles are set by Article 91, paragraph 1 of UNCLOS regarding flag states and the nationality of ships, defining a ship's condition as determined by a close or genuine relationship with the flag state. Consequently, the ship shall be granted the right to fly its flag (Weston, 2021). As a state that holds the control authority, the flag state has a right to perform an inspection on the object that flies its flag. However, the basic principles of vessel inspection should be adhered to, namely prioritisation, deterrence, sustainability, and systemic effect (Weil, 2008).

According to Section 5.1.5 of MLC 2006, a flag state has to establish a complaints procedure for the seamen on board (Pineiro, 2015). It is then required to create a system that reports the complaint to a port state, as well as a mechanism to receive a complaint from a seafarer.

As a labour supplier, it is the duty of a state to upgrade seafarers' knowledge and competence about their rights and ability during the working period. Therefore, a state must adopt new certification systems for seamen that are not only set up by the International Convention on Standards

of Training, Certification, and Watchkeeping for Seafarers 1978 (STCW) and other IMO seaman standards, but also by MLC 2006 in their national training system. They must also instruct seafarers as to their rights during their working period based on the MLC, as well as inform them of the general system of complaint procedures on board or in port.

CONCLUSIONS

The enforcement of the Maritime Labour Convention 2006 significantly changed how the world perceived seafarers' working rights. The convention consists of mandatory standards as shown in Articles, Regulations, and Codes (Part A), as well as non-mandatory matters (Part B). In 2016, Indonesia ratified MLC 2006 by Law No. 15/2016. Consequently, the convention has become a binding legal source for minimum standards of treatment for seafarers in Indonesia. Mandated by the law, the Director-General of Sea Transportation issued a regulation No. HK. 103/3/13/DJPL-18 regarding the Procedure of Certification for seafarers, and the Ministry of Transportation set up Regulation PM No. 58/2021 on MLC certification standard according to MLC as practical (technical) guidance. These rules were intended to enforce Indonesia's role as a flag state with minimal emphasis on its role as a port state.

However, there are insufficient comprehensive technical provisions for conducting a standard assessment in Indonesia; in particular, specification for an inspection mechanism are lacking. The inspection procedure is critical for ensuring compliance with the MLC. Therefore, a state must establish a set of national legal frameworks and mechanisms. There are three critical roles of a state under MLC 2006: flag state, labour supplier state, or port state. A port state is described as an entity that has a duty as a port state control officer (PSCO) that must create and enforce rules and guidelines. Under the inspection mechanism, the port authority has a right to detain and enforce a ship to comply with deficiencies found during the procedure. As a flag state, the state serves a primary role in managing compliance and assessment of ships. As a state that holds the control authority, a flag state has the right to perform an inspection via an inspection mechanism on the object that flies its flag. Such a mechanism should conform to basic principles of vessel inspection, namely: prioritisation, deterrence, sustainability, and systemic effect. As a labour supplier, a state must adopt the new certification system for seamen set up by MLC 2006 and provide for the upgrading of seafarers' knowledge about their rights during working periods.

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RESEARCH PAPER

Defining State Economic Loss Due to Corruption within the Indonesian Law: Hurdle and Solution

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ABSTRACT

PURPOSE: This study aims to identify what the phrase "state economy" means in the Indonesian Anti-Corruption Act and to provide standards or benchmarks for determining the ratio of state economic losses caused by corruption.

DESIGN/METHODOLOGY/APPROACH: A descriptive-analytical strategy was employed in this investigation. This method made use of library research on rules and court decisions, and the information gathered was examined descriptively.

FINDINGS: Although the notion of state economy is articulated in the General Explanation of the Anti-Corruption Act, this study demonstrates that it remains inappropriate and confusing.

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RESEARCH LIMITATIONS/IMPLICATIONS: The findings of this study are likely to serve as a model for future research or as a reference for judges interpreting the aspects of the state economy in the Indonesian Anti-Corruption Act.

ORIGINALITY/VALUE: This study demonstrates the parameters and guidelines for understanding the notion of damaging a country's economy, as well as explaining the meaning of harming a country's economy by identifying the definition of economic interests.

KEYWORDS: *Corruption; State Economic Losses; State Financial Losses*

INTRODUCTION

Corruption is not only a problem in government bureaucracies, but also in private businesses. Like cancer, corruption is a chronic illness that is difficult to treat (Mochtar, 2006). According to Barda Nawawi Arief (1997), corruption is difficult to eradicate because it is complex and caused by corruption-related issues, such as mental/moral attitudes, economics, socio-economic environment, political culture, and bureaucratic weaknesses/administrative procedures in the field of public services and finance.

For decades, corruption has been a concern. Corruption allegations have resulted in the demise of governments or governing elites in nations such as Japan, Indonesia, South Korea, and Thailand, and most likely contributed to the end of the Yeltsin era in Russia (McFarlane, 2001). Corruption is particularly harmful everywhere, not only because it undermines commercial integrity and good governance, but also trust, which threatens democracy itself (McFarlane, 2001). Corruption is also linked to a country's economic development. According to several studies, the main reason investors are hesitant to invest in a country with high levels of corruption is because of corruption. This, in turn, leads to a fall in the country's economic growth (Alsagr and van Hemmen, 2022). Furthermore, corruption has an impact on financial markets. Some studies have demonstrated the negative effects of corruption. A study by Ng (2006) revealed that corruption has a substantial impact on numerous aspects of the economy, namely higher borrowing costs, lower stock valuations, and poorer corporate governance throughout worldwide financial markets.

Indonesia is a country that is now dealing with a number of corruption cases. The statistics on corruption cases by the Corruption Eradication Commission (KPK) during the last ten years are shown in Table 1 below:

Table 1: Corruption Cases in Indonesia

INKRACHT (Final and binding court decision)	District Court	High Court	Supreme Court	Total
2010	20	3	11	34
2011	21	0	13	34
2012	8	3	17	28
2013	10	10	20	40
2014	20	7	13	40
2015	16	6	15	37
2016	43	13	14	70
2017	71	5	5	84
2018	94	10	5	109
2019	113	11	18	147
2020	52	4	14	70
Total	468	72	145	693

Source: Constructed by authors

In addition, Transparency International, a global non-governmental organisation, conducts an annual corruption study. The Corruption Perception Index (CPI) is based on the results of an annual poll. The score is used to determine the CPI score that provides a snapshot of a country's or territory's corruption situation and conditions. A number of 0 indicates that something is exceedingly corrupt, while a score of 100 indicates that something is very clean. Indonesia has been examined since the first CPI was launched in 1995. In 2020, Transparency International released a CPI in which Indonesia ranked 102nd out of 180 nations evaluated, with a CPI of 37/100; this is a 3 point decrease from the previous year's score of 40/100, which was the highest since Indonesia came under study in 2018.

One of the likely causes of Indonesia's CPI decrease are two high-profile Indonesian cases. The Minister of Marine Affairs and Fisheries, Eddy Prabowo, became the first minister to be implicated in a corruption case in 2020. Prabowo was charged with bribery in the areas of pond licensing, business, and/or administration of fisheries or other aquatic commodities. He was arrested by the KPK on 24 November 2020 as he was about to arrive in Indonesia after traveling to Hawaii for a holiday and shopping for expensive things with the bribes he received. He was charged under Article 12 Paragraph (1) Point (a) of Law Number 31 of 1999 and Law Number 20 of 2001 concerning the Anti-Corruption Act and sentenced to 5 years in prison, a fine of 400 million rupiahs (US$25,694), and a compensation of 9.6 billion rupiahs (US$616,382) and US$7,700 based on what the defendant had returned. As an additional penalty, the panel of judges revoked Prabowo's political rights to run for public office for three years from the time he completed his main sentence (BBC News, 2021).

Juliari Batubara, the Minister of Social Affairs, became the second minister to be charged with corruption in 2020. Batubara was named a suspect by the KPK in the bribery case for social assistance in the COVID-19 pandemic on 6 December 2020. Batubara received a total bribe of 17 billion rupiahs (US$1,091,427), which he utilised to advance his own interests. Batubara was found guilty of violating Article 12 Point (a) of the Anti-Corruption Act and was sentenced to 12 years in jail and a fine of 500 million rupiahs (US$32,101) for his acts. In addition, the panel of judges imposed extra penalties for Batubara's failure to pay compensation in the amount of 14.59 billion rupiahs (US$936,964) and removed his political privileges or rights to be elected for four years (BBC News, 2021).

The state's loss in the Indonesian Jiwasraya case (2020) was enormous, at Rp. 16,807,283,375,000.00 (US$1,078,807,417), but the meaning of harming the country's economy remained unclear (CNN Indonesia, 2020). According to the Chairman of the Supreme Audit Agency (BPK), which is in charge of calculating state financial losses, the Jiwasraya case did not rule out the potential of state economic losses as a result of the enormous and massive state financial losses that happened (Rosana, 2020). Based on the definition referred to in the General Explanation of the Anti-Corruption Act, the panel of judges only specified the existence of state financial losses and state economic losses. This raised concerns because despite a significant loss (the largest in Indonesia's history of anti-corruption efforts), the country's economy was not clearly mentioned as being harmed (Firdaus, 2020). In conclusion, the court appears to conflate the notion of state financial losses and state economic losses, which should be distinct. As a result, a clear framework and limitations are required to establish whether or not the state has suffered economic losses.

Definition of Corruption

In Indonesia, the definition of a criminal act of corruption has been regulated in positive law, specifically in Article 1 Paragraph (1) of Law Number 30 of 2002 concerning the Corruption Eradication Commission (KPK Act), which states that "Corruption is a criminal act as referred to in Law Number 31 of 1999 concerning Anti-Corruption Act as amended by Law Number 20 of 2001" which lastly amended by law number 19 of 2019.

In the Anti-Corruption Act, there are 30 types/forms of criminal offenses of corruption (KPK, 2006). The thirty forms/types of corruption discussed in this article can be divided into seven classes of corrupt acts, namely:

1) Corruption involving state financial losses, regulated in Article 2 and Article 3;
2) Corruption involving bribery, regulated in Articles 5 Paragraph (1) Point a and Point b, Article 13, 5 Paragraph (2), 12 Point a and Point b, Article 11, 6 Paragraph (1) Point a and Point b, Paragraph (2), Article 12 Point c and Point d;
3) Corruption involving embezzlement in office, regulated in Article 8, 9, and 19 Point a until Point c;

4) Article 12 Point e, and Point f regulating extortion-related corruption.
5) Article 7 Paragraph (1) Point a until Point d, 7 Paragraph (2), and Article 12 Point h regulating corruption associated to dishonesty.
6) Article 12 Point i regulating corruption linked to procurement containing conflicts of interest;
7) Gratification-related corruption, regulated under Articles 12B and 12C.

Understanding the Elements of the State Finances Losses

Because of the rise in corrupt practices in Indonesia, law enforcement agents must be more effective in preventing and eradicating any form of corruption that has a significant negative influence on state finances or the economy, as well as people's lives in general. The Indonesian Public Prosecutor frequently invokes Article 2 Paragraph (1) and Article 3 of the Anti-Corruption Act during the prosecution procedure. The following are the provisions of Article 2 Paragraph (1) and Article 3 of the Anti-Corruption Act:

Article 2 Paragraph (1):

> 1) Any person who unlawfully commits an act of enriching himself or another person or a corporation that can harm the state finances or the state economy shall be punished with imprisonment for life or imprisonment for a minimum of 4 (four) years and a maximum of 20 (two) years and a fine of at least Rp200,000,000.00 (two hundred million rupiahs) and a maximum of Rp1,000,000,000.00 (one billion rupiah).

Article 3:

> Any person who, intending to benefit himself or another person or a corporation, abuses the authority, opportunities, or facilities available to him because of a position or position that can harm the state finances or the state economy shall be sentenced to life imprisonment or a minimum imprisonment of 1 (one) year and a maximum of 20 (twenty) years and or a fine of at least Rp50,000,000.00 (fifty million rupiahs) and a maximum of Rp1,000,000,000.00 (one billion rupiah).

The supplementary document of the Article 32 Paragraph (1) of the Anti-Corruption Act states: "What is indicated by a state financial loss is a loss that can be assessed based on the conclusions of the competent agency or appointed public accountant". The concept of state finance is also explained in several other laws and regulations that can be used as a valid reference and legal source regarding the legal construction of the concept of state finance, including Law No. 17 of 2003 on State Finance. Article 1 Paragraph (1) states that: "State finances are all of the state's rights and obligations that can be valued in money, as well as everything in the form of money or goods that can be used as state property in connection with the implementation of these rights and obligations".

In these Articles (Article 2 Paragraph 1 and Article 3), the phrase "can" before the phrase "harm the state finances or the state economy" considers this corruption case as a *delik formil*.[1] Therefore, the existence of state financial losses or the state economy is not required (potential loss is sufficient) (Wiyono, 2008). However, following the decision of the Constitutional Court No. 25/PUU-XIV/2016 that removes the phrase "can" from Article 2 Paragraph (1) and Article 3 of the Anti-Corruption Act, corruption that harms the state finances or economy at this time must be interpreted as a *delik materiil*[2] (opposite of *delik formil*), whose consequences are the consequences prohibited in the articles. The phrase "*merugikan keuangan negara atau perekonomian negara*" (state financial loss or state economic loss) must be understood as implying real loss (actual loss).

In practice, law enforcement officials attempt to prove 'state financial losses' based on investigative audit calculations from Badan Pemeriksa Keuangan (the Audit Board of the Republic of Indonesia) (BPK RI) and/or Badan Pengawasan Keuangan dan Pembangunan (the Financial and Development Supervisory Agency) (BPKP RI) (Astuti and Chariri, 2015). In terms of 'the state economic loss', the court only found the defendant guilty of committing a criminal act of corruption because it harms the state economy under the Anti-Corruption Act in a few cases. Furthermore, there is no Indonesian regulation governing which institution is authorised to assess (or calculate) the state economic losses at this time.

Understanding the Elements of State Economic Losses

In the fourth paragraph of the General Explanation of the Anti-Corruption Act, it is explained that:

> "…The State Economy is an economic life structured as a collaborative effort based on the principle of kinship or an independent community effort based on government policies, both at the national and regional levels, under the provisions of applicable laws and regulations aimed at providing benefits, prosperity, and welfare to all people's lives".

Although the General Explanation of the Anti-Corruption Act mentions 'the state economy', the definition of state economic losses is arguably not comprehensive and remains imprecise, creating legal confusion about the recovery of losses suffered by the state as a result of criminal acts of corruption. Moreover, the description of the state economy in the General Explanation of the Anti-Corruption Act section is ambiguous, confusing, and difficult for law enforcement to apply, making it difficult to establish clear boundaries or benchmarks for 'state economic losses'. Previously, according to Article 1 Point (a) of the Indonesian Anti-Corruption Act Number 3 of 1971,[3] activities

[1] The Indonesian type of conduct that shows that the result of the conduct is unnecessary to be assessed.
[2] The Indonesian type of conduct that shows that the result of the conduct is necessary to be assessed.
[3] This law is no longer in effect.

that can harm the economy of the country are "actions that can impair the country's economy which are considered as criminal violations within its jurisdiction as alluded in MPRS[4] Decree Number XXIII/MPRS/1966". Consequently, the government issued regulations based on its authority and the TAP MPRS to create harmonisation, particularly laws and regulations governing economic and monetary policy (Supriyanto *et al*., 2017). According to the Indonesian legal system, TAP MPRS[5] Number XXIII/MPR/1966 Concerning the Renewal of Economic, Financial, and Development Policy, on the other hand, has been established as TAP MPR/MPRS, which does not require further legal action because it is *enmalig*[6] (final), has been revoked, or has been completed according to TAP MPR Number 1 of 2003.

This means that provisions concerning actions that are harmful to the state economy can no longer be used as normative legal guidelines. However, regulations made by the relevant government under their authority as mandated by this TAP MPRS remain valid and are not revoked or declared as not having legal force. The regulations in this area are still relevant and can be used as a reference.

Decision Related to the Elements of State Economic Losses

Referring to a judge's decision related to the phrase "loss of the state economy" in the corruption case, it can be seen in Decision Number 1164/K/Pid/1985 that on behalf of the defendant Tony Gozal, the defendant built on a state-owned beach without a permit, preventing the state from using it for the public interest (Mulyadi, 2007). The decision No. 1144 K/Pid/2006 on behalf of the defendant ECW Neloe is also related to the state economic losses. As for the President Director of Mandiri Bank (State Owned Enterprise Bank), he illegally made bailout loans by ignoring the idea of banking prudence and loaned to *Korupsi, Kolusi, dan Nepotisme* (KKN/Corruption, Collusion, and Nepotism). According to the judges, the country was harmed by providing huge sums of credit to entrepreneurs who were not engaged in productive fields, where the state and community conditions necessitate the development of the populist economy. However, the preceding judgements did not clarify in any way what the expression "economic damages in the crime of corruption" implies. Neither decision was able to explain the significance of the state economic losses. Table 2 below shows numerous judgements that state that there have been economic losses to the country for the last decade:

[4] The Provisional People's Consultative Assembly (MPRS) is the forerunner of the People's Consultative Assembly (MPR), an Indonesian legislative body consisted of DPR and DPD members elected in general elections.

[5] TAP MPR is a type of People's Consultative Assembly decision that contains specific provision matters. TAP MPR is also one of Indonesia's laws and regulations.

[6] Several Dutch legal legacies have been brought to Indonesia by the principle of concordance for the colonised country (Indonesia). Even the terms HIR (civil procedural law), KUHD (commercial law), BW (Civil Code), and KUHP (criminal law) are still used today. As a result, many Dutch languages are still used in Indonesian law.

Table 2: Judgements Regarding Economic Losses

Case Register	Article 2 or Article 3	Loss Incurred (Ratio Decidendi)	Harming The Country's Economy
9/PID.SUS/ TIPIKOR/2014/ PN.PL	Article 3	Explanation of the Anti-Corruption Act	Harming the country's economy due to reduced welfare of teachers in remote areas
20/PID.SUS-TPK/2021/ PT.DKI	Section 2	A thing that affects the course of development	Harming the country's economy due to a decrease in national textile production
18/PID.SUS/ TPK/2021/PT.DKI	Section 2	A thing that affects the course of development	Harming the country's economy due to a decrease in national textile production
33/PID.SUS-TPK/2016/ PN.BJM	Article 3	Macro-economics and micro-economics	Harming the country's economy due to harming the micro and macro economy, the Binawara Village community, and the state
8/PID.SUS/2019/ PN.dps	Article 3	Explanation of the Anti-Corruption Act	Harming the country's economy (without further explanation)
22/PID.SUS-TPK/2018/ PN.DPS	Article 3	Explanation of the Anti-Corruption Act	Harming the country's economy (without further explanation)
9/PID.SUS/2019/ PN.dps	Article 3	Explanation of the Anti-Corruption Act	Harming the country's economy (without further explanation)

Source: Constructed by authors

Several of the cases above tried to define "state economic loss" in their decisions. For example, the defendant committed a criminal act of corruption in the special allowance funds for remote teachers in 2009-2012 at Tojo Una-Una Regency, resulting in state economic losses, particularly for the welfare of teachers in these remote places.[7] A different case mentioned that it was known that the defendant was engaged in a criminal act of corruption in the management of the Traditional Ship Village LPD funds, resulting in losses to the state economy, particularly village welfare.[8] Subsequently, according to Decision Number 33/PID.SUS-TPK/2016/PN.BJM, the defendant committed a criminal act of corruption in village funds, inflicting economic damage to the residents of Binawara Village (micro economy) and the country's economy (macro) suffered as a result. Another case stated that the defendant committed a criminal act of corruption in the import of products (textiles), resulting in losses to the country's economy, specifically the decline in national textile production of 63.35 trillion rupiah (US$4,034,890,480) and the decline in domestic textile industry activity induced by a surge in material imports.

[7] Case number 09/PID.SUS/TIPIKOR/2014/PN.PL (Palu District Court).

[8] Case number 8/PID.sus/2019/PN.dps (Denpasar District Court), 9/PID.sus/2019/PN.dps (Denpasar District Court), and 22/PID.SUS-TPK/2018/PN.DPS (Denpasar District Court).

It can be observed from these judgements that some still utilise the definition of state economic losses as defined in the General Explanation of Anti-Corruption Act. However, the panel of judges who heard in one of the cases above believed that what was meant by the state economy was a decrease in domestic industrial activity in the form of a 63.35 trillion rupiah decrease in production, and a decrease in the workforce caused by the defendant's surge in textile imports.[9] Expert witnesses in this textile case calculated the country's economic losses in textile imports from 2018 to 2020 at the Directorate General of Customs and Excise.

The panel of judges in one of the above decisions considered that there was a state economic loss (a decrease in the welfare level of teachers who teach in a remote area), despite the fact that it still used the meaning of the state economy in the General Explanation of the Anti-Corruption Act.[10] This will undoubtedly hinder the government's efforts to improve school quality. However, this decision has a flaw in that there are no guidelines for measuring the decline in teacher welfare in these remote places.

Guidelines of the Elements of State Economic Losses

Because the majority of the panel of judges still relies on the rationale based on the General Explanation of the Anti-Corruption Act, the decisions above illustrate that the panel of judges still has different views when assessing the factors of state economic losses. As a result, a guide to evaluating the meaning of state economic losses is required. Through Perma Number 1 of 2020 (Supreme Court Rule Number 1 of 2020), the Supreme Court published sentencing guidelines to enforce Articles 2 and 3 of the Anti-Corruption Act. These guidelines attempt to provide a method for imposing punishment by establishing the criteria that judges must evaluate. The goal is to ensure legal certainty, proportionality in sentencing, and avoidance of inequity. The Supreme Court recognises that implementing the two provisions of the Anti-Corruption Law remains a challenge, so judges are compelled to follow the guidelines.

There are four chapters in the guidelines:

- Chapter I General Provisions;
- Chapter II Principles, Objectives, and Scope;
- Chapter III Guidelines Implementation; and
- Chapter IV Closing Provisions.

The contents of the guidelines are not explored in length in this study, but they are discussed concurrently in relation to the subject of state economic losses. Chapter III of Perma Number 1 of

[9] Cases number 18/PID.SUS/TPK/2021/PT.DKI (Jakarta High Court) and 20/PID.SUS/TPK/2021/PT.DKI (Jakarta High Court).

[10] Case Number 9/PID.SUS/TIPIKOR/2014/PN.PL (Palu District Court).

2020 regulates articles in the guidelines that are directly relevant to the subject. The category of state financial losses or the state economy is specifically mentioned in that chapter. Because the criteria have the same articles in the rules, the term "or" is used to express choices, and the criteria are not distinguished. For example, under Article 6, the heaviest, heavy, medium, and light categories of state financial losses or the state economy are defined. For the purpose of applying Article 2, the categories refer to a specified nominal of loss, such as over 100 billion rupiahs (US$6,420,650), which is the heaviest loss, and more than 200 million rupiahs (US$12,855) but not more than one billion rupiah (US$64,275), which is the lightest loss. When it comes to the application of Article 3, the heaviest category is a loss of more than 100 billion rupiahs (US$6,420,650), while the lightest category is a loss of less than 200 million rupiahs (US$12,855). The "lightest" category applies only to Article 3, while "light" is the lowest category for Article 2. The metrics utilised in this legislation do not differentiate between "harming the state finances" and "harming the country's economy". This indicates two things. First, the two meanings can be employed interchangeably, implying that they are equivalent alternatives. Second, the factors used to calculate "state financial losses" and "state economic losses" are the same as those mentioned in Article 6 of Perma Number 1 of 2020.

Following the aforementioned nominal categorisation, the state economic losses are determined once the nominal state losses are determined (two-stage evaluation). If it is not interpreted this way, the implementation of Perma Number 1 of 2020 will be confusing because it conflates "State Finances Losses" with "State Economic Losses", which are clearly stated to be distinct in the legislation. The meaning of "State Economic Losses" is still not explained in Perma Number 1 of 2020. Therefore, a flexible parameter or guide is still needed in interpreting the meaning of harming the state economy that can be continuously updated to suit the times by the authorised institution, in this case, the Supreme Court. It is worth noting that there cannot be any state economic losses if there are not any state financial losses (Rachman and Raspati, 2021). Furthermore, a metric is required to estimate the extent to which state financial losses can result in state economic losses. This article suggests that state financial losses exceeding 100 billion rupiah (US$6,420,650), or the most severe category, are state financial losses that can result in state economic losses.

Certain things that directly affect an economy can be linked to guidelines for determining a country's economy. Guidelines for defining a country's economy must be flexible enough to be altered (by adding or removing categories) in response to changing circumstances. The guidelines contain categories that can be approved, but if they (the categories) are disrupted, the economy of the country will also be disrupted. Several factors can interfere with or disturb economic interests, including the presence of monetary corruption, such as fiscal, exchange rate, and interest rate corruption. Furthermore, corruption can disturb economic interests in areas involving national products, such as exports and imports, distribution of goods and services, and sales. Furthermore, corruption in the financial sector, including banking, lending, capital markets, insurance, investment, and foreign investment, might jeopardise economic interests. In addition, corruption in areas such as education, output reductions due to poverty alleviation programmes, and issues with

people's economic institutions (such as Koperasi[11]) can all hinder economic interests. As a result, the definition of the state economy in the General Explanation of the Anti-Corruption Act must be interpreted as follows: state economy loss is defined as an economic life structured as a joint effort based on the principle of kinship or an independent community effort based on government policies, both at the national and regional levels, that aim to provide benefits, prosperity, and welfare to all people's lives under the provisions of applicable laws and regulations. If there is corruption in the scope of the country's economic interests, it will be disrupted or impossible to implement.

The Constitutional Court issued judgement No. 25/PUU XIV/2016 in 2016, requiring state financial losses to be shown in cases of corruption under Article 2 Paragraph (1) and Article 3 of the Anti-Corruption Act. Consequently, even while state financial losses are sufficient and state economic losses are not required, the application of the elements of state economic losses should become an aggravating factor. If financial loss is established, the factor affecting the state economy must be examined, and the elements cannot be considered separately. As a result, the assessment has changed from a one-stage evaluation to a two-stage evaluation to determine the loss. This is also consistent with Perma Number 1 of 2020 (guidelines), which specifies that when applying Article 2 Paragraph (1) and Article 3 to the element of "loss", the first stage must demonstrate the existence of state losses determined by a competent institution. The second stage consists only of determining whether there is a loss to the state economy by taking into account the previously mentioned disrupted economic interests.

LITERATURE REVIEW

State Economic Losses and State Financial Losses

The concept of financial loss is mentioned in Law Number 1 of 2004 concerning the State Treasury; this states that "State/Regional losses are shortages of money, securities, and goods, which are real and definite in number as a result of unlawful acts, whether intentional or negligent". According to the General Explanation of the Anti-Corruption Act:

> "The State Economy is an economic life that is structured as a joint effort based on the principle of kinship or an independent community effort based on government policies, both at the central and regional levels, under the provisions of applicable laws and regulations aimed at providing benefits, prosperity, and welfare of all people's lives".

According to this definition, harming the country's economy is defined as harming economic life that is structured as a joint effort based on the principle of kinship or an independent community effort based on government policies at the central and regional levels that are designed to provide

[11] According to Article 1 Law Number 17 of 2012, Koperasi is a business made up of a group of people whose activities are based on cooperative principles, as well as a people's economic movement based on kinship.

benefits, prosperity, and welfare to all people's lives under the provisions of applicable laws and regulations. Such a definition is very broad and contains topics that need to be explained further. As a result, it is difficult to put into practice and tends to be ambiguous. Several studies have also concluded that the factor of 'harming the country's economy' is ambiguous. "It may be inferred that the idea of the state economy in corruption is imprecise, vague, and has numerous interpretations", writes Firmansyah (2020). To aid law enforcement personnel, the explanation in the Anti-Corruption Law should include a clear and detailed statement of state economic losses.

According to former Attorney General Baharudin Lopa, what is meant by the state economy as alluded to in the Anti-Corruption Act's explanation is imprecise, making it impossible to prove the phrase "harming the country's economy" in law enforcement. It is explained regarding actions that can impair the country's economy in the preceding Law on the Eradication of Corruption Crimes, specifically Law Number 3 of 1971. "Actions that can impair the country's economy are criminal violations of the regulations imposed by the government within its jurisdiction as alluded to in MPRS Decree Number XXIII/MPRS/1966", according to Article 1 Sub (a) Law Number 3 of 1971. However, according to MPR Decree No. 1 of 2003 concerning the Review of the Material and Legal Status of Provisional People's Consultative Assembly Decrees and Decrees of the People's Consultative Assembly of the Republic of Indonesia 1960 to 2002, this MPRS Decree has been revoked.

CONCLUSIONS

From the standpoint of anti-corruption law, this study describes the characteristics of "state economic loss" reported to the Indonesian Supreme Court for the last decade. An examination of the decision on the Indonesian Supreme Court's website revealed no clear considerations regarding the meaning of state economic loss. Due to their casuistic nature, some decisions provide considerations related to the meaning of state economic loss, but they are difficult to use as a reference for different cases. The idea of the state economy is defined in the General Explanation of the Anti-Corruption Act, but it is nevertheless seen as broad, difficult to apply, and vague. As a result, a parameter is required to calculate the state economic loss as a result of investigating Indonesian corruption cases. These characteristics focus on what it means to have "economic interests" that are jeopardised when corruption occurs. These criteria can be related to monetary, national production, finance, and government programmes for poverty alleviation, education, or people's economic institutions. Furthermore, with the Constitutional Court's decision No. 25/PUU XIV/2016 concerning State Financial Losses and Perma No. 1 of 2020 establishing Guidelines for the Sentencing of Articles 2 and 3 of the Anti-Corruption Law, "harming the country's economy" should be viewed as an aggravating factor that does not always have to exist. As a result, the element of causing economic harm to the country can only be demonstrated after the element of "state financial loss" has been established. According to Indonesian legislation, there can be no state economy loss without state financial loss. It is proposed that the Indonesian Supreme Court

amend Perma No. 1 of 2020 establishing Guidelines for the Sentencing of Articles 2 and 3 of the Anti-Corruption Law by including "economic interest" criteria for judges to use in evaluating the element of state economic loss.

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BIOGRAPHY

Taufik Rachman is a passionate researcher and lecturer at Universitas Airlangga Indonesia. His ambition is to contribute to the improvement of the legal system in Indonesia, so after graduating from Victoria University in 2016, he joined the Faculty of Law Airlangga University Center for Anti-Corruption (CACCP/Center for

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RESEARCH PAPER

Optimisation of Village Funds in Achieving SDGs: Lesson Learned from East Java

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ABSTRACT

PURPOSE: This research aims to discover the ideal model of Village Regulation in order to realise SDGs Desa (Village Sustainable Development Goals). It begins with the Village Fund Management rules that became the basic legal framework of Village SDGs. This output helped local government design regulation bills to realise the Village SDGs that support the national SDGs programme.

DESIGN/METHODOLOGY/APPROACH: The paper is an empirical study applying a statute and conceptual approach. Additionally, supporting data are gained through interviews resembling a participatory approach.

FINDINGS: There is a relationship between ideal model regulation and the supporting programmes for Village SDG achievements.

ORIGINALITY/VALUE: This paper presents new information to optimise village funds in achieving SDGs through the development of regulatory models, especially at the local level.

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RESEARCH LIMITATIONS/IMPLICATIONS: As this research discusses updated issues in Village Financial Management, the sources are limited. However, the outcome is applicable for local governments to achieve SDGs.

PRACTICAL IMPLICATIONS: This research helps local village governments to draft bills in order to achieve the SDGs Desa (Village Sustainable Development Goals).

KEYWORDS: *Public Welfare; Regulation Model; Village Funds; SDGs*

INTRODUCTION

The enactment of Law No. 6 Year 2014 regarding Village (Law No. 6/2014 or Village Law, hereinafter) strengthens the existence of the village as a subject of national development; the law resembles the regulated authorities and focuses on village fund management and national priorities. Village funds are sourced from the National Budget that is allocated to villages. They are transferred through the Regency/Municipal Budget and used to finance government administration, development implementation, community development, and community empowerment.

To ensure village growth, the government designs the Village Fund Allocation Priority annually. From this the regional governance regulates the integral regional legal framework. In 2021, expenditure priorities were to support Village Sustainable Development Goals (VSDGs) pursuant to the Ministry of Village, Development of Disadvantaged Regions and Transmigration Decree No. 13 Year 2020 (Ministerial Decree 13/2020, hereinafter). In accordance with Article 5 para 2, priorities were allocated towards supporting VSDGs. Previously, the notion of reducing poverty, escalating community welfare and other SDG ambitions were regulated in accordance with the National Mid-Term Development Plan of Indonesia Year 2020-2024 and Law No. 6/2014.

The Ministerial Decree 13/2020 also indicated that the allocation plan should aim at the recovery of the national economy, grounded in the village economy based on the village authorities, national priority programmes and the village new normal policies. Both the ideas of SDGs and recovery of the economy are interchangeably related. This is because the goals are connected; that social and economy damage is minimilised, and development that was hampered due to the COVID-19 pandemic continues.

Realising the integral role of the villages, it is therefore important to develop more comprehensive and mindful regulations regarding the use of Village Funds. It needs a possible designed regulation consisting of planning, allocating, transferring, managing and using policies.

MANAGEMENT OF VILLAGE FUNDS AS PART OF VILLAGE AUTHORITY

The village, as a government entity, is authorised to administer its main tasks and functions pursuant to the Laws and Regulations. Article 3 of Law No. 6/2014 states that the given authority recognises the origin rights owned by the village, and the principle of subsidiarity, namely the determination of local-scale authority and local decision-making upon community benefits. Article 19 of Law No. 6/2014 also covers village-scale local authority. More defined authorities are subject to the

Ministry of Village, Development of Disadvantaged Regions and Transmigration Decree No. 44 Year 2016 regarding the Village Authorities (Ministerial Decree No. 44/2016, hereinafter). Pursuant to the regulations, the village government is allowed to regulate its financial management, such as Village Budgetting; ideally, this is drafted on the actual situation and interest of the villages. Village income is streamed from the national budget and called *Dana Desa* (the Village Fund); it requires an equitable and fair management pursuant to the Article 72 para 1 (b) and para 2 of the Law No. 6/2014.

Local developments, including community empowerment, poverty alleviation, and the fulfilment of basic needs are prioritised; other allocations are permissible after initial priorities have been fulfilled. As the current priority, VSDGs should cover integrated efforts to realise villages that achieve zero poverty and hunger, a growing economy, concern for people's health and welfare, environmentally friendly, education supporting, women friendly, well-networked, and culturally responsive. This resembles the acceleration of the SDGs 2030 ambition.

IMPLEMENTATION OF SUSTAINABLE DEVELOPMENT PROGRAMMES IN VILLAGES: LESSONS LEARNED FROM EAST JAVA

According to the Ministry of Village, Development of Disadvantaged Regions and Transmigration data, villages contribute to approximately 74% of the National SDGs (Kementerian Desa PDT, 2021). It can be seen that this is a major contribution that makes them accountable in realising the achievement of SDGs. The Village Fund priority expenditures are described below.

National Economy Recovery Programme

This programme is designed as the recovery plan for the Indonesian Economy after the pandemic. Since it shares similarities with the SDGs planning, the government expects to accelerate both at the same time. The National Economy Recovery (NER) Programmes that correlate to VSDGs cover.

ESTABLISHMENT, DEVELOPMENT, AND REVITALISATION OF VILLAGE-OWNED ENTERPRISES (VOE)/JOINT VILLAGE-OWNED ENTERPRISES (JOINT VOE) FOR EQUITABLE VILLAGE ECONOMIC GROWTH

The VoE aimed to improve the village economy, optimise village assets, and increase community efforts in managing the village's economic potential. It ultimately had a substantial impact on realising national economic recovery with an orientation towards the creation of sustainable development in the village (Putra, 2015). It oversees asset management activities, services, and businesses in the village as a legal entity (Andayani and Sudiarta, 2021). The optimisation of the VoE will have an effect on the economic quality improvement in the village that will lead to national economic recovery. One of the efforts determined the VoE activities based on the concerned area potentials (Kementerian Desa PDTT, 2022; Wibowo, 2018).

Since Village Funding became one of the VoE's funding sources, it shows the relationship between well-managed funding and better and optimised economic growth of certain areas through VoEs.

Currently, VoEs are distributed to various villages in every province throughout Indonesia. Based on data from the Central Bureau of Statistics, nationally there are 60,911 business units (Priadi Asmanto, 2020). In East Java alone, there are 6,313 units according to the national agency, and 6,114 according to the provincial agency (East Java Community and Village Empowerment Agency). The distribution is shown in Figure 1 below.

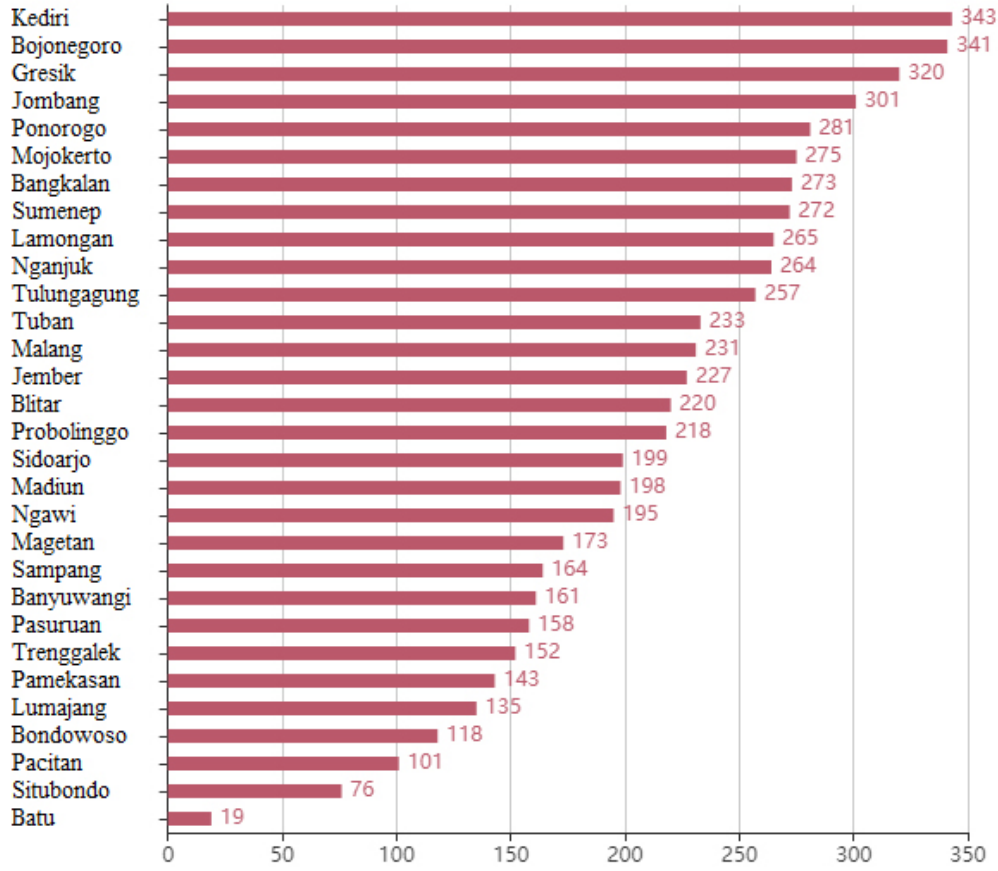

Figure 1: Number of the VoE by Regency

Source: East Java Province Village and Community Empowerment Service

To clarify, this paper recognises the data earned by the provincial agency. It is divided into 8,055 sectors with IDR57,433 billion (US$3,671,869,732) valued total assets and IDR64,257 billion

(US$4,108,149,206) total turnover (Dinas Pemberdayaan Masyarakat dan Desa Provinsi Jawa Timur, 2021) (Service, 2021a). The province earned IDR16,162 billion (US$1,033,286,762) profit, the majority of which is streamed by Local-own Source Revenue. In 2019-2020, the number of the VoE in East Java increased by 682.

The VoE has various types of business units that are influenced by the original characteristic of each village and its potential. In East Java Province alone, the total number of business units is 9,354 (Service, 2021a), distributed as shown in Figure 2.

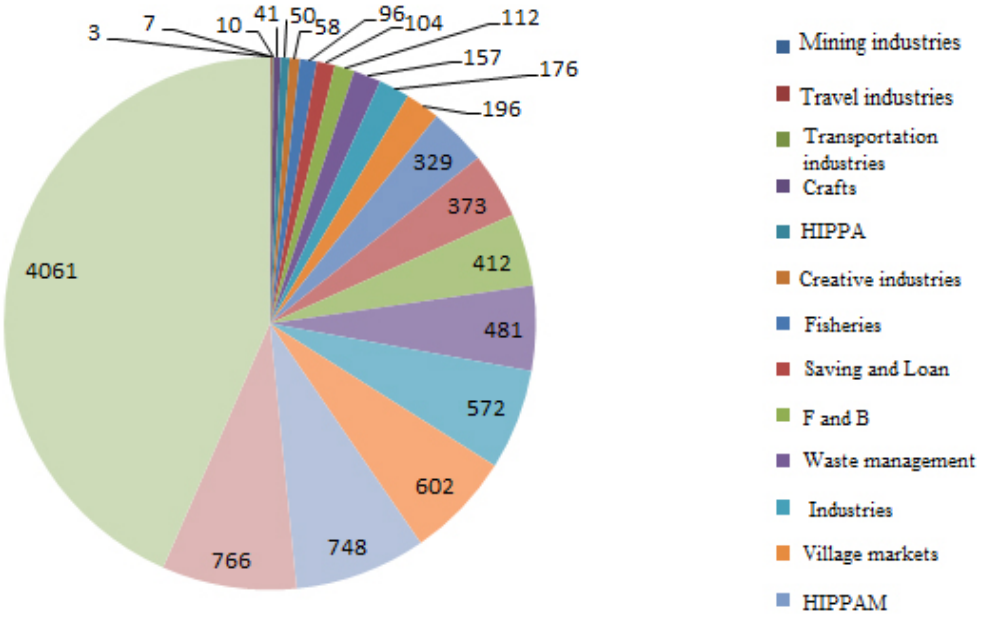

Figure 2: Number and Types of VoE Business Units in East Java Province
Source: East Java Province Village and Community Empowerment Service

According to the data, financial service units dominate with 4,061 units. In contrast, there are only three units in mining services. The advanced VoE reach nearly 16%, 36.11% of which are growing and 48.44% are at initiator level. Although the majority of villages in East Java own their business units, 1,776 villages have none (Service, 2021b).

Considering the integral role of the VoE, both central and local government should establish a synergised effort such as providing sustainable accompaniment pursuant to Government Regulation No. 11 Year 2021 regarding the Village-owned Enterprises (GR No.11/2021, hereinafter). Proper management will significantly impact on the welfare of the village community at large (Anggraeni, 2016). Accordingly, it supports the achievement of VSDGs 8, equitable and fair economic growth.

To support the existence of VoEs during the COVID-19 pandemic, the provincial government of East Java implemented three significant programmes. First, Lumpang Bude, a programme for a Food Estate by VoE, was applied by 107 VoEs with the total transaction equal to IDR1,820,805,500.00 (US$116,409). It includes three activities: supplier, drop-shipper, and trading (Service, 2020).

The second programme is the VoE Clinic (Klinik BUMDES) through *Sinando/Sinau Nang Ndeso* (learning from the villages). It is run in 17 regencies with 34 trainings of 837 members (including 130 villages with 1,800 participants). The programme aims to escalate locals' entrepreneurial skills that support economic growth. Eventually, comprehensively speaking, it encourages communal branding, preparing new businesses in the villages, as well as creating a supply-demand channel (through traditional market modernisation and modern community retail projects). There are also some supporting programmes, e.g., *Paman Desa* (Strengthening the Capital of VoE), *Jatim Puspa* (Women's business empowerment), and *Bibit Jamur* (Training and Providing Soft Loan from Banking). Also, there are systems management programmes created to support the villages (IdFos Indonesia, 2021).

PROVIDING VILLAGE ELECTRICITY TO REALISE RENEWABLE AND CLEAN ENERGY VILLAGES

The provision of village electricity in the NER Programme rules that it is funded by the Village Fund aiming to realise a clean and RE-friendly village. The provision of village electricity includes:

a) micro-hydro power plants;
b) biodiesel power plants;
c) solar power plants;
d) wind power generation;
e) biogas installation;
f) electricity distribution network (not from the State Electricity Company); and
g) other activities to realise the provision of Village electricity in accordance with the authority of the Village and decided in the Village Deliberation.

The availability of electricity in the village is related to the electrification ratio. The electrification ratio itself is a comparison of the number of household customers who have a source of lighting either from the State Electricity Company (SEC) or private electricity companies with the number of households (Kementerian Energi dan Sumber Daya Alam, 2020). The SEC is run by government whilst the private companies provide electricity, including solar panel-sourced electricity (Survei Sosial dan Ekonomi Nasional, 2012).

Based on data from the Ministry of Energy and Mineral Resources, in May 2021 346 villages were without electricity. To optimise supply, village electricity can be sourced in several ways, e.g., the State Budget through the Ministry of Energy and Mineral Resources, the Special Allocation

Fund, and the Village Funds Priority; these would impact on accelerating the rural electricity programme (Institute for Essential Services Reform, 2019). Even though in percentage terms Indonesia has reached an almost perfect number, the availability of village electricity must be carried out comprehensively in all villages within Indonesia. This is very important considering that the quality of economic growth requires reliable and equitable availability of energy, including the availability of electrical energy in villages (Mary et al., 2017).

DEVELOPMENT OF PRODUCTIVE ECONOMIC ENTERPRISES THAT IS PRIORITISED TO BE MANAGED BY VOE/JOINT VOE TO REALISE ENVIRONMENTALLY CONSCIOUS VILLAGE CONSUMPTION AND PRODUCTION

Productive economic efforts in the NER programme aim to realise environmentally conscious village consumption and production that is also in line with village SDGs 12 (Studies, 2021). When a village is committed to run an economic business by paying attention to the potential and role of the environment, as well as by paying attention to environmental sustainability itself, it will have an impact on achieving sustainable development through productive economic efforts (Ulumiyah, 2013).

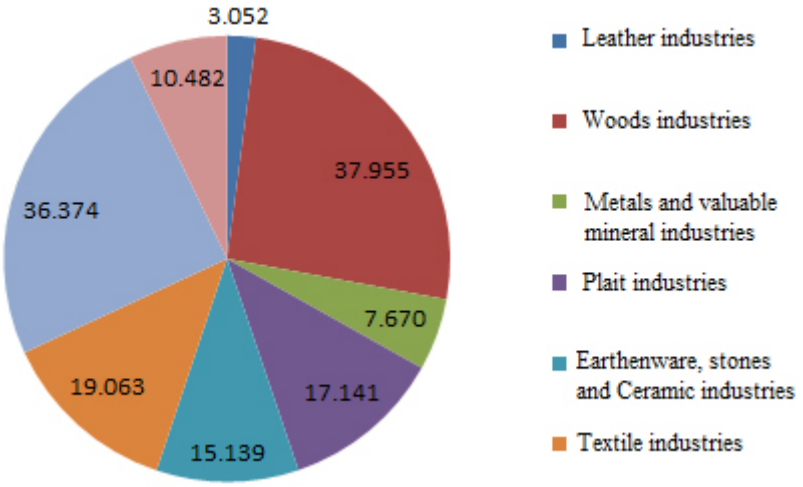

Figure 3: Data of village SMEs
Source: The Central Bureau of Statistics

As can be seen in Figure 3, these productive economic businesses already exist and are spread in various villages throughout Indonesia. The use of village funds for the development of productive economic enterprises will affect the national economic recovery. Moreover, in the NER programme, productive economic enterprises that are managed by the VoE or the joint VoE are

prioritised. These efforts will open and create more productive economic activities and businesses that are environmentally conscious. In addition, VoEs will be empowered and utilised in a more comprehensive and synergised manner.

National Priority Programmes

Village Fund priorities are the same as the National Priority Programmes; these include data collecting, natural resources and potential mapping, development of information and technology, support for village tourism, food sufficiency and strengthening, and the establishment of an inclusive village. There are three ways these can be used to pursue VSDGs.

VILLAGE DATA COLLECTION, MAPPING OF POTENTIAL AND RESOURCES, AND DEVELOPMENT OF INFORMATION AND COMMUNICATION TECHNOLOGY (ICT) IN AN EFFORT TO EXPAND PARTNERSHIPS FOR VILLAGE DEVELOPMENT

Part of the first National Priority Programme comprises village data collection, mapping of potential and resources, and the development of technology and communication aimed at achieving village SDGs 17, namely partnerships for village development (Studies, 2021). The Central Bureau of Statistics has previously collected data from the villages. These data include potential natural resources, a map of the village's poverty levels, and occurred circumstances (hindrances and solutions) that support development and productivity levels (The Central Bureau of Statistics, 2021). These efforts support the ambition of VSDGs in accordance with the villages' potentials and characteristics. Furthermore, the development of ICT departs from the awareness of the technology and information advancement in developing the village economy (Badri, 2016). The Village Information System was created by central government to facilitate the accessibility of the locals to economic activities such as managing and integrating village assets and financial administration. It covers digital and technological information on digital application forms (Mukhsin, 2020).

DEVELOPMENT OF TOURIST VILLAGES FOR EQUITABLE VILLAGE ECONOMIC GROWTH

The development of tourist villages aims to achieve VSDGs 8, namely equitable village growth (Studies, 2021). The tourist villages are divided into four types: pilot tourism villages, developing tourist villages, advanced tourist villages, and independent tourism villages (Kemenparekraf RI, 2021). Based on current data, there are 7,275 tourist villages in Indonesia (Badan Pusat Statistik, 2019). The data from the Ministry of Tourism and Creative Economy show that, in 2015-2019 alone, the average number of foreign tourists visiting various regions in Indonesia reached 13.5 million per year. This stream will benefit the government once it can realise the villages as a main destination of tourism.

Developing village tourism can be done through:

a) procurement, development, utilisation and maintenance of tourist village facilities and infrastructure;
b) promotion of tourist villages prioritised through cultural and digital-based titles;
c) tourism village management training;
d) management of tourist villages;
e) cooperation with third parties for tourism village investment; and
f) other tourism village development activities in accordance with the village authority decided in the Village Forum.

Through these steps, combined with the efficient and effective use of the Village Funds, the hopes of achieving VSDGs seems reachable, particularly in terms of equitability and fair economic growth.

STRENGTHENING FOOD SECURITY AND PREVENTING STUNTING IN VILLAGES TO REALISE A VILLAGE WITHOUT HUNGER

This programme aims to achieve SDGs 2, namely villages without hunger. It covers food sufficiency, quality, quantity, safety, diversity, nutritious levels, equitable and affordable, that are also relevant to any religious concerns in the community. It also means healthy, active and productive food sufficiency in a sustainable manner that is managed to solve stunting issues. Stunting is a chronic malnutrition problem caused by a lack of nutritional intake over a long period, resulting in growth disorders in children, meaning that some children are shorter than others. International experience and evidence show that stunting can hinder economic growth and reduce labour market productivity, resulting in a loss of 11% of GDP and the income of adult workers being reduced by up to 20%. In addition, stunting can also contribute to widen inequality, thereby reducing 10% of total lifetime income and causing inter-generational poverty (Tim Nasional Percepatan Penanggulangan Kemiskinan, 2017).

Global Food Security Index data show that in terms of food security, Indonesia is currently at 65 out of 113 countries, slightly below Vietnam, Malaysia, Singapore, and Thailand (Agency, 2018). Based on the results of the Nutritional Status of Toddlers survey in 2019, the prevalence of stunting in Indonesia was recorded at 27.67% (Kementerian Koordinator Bidang Pembangunan Manusia dan Kebudayaan, 2021). This figure is still above the standard set by the WHO that the prevalence of stunting in a country should be below 20%. Currently, 2017 data show that Indonesia is in the fourth highest stunting position in the world and second in Southeast Asia; specifically, in East Java Province, the prevalence remains high (see Table 1) (Kementerian Koordinator Bidang Pembangunan dan Kebudayaan, 2017).

Table 1: Number of Villages in Districts with High Stunting Prevalence Rate

Regencies/Cities	Number of Villages	Population (thousand)	Number of Toddler with Stunting	Stunting Prevalence (%)
Trenggalek	157	691	19553	38.63
Malang	390	2556	57372	27.28
Jember	248	2416	80359	44.10
Bondowoso	219	764	29159	56.38
Probolinggo	330	1146	46576	49.43
Nganjuk	284	1045	36970	44.33
Lamongan	474	1188	44031	48.87
Bangkalan	281	961	32473	43.21
Sampang	186	945	35371	41.46
Pamekasan	189	852	32905	44.60
Sumenep	334	1076	33196	52.44

Source: Annual Report of Coordinating Ministry for Human Development and Cultural Affairs, 2017

According to the data, the East Java government together with the village should prioritise the use of the Village Fund to promote food sufficiency and zero hunger villages. This is in line with the national priority programme that aims to be achieved through:

a) developing agribusinesses to support food sufficiency;
b) developing village's foodshed system;
c) post-harvesting management; and
d) strengthening food sufficiency in accordance with the local authority decided in the Village Communal Forum.

The local community also takes part in benefiting village-owned lands as part of village cash (*Padat Karya Tunai Desa*). For example, a community can establish plantations to gain profits from the harvests (Kemendesa PDTT, 2020). Supporting the economy eventually helps to solve the basic reason for stunting.

Although the government supports these programmes, it takes several additional efforts to decrease the stunting percentage level. The efforts are:

- e-HDW (electronic-Human Development Worker);
- transferring fees for Human Development Cadre (including local health centres and early-childhood facilitators);

- preventing stunting through Healthy Village Centre (*Rumah Desa Sehat*); and
- providing basic services of health, nutritious support and child care.

Providing basic services includes activities for mother and child welfare, nutritionist consultation, clean water and sanitation, social protection (access for pregnant women and toddlers), education towards early childhood fostering, family support and encouraging urban gardening (self-resiliency). These efforts are part of the urgencies of government at any level in diminishing stunting levels, as well as accelerating the achievement of zero hunger (Studies, 2021).

ESTABLISHING INCLUSIVE VILLAGE, PEACEFUL AND FAIR VILLAGE, AND DEVELOPING DYNAMIC AND ADAPTIVE VILLAGE ORGANISATIONS

Conceptually, inclusive is defined as openness (Dakelan, 2016). In other words, it means the village applies equality principles in strategic decision-making, such as giving opportunities for women to be involved. Those concepts are pursuant to VSDGs 5, 16 and 18. Due to its uniqueness, the existence of VSDGs 18 represents the respect of Indonesia's local culture, religion and customs (Kementerian Desa PDTT, 2021). It includes support programmes for equality. One of these is establishing inter-ministerial coordination to create women-friendly and child-care villages. The collaboration is established between the Ministry of Women Empowerment and Child Protection, and the Ministry of Village, Development of Disadvantaged Regions and Transmigration subject to Press Release No. B-301/Set/Rokum/MP/01/11/2020. This will be the epicentre of new development strategies in welfare and health, qualified education access, lowering children-marriage rate, and encouraging home-centered economy backed up by stay-at-home mothers (Kementerian Pemberdayaan Perempuan dan Perlindungan Anak, 2020).

Despite support for the women's empowerement programme, inclusive notions also cover support towards the person-with-disability community. The pilot project runs in Bugeman Village, Situbondo, subject to the Decree of the Headman. In 2019, a village in Malang Regency followed this step. The activities carried out include social rehabilitation for this community and developing a non-profit organisation advocating this issue in 2020 (Syamsi, 2020).

The Villages New Normal Adaptation

This programme strategically aims to create health and welfare villages through the *Desa Aman* Covid-19 programme. It also aims to promote villages with zero poverty through the Village Fund-Cash Transfer.

DESA AMAN COVID-19

For this, a set of three activities comprises: 1) strictly ruling and monitoring the new normal measures, 2) maintaining isolation spaces to be ready-to-use at any time, and 3) maintaining security booths. In East Java alone, allocated Village Funds for COVID-19 control measures are calculated to be IDR422,630,717,098 (US$27,970,926). It has been distributed to 7,411 villages around East Java, managed by nearly 275,000 volunteers. Table 2 lists the Village Fund allocation in COVID-19 control (Dinas Pemberdayaan Masyarakat dan Desa, 2021):

Table 2: Lists of the Village Fund Allocation in COVID-19 Control

Activities	Number of Villages
Establishing Volunteer Team Booth	7,218
Establishing Isolation Spots	5,714
Healthy Life Against COVID-19 Socialisation	7,013
Providing Hand-Wash Basins for Public	6,902
Disinfecting Spray	6,911
Registering Permanent and Non-Permanent Residents	6,264
Data Collection of Vulnerable Group of People	4,840
Face masks distribution	5,495

Source: Annual Report of Community and Village Empowerment Services Bureau (Dinas Pemberdayaan Masyarakat dan Desa, 2020), East Java Province, 2021

By July 2021, the National Board of Disaster Management data show the number of people under supervision (ODP) reached 45,192 from 188,787 villages. The number of confirmed patients in the villages is lower than in the cities (Kementerian Desa PDTT, 2020), because villages are concerned with managing patients. It shows that villages are reliable and the programmes are significantly impactful. If it is well-maintained, it helps the government in realising VSDGs 3, promoting healthy and wealthy villages.

THE VILLAGE FUND CASH TRANSFER PROGRAMME

This programme is resourced from the Village Fund subject to Ministry of Finance Decree No. 69/PMK.07/2021 regarding the amendment of the Decree No. 222/PMK/07/2020. This programme is distributed three times for two periods of time; first period (April-June 2020) and second period (July-September 2020). The amount distributed was different in each period pursuant to the Integrated Data of Social Welfare by the Ministry of Social (Kementerian Keuangan, 2020). Observing the data (see Table 3), the provincial government distributed the fund during the first three months of 2021. By July 2021, 39.58% of the total funds had been distributed, IDR769,537,800 (US$50,930) of IDR1,944,188,100,000 (US$128,672,006) (Dinas Pemberdayaan Masyarakat dan Desa, 2021).

Table 3: Distribution of Cash Transfer for East Java Province as of 19 July 2021

Month	Number of Regencies	Number of Benefiting Villages	Number of not yet Benefiting Villages	Number of Benefiting Families	Total Transferred	Percentage
1	30	7,716	8	570,355	171,106M	99.90%
2	30	7,665	59	567,611	170,283M	99.24%
3	30	7,115	609	527,939	158,381M	92.12%
4	28	5,897	1,827	435,728	130,721M	76.35%
5	23	4,227	3,497	275,055	82,516M	54.73%
6	14	2,321	5,403	139,661	41,898M	30.05%
7	8	911	6,813	48,767	48,767M	11.79%

Source: Annual Report of Community and Village Empowerment Services Bureau (Dinas Pemberdayaan Masyarakat dan Desa, 2020), East Java Province, 2021

This programme is pivotal in stabilising the national economy starting from the grassroots level (the villages); it promotes a turn around in the economy as a recovery effort post-pandemic (Ministry of Finance, 2021). Regardless of the smaller amount of funds distributed in 2021, which also required support and help from local government, this programme is an efficient implementation of the national budgets. Through this programme, eventually, it is hoped to bridge the whole social nets occurred in the post-pandemic recovery efforts. Moreover, it is relevant to the VSDGs 1, promoting zero poverty at the village level (Kementerian Desa PDTT, 2021).

VILLAGE FUND REGULATION MODEL IN ORDER TO REALISE SUSTAINABLE DEVELOPMENT IN THE VILLAGE

The village is authorised to draft its own regulations. Pursuant to Article 69 of Law No. 6/2014, village regulations include the Village Regulation, the Joint Headmen Regulation and the Headman Regulation. The difference between the Joint Headmen and the Headman Regulation is the Joint Headmen Regulation is drafted and enacted by two or more Village Headmen, whereas the Headman Regulation is drafted and enacted by a Headman only. Each type of Village Regulation requires the community's participation and negotiation by the Village Representative Body. The regulations contain the measurements ruled at the higher level of regulation.

The legislators are the Headman, Staffs and the Village Representative Boards. The locals are also included pursuant to Article 3 the Law of the Village as opinion makers. The ability of the villages to realise the democratic principles in drafting regulations can strengthen its governance (Marjoko, 2013). Therefore, the relationship between government and legal product of democratic principle is reciprocal and supportive. It is therefore important to create a regulation applying those principles in accelerating the VSDGs. As the results of this research show, the ideal drafts shall contain:

I. General provisions
II. Goals and Functions
III. Drafting and Revising Mechanism of the Development Planning
IV. The Decision Making Mechanism
V. The Development Planning Systematic
This part will be elaborated at the annexes, as follows:
CHAPTER I INTRODUCTION
CHAPTER II THE VILLAGE FINANCIAL POLICIES
CHAPTER III RESUMES OF THE PRIORITY ISSUES
Identifying previous year issues evaluated from the former Development Planning.
3.1. Issues identified based on the Mid-term Development Planning of the Village.
3.2. Issues identified based on the Supra-Village Priority Policies
3.3. Issues identified based on the Emergency Situation Analysis
CHAPTER IV: POLICIES AND THE VILLAGE DEVELOPMENT PLANNING
PART V: CLOSING ANNEXES
VI. The execution of the Planning
VII. Closing Terms.

CONCLUSIONS

Village funds have a strategic role in achieving village SDGs. Therefore, concrete regulations that contain policy substance from planning, budgeting, distribution, and management and use of village funds are a must. Reflecting on the implementation in East Java, especially during the COVID-19 pandemic, there are many programmes that can be developed in villages to realise the village SDGs by optimising the use of village funds. First, to support the economy recovery and SDGs Desa 8 (equitable and fair economy): these are programmes developed by the East Java provincial government: Lumpang Bude (a programme for a Food Estate by VoE), VoE Clinic (learning from the villages), Paman Desa (Strengthening the Capital of VoE), Jatim Puspa (Women's business empowerment), and Bibit Jamur (Training and Providing Soft Loan from Banking). Second, the tourism village development programme was also established to support the village's economic growth. Third, Program Padat Karya Tunai Desa (PKTD) or Village Cash Intensive that aims to realise Zero Hunger and Stunting Villages. Fourth, the programme of *Aksi Desa Aman Covid-19* and its transformed volunteers that aims to accelerate sustainable development in the villages relevant to VSDGs 3, health and welfare villages. It is also supported by Cash Transfer to create Zero Poverty Villages.

To legitimise the implementation and justify the position of village government, the Headman, the Village Representative Body and community should draft a village regulation regarding development plans that regulate the Prioritised Development Policies and Programmes with the Funding Systems. This research helps the local village government to set adequate regulations in

order to achieve the SDGs Desa. Also, the findings of this research are useful for the government to arrange monitoring and evaluation components for SDGs Desa programme.

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RESEARCH PAPER

Regulatory Impact Analysis (RIA) as a Mandatory Legislative Drafting Method for Achieving Sustainable Development Goals (SDGs) in Indonesia

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ABSTRACT

PURPOSE: This study's objectives are the analysis of the urgency of RIA, the problems in achieving the SDGs and their solutions.

APPROACH: This study uses the normative legal analysis method with secondary data.

FINDINGS: The results showed that there is an urgency for Indonesia to implement RIA in preparing its laws and regulations to achieve the SDGs. Practically, the RIA method is not a must-use method in preparing Indonesia's law and is not a priority. Several institutions encourage people to use RIA and this must be encouraged so that RIA can be inherently implemented before making decisions to make laws and regulations.

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RESEARCH IMPLICATIONS: The RIA method is considered a breakthrough that can be used as a guide for making good laws and regulations. In the future, the House of Representatives (DPR), as RIA guideline drafters, may include the SDGs as one of the parameters in forming regulations.

KEYWORDS: *Regulatory Impact Analysis (RIA); Legislative Drafting; Indonesia*

INTRODUCTION

Jacobs and Astrakhan (2006) pointed to three main reasons for poor legislation:

1) costs that cannot be accounted for in an accountable manner, in the process of legislative drafting;
2) lack of coordination between the government itself, causing overlapping or even non-implementation of various affairs; and
3) the political economy of politicians, where they issue policies that efficiently provide payments for parties who are deemed to be able to facilitate their steps.

It is confirmed by research from the National Development Planning Agency (Bappenas), that Indonesia's poor quality of legislation is due to the lack of impact assessment in the law drafting process (Nalle and Kristina, 2020). In Nalle and Kristina (2020), Verschuuren and Van Gestel mention the importance of impact analysis. They state that an impact analysis should ideally be carried out at an early stage of legislation because the relevant policy options are still open for transparent discussion (Nalle and Kristina, 2020). The regulatory impact analysis is carried out to see all aspects of implementing regulation.

One of the regulatory impacts developed by many countries is the Regulatory Impact Analysis (RIA), developed by the Organisation for Economic Co-operation and Development (OECD). It started to implement the idea and published their guidelines for implementing RIA in March 1995. In simple terms, RIA is defined as analysing the impact of laws. In more detail, RIA is defined as a comparative process based on established regulatory objectives and identifying all possible policies that influence the achievement of policy objectives.

Indonesia has not strictly enforced RIA as a basic guideline in legislative drafting until now. In comparison, several OECD member countries, such as the Czech Republic, Korea, and Mexico, implemented RIA in their laws. In the United States, RIA is required by Presidential Decree. In Australia, Austria, France, Italy, and the Netherlands, RIA is required by the Prime Minister's decision. In Canada, Denmark, Finland, Japan, Hungary, New Zealand, Norway, Poland, Germany, Portugal, Sweden, and the UK, the use of RIA is based on cabinet directives, cabinet decisions, and government policy directions (Suska, 2012). In addition, several developing countries in various parts of the world also apply the RIA method for multiple policies as shown in Table 1.

Table 1: Number of Developing Countries Applying RIA Method to Various Policies

Area	Economic Policy	Social Policy	Environmental Policy
Asia	8	8	5
Africa	10	5	7
Latin America	5	3	5
Other NSB	5	5	4

Source: Kirkpatrick *et al*., 2004

Based on the table above, it can be seen that the use of RIA is widespread in many countries in various parts of the world. Therefore, it becomes relevant to discuss the urgency of using RIA in preparing laws in Indonesia, especially considering the poor state of legislation. In addition, improvements in the preparation of laws will also affect achieving one of the Sustainable Development Goals (SDGs), namely the achievement of peace, justice, and strong institutions.

There are 17 SDGs that are now the world community's focus. Indonesia is one of the countries that have ratified the SDGs. Although the SDGs are not legally binding for Indonesia, the state is expected to take ownership and build a national framework to achieve these 17 goals. As a tangible form of Indonesia's commitment to realising the 17 SDGs, the government issued Presidential Regulation Number 59 of 2017 concerning achieving Sustainable Development Goals (Presidential Regulation 59/2017).

The existence of Presidential Regulation 59/2017 shows Indonesia's further commitment to achieve the SDGs in the world. Regarding the achievement of the SDGs, RIA answered SDG 16, namely peace, justice, and strong institutions. RIA is an assessment process that involves stakeholders and promotes transparency and can contribute to achieving policy coherence. It introduces formal procedures for those affected by the proposed regulations to exercise their right to be notified and provide feedback. RIA contributes to public accountability and oversight of executive action. It is particularly relevant for developing countries seeking policy coherence by involving multiple stakeholders. Stakeholders as diverse as citizens, domestic companies, foreign companies, investors, and international donors alike demand a real commitment from governments to listen to their interests before issuing regulations. It drives the importance of implementing RIA in formulating laws in Indonesia to achieve the SDGs.

Based on the explanation above, this research will answer questions related to the urgency of implementing RIA to achieve the SDGs. It will show the challenges of implementing RIA in legal construction associated with the preparation of existing laws and the solutions to encourage more massive implementation of RIA to achieve the SDGs. This paper is expected to support the existing arguments about the importance of implementing RIA in forming regulations. The novelty of this paper is to describe the relationship between RIA and the achievement of one of the SDGs as one of the parameters in the formation of legislation.

RESEARCH METHODOLOGY

This study focuses on how the RIA will positively impact the achievement of the SDGs when used as a reference in the legislative drafting process in Indonesia. The method used in this research is the normative legal method; this is an analytical method that uses literature studies as its primary source (Soekanto, 2014). This study uses secondary data by analysing the results of previous studies related to the SDGs and RIA, related to both their application in Indonesia and other countries. Some of the approaches used are the conceptual, statutory, and comparative approaches. In addition to secondary data, the author's involvement in several focus group discussions (FGDs) and workshops organised by several government agencies, such as the Expertise Board of the House of Representatives of the Republic of Indonesia and the Cabinet Secretariat, enriched the material for this research.

THE URGENCY OF USING RIA IN ACHIEVING SDGS

RIA is a process of several steps that aims to analytically and systemically answer whether regulatory intervention is needed. This process also analyses which possible options are the best solution (Radulović and Marušić, 2011). Based on this definition, RIA should be used as early as possible in the legislative process because it is designed to help inform decision-makers whether or not an arrangement needs to be made. The best way to put RIA into practice is to use it as the basis for establishing an evidence-based policy. In practice, RIA is often positioned as a tool to support a draft regulation (Trnka, 2015). The point that needs to be emphasised here is that the legislative drafting process must be based on solid evidence that regulatory/policy intervention is required under certain conditions, not the other way around; the evidence is collected to support the legislative drafting. Indeed, legislative drafting always has a goal to achieve. However, we also have to remember that issuing laws is not the only solution to achieve the purpose (stated in the drafted law). Similarly, in their achievement, SDGs, which are widely known internationally, do not always rely on legislative drafting.

The SDGs promise not to leave anyone behind, place sustainable development in all fields for the benefit of all parties. Efforts to realise the SDGs in Indonesia require strategic steps to consider which goals can be achieved first, followed by other objectives. In doing that, we can utilise the RIA method to determine priorities for achieving SDGs. Furthermore, the RIA method analyses the impact of policies with the primary considerations, namely consultation with various stakeholders and cost-benefit analysis (Jamal, 2020).

It should be noted that the OECD, known as the organisation that popularised RIA internationally, is also running projects to support the achievement of the SDGs. The OECD framework consists of improving policy coherence, promoting investment in sustainable development, supporting inclusive growth and well-being, ensuring the planet's sustainability, promoting partnerships, strengthening data availability and capacity, and facilitating follow-up and review (OECD, 2021). Regional policy assessment programmes support inclusive growth and well-being (OECD, 2021). The programme can be linked to a project highlighted by the OECD, namely RIA, as an impact

analysis method used to assess whether a policy can still be implemented (do nothing), should be revised, or replaced with another new approach.

The RIA method is norm analysis and can also take non-legislative actions that might be the best solution for specific social and economic problems (Pandi, 2021). One of the parts in RIA that becomes the most critical aspect is Cost Benefit Analysis (CBA); this is a method to analyse the costs and benefits of something related to laws. In addition, RIA also recognises several types of frameworks for analysing policy impacts, including Break Even Analysis, Cost-Effectiveness Analysis (CEA), and Multi-Criteria Analysis (MCA) (OECD, 2008).

As explained above, after weighing the costs and benefits arising from each available option, policy-makers can choose three options, namely, do nothing, revise existing regulations/policies, or form new laws. Based on these three options, RIA can help provide valid arguments in favour of planned regulation, particularly helping to avoid excessive legislative drafting and reduce bureaucratic burdens (Pandi, 2021).

In 2009, Indonesia started to use RIA as a method of policy-making through the launch of a guidebook for the implementation of the RIA method by Bappenas (Suska, 2012). Two years later, Law No. 12 of 2011 concerning the Establishment of Legislation was promulgated: the law does not explicitly discuss using the RIA method as an analysis method. Still, it only places RIA as one of the options for the policy analysis method in preparing Academic Papers (Law Drafting Centre Expertise Board of the House of Representatives of the Republic of Indonesia, 2017). However, forming legislation in Law No. 12 of 2011 has adopted some RIA concepts (Trnka, 2015). Differences from the RIA concept launched by the OECD include identifying policy options, quantifying policy options, policy options compliance strategies, and policy evaluation mechanisms (Trnka, 2015).

The development of the use of RIA in Indonesia shows a good trend with the adoption of RIA into policy impact analysis preparations taken by the government. In 2017, Presidential Instruction Number 7 of 2017 was issued regarding Policy Implementation, Monitoring, and Controlling at the Level of State Ministries and Government Agencies. This instructs stakeholders at the State Ministries and Government Institutions to conduct impact analysis and public consultation before establishing a policy. One form of follow-up to this mandate is the issuance of the Decree of the Minister of Maritime Affairs and Fisheries of the Republic of Indonesia Number 96/KEPMEN-KP/202. This concerns the Technical Guidelines for preparing a Written Study of Draft Laws within the Ministry of Maritime Affairs and Fisheries using the Regulatory Impact Analysis Method.

In addition, currently, the Expertise Board of the House of Representatives of the Republic of Indonesia (BK DPR RI) is preparing RIA guidelines in the preparation of Academic Papers (NA) and Draft of Laws (RUU). In the proposed RIA guidelines established by the BK DPR RI and indicators for conducting a cost-benefit analysis, Pancasila and Human Rights (HAM) indicators are also used to analyse the impact of policies. The efforts made by the BK DPR RI to include Pancasila and Human Rights as indicators of RIA analysis to ensure every approach. It must not conflict with Pancasila, and Human Rights is a good step that, on the one hand, deserves appreciation but can

also be improved. The placement of the SDGs as an additional indicator, for example, is believed to strengthen the use of RIA to achieve the SDGs.

THE CHALLENGES OF USING THE RIA METHOD TO ACHIEVE THE SDGs AND THEIR SOLUTIONS IN INDONESIA

In 2021, Indonesia ranked 97th out of 165 countries to fulfill the SDGs. Indonesia's ranking, which can only record a score of 66.3, is still lagging compared to other ASEAN countries, such as Thailand, Vietnam, and Malaysia (Sach *et al.*, 2021). The lack of maximum fulfillment of the SDGs is caused by several factors, including regulations and policies. The existence of gaps in the conception of the long-term goals of the SDGs and short-term-oriented policies contributed to the slow pace of fulfillment of the SDGs (van Vuuren *et al.*, 2015). Various scenarios with different levels of difficulty in each period of government also influence policy so that the proposed solutions are only marginal. In contrast, the fulfillment of the SDGs requires transformative solutions and changes (van Vuuren *et al.*, 2015).

One of the ways to improve the quality of policies and regulations is to use RIA as a method in formulating a policy. Assessment in RIA acts as a tool that can help policy-makers to sort out the consequences of various policy options that will be made. In addition, RIA is also a means to increase accountability and transparency in policy-making (OECD, 2020).

Although RIA has experienced a positive trend since it was first introduced to the Indonesian people in 2009, it still faces many challenges. Research conducted by Kurniawan *et al*. (2018) classifies these challenges into three categories: strategic, substantive, and technical. Strategic challenges include the lack of commitment of regional leaders in implementing RIA as a guideline in formulating policies. RIA is not mandated by Law No. 12 of 2011 as a required method in the policy analysis. The mindset of government officials is that RIA is a complex and expensive method. Substantive challenges include the lack of insight by government officials regarding RIA that is seen as the only suitable method of policy analysis in the economics field because of the cost-benefit analysis component. Meanwhile, technical challenges include the lack of socialisation of RIA by government agencies at both the central and regional levels, and budgetary restrictions on the use of RIA due to the perception that the RIA method will require a large amount of money (Kurniawan *et al*., 2018).

Research conducted by Nalle and Kristina (2020) also reveals that the RIA method in Indonesia is still far from ideal. Of the several academic papers published between 2016-2019, only the Academic Paper of Encryption Bill has used the RIA method in its preparation; other academic papers still focus on analysing statutory regulations. In addition, in several academic papers, the research results on empirical conditions in the field were not found (Nalle and Kristina, 2020).

The many challenges in implementing RIA in Indonesia indirectly correlate to the fulfillment of the SDGs. RIA implementation that is not effective and efficient will result in a less than optimal analysis of the risks of each policy option taken. Consequently, there will be inconsistencies in the

quality and direction of the resulting policies. This stagnant spirit of change is a stumbling block for Indonesia to fulfill the SDGs, and requires measurable transformative changes.

The OECD analysis shows that the use of RIA in an appropriate and systematic framework can support government efforts to ensure that regulation is efficient and effective in a complex and ever-changing world (OECD, 2021). However, it should be understood that making policies that are on target and support the community's welfare is not easy (OECD, 2021). Therefore, the integration of SDGs and RIA is needed, not only aiming for policies to be on target, but must also have the capability to accommodate the ever-changing and complex world conditions.

Some solutions are believed to overcome the problems and challenges faced by Indonesia in using the RIA method to achieve the SDGs:

1. To encourage the use of the RIA method as early as possible, not only during the preparation of laws but also before the determination of plans for the preparation of laws.
   Making laws is commonly seen as the only medium for solving problems that occur in society. Whereas based on the RIA method, there are many alternative forms of government intervention to a problem that occurs in the community, for example (OECD, 2019):
   a. Conduct socialisation to inform or prevent the public on a problem;
   b. Imposing a tax to control an activity;
   c. Providing subsidies to stimulate certain behaviours; and
   d. Initiating the development of "self-regulation" within the scope of a particular industry or group.

   The paradigm needs to change to what should be counted as the number of problems that can be solved, not how many laws have been promulgated. The government should be more open to non-legislative options identified through the RIA method.
2. To integrate SDGs achievements as one of the indicators in RIA.
   In addition, in addition to conducting the policy analysis based on calculating costs and benefits, Indonesia has also started working on policy assessments with multiple indicators through a competition checklist that functions to ensure that policies will not result in unfair business competition (KPPU, 2016). Therefore, it is certainly not challenging to add sustainability impact indicators in a policy impact assessment to achieve Indonesia's SDGs immediately.
   The background that underlies the idea that SDGs need to be included as an indicator of RIA analysis is the Ratification of Presidential Regulation 59/2017; this is the gateway to the adoption of SDGs in Indonesia. Therefore, as a regulator in Indonesia, the government cannot turn a blind eye to the agendas in the SDGs. Every regulation that is formed should encourage the achievement of the SDGs.
   The integration of goals in the SDGs as an indicator of RIA analysis is not the first time in the world. Recognising the importance of aligning policy with sustainable development, the UK pioneered the integration of sustainable development criteria into RIA in the 1990s

(Jacob, 2010). This was followed by the European Commission in 2003, Switzerland in 2004, Ireland in 2005, and Belgium in 2007 (Policy Department (Dirth and Zondervan), 2019).

CONCLUSIONS

The efforts to realise the SDGs in Indonesia require strategic steps from the government. The urgency of using the RIA method to achieve the SDGs is because RIA analyses the impact of policies with the primary considerations, namely consultation with various stakeholders and cost-benefit analysis. RIA is believed to improve the quality of produced laws; this is one indicator of the achievement of the SDGs, namely the attainment of peace, justice, and strong institutions.

Although the use of RIA in Indonesia shows a positive trend, its implementation still faces many challenges. These include the lack of commitment by policy-makers to use RIA, the view that RIA is a complex and expensive method, lack of insight by government officials about RIA, lack of socialisation of RIA, and a limited budget for the use of RIA. The less than optimal use of RIA impacts the quality of policies that affect the level of achievement of the SDGs. To overcome this problem, the Indonesian government must carry out RIA before determining plans for legislative drafting and integrating the achievement of the SDGs as one of the indicators in RIA.

This research can be used as a starting point for several further studies related to the relationship between the formation of regulations using the RIA method and the achievement of the SDGs. Research on what legal remedies can be used to encourage the implementation of RIA, and what standards or measures should be used in the RIA method that suits Indonesia's needs, are also ideal examples for further research. In the long run, research can also be carried out on the effectiveness of applying the RIA method to achieve the SDGs after several years of RIA being successfully implemented in Indonesia.

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BIOGRAPHY

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RESEARCH PAPER

The Potential for Developing Thematic Villages in Cisaat and Selajambe, Cibaraja-Cisaat Sub-District, Sukabumi Regency, West Java Province

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ABSTRACT

PURPOSE: This study aims to describe the potential of Cisaat and Selajambe Villages, Cibaraja-Cisaat Sub-District, Sukabumi Regency, West Java Province.

DESIGN/METHODOLOGY/APPROACH: To describe the potential of the two villages, this research uses a literature and field study approach. Thematic villages are a relatively new issue in the village development approach model. Previously, development in villages was based on an exogenous approach, although this approach has been judged to have failed to develop villages. This approach places villages as the object of development. A friendlier approach to village community participation is a development model with an endogenous approach that places villages as the subject of development. The actual practice of the endogenous approach is the development of thematic villages. The main principle of the thematic village model is that development is based on ideas and potential that exist in the community and the village environment itself. The data analysis of the observation and in-depth interview results demonstrate that Cisaat and Selajambe villages have the potential to become thematic villages.

FINDINGS: The potential of the two villages is in the product of their freshwater fish management that has been carried out by all inhabitants of Cisaat and Selajambe villages for generations.

KEYWORDS: *Endogenous; Exogenous; Thematic Village; Cisaat, Selajambe*

INTRODUCTION

Thematic villages are relatively new issues in the village development approach model. Previously, development in villages was based on an exogenous approach, and through this approach villages were built top-down and externally. Top-down village development means that the process of planning and implementing village development is carried out by institutions that are structurally above village level, such as district, provincial, and even national levels of government. Externally-developed villages means that development in villages is carried out based on the interests and needs of the community outside the villages. In both patterns, villages are treated as an object of development. The villages become the object of policies and interests that come from outside. Village community participation in this context is almost negligible.

The exogenous development model approach has been accused of being the main source and cause of villages not progressing. The exogenous approach has also caused villages to lose their unique local identities, such as culture, the relationship of the village community with their natural environment, and social relations in the villages. Economically, the classical exogenous approach cannot improve the welfare of rural communities. In short, the exogenous approach has put villages in a difficult situation because villages lose their social, cultural, and environmental identities; the village community welfare is not achieved and the community becomes a national poverty enclave.

The weaknesses of the exogenous approach model have triggered village development to be carried out based on the endogenous approach model. This endogenous approach model places villages as the subject of development. Through this approach, village communities are given an opportunity to participate in all of the development process. Village communities actively participate in the planning, implementation, and evaluation processes of development. The active

involvement of the village communities is claimed to be able to create development plans that are in accordance with the aspirations and needs of the village communities. In addition, village community involvement is based on existing capital in the villages such as social, cultural, physical, and economic capital.

The endogenous approach to village development that has attracted the attention of activists and experts who care about villages is for thematic villages. Thematic villages were created by involving the participation of communities, not only in relation to the active involvement of the village communities in the development planning process in the village, but also in connection with the development planning that reflects the potential in the village environment. Each village, of course, has different potential from one another in terms of history, culture, the physical and social environment. Therefore, thematic villages not only create unique development in participatory villages but also improve the welfare and sustainability of development in the village that, eventually, keeps the economic, historical, social, and environmental sustainability of the villages.

Referring to the endogenous approach model to village development, this study specifically pays attention to the potential for thematic village development in Cisaat and Selajambe Villages, Cibaraja-Cisaat Sub-District, Sukabumi Regency, West Java Province.

LITERATURE REVIEW

From Exogenous to Endogenous Model

Conceptually, a thematic village is a form of criticism of the exogenous model (Tobiasz-Lis *et al*., 2019) that places industrialisation at the centre of development. The exogenous model makes villages function as a place to provide food needs for urban areas. It does not involve the participation of local communities and does not pay attention to the uniqueness and potential that exists in the village. This exogenous approach was later criticised for failing to bring prosperity to the communities in villages because the approach was made to meet the interests of the outside parties of villages.

Galdeano-Gómez *et al*. (2011) explain that the exogenous model of development in rural areas has been widely practiced in post-World War II Europe. This model places the industry as the centre of economic growth. The villages in this model function to provide agricultural land or plantations for food production for urban communities. However, they explain that this model began to fail in the late 1970s, and that the failure was caused by development policies that were made on a top-down basis and formulated by experts in meeting rooms that were far from rural location conditions. It is the experts who determine the type of business and the location of development in the village. This model is considered responsible for the destruction of cultural and environmental differences in rural areas.

The exogenous model of development in the villages has changed into an endogenous model. This new endogenous model no longer views villages as a place that functions as a provider

of urban community needs. In this approach, development is understood as a territorial process that involves the existing resources in villages such as social, cultural and human capital. The endogenous approach has placed the villages in their different unique contexts. In addition, the endogenous model prioritises the role of local actors, but not the role of the central government. The participation of local actors allows development to be more in line with local needs (Margarian, 2011).

The differences and dimensions between the approach of exogenous development and endogenous development can be seen in detail in the following Table 1 below.

Table 1: Model of Rural Development

	Exogenous Development	Endogenous Development
Key Principle	Economies of scale and concentration	Harnessing local (natural, human and cultural), resources for sustainable development
Dynamic Force	Urban growth poles (driver exogenous to rural areas)	Local initiatives and enterprise
Functions of rural areas	Food and primary products for expanding urban economies	Diverse service and economies
Major rural development problems	Low productivity and peripherality	Limited capacity of areas/groups to participate in economic activity
Focus of rural development	Agricultural modernisation; labour encouragement and capital mobility	Capacity-building (skills, institutions, infrastructure): overcoming exclusion

Source: Ward *et al.* (2005)

Examples of endogenous model development policies in rural areas today can be found in the development of thematic villages. Village development with a thematic village approach is based on the participation of the village communities and the social, physical and cultural capital that exists in each village. In addition, thematic village development policies have also placed people and their social and economic life spaces within their own historical and cultural unity. In this context, the existing development in the villages summarises the experience and cultural heritage of the past, the needs of the present, and the aspirations of the future. No wonder if it is recognised that the development of thematic villages contains a dimension of sustainability.

The Concept of Thematic Villages

Thematic villages are villages where the inhabitants decide to develop their environment based on ideas that make them recognisable and unique (Kłoczko-Gajewska, 2014). The creation of a thematic village usually begins with exploring and gathering new ideas to do something different for the village. In this context, the community is actively developing the village and creating new ideas about how the village is developed.

Kłoczko-Gajewska (2014) further argues that the creation of thematic villages is usually initiated by people who are actively looking for new ideas on how their village is developed. Furthermore, thematic villages are also developed by people who already have information about successful thematic villages from other places. The successful model of thematic village development is then implemented to develop their own thematic village on the basis of the unique potential in their village. Even at first, it might only be started by one person, but then it spreads to other people around him. In the end, it develops into a group movement to create thematic villages.

Conceptually, thematic villages can be viewed in two contexts. First, it is endogenous in which thematic villages maintain the memory and cultural identity of the village, are oriented to the past and refresh the local image that can create community life. Second, thematic villages also have exogenous functions. Thematic villages can create new tourist destinations that can contribute to strengthening the government's economy and improve people's quality of life (Tobiasz-Lis *et al*., 2019).

The development of thematic villages involves three aspects, namely people-process-organisation (Tobiasz-Lis *et al*., 2019). Village communities have historical and even cultural relationships with the physical space that is their living environment. Therefore, they can participate actively and directly in the process of creating ideas in building development themes that are familiar with the culture, social and resources they have in the village. Lastly, organisationally, the social relationships among them in thematic villages are familial. Therefore, it can create an impact that is easy to build co-operation in creating thematic villages.

Parantika *et al*. (2020) also underline that thematic villages relate to development that is oriented to the formation of ideas, creative and unique topics. The creation process involves many people in the village. Therefore, thematic villages are recognised as a social innovation that is unique to the village. The ideas, creative and unique topics that are generated reflect the conditions of their space and living environment in the village.

Parantika *et al*. (2020) describe that the process of creating social innovations goes through three stages. In the first stage, the villagers map the problems that they are experiencing in their village. In this process, the villagers look for ideas and methods to solve these problems. Then, in the second stage, they determine the theme or topic of village development. In the last stage, they implement these ideas to build a village.

The Thematic Village Program is one of the best programmes to alleviate poverty in villages. Through this programme, village communities are not treated as objects of development, but as subjects who are actively involved in the poverty alleviation process. The main objective of the thematic village programme itself is to improve the economic welfare of rural communities, change slum areas to be more organised, increase village community participation in the poverty alleviation process, and build a unique village community identity (Ngabiyanto *et al*., 2019).

The characteristics of thematic villages are very diverse. For example, Subekti and Kurnia Putri (2020) in their study of thematic villages conducted in Malang City, describe several characteristics

of thematic villages. Thematic villages in Malang City have unique thematic characteristics and differ from one village to another. There are villages that are based on culture, but others highlight the historical side. Others highlight the superior products produced by the villagers. There are also villages that highlight aspects of environmental management.

The development of thematic villages in Indonesia has good prospects. In addition to Malang City, East Java, thematic villages have also been developed in Bogor (Parantika *et al*., 2020) based on agro-tourism. In Semarang, Central Java, there are also thematic villages (Ngabiyanto *et al*., 2019). In short, in Indonesia, there has been a change in the approach to building villages from an exogenous to an endogenous approach as happened in the development of thematic villages.

RESEARCH METHODS

Approach

This research uses a field research approach that aimed to study or describe social interactions that occur in a group of people. Therefore, field research begins with a relatively small group of people who interact with one another on a regular basis in a fixed social setting (Neuman, 2016). With this field research, researchers have an overview of the social background, field and patterns of social interaction of freshwater fish farmers, who are the focus of this research.

Research Sites

This research was conducted in Cisaat and Selajambe Villages, Cibaraja-Cisaat Sub-District, Sukabumi Regency, West Java Province.

Research Focus

This study focused on the potential of the Cisaat and Selajambe Villages, Cibaraja to become thematic villages, based on the fact that all residents in the villages have a freshwater management business. In addition, this study mapped the problems that are often faced by freshwater fish farmers, both in the production process and in the distribution of freshwater fish harvests.

Data Types

The data obtained in the field research were the ownership of freshwater fish management ponds, freshwater fish irrigation processes, production costs, and harvest distribution processes.

Data Collection

Two types of data were collected for this study: secondary data and primary data. The secondary data were taken from the document *Kecamatan Cisaat Dalam Angka, 2020* (BPS, 2020). In this secondary data, researchers took a general profile of the number of freshwater fish farmers in Cisaat Sub-District in general, and Cisaat and Selajambe villages, Cibaraja in particular. The primary data

were the in-depth interviews with freshwater fish farmers in the Cisaat and Selajambe Villages, Cibaraja-Cisaat Sub-District, Sukabumi Regency, West Java Province.

Data Analysis

The data were analysed based on the description of the data obtained from the secondary and primary data. The data were then analysed in the framework of the thematic village concept.

RESULTS AND DISCUSSION

Cisaat and Selajambe Villages are located in Cisaat Sub-District, and in general, residents in have freshwater ponds. The profile of the Cisaat Sub-District as presented Figure 1 below shows that all villages in the Sub-District have a freshwater fish pond business.

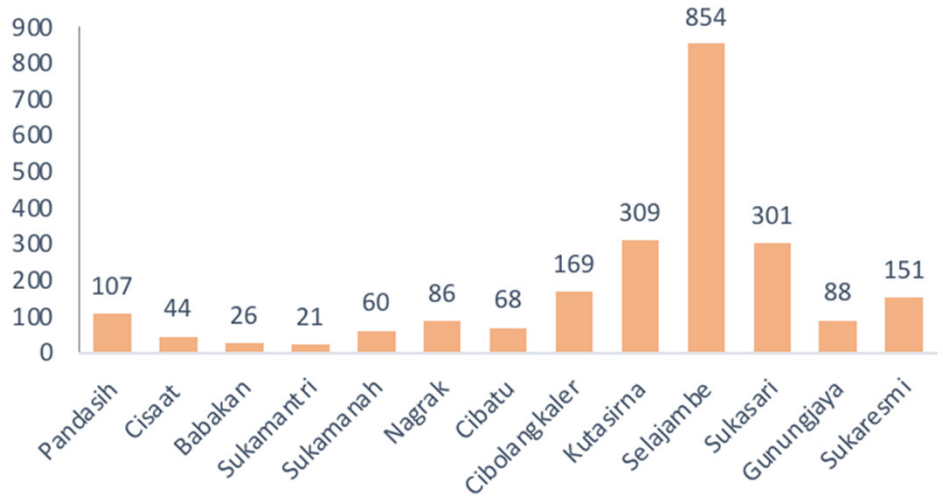

Figure 1: Number of Fish Ponds
Source: BPS (2020)

Based on the observation and in-depth interview results, it is known that every house has a freshwater fish pond, and the land for this fish pond is generally owned by the fish farmers themselves. The land is basically an inheritance from previous generations. The farmers who do not own the land rent out other people's land. However, the farmers who contract the land also come from the same village as those who rent out their land.

The irrigation system for pond irrigation is gravity: water flows from a higher location to a lower place. This irrigation system is a self-management of the community itself. If the pool is higher, the water has filled the pool, then the water will flow to the lower pool.

Freshwater fish farming managed by the communities in Cisaat and Selajambe Villages, Cibaraja, consists of ornamental fish and fish for consumption. The freshwater fish produced is marketed outside Sukabumi Regency, namely in Jakarta, Sumatra, Central Java and East Java.

The Process of Freshwater Fish Marketing

The process of marketing fish production from farmers is carried out through intermediaries, namely middlemen (see Figure 2).

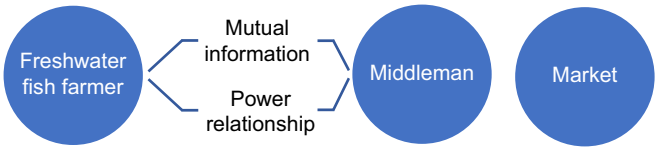

Figure 2: Schematic of Fish Harvesting and Marketing

Source: Constructed by authors

Figure 2 describes the process or marketing flow for freshwater fish harvests. The farmers sell their harvested fish to the middlemen, then from the middlemen, some of these fish are sold directly to the market, and some are reared by the middlemen in their ponds. Usually, if the market price is not very favourable, the middlemen will release the fish they have bought from the farmers in their ponds. When the price is profitable again, the middlemen will sell the fish to the market.

The relationships with middlemen are very unique. First, the middlemen usually come from the same village as the fish farmers or even their own neighbours. Second, there are breeders who have very intense relationships with the middlemen. If a farmer already has a relationship with a middleman, they will not move to other middlemen.

Third, the middlemen are the providers of the funds the fish farmers need in times of trouble. The fish farmers will borrow the money from the middlemen to buy fertiliser, or even hire workers at harvest or drain ponds after harvest. Fourth, the fish farmers tend to only have a relationship with one middleman. However, one middleman can control several freshwater fish farmers.

Based on the description of the pattern of relationships between freshwater fish farmers and middlemen, it is clear that freshwater fish farmers in Cisaat Village, Cibaraja Village have no relationship with the world outside their own village in the context of freshwater fish marketing.

Thematic Potential Cisaat and Selajambe Villages

Cisaat and Selajambe Villages, in the Cibaraja area, Cisaat Sub-District, Sukabumi Regency, West Java Province have enormous potential to be managed into thematic villages. The potential is based on several reasons. The first reason is based on the availability of physical capital: every resident in Cisaat and Selajambe Villages has a freshwater fish pond that is built on the land inherited

from previous generations. Therefore, the development of thematic villages has ties to the physical environment in which the villagers of Cisaat and Selajambe live.

The second reason is based on social capital. The freshwater fish farmers in the two villages have social ties to one another. This social bond is formed by kinship and neighbourhood relationships and the social capital will certainly create a sense of mutual trust and very solid co-operation.

The third reason is cultural capital. Becoming a freshwater fish farmer has created a social identity for the residents of Cisaat and Selajambe Villages. This identity distinguishes them from other residents in Sukabumi Regency. Shared social identities can encourage more solid social and economic action.

The last reason is economic capital. The residents of the villages of Cisaat and Selajambe in Cibaraja have made freshwater fish ponds as one of their main sources of economic income. Therefore, freshwater fish farming can improve their economic welfare.

Conceptual discussions as shown in the review article above show that thematic villages are created rationally in principle. Thematic villages are created from an idea to solve the problems faced by the villagers. Of course, the main problem is how to increase the income of villagers to achieve a more prosperous life. The process of creation can be started by concerned social actors who can come from and become a social part of the village itself. However, there are also actors from outside who have a concern for increasing added value in the economic life of the villagers.

A collective action will be easily created if the population in a society has a level of homogeneity in many arenas. Based on this proposition, the residents of Cisaat and Selajambe Villages in Cibaraja-Cisaat Sub-District have a very solid level of homogeneity. All of them have freshwater fish ponds; the activities of keeping freshwater fish are inherited from generation to generation and they also have land to build fish ponds. Then, socially they have family relationships and neighbours. All of this shows that the villagers of Cisaat and Selajambe have enormous potential to create thematic villages based on freshwater fish management.

Therefore, what is needed is the existence of social initiators to mobilise the ideas that exist in the residents of Cisaat and Selajambe Villages in Cibaraja. As described in the conceptual discussion in the review article above, the idea of the mobilisation process begins with the first stage, that is, building collective awareness about the problems they are currently facing in the management of freshwater fish; second, finding plausible reasons for these problems; third, collectively formulating the solutions to the problems; fourth, planning collective action; and fifth, organising to facilitate joint action to be carried out.

Research Implications

This research focused on the potential of the communities of Selajambe and Cisaat Villages in Cibaraja, Sukabumi and found that the Cibaraja communities in the two villages had the potential to become thematic villages. However, to realise this potential, government intervention and incentives are needed from the Selajambe and Cisaat Village Governments. These interventions

and incentives can be carried out through village development policies based on the potential for freshwater fish production in Selajambe and Cisaat Villages.

The government, especially the Village Government that has the authority to create the Village Revenue and Expenditure Budget, must be actively involved in actualising the potential of Selajambe and Cisaat Villages to become thematic villages. This active participation can be done through the allocation of the Village Revenue and Expenditure Budget based on freshwater fish farms in Selajambe and Cisaat Villages. The Village Government also has the authority to create Village Regulations that can protect freshwater fish production patterns from the traps of debtors.

One of the subsistence needs of fish farmers is funds for the fulfilment of daily life and for the production of freshwater fish. By providing funds, the Village Government can cut the fish farm production chain that has been dependent on middlemen or intermediaries.

In addition to allocating a village development budget based on increasing freshwater fish production, the village government can also bridge and become a guarantor for fish farmers to obtain credit funds from banking institutions.

However, to produce a Village Revenue and Expenditure Budget and Village Regulations that reflect the potential of the community, its process should be based on good principle of governance.

In regard with the governance for sustainable development, the United Nations (2019), the field of economics and social affairs issued several principles of governance for a sustainable development:

(1) *Competence*: to carry out their functions effectively, institutions must have enough expertise, resources, and tools to deal with the mandate below their authority adequately;
(2) *Good policy-making*: a good policy is a policy that achieves the desired results; public policies must be coherent with each other and based on true or well-established reasons, in accordance with facts, reasons, and common sense;
(3) *Collaboration*: to address issues of common interest, institutions at all levels of government and in all sectors must co-operate with non-state actors towards common goals, objectives and effects;
(4) *Integrity*: to serve the public interest, civil servants must carry out their official duties honestly, fairly, and in a manner that is in accordance with sound moral principles;
(5) *Transparency*: to ensure accountability and enable public scrutiny, agencies must be open and honest in carrying out their functions and promoting access to information, subject only to special and limited exceptions as provided for by law;
(6) *Independent supervision*: to maintain trust in government, regulatory bodies must act in accordance with strict professional judgement and independent of and unaffected by others;

(7) *Leaving no one behind*: public policy must take into account all the needs and aspirations of all groups in society, including the poor, the most vulnerable and those who experience discrimination. This is important to ensure that all human beings can fulfil their potential in dignity and equality;
(8) *No discrimination*: to respect, protect and promote human rights and fundamental freedoms for all, access to public services must be provided on a general basis, without distinction as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, disability or other status;
(9) *Participation*: all significant political groups that can influence public policy must be actively involved;
(10) *Subsidiarity*: to promote a government that is responsive to the needs and aspirations of the people, the government performs tasks that the people cannot effectively perform; and
(11) *Intergenerational justice*: to increase prosperity and quality of life for all, institutions must establish administrative measures that balance the short-term needs of the present generation with the long-term needs of future generations.

To achieve these governance principles, the village government must involve all stakeholders affected by the policy. These are freshwater fish farmers, freshwater fish business people or those related to freshwater fish production. The involvement of these stakeholders makes the Village Revenue and Expenditure Budget, as well as the resulting Village Regulations, become more relevant to the needs of the communities in Selajambe and Cisaat Villages.

CONCLUSIONS

Conceptually, thematic villages were created by village communities in a participatory manner. This creation process begins with collecting creative ideas, then collectively the village communities have a topic that will become a unique feature of development in their village. Because it is based on the participation of the village community itself, thematic villages reflect the potential that exists in the village.

Cisaat and Selajambe Villages, Cibaraja-Cisaat Sub-District, Sukabumi Regency, West Java Province have enormous potential to be developed into thematic villages. Their potential is based on the management of freshwater fish. Almost all communities in the two villages have freshwater fish ponds.

What is needed to make Cisaat and Selajambe Villages, Cibaraja become thematic villages is the existence of community initiatives to mobilise community participation to get ideas for this development. The initiative can come from local actors, as well as from outside parties, including in this case the village government apparatus.

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BIOGRAPHY

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RESEARCH PAPER

Regulating Sustainable Coffee: An Analysis of Smallholder Farmers' Participation in Certifications

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ABSTRACT

PURPOSE: This paper presents the findings of a study conducted to identify the preference of smallholders to join coffee certifications for the purpose of sustainability performance. Our focus is on the examination of the smallholder coffee farmers' participation in sustainability goals through voluntary certification. The study includes insights from different smallholder farmers in Indonesia with a special focus on the coffee sector.

DESIGN/METHODOLOGY/APPROACH: In order to gain more clarity on the farmers' preference on certification schemes, this paper comprises a qualitative method aimed to draw out certification in the coffee sector.

FINDINGS: This study finds that certification programmes are still in a vulnerable position to regulate sustainability, to protect the environment, and protect human rights beyond the state's regulations.

RESEARCH LIMITATIONS/IMPLICATIONS: This research does not aim to identify the benefits of certification schemes, but the conditions that have hindered the uptake of certification by smallholders. and what might encourage them to participate in certification for sustainability purposes.

ORIGINALITY/VALUE: This paper presents new information on smallholders' preferences on certification participation in the coffee sector, and proposes significant factors that might encourage certification of the coffee sector in Indonesia.

KEYWORDS: *Sustainable; Coffee Certification; Farmers' Participation*

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INTRODUCTION

The logic behind certification is its association with sustainability that is responsible for verifying products in accordance with agreed upon environmental and social requirements (Maguire-Rajpaul *et al.*, 2020). Certification is an important initiative aimed at achieving sustainability in the coffee sector, creating a new set of product standards by evaluating the coffee based on the production or trading process (Raynolds *et al.*, 2007). The process standard aims for clear environmental, social, and economic missions through certification.

However, there are growing issues regarding safeguards for consumption; this is difficult for government to protect through legislation. Human rights and workers' rights, protection of the environment, and sustainable development are particularly in jeopardy in developing countries. In the end, the incapability of government to provide public regulations has led to certification as an alternative mechanism to enhance the protection of human rights (Nunes, 2012), environmental issues (Blackman and Naranjo, 2012), and sustainable development (Rich *et al.*, 2018). The NGO-based voluntary initiatives addressing environmental, quality, health, and ethical dimensions of coffee chain production and trade aim to fill the gap in this regulatory vacuum (Raynolds *et al.*, 2007). The voluntary certifications are self-regulatory arrangements of protection by governing their own standards and norms where the participants are obliged to comply with the scheme's rules (Misiūnė, 2014).

Indonesian smallholders' participation in global certification is mainly the result of increasing requirements for products entering competitive and rapidly growing niche markets due to the demand from consumers rather than farmers' concern regarding the importance of certification for sustainability (Raynolds *et al.*, 2007; Muhammad *et al.*, 2015). Although there is a promising sustainability through certification schemes offered by the private sector, such as UTZ, Fairtrade, and Organic, to promote environmentally friendly production practices aimed to improve the livelihoods of coffee farmers in developing countries (Meemken *et al.*, 2016), the farmers have a different point of view in understanding whether certification is beneficial for them (Astuti *et al*., 2015b).

A number of studies on coffee certification suggest that understanding farmers' preferences is crucially essential to set the certification programme effectively, to design more acceptable programmes, and to improve the pertinence of the programmes for improving coffee farmers' productivity and income (Muhammad *et al.*, 2015).

However, existing studies diverge in their analysis. While some have suggested that certification benefited farmers, others contended that these efforts have less significant impact socially, economically, and environmentally. A series of studies show that the advantages gained from certification have empirically benefited farmers to improve their livelihood and income (Bray and Neilson, 2017; Neilson *et al.*, 2019; Jena *et al.*, 2017; Kirana and Karyani, 2017). Beyond the economic advantages, certification offers protection for farmers' rights, particularly smallholders,

to have equal bargaining power to set price determination and to gain market access (Prihandono and Relig, 2019).

In Indonesia, about four million smallholder farmers produce coffee, and about 7% of the coffee is certified under different standards (Muhammad *et al.*, 2016). Previous studies analysed and compared impacts of different certification standards on the livelihoods of smallholder coffee farmers in Indonesia; they concluded that certification increases household living standards and reduces the prevalence and depth of poverty (Astuti *et al.*, 2015b; Muhammad *et al.*, 2015; Karami *et al.*, 2021). However, none of these studies consider all main aspects of why 93% of Indonesian coffee farmers are beyond the reach of certification.

Apart from the mixed results from participation, the fact is that certification may not always be rational for farmers (Micheletti and Follesdal, 2007). It signifies that although there are growing numbers of sustainability standards and certification schemes (Glasbergen and Schouten, 2015), only a small percentage of small-scale farmers have participated in such schemes (Muhammad *et al.*, 2016). This means that the function of certification as self-regulation to protect the relevant issues cannot be achieved as expected.

Therefore, given the importance of the coffee sector to Indonesia and the global market, this study raises the question of why certification has not been taken up significantly by smallholders in Indonesia and what factors are behind this situation. Given the lack of certification in the coffee sector in Indonesia, this research is not meant to evaluate the benefits of certification schemes, but rather assesses the conditions that hinder the uptake of certification by smallholders and what might encourage them to regulate sustainability in the coffee sector.

DATA AND METHOD

The research is qualitative in nature and reviews the relevant literature on smallholders' participation in coffee certification. To identify the originality of our study, we screened the titles and abstracts of all identified papers and the potential research. We selected the lists of all papers included, the list of papers identified by the Connected Papers, and the list of papers cited by using Google Scholar, and Web of Science database as well to reduce the likelihood of missing potentially relevant studies. Papers for inclusion in the analysis were then selected based on a set of clear criteria: published papers and working papers in the English and Indonesian languages that used survey data collected in Indonesia to analyse the participation of certified and non-certified smallholder farmers in Indonesia.

Coffee and Certification in Indonesia

Currently, the development of the coffee industry in Indonesia is formed from the increase in Indonesia's domestic coffee consumption. Although the level of domestic coffee consumption during the period 2010 to 2014 looks stagnant, there is a tendency to increase. In 2010, it was

recorded at 0.80kg/capita/year, while in 2019, domestic coffee consumption increased to 1.13kg/capita/year.

The increase in coffee consumption has had a positive impact on the coffee industry in Indonesia in recent years. This can be seen from the increasing production of processed coffee produced by the coffee processing industry, and the growing number of cafes and coffee shops in big cities (Sri Astuti Soeryaningrum Agustin, 2018). This is in line with findings gathered by Toffin's independent research. In 2019, the number of coffee shops in Indonesia reached more than 2,950 outlets, an increase of almost three times that of 2016. The market value generated has reached IDR 4.8 trillion (US$314,182,387) (Dahwilani, 2019).

The coffee industry market in Indonesia structurally consists of the people's coffee industry, the middle class, and the large class of processed coffee industry. Coffee commodity business actors in Indonesia consist of various levels, ranging from coffee farmers, small and large traders (villages and sub-districts), exporters, coffee processing industries, and cafes/shops that sell coffee. In April 2018, BBC Indonesia reported in their online article that Indonesia is one of the largest coffee exporters; however, in producing a little over 10 million bags of coffee, premium coffee production remained lagged behind Brazil, Vietnam and Colombia (BBC, 2018).

With coffee as the most popular drink in the European Union, it is placed as the largest market destination for Indonesian coffee. According to the International Coffee Organization, Finns drink 12.5kg of coffee every year, followed by Sweden with 11kg each year, Iceland, Norway, and Denmark, sequentially (BBC, 2018).

Demand for coffee commodities from the European Union to Indonesia is quite high. Unfortunately, Indonesia has not been able to fulfil this demand as the level of coffee productivity in Indonesia is still relatively low. There is no plant regeneration, affecting coffee productivity, and there is a lack of added value. Another issue raised is the high chlorpyrifos and chlorpyrifos-methyl in the coffee beans. EU regulation demands high standards of the coffee beans that must contain below 0.01mg/kg chlorpyrifos and chlorpyrifos-methyl, a requirement that cannot be fulfilled by Indonesian farmers due to a lack of proper equipment to comply with EU standards of certification.

Theoretically, certification is seen as a complex of institutional policies with specified standards and practices aimed to govern and transform the activities of the organisations. Put in other words, certification is a mechanism on how to direct, control, and hold to account organisations that claim to perform sustainable production (Overdevest and Rickenbach, 2006). Coffee certification emerged from several starting points and with support from various public and private organisations. Like other sectors, the appeal of certification stems from the power of individual consumers with information about the ethical aspects of the products they consume (Auld, 2010).

Coffee certification was initially begun in Indonesia a year after Agenda 21 of the 1992 Rio Conference. The Rainforest Alliance was the first to implement certification in Aceh province in 1993 (Ibnu *et al.*, 2018a). In 1997, Fair Trade (FT) followed the pathway taken by the Rainforest

Alliance in the same province. The UTZ[1] also involved the certification movements in Indonesia's coffee sector in 2002 and the Common Code for the Coffee Community (4C) in 2006.

Indonesia, as the fourth largest coffee producing country in the world, caused the average level of coffee demand in Indonesia to increase between 2015 and 2019, with coffee production of 398,432 tonnes and average growth rate of 5.09% (Directorate General of Estate Crops, 2016). The massive growth of coffee production encourages Indonesia to be able to increase coffee production and productivity in the future. The demand by worldwide coffee consumers requires coffee producers to develop coffee farming in a sustainable manner, with the hope that the quality and productivity of the coffee harvest will always increase every year. The demand is caused by changes in the pattern or lifestyle of global coffee consumers that prioritise human health and environmental sustainability. Therefore, one of the efforts to increase coffee productivity is to include coffee commodities in the coffee certification programme (Pratiwi *et al.*, 2021).

Regulating Sustainability

With the unreliable state regulations, certification fills a void where the government is unwilling or unable to regulate (Lytton, 2014). Certification aims to promote social justice, fair wages, safe working conditions, community development, and other tenets of sustainable development and human rights (Bennett, 2021), to comply with a specific set of social, environmental, economic, quality or ethical conditions (Vermeyen, June 2017). They do so by creating standards that are more rigorous than state regulations, verifying that farms and factories comply, and communicating those achievements to brands, retailers, and consumers with an ethical logo or label (Bennett, 2021).

Undeniable circumstances are that corporations use certification to improve their image and to gain profit margins without altering their practices (Sleiman, 2015; Benites-Lazaro *et al.*, 2018); states using private governance in order to avoid taking responsibility to protect environment and human rights (Grabs, 2020; Bennett, 2021); consumers look for certification to avoid the work of ethical consumerism; and NGOs choose certification because it generates proven results, such as the number of certified farmers (Raynolds and Bennett, 2015). Certification indeed makes progressive efforts to protect the environment, protect human rights and improve the livelihood of small farmers where the state cannot achieve this. Currently, certification shapes the incomes and working conditions of thousands of workers located in major countries and across a wide variety of sectors (Bennett, 2021). Certification does what states should not endeavour to achieve: regulate sustainability through private interests.

In fact, certification has a positive impact on smallholders' livelihood (Ibnu *et al.*, 2018b), but the overall impact of these certification standards on the total household income is found to be statistically less significant (Jena *et al.*, 2017). In Indonesia, if referred to economic impact, there is no difference between certified and non-certified coffee (Astuti *et al.*, 2015a). The certification may

[1] Former UTZ Certified, a label used to signify sustainable farming.

lead to higher production and better coffee quality, but the financial gains are debatable. By joining certification, farmers get a higher price per kilogram; this compensates the higher production cost and time-consuming hard work. Overall, however, there were no significant differences in unit costs between certified and non-certified coffee farmers (Astuti *et al.*, 2015a). Furthermore, the positive effects of certification are influenced by various local factors, such as the level of education and skill of the farmers, market structure, local infrastructures, the role of cooperatives, and the support from the government (Bray and Neilson, 2017).

Referring to the government's support, Indonesia is experiencing a series of difficulties in selling the coffee. These problems include the lack of regulations on sustainability in the coffee sector, human rights violations, as well as environment problems (Prihandono and Relig, 2019). These issues could be solved if the stakeholders applied a sustainable standard in multiple fields, such as employment, environmental, social, and economic (Prihandono and Relig, 2019). In achieving such goals, certification schemes offer incentives that guarantee that smallholders not only receive reasonable prices paid at purchase, but also ensure an additional fair-trade premium for capacity building and related community projects (Ssebunya *et al.*, 2019), human rights protection, and reduced environment destruction (Prihandono and Relig, 2019).

The Rainforest Alliance provides standards to support farmers in creating more sustainable livelihoods, improving farm productivity and becoming more responsive to climate change issues (Ibnu *et al.*, 2018a). Rainforest Alliance certification consequently focuses on how farms are managed, with certification being awarded to farms that meet the standards of the Sustainable Agriculture Network (SAN) (Ibnu *et al.*, 2018a).

The focus of the FT programme is mainly to forge a better life for farming families in developing countries; this is done through direct trade, community development, environmental stewardship, and guaranteed prices for the coffee products (Sri Astuti Soeryaningrum Agustin, 2018). To support the programmes, FT requires the first coffee buyers to provide pre-financing for long-term contracts with farmers (Ibnu *et al.*, 2018a). Meanwhile, the UTZ aims to create transparency along the supply chain and to reward responsible coffee producers.

The schemes offered by Organic and Fair Trade certification have more small-scale farmer involvement than the UTZ Certified and Rainforest Alliance systems (Bray and Neilson, 2017). The latter initially focused their efforts on larger landholdings, whereas 4C purposes to achieve economic development, social, and environmental production, processing, and trading conditions for all stakeholders who earn a living within the coffee industry. Among the schemes offered, 4C is often considered as the one requiring fewer private certificates (Sri Astuti Soeryaningrum Agustin, 2018).

Farmers' Participation

Based on the literature studies that thoroughly compared between certified and non-certified smallholders, we conclude that certification programmes in the coffee sector lead to some positive

impacts on farmers, but show no difference between certified and non-certified coffee products (Bray and Neilson, 2017; Astuti *et al.*, 2015b; Wahyudi *et al.*, 2020; Ibnu *et al.*, 2018a; Vicol *et al.*, 2018; Karami *et al.*, 2021). However, on the other hand, the resonance of the positive impacts is not in line with the smallholders willingness to be involved in certification (Muhammad *et al.*, 2015; Muhammad *et al.*, 2016).

Identification of Factors

After identifying the coffee certification and farmers' involvement, five factors of participation, for each certified farmer as shown in Table 1 and uncertified farmers as shown in Table 2, were selected to be analysed and investigated. Selected factors are expected to have a high influence on the logic behind farmers' participation in certification. The justification of the selection is then further rationalised.

Table 1: Certified Farmers' Perspective of Participation

Factors
Consumers' interest
Economic benefits
Environmental focus
Market expansion
Sustainability

Source: Various sources gathered by the authors

Table 2: Uncertified Farmers' Involvement

Factors
High cost of certification programme
Economic reason
Strict requirements
Low skill of farmers
Low farmer output

Source: Various sources gathered by the authors

The high cost of certification standards advised smallholders to be accounted of sustainable programmes (Kilian *et al.*, 2004; Lyngbaek *et al.*, 2001). It is difficult for smallholders to enter new fair trade markets, and they are discouraged from certifying their coffee products mainly because of the high cost of certification and low coffee production. The high-cost standards and strict requirements are preventing farmers from achieving economic advantages, so that they cannot cover the total costs incurred.

As a result, production costs on certified farms are much higher than those on conventional uncertified farms, creating unequal economic benefits. Uncertified farmers choose conventional farms but produce lower quality coffee for customers. Therefore, the net income received by certified organic farmers is lower than the income received by conventional producers.

Local certified farmers and uncertified farmers prefer certification schemes that are primarily economically driven (Kirana and Karyani, 2017). This means that certifications are only needed as the instrument to maximise profits for the farmers rather than to protect the environment and maintain sustainability (Ibnu and Prayitno, 2018). The coffee farmers show opportunistic performance and put aside the main core of standards of certification: sustainability development. This preference is in line with the findings of several previous studies in various countries (DeFries *et al.*, 2017; Ruben and Zuniga, 2011; Bennett, 2021).

The coffee industry market today is filled with certified coffee production where supply exceeds demand. This has resulted in certified coffee being sold in the conventional market. Therefore, the premium price can no longer be guaranteed, and this can cause farmers to decide to leave the certification scheme.

It is also found that farmers' knowledge about the certification scheme is still at a low level (Ibnu *et al.*, 2018a; Muhammad *et al.*, 2016; Neilson *et al.*, 2019). It generally covers activities that are recommended (such as harvesting ripe cherries) and unacceptable practices that should be prevented in their own schemes, such as avoiding the use of prohibited pesticides. This may explain why smallholders are completely unaware of the differences between certification schemes and, therefore, cannot see an attribute level that goes beyond their own schemes.

The five factors clearly explain the hinder factors of smallholder participation in that coffee certification does not offer enough advantages to encourage small farmers to transition to deeply sustainable practices (Bacon *et al.*, 2008; Jaffee, 2014). This was worsened by certain conditions as farms shrank, farmers earned less than expected, and the smallholders found themselves trapped in an endless cycle of poverty. With less income, coffee farmers were unable to reinvest in and rejuvenate their farms, such as replacing old, unproductive trees and planting new. Most farmers are disorganised, and co-ops have little capacity to manage their farms and gain technical and financial assistances; this has led to reductions in production and sales (Sarirahayu and Aprianingsih, 2018).

Other facts showed that the lived experience of coffee farming is very challenging, and sustainability certification less effective. Furthermore, it is expected that future generations of coffee farmers will abandon their land and crops in search of better opportunities (Grabs, 2020). Given coffee's similarities to other industries, certification is unlikely to facilitate significant sustainable change (MSI Integrity, 2020).

Essentially, farmers recognise the importance of protecting the environment and nature conservation. Their awareness of the protection of forests, soils, and biodiversity are explained by their relationship to nature. Nevertheless, even if an environmental focus is considered important,

smallholders will not choose a different certification scheme simply because of better environmental protection criteria (Muhammad *et al.*, 2015).

This trend is exacerbated by the Indonesian domestic market that does not require certified coffee. This means that the current certification system is still in a precarious position in Indonesia. The vulnerable position of certification implies that regulating sustainability to protect the environment, protect human rights, and increase the livelihood of smallholder farmers are far from attainable. By failing to address these issues, fair trade and regulating sustainability in Indonesia are collapsing.

CONCLUSIONS

In conclusion, to encourage farmers' participation in certification it is important to provide technical assistance and financial aid to cover sustainable farm production. In addition, certification schemes are encouraged to provide clear standards of behaviour, offer continuous capacity building, low-cost certification, including providers in high-level decision-making, and less demanding rules, with the help of multi-stakeholders such as private actors and government to help maximise the benefits of certification for smallholders. Each of these is necessary and implies that neither can work alone to facilitate regulating certification to a highly sustainable practice in Indonesia.

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LITERATURE REVIEW

Income Tax Reconstruction on Construction Services to Support Development in Indonesia

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ABSTRACT

PURPOSE: The rapid development of construction companies is still dominated by various illegal acts including bribery, embezzlement, and fraud, meaning that the proper tax income is not reported to the tax office. It is necessary to to produce a reconstruction of the income tax provisions on development-based construction services.

DESIGN/METHODOLOGY/APPROACH: This paper applied a normative juridical method with an evaluative and prescriptive thought.

FINDINGS: The applicable income tax regulations on construction services have not been able to overcome various illegal acts, such as fictitious subcontractors, fictitious work units, replacement or deterioration of material quality, transfer of lump-sum costs to material costs, tender collusion, personal use of project equipment, and money laundering.

RESEARCH LIMITATIONS/IMPLICATIONS: This paper requires in-depth study using a socio-legal approach, but can enrich subsequent empirical research.

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ORIGINALITY/VALUE: It is important and urgent to renew income tax laws to overcome existing fraud in construction services, including the regulation of the Construction Industry Schemes obligations together with sanctions for each violation, revocation of final income tax on construction services, and the obligation to use the percentage-of-completion method in construction services whose project completion exceeds a financial year.

KEYWORDS: *Income; Tax; Construction; Contract; Illegal Act*

INTRODUCTION

The construction industry has become a big business sector in Indonesia in recent years. The Central Bureau of Statistics (2018; 2020a; 2021) reported that the total gross income from construction industries from 2016-2019 has increased year on year, reaching Rp.938.36 trillion (US$60,841,402), Rp.1,525.16 trillion (US$9,888,835), Rp.1,745.03 trillion (US$11,314,428), and Rp.2,048.56 trillion (US$13,282,457), respectively. Gross income has increased tax revenues in the construction sector in 2016-2019, amounting to Rp.57.08 billion (US$370,095), Rp.60.83 billion (US$394,409), Rp.64.49 billion (US$418,140), and Rp.66.63 billion (US$432,015) respectively (Directorate General of Taxation, 2019).

However, the increase has brought with it certain challenges, such as bribery, embezzlement, and fraud that can occur at any stages of a construction project. Therefore, a strategy that focuses on raising awareness that every illegal act can hinder the sustainability of development is needed (Sohail and Cavill, 2008). This is because illegal acts are not only limited to the violation of the law but also damage the morals, propriety, care, and prudence of the society (Sinaga *et al*., 2019). It is clear that illegal acts in the construction sector led to improper income (Sinaga and Hermawan, 2021) as formulated in Article 4 paragraph (1) of Law Number 36 of 2008 concerning Income Tax *(UU PPh)*.

The fact that the challenges that occur in the construction sector are directly and indirectly related to taxes can be seen, among others, in the court's verdict on a fictitious project carried out by five defendants in one of the State-Owned Enterprises construction companies, PT. WK, causing state losses of Rp.202.29 billion (US$131,160). One of the methods used showed several companies affiliated with several suspects as subcontractor companies undertake fictitious subcontractor work, with the appointed fictitious subcontractor companies given a "flag borrowing" fee of 1.5%-2% of the contract's value (Ramadhan, 2020). In addition, various modes of fraud potentially occur in the construction industry, such as bills for fictitious work units, fictitious vendors, replacing or lowering the quality of materials, transferring lump-sum costs to material costs, tender collusion, personal use of project equipment/equipment, and money laundering (Aprilliani, 2021).

The state must emphasise that the growth of tax revenue from the construction sector will have a significant impact on the country's economy and the state's welfare (Setiawan and Erdogan, 2020). This would be in terms of energy absorption work, turning the supplier business wheel related to the construction industry, and the income of construction workers. However, it must

be realised that there are challenges in construction business activities that intersect with many regulations, such as construction service, environmental, land, investment, labour, tax, and many other regulations (Lature, 2018). Therefore, it is important to keep the construction sector running in a healthy, growing, and sustainable manner by minimising every illegal act; this all comes down to income, which is the object of income tax.

Based on this thought, this study seeks to answer two main problems. First, what are the current income tax regulations in the construction industry in Indonesia? Second, what are the ideal provisions for *PPh* on construction services in the future? The existence of these two questions can explain the imposition of income tax *(PPh)* and produce a concept of income tax on construction services based on development in Indonesia. Development growth will significantly increase the rule of law so it can significantly increase the level of prevention and control of illegal income and expenses (Hermawan and Sinaga, 2020).

METHODOLOGY

This study uses a qualitative approach that is expected to produce a reconstruction of income tax provisions on construction services based on future sustainable development. The urgency of the reconstruction is based on the need for a philosophical and juridical study to tackle violations or crimes that are detrimental to state finances; this should be done through actions or processes that rebuild, recreate, or reorganise existing legal constructions, to be used as a solution that prioritises output and outcome (Gardner, 2009; Sinaga and Sinaga, 2018; Sinaga *et al*., 2020). The reconstruction is in line with the efforts of the juridical study as prescriptive thinking to obtain suggestions to overcome the problems posed in research, and evaluative, namely to assess the programmes being implemented (Soekanto, 2010).

In aligning with the research objectives, this normative juridical method will start from the inventory of statutory regulations, laws *in concreto*, legal principles, and legal comparisons by examining library materials or secondary data in the form of primary, secondary, and tertiary legal materials. Primary legal materials consist of binding legal materials in the form of laws and regulations related to taxation. Secondary legal materials include the use of textbooks, legal expert opinions, articles, seminar results, and research results in the field of law and taxation, while tertiary legal materials are materials that support information on primary and secondary legal materials, including newspapers, dictionaries, and encyclopedia (Soekanto and Mamudji, 2007).

INCOME TAX ON CONSTRUCTION SERVICES

Income related to construction services is an object of income tax, as stated in Article 4 paragraph (1) of the Income Tax Law; this emphasises that the object of income tax is *"any additional economic capability received or obtained by taxpayers, both from Indonesia and from outside Indonesia, which can be used for consumption or to increase the wealth of the Taxpayer concerned,*

in whatever name and form". Then, Article 4 paragraph (2) of the Income Tax Law stipulates that income in the form of a construction service business is an object of final income tax.

Subsequently, Government Regulation (GR) Number 40 of 2009 concerning Amendments to GR Number 51 of 2008 concerning Income Tax on Income from Construction Services Business was issued; this is an explanatory regulation, the implementation of which regulates the payment of income tax on construction services (Tjahjono, 2015). On income received or obtained by domestic taxpayers and permanent establishments (BUT) from businesses in the construction service sector, final income tax will be imposed for taxpayers who meet the qualifications as small businesses and the procurement value is a maximum of Rp.1 billion (US$6,483,801). Non-final income tax relates to non-small business taxpayers and/or where procurement is greater than Rp.1 billion. The income from construction services business in the form of final income tax will be subject to final withholding tax at the time of payment of advances and terms, or subject to final tax by self-payment of income tax payable at the time of receipt of advance and term payments. The amount of income tax payable must be deducted by the service user or paid by the service provider taxpayer, in accordance with GR Number 40 of 2009, is 4% of the gross amount. This is received by the taxpayer providing construction planning services, 2% of the gross amount, received by the taxpayer of the construction implementation service provider, or 4% of the gross amount received by the taxpayer of the construction supervision service provider.

Article 10 letter (a) number 1 (b) GR Number 40 of 2009 regulates non-final income tax on income from businesses in construction services that are:

a) income received or earned by domestic taxpayers, and BUT is subject to withholding tax based on the provisions of Article 23 of the Income Tax Law by service users in the event that the service user is a Government entity, domestic Corporate Tax Subject, BUT, or an individual as a resident Taxpayer appointed by the Director-General of Taxes as the withholding of Article 23 income tax at the time of payment of advances and terms;
b) imposed based on the provisions of Article 25 of the Income Tax Law in the event that the income provider is another service user other than as referred to in (a).

The non-final income tax rates for construction service businesses in accordance with Article 3 of GR Number 51 of 2008 are:

- 4% for construction implementation carried out by service providers who do not have business qualifications;
- 3% for construction implementation carried out by service providers other than that carried out by service providers who have small business qualifications and service providers who do not have business qualifications;

- 4% for construction planning or construction supervision carried out by service providers who have business qualifications; and
- 6% for construction planning or construction supervision carried out by service providers who do not have business qualifications.

In the event that the service provider is a permanent establishment, the income tax rate referred to above does not include income tax on the remaining profits of the permanent establishment after the final income tax.

AGENCY RELATIONSHIPS OF THE CONSTRUCTION WORK CONTRACTS IN THE INCOME TAX FRAMEWORK

As the entire contract document that regulates minimising the occurrence of tax avoidance and tax evasion in the construction industry, the Construction Work Contract is important in understanding the contractual relationship between the parties involved in the contract considering Article 46 and Article 49 of Law Number 2 of 2017 concerning services. Construction (Construction Services Law) stipulates that the working relationship between Service Users and Service Providers, as well as between Service Providers and Service Sub-Providers, must be stated in the Construction Work Contract. Furthermore, Article 1 point 8 of the Construction Services Law confirmed the legal relationship between Service Users and Service Providers in the implementation of Construction Services. The Construction Work Contract must at least include, clear identities of the parties, the job formulation, the implementation, and maintenance period (which is the responsibility of the Service Provider), equality of rights and obligations between the Service User and the Service Provider, the obligation to employ certified construction workers, payment methods, default, dispute resolution, contract termination, *force majeure*, building failure, worker protection, protection of third parties (other than the parties and workers), environmental aspects, guarantees for risks that arise, and legal responsibility to other parties in the implementation of Construction Works or as a result of Building Failure, and construction dispute resolution options (Emirzon and Sinaga, 2021).

The arrangement of the Construction Work Contract implies that the scope of construction is legally very broad; it contains the totality of legal problems that may arise from certain business fields (Bailey, 2011), including engineering, economics, and taxation. This can be seen from construction products that do not only produce building and infrastructure products, which are public goods (such as roads, bridges, airports, ports, dams, and dams) as well as private goods (such as residential houses, hotels, offices, condominiums, shopping malls, and factories), but also construction sector products that become inputs for other sectors (Central Bureau of Statistics, 2020b), such as the industrial sector (cement, roofing, aluminum, wood, and ceramics), the equipment sector -heavy equipment, fuel oil sector, and technology sector. In addition to referring to the Construction Services Law, contractual relationships in the construction industry must refer to tax provisions in terms of

carrying out their tax rights and obligations. Article 4 of Law Number 16 of 2009 concerning General Provisions and Tax Procedures to Become Law *(UU KUP)* states that taxpayers who have fulfilled subjective requirements must fill out and submit the Tax Return correctly, completely, clearly, and signed by the taxpayer or an attorney with a special power of attorney.

The existence of the obligation to make contracts in the construction industry shows that a good contractual relationship cannot be separated from the implementation of agency theory. Agency relationship problems often arise when the principal, who is the party that mandates the agent to carry out all activities on behalf of the principal (Gardner, 2009), is unable to check whether the agent has behaved appropriately or not. The existence of potential fraud in a construction company shows that agency theory is appropriate to solve the problem of tax avoidance and tax evasion as the Construction Work Contract will be evidence for each party. This is in line with Eisenhardt (1989) and Adams (1994), who show that agency theory is very useful in knowing:

a. the wishes or goals of the conflicting principal and agent;
b. the occurrence of information asymmetry between principals and agents; and
c. how to examine external or internal factors of a particular community (business) that are indeed very complex and generally hidden.

These contractual relationships and agency theory will be the main concerns to minimise tax avoidance and tax evasion in the construction industry. They refer to certain things, such as construction service revenues that do not exceed costs, fulfillment of the demand for construction services, the fulfillment of financial resources in financing the project until the payment terms are received from the customer, the fulfillment of a skilled workforce, and overhead costs that meet the projected workload (Schaufelberger, 2009).

LITERATURE REVIEW OF INCOME TAX ON CONSTRUCTION SERVICES IN INDONESIA

The total value of the global construction market, which is estimated to have reached a value of US$3,200 billion per year (Rp.45,920), cannot be separated from fraud in several forms, such as corruption, misappropriation of assets, tax irregularities, and bribery. The American Society of Civil Engineers stated the amount of corruption in the construction industry in the world has reached the range of US$340 billion per year (Rp.4,879 trillion).

The challenges of economic crime in the construction sector are quite significant and can occur at any stage of a construction project (Sohail and Cavill, 2008). This is also true in the Indonesian construction and real estate sectors; these sectors have a low tax ratio that was only 6.72% of Gross Domestic Product (GDP) in 2019. Therefore, appropriate policy changes are needed, namely through changing the applicable tax rates in the final *PPh* regime or implementing a general scheme in imposing *PPh* on income received by the construction sector (Wildan, 2020).

The occurrence of tax fraud in the industrial sector must be of special concern to the government in Indonesia considering the complexity has been very worrying; the fraudsters disguise income with the intention of deceiving the state (Martin, 2011, Skalak *et al*., 2011), or carry out hidden activities.

In the case of fraudulent invoices for fictitious work units, fictitious subcontractors, material quality degradation, transfer of lump-sum costs to material costs, personal use of project equipment/equipment, tender collusion, and money laundering, the Tax Authority must be able to implement agency relationships on obligations in the construction contract; this should be done by requiring all contractors to report and register their Construction Industry Scheme (CIS), including certain financial databases, recordings, and bookkeeping, who must report tax returns (Sinaga, 2021). The tax office must have a database of construction companies that have truly verified data, reports, and information, such as companies, management, board of commissioners, shareholders, company qualifications, and a list of certified labour workers (HM Revenue & Customs, 2014). It is necessary to study the rules for withholding income tax on multi-storey construction services carried out by the main contractor to subcontractors, namely the main contractor deducting income tax on their payments at a higher rate to contractors/sub-contractors who are not registered with the Tax Office (HM Revenue & Customs, 2014). The obligation to report this CIS can prevent fictitious transactions, borrowing flags, fictitious vendors, and misuse of fees into personal interests, because before a contractor can make payments to subcontractors for construction work, the contracting company must verify with the tax office that the subcontractor is registered. Each month, the contractor must send a complete list of all payments that the contractor has made under the scheme to the tax office. The reporting or return of the list to the tax office includes details of subcontractors, details of payments and any withholdings that have been made, statements on the status/progress of work of all subcontractors, statements that all subcontractors have been verified (HM Revenue & Customs, 2014). The tax office will then check whether the subcontractor is registered and notify the contractor which tax withholding rate should be applied when the contractor makes payments to the subcontractor (HM Revenue & Customs, 2014).

The existence of the rules of the CIS shows that there is a shared responsibility between the people and the state so that taxes are fair; this can restore the functioning of the market and produce a healthier construction industry (Doree, 2004). The CIS regulations are expected to be one of the solutions in bridging the interests of state revenues in minimising economic crime in the construction sector through increasing the role of taxes; this is because taxes (which are basically non-discriminatory (Soemitro and Sugiharti, 2004)) must be able to realise voluntary compliance to all taxpayers. The imposition of taxes on construction services meets the principles of equity, certainty, convenience, and efficiency, with reference to a good taxation system that must be fair, and collected according to the ability of the taxpayer to pay (Matarirano *et al*, 2019). Taxpayers know about their tax compliance obligations, and the time and method of tax payment must be the most conducive and not excessive. The principles of certainty and convenience are then fully

related to compliance costs, while equity and efficiency require that compliance costs be ignored so as not to violate the principles of a good tax system (Matarirano *et al*., 2019).

CIS obligations will be of key importance in presenting financial reporting consistently from year to year, from project to project, and from month to month in each project. This is based on the consideration that in order to report costs and profit projections consistently, the contractor must at least have a reliable financial management system, especially with regard to cost control. Holm (2019) suggested that construction project teams must follow several basic rules to have an effective cost control system, that is cost reporting data must be timely and accurate. More specifically, in terms of income tax rates on construction services, it is necessary to abolish the imposition of final income tax rates for the entire construction industry in order to minimise efforts to break up subcontractors into small category companies. Contractor's bookkeeping must be kept consistent and accurate during the multi-faceted construction process, relying heavily on audits as an examination of the contractor's financial accuracy. The basis for revenue recognition at the contract stage is recorded by using a certain percentage of completion supported by evidence, such as the results of an internal review related to the achievements of the project progress, or the existence of independent party evidence (such as professional surveyors) about project uncertainty, showing that it is impractical to assess the percentage of completion (Inland Revenue Authority of Singapore, 2021).

The income recognition of contractor companies has been briefly explained in the Elucidation of Article 4 of GR Number 47 of 1994 concerning Calculation of Taxable Income and Payment of Income Tax in the Current Year; this is known as the percentage contract method or the percentage of completion method and completed contract methods. The use of one of the two income recognition methods will result in different amounts of income from year to year, and differences in the calculation of the income tax payable for each tax year. The "percentage of completion method" calculates the income tax payable every year on the basis of the income earned periodically (proportionately) during the completion stage of the work, while the "completed contract method" calculates the income tax payable when the work is completed, because income is only recognised at the end of the year the work is completed. During the completion stage of the work, no income tax is calculated. Furthermore, the Elucidation of Article 4 of GR Number 47 of 1994 confirms that the percentage of completion method is an accrual method commonly found in construction companies or building contractors who work on projects that take several years, with considerations:

a) equalising the tax burden in every tax year during the period of completion of the work that can ease the burden on the taxpayer, because the tax payment in a tax year is in accordance with the income obtained proportionally during the stage of completion of the work, and the tax burden does not accumulate at the end of the year of completion of the work;

b) obtain uniformity in income recognition for all taxpayers engaged in construction contractors or building contractors; and
c) provide equal treatment for taxpayers engaged in the same business.

However, since GR Number 47 of 1994 has been revoked by GR Number 45 of 2019, the obligation to use the percentage of completion method for long-term construction is not explicitly regulated in laws or government regulations. In fact, many developed countries require the implementation of the percentage of completion methods, such as the Inland Revenue Authority of Singapore (2021) and the Internal Revenue Service of the United States (26 U.S. Code § 460 Special rules for long-term contracts). The use of the percentage of completion method for long-term construction contracts will make it easier for the tax office to periodically recognise and monitor revenues and expenses, not when the project is 100% complete.

CONCLUSIONS, IMPLICATIONS, AND LIMITATIONS OF THE RESEARCH

This study produces two conclusions. First, the current income tax regulations in the construction industry in Indonesia, in which the imposition of income tax is final and non-final, could not overcome the fraud that still occurs. The prevailing tax law can justify the financial fraud of certain entities (such as the number of construction companies breaking up the contract value below Rp.1 billion (US$65,333,834), and the mode of making a "dummy construction company/subcontractor" to legalise fictitious costs) by legalising the payment of income tax at very low rates (only 2% of the contract revenue). These illegal acts will only harm sustainable development given the low quality of buildings and/or mark-up on contract values and/or loss of state's tax revenue. Second, the ideal provisions for income tax to overcome the fraud on construction services must be done through income tax law reforms. These must include the regulation of CIS obligations (rules that require the reporting and registration of the CIS for all contractors and a database of the construction company that has truly verified data, reports, and information). Also, there must be sanctions for each violation, revocation of final income tax regulations on construction services, the obligation to use the percentage of completion method in construction services whose project completion exceeds a financial year, and the rules that apply the withholding of income tax on multi-level construction services carried out by the main contractor to subcontractors. Hopefully, the implication of the renewal of income tax regulations on construction services will tackle practices that can justify fraud that are detrimental to state finances. This should be through increasing the voluntary compliance of taxpayers, including carrying out tax rights and obligations in a complete, clear and correct manner in the construction service sector.

This research is still limited to a normative juridical study. It is necessary to deepen the research in the form of socio-legal research to find laws that live in the community/society that can improve tax law compliance of construction sector taxpayers.

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