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Promoting Policy Awareness on the Rights of Special Needs Persons for Inclusive Education in Nigeria

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ABSTRACT

In order to effectively promote inclusion, this essay analyzes the urgent need for policy knowledge of the rights of people with special needs in Nigeria. Even with the passage of laws such as the Discrimination Against Persons with Disabilities Act, systemic obstacles and general ignorance still make it difficult to put these laws into practice. The importance of policy knowledge is examined in the article, with particular attention paid to how it may empower people with disabilities, promote social justice and equity, increase policy implementation, and foster community integration. According to the report, key tactics for increasing awareness include government accountability, capacity building, stakeholder engagement, technology distribution, and grassroots community-based activities. Examples include training teachers in inclusive education, using local languages in campaigns, advocating on social media, and putting in place monitoring systems to make sure laws pertaining to disabilities are being followed. These tactics highlight the value of teamwork in closing the gap between practice and policy. The paper concludes by emphasizing the moral and developmental imperatives of promoting awareness of disability rights. It demands effective public education campaigns, cooperation with NGOs and commercial sector stakeholders, *accessible communication, digital activism, and the inclusion of disability rights in school curricula. Lastly, it suggests accountability and monitoring systems to guarantee that the policy is followed. Policymakers, educators, campaigners, and stakeholders who are dedicated to building a more inclusive society should use this article as a guide since it offers practical insights and real-world examples.*

Keywords: *Policy Awareness, Special Needs, Inclusive Education*

1.0 Introduction

In Nigeria, persons with special needs represent a significant portion of the population, encompassing individuals with physical, sensory,[1] intellectual, and developmental disabilities. Despite their numbers, this group remains one of the most marginalized in society, facing systemic barriers that hinder their inclusion in various spheres of life such as healthcare, employment, education, and social interactions. Over the years, Nigeria has enacted policies and laws to safeguard the rights of persons with special needs, such as the Discrimination Against Persons with Disabilities (Prohibition) Act of 2018.[2] However, the existence of these legal frameworks has not necessarily translated into meaningful inclusion due to poor policy awareness among the public, policymakers, and even persons with special needs themselves. Without widespread knowledge of these rights and protections, inclusion efforts often falter, leaving many to continue facing discrimination and neglect. The root of this exclusion can often be traced to the lack of effective dissemination and understanding of policies designed to protect and empower persons with special needs. In many parts of Nigeria,[3] the rights of this population are either misunderstood, ignored, or completely unknown. Policymakers and enforcement agencies frequently fail to implement these laws effectively, while the general public

[1] EO Mbanugo, 'Perspectives and legal implications of inclusive access to the environment for children living with disabilities in Nigeria under the discrimination against persons with disability (prohibition) Act 2018', *JL Pol'y & Globalization* (2019) 85, 133.
[2] EO Mbanugo, *op. cit.*; C. Amucheazi & CM Nwankwo, 'Accessibility to infrastructure and disability rights in Nigeria: an Analysis of the Potential of the Discrimination against Persons with Disability (Prohibition) Act 2018', *Commonwealth Law Bulletin* (2020) 46 (4), 689-710.
[3] World Bank Group, 'Disability inclusion in Nigeria: A Rapid Assessment' (2020) <https://documents1.worldbank.org/curated/en/780571593336878236/pdf/Disability-Inclusion-in-Nigeria-A-Rapid-Assessment.pdf> accessed on 1 January 2025.

remains largely unaware of the importance of inclusion. This gap in awareness perpetuates social stigma, economic marginalization, and limited access to essential services. Consequently, individuals with special needs are left with few opportunities to fully participate in society, underscoring the urgent need to address this awareness gap to ensure their rights are upheld and their inclusion realized.

Knowledge of the rights of people with disabilities. It calls for the inclusion of disability rights in school curricula, accessible communication, digital activism, collaboration with NGOs and stakeholders in the commercial sector, and successful public education campaigns. It suggests accountability and monitoring systems to guarantee that the policy is followed. This comprehensive approach aims to assist Nigeria in achieving social justice and sustainable development by empowering individuals with special needs, reducing social stigmas, and fostering an inclusive culture.[4] Policymakers, educators, campaigners, and stakeholders who are dedicated to building a more inclusive society should use this article as a guide since it offers practical insights and real-world examples.

2.0 Understanding the Rights of Persons with Special Needs

A wide range of people who need extra help because of physical, sensory, intellectual, or developmental disabilities are referred to as persons with special needs.[5] This covers, among other things, people who are deaf, blind, have mental health issues, autism spectrum disorder, Down syndrome, or mobility issues. In order to support their inclusion in school, the workforce, and society at large, these demands frequently call for unique services, accommodations, or technologies. When given equal chances and the right kind of support, people with special needs make tremendous contributions to their

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[4] O Aluko *et al*, 'Unlocking Inclusive Growth and Sustainable Development in Nigeria: A Roadmap through Challenges and Opportunities', *African Journal of Applied Research*, Vol. 10(1) (2024), 201-223; RE Ebeh, 'Counselling Psychology as a Transformative Tool for Driving Sustainable Development across Education, Health, and Organizations in Nigeria' *Journal of Professional Counselling and Psychotherapy Research*, Vol. 5(2) (2024) <https://journals.aphriapub.com/index.php/JPCPR/article/view/2825/2600> accessed on 2 January 2025; RA Yusuf *et al*, 'Diversity, inclusion and equity: making a case for the underserved and vulnerable in the Nigerian society', *Lagos Journal of Library and Information Science*, Vol. 11(1 and 2) (2022) 79-94.

[5] CR Reynolds & E Fletcher-Janzen (Eds), *Encyclopedia of Special Education: A Reference for the Education of Children, Adolescents, and Adults with Disabilities and Other Exceptional Individuals*, Volume 3 (2007) pp. 1404, 1842 <https://hmk.am/wp-content/uploads/2021/05/Encyclopedia-of-special-education_-a-reference-for-the-education-of-children-adolescents-and-adults-with-disabilities-and-other-exceptional-individuals-PDFDrive-.pdf> accessed on 31 December 2024.

communities despite their particular difficulties. In order to formulate laws and activities that address their rights holistically rather than as a homogeneous group, it is imperative to comprehend their variety.[6]

Through a number of laws and regulations, Nigeria has made great progress in recognizing and defending the rights of people with special needs.[7] A historic law known as the Discrimination Against Persons with Disabilities (Prohibition) Act of 2018 renders it unlawful to discriminate against people with disabilities, establishes accessible requirements, and encourages equal opportunity.[8] According to the National Policy on Education and/among other applicable policies, all children including children with disabilities are entitled to inclusive education. Although these frameworks give inclusion a legal foundation, enforcement is nonetheless lax and stakeholder awareness is low. Many people with special needs are therefore unable to make use of the possibilities and safeguards that these laws are meant to offer.[9]

2.1 International Conventions

In addition to its domestic legislation, Nigeria has ratified some international agreements that protect the rights of people with special needs which in the main include the United Nations Convention on the Rights of Persons with Disabilities (CRPD). Member nations are required by this agreement to guarantee the autonomy, dignity, and full inclusion of people with disabilities in society.[10] Additionally, it highlights the necessity of inclusive

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[6] *Ibid.*

[7] SI Ibadin, Rights to Education and Employment for Persons with Disabilities in Nigeria: Towards a Human Rights Model of Disability (2022) <https://theses.ncl.ac.uk/jspui/bitstream/10443/5679/1/Ibadin%20S%20I%202022.pdf> accessed on 3 January 2025.

[8] EO Mbanugo, *op. cit.*; M Sharma, *Right of Equality and Non-Discrimination for Persons with Disabilities: Need of Constitutionalisation under Article 15 of the Constitution of India* (2022) p. 21 <https://www.etd.ceu.edu/2022/sharma_meghna.pdf> accessed on 4 January 2025; I Okata, An Exploration of Nigeria's Discrimination against Persons with Disabilities Prohibition Act, 2018 –A Legal Practitioner's Perspective (2024) <https://mspace.lib.umanitoba.ca/items/757cee05-4734-4c4a-963b-88e484710604> accessed on 2 January 2025.

[9] E Pasachoff, 'Special education, poverty, and the limits of private enforcement', *Notre Dame L. Rev.* (2011) 86, 1413; United Nations Human Rights Office of the High Commissioner, 'The Convention on the Rights of Persons with Disabilities', *Professional Training Series No. 19* (2010) <https://www.ohchr.org/sites/default/files/Documents/Publications/CRPD_TrainingGuide_PTS19_EN_Accessible.pdf> accessed on 30 December 2024.

[10] T. Bratan *et al,* 'Implementation of the UN Convention on the Rights of Persons with Disabilities: A comparison of four European Countries with regards to Assistive Technologies', *Societies* Vol. 10(4), (2020) 74. <https://www.mdpi.com/2075-4698/10/4/74/pdf?version=1601027373> accessed on 4 January 2025; R Lang, 'The United Nations Convention on the Right and Dignities for Persons with Disability: A

education, easily accessible infrastructure, and equitable involvement in political and economic endeavors. Nigeria's dedication to these international norms is a start in the right direction, but there is still more work to be done to put these treaties' tenets into practice.[11] It is necessary to increase knowledge of these international commitments and successfully incorporate them into domestic policy in order to close the gap between commitment and action.

2.2 Importance of Understanding Rights

It is crucial for society at large as well as for people with special needs to be aware of these legal frameworks and conventions. People, groups, and organizations are better able to support, respect, and defend the rights of people with special needs when they are aware of those rights. A more inclusive and equitable society is promoted by this understanding,[12] which also guarantees that the opinions of people with special needs are heard during decision-making processes. The objectives of inclusion, equality, and dignity for everyone remain unachievable in the absence of a broad awareness of these rights.

3.0 Current Challenges in Policy Awareness

1. **Low Public Awareness**

   The general lack of knowledge about the rights of people with special needs is one of the biggest obstacles to their successful inclusion in Nigeria.[13] Although

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Panacea for Ending Disability Discrimination?', *Alter* Vol. 3(3) (2009) 266-285 <https://www.sciencedirect.com/science/article/pii/S1875067209000443> accessed on 2 January 2025.

[11] Fitzmaurice, M. (2014). The practical working of the law of treaties. International law, 2, 187-213. <https://iilj.org/wp-content/uploads/2016/08/Fitzmaurice-The-Practical-Working-of-the-Law-of-Treaties-pp.-172-83-2010.pdf> accessed on 1 January 2025; Lang *et al*, 'Implementing the United Nations Convention on the Rights of Persons with disabilities: Principles, Implications, Practice and Limitations', *Alter*, Vol. *5*(3) (2011) 206-220.

[12] C Flores & J Bagwell, 'Social Justice Leadership as Inclusion: Promoting Inclusive Practices to Ensure Equity for All', *Educational Leadership and Administration: Teaching and Program Development* (2021) <https://files.eric.ed.gov/fulltext/EJ1318516.pdf> accessed on 9 January 2025; HM Haugen, 'Approaches to Inclusive and Equitable Societies: Diaconal Perspectives' *Diaconia*, Vol. 6(2) (2015) 150-166 <https://www.vr-elibrary.de/doi/reader/10.13109/diac.2015.6.2.150> accessed on 8 January 2025.

[13] L Akinyi *et al*, 'Challenges facing Implementation of Inclusive Education in Public Secondary Schools in Rongo Sub-County, Migori County, Kenya', *IOSR Journal Of Humanities And Social Science*, Vol. 20(4) (2015) <https://ir-library.ku.ac.ke/server/api/core/bitstreams/af21738f-64ae-4899-ae74-36ec0295ff04/content> accessed on 1 January 2025; CJ Eleweke, & J Ebenso, 'Barriers to Accessing Services by People with Disabilities in Nigeria: Insights from a Qualitative Study', *Journal of Educational and Social Research*, Vol. 6(2) (2016) 113 <https://pdxscholar.library.pdx.edu/cgi/viewcontent.cgi?article=1057&context=wll_fac> accessed on 22

laws and regulations have been put in place to empower and protect this group, many Nigerians are still ignorant of them. This ignorance affects not just the general population but also employers, schools, and even medical professionals—who ought to be leading the charge in establishing inclusive practices.[14] These stakeholders could inadvertently promote exclusionary behaviors like inaccessible infrastructure, biased employment procedures, or insufficient educational support if they don't have the right knowledge. This problem is made worse by cultural preconceptions regarding disability and the limited informational reach of public campaigns,[15] which creates a disconnect between the development of policies and their intended implementation.

2. **Inadequate Implementation of Laws and Policies**

The inefficient application of rules and regulations intended to safeguard individuals with special needs is another serious problem. Although laws such as the Discrimination Against Persons with Disabilities Act offer a strong basis, enforcement procedures are sometimes ineffective or nonexistent.[16] For example, due in large part to insufficient monitoring and accountability procedures, both public and private organizations commonly violate accessibility regulations or inclusive employment practices. Furthermore, the efficacy of these measures is further undermined by bureaucracy, corruption, and underfunding of programs relating to disabilities.[17] Because of this, people may have little to no remedy when their rights are infringed, even if they are aware of them, which feeds the cycle of marginalization and exclusion.

December 2024; MP Mostert, 'Stigma as Barrier to the Implementation of the Convention on the Rights of Persons with Disabilities in Africa', *Afr. Disability Rts. YB*, Vol. 4 *(2016)* 3 <https://www.adry.up.ac.za/images/adry/volume4_2016/adry_2016_4_chapter1.pdf> accessed on 23 December 2024.

[14] R Rieser, 'Implementing inclusive education: a Commonwealth Guide to Implementing Article 24 of the UN Convention on the Rights of Persons with Disabilities' (2012) <https://edu.thecommonwealth.org/wp-content/uploads/2020/11/Implementing_Inclusive_Education_Article_24_in_CRPD.pdf> accessed on 1 January 2025.

[15] B Rohwerder, 'Disability Stigma in Developing Countries', *K4D Helpdesk Report* (2018) *26* < https://assets.publishing.service.gov.uk/media/5b18fe3240f0b634aec30791/Disability_stigma_in_developing_countries.pdf> accessed on 5 January 2025.

[16] EF Emens, 'Disabling attitudes: US disability law and the ADA Amendments Act', *The American Journal of Comparative Law*, Vol. 60(1) (2012) 205-234.

[17] TS Ezeudu & M Umaru, 'Challenges and Barriers to the Successful Implementation of Social Development Programs in Nigeria', *Zamfara Journal of Politics and Development*, Vol. 4(2), (2023) 73-88.

3. **Cultural and Social Barriers**

Significant obstacles to policy understanding and inclusion are also presented by deeply rooted cultural and social attitudes. Disabilities are frequently perceived through a superstitious or stigmatized lens in many Nigerian communities, with some people linking them to punishment, ill luck, or curses.[18] In addition to isolating people with exceptional needs, these attitudes deter families from supporting them or standing up for their rights. This stigma also exists in public areas, where ignorance about society has normalized exclusion and discrimination.[19] Additionally, the underrepresentation of people with special needs in the media and in leadership positions restricts their visibility and activism, which feeds into harmful stereotypes and impedes more significant social change.

4. **Limited Access to Information**

Accessing information about their rights is another obstacle for people with special needs themselves.[20] Many people lack the means to learn about current laws and protections, especially those who live in rural areas. Barriers to communication, like the lack of information in accessible formats like braille or sign language, further distance these people from important information that could enable them to demand their rights. Because there aren't enough inclusive communication techniques, deaf or blind people are particularly excluded from advocacy campaigns.[21] Individuals with special needs continue to be excluded from the very structures intended to guarantee their inclusion in the absence of focused interventions to make information accessible.

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[18] O Omiegbe & FC Ezehi, 'Correcting Misconceptions about Persons with Disabilities', *Special Needs Education from the Lens of Interdisciplinary Dialogue: A Festschrift in Honour of Prof. Emeka D. Ozoji,* Vol. 1(1) (2023) <https://journals.ezenwaohaetorc.org/index.php/AFHOPEO/article/download/2416/2467> accessed on 3 January 2025.

[19] É Pigeon-Gagné *et* al, 'Discrimination and Social Exclusion of People Experiencing Mental Disorders in Burkina Faso: a Socio-Anthropological Study', *Culture, Medicine, and Psychiatry*, Volume 48 (2024) 792–815 <https://doi.org/10.1007/s11013-024-09860-w> accessed on 6 January 2025.

[20] RW Barnard & RH Henn, 'Overcoming Learning Obstacles: Strategies for Supporting Students with Diverse Needs', *Open Access Library Journal*, Vol. 10(8) (2023) 1-14.

[21] E Calgaro *et al*, 'Silent no more: Identifying and Breaking through the Barriers that d/Deaf People face in Responding to Hazards and Disasters. *International journal of Disaster Risk Reduction* (2021) 57 <https://doi.org/10.1016/j.ijdrr.2021.102156> accessed on 7 January 2025.

4.0 Importance of Policy Awareness for Inclusion

1. Empowerment of Persons with Special Needs

The foundation for enabling people with special needs to fully engage in society and fight for their rights is policy understanding.[22] People acquire the self-assurance and resources needed to confront discrimination and demand responsibility when they know the laws and structures put in place to protect them. For instance, being aware of the Discrimination Against Persons with Disabilities Act empowers people to pursue legal action in the event that they are excluded from the employment or denied access to public facilities. Families and caregivers are also empowered because they can better assist and advocate for their loved ones if they are aware of the situation. In the end, knowledgeable people and groups transform into potent change agents that propel initiatives for a more inclusive society.

2. Fostering Community Integration

By lowering stigma and misunderstandings, policy awareness promotes society integration in addition to helping people with special needs.[23] The public is more inclined to support inclusive policies like accessible infrastructure, inclusive education, and equitable hiring when they are aware of the rights and contributions of people with special needs. In order to dismantle barriers and promote acceptance, awareness initiatives that inform communities about the rights and talents of this community are essential. This enhances communities and dispels harmful preconceptions by enabling people with special needs to fully engage in social, cultural, and economic activities.[24]

3. Strengthening Policy Implementation

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[22] KU Eze, 'Perspective Chapter: Bridging the Gap-Addressing the Marginalisation of Individuals with Mental Health Disabilities' in A Klimczuk & DA Dovie (Eds), *Bridging Social Inequality Gaps-Concepts, Theories, Methods, and Tools: Concepts, Theories, Methods, and Tools*, 3 <https://www.intechopen.com/chapters/1176888> accessed on 2 January 2025.

[23] E McGinty *et al,* 'Communication Strategies to Counter Stigma and Improve Mental Illness and Substance Use Disorder Policy', *Psychiatric Services,* Vol. 69(2) (2018) 136-146 <https://pmc.ncbi.nlm.nih.gov/articles/PMC5794622/> accessed on 1 January 2025.

[24] E McGinty *et al, op. cit.*

For laws and regulations pertaining to disabilities to be effectively enforced, a knowledgeable public is necessary.[25] Policymakers, law enforcement, and advocacy organizations are more inclined to give these frameworks top priority when they recognize their significance. Authorities are under pressure to maintain responsibility and adherence to legislative requirements, such as requiring inclusive employment practices or making public areas accessible, as a result of public awareness.[26] Furthermore, understanding makes it easier for stakeholders—such as governmental agencies, non-governmental organizations, and the commercial sector—to work together to close enforcement gaps and create creative inclusionary solutions.

4. **Promoting Equity and Social Justice**

Fundamentally, raising knowledge of policies is a first step in ensuring social justice and equity for people with special needs.[27] Society gets one step closer to removing structural obstacles that sustain inequality by making sure these people are aware of their rights and involved in policy discussion. By bridging the gap between policy and practice, awareness makes sure that the values of inclusion, fairness, and dignity are not merely abstract concepts but rather are experienced by everyone. In addition to helping those with special needs, this also fortifies the moral and social foundation of the country, making Nigeria more inclusive and egalitarian.[28]

5.0 Strategies for Enhancing Policy Awareness

1. **Campaigns for Public Awareness**

[25] United Nations Human Rights Office of the High Commissioner, *op. cit.*
[26] M Boström *et al*, 'Sustainable and Responsible Supply Chain Governance: Challenges and Opportunities', *Journal of Cleaner Production*, Vol. 107 (2015) 1-7 <https://doi.org/10.1016/j.jclepro.2014.11.050> accessed on 4 January 2025.
[27] S Shaeffer, 'Inclusive Education: a Prerequisite for Equity and Social Justice', *Asia Pacific Education Review*, Vol. 20(2) (2019) 181-192; E Shyman, 'Toward a Globally Sensitive Definition of Inclusive Education based in Social Justice', *International Journal of Disability, Development and Education*, Vol. 62(4), (2015) 351-362.
[28] NC Umeh, 'Access to Inclusive Education for Learners with Disabilities in Nigeria: Discursive Interpretation of Findings', *Inclusive Education Developments in Africa* (2024) 47-71.

Campaigns for Public awareness play a central role in bridging the gap between policy creation and implementation.[29] These campaigns can leverage traditional and digital media platforms to disseminate information about the rights and protections afforded to persons with special needs. For example, radio programs in local languages can reach rural communities, while social media can target younger, tech-savvy audiences. Billboards, posters, and TV ads can highlight key provisions of laws like the Discrimination Against Persons with Disabilities Act, making them accessible to the broader public.[30] To guarantee that they reach a variety of groups, including people with disabilities themselves, these programs must be inclusive and use reachable arrangements such as braille, sign language interpretation, and simplified language.

2. **Involvement of Stakeholders**

All parties involved—government agencies, advocacy groups, non-governmental organizations (NGOs), and businesses—must actively participate in the effective distribution of policy information. Government agencies should take the initiative by funding awareness campaigns and working with groups that cater to people with disabilities to plan and carry out these projects. Because they frequently have grassroots contacts, NGOs and advocacy groups can aid in community mobilization and focused outreach to underserved groups. By include discussions on disability rights in their curricula and activities, businesses, schools, and places of worship can all act as platforms for increasing awareness. Private businesses can act as role models for larger societal change by supporting campaigns or putting workplace inclusion policies into place.[31] This group effort guarantees that

[29] OI Eze *et al*, 'Leveraging Technology to Bridge the Policy Innovation Gap in Developing Countries: Enhancing Service Delivery and Public Engagement', *West African Journal of Interdisciplinary Research* (ISSN: 3027-1878), Vol. 2(2) <https://www.openjournals.ijaar.org/index.php/wajir/article/view/703/901> accessed on 4 January 2025.

[30] J Freiwirth, 'Community-Engagement Governance: Engaging Stakeholders for Community Impact', *The Nonprofit Quarterly* (2013) 183-209 <https://inspiringcommunities.org.nz/wp-content/uploads/2019/03/Freiwirth-2011-Community-Engagement-Governance.pdf> accessed on 7 January 2025.

[31] A Ismail, *Creating a Positive Social Impact: Examining Diversity and Inclusion Strategies in Finnish Corporate Marketing* (2024) <https://oulurepo.oulu.fi/bitstream/handle/10024/50175/nbnfioulu-202406014141.pdf;jsessionid=C5C491D133B7C4B10FDC877C76DAE656?sequence=1> accessed on 6 January 2025.

policy awareness is a shared commitment to inclusion rather than solely the government's responsibility.

3. **Training and Education**

To guarantee that policy knowledge results in meaningful change, training and education are essential. To comprehend the rights of people with special needs and their role in upholding them, professionals including teachers, healthcare providers, and law enforcement personnel require particular training. For example, police personnel can receive training on how to handle situations of abuse or discrimination against people with disabilities, and educators can learn about inclusive teaching practices. Families of people with special needs should also benefit from these programs, which should teach them how to advocate for their loved ones and provide information about resources.[32] Another good way to raise awareness early on and create a generation that loves equity and inclusion is to incorporate disability rights into school curricula.

4. **Accessible Communication**

In order to reach a varied audience, it is imperative that information regarding disability policies be presented in accessible formats. It can be difficult for many people with special requirements, such the deaf and the visually impaired, to obtain information through traditional channels.[33] Governments and organizations must employ a variety of forms to meet this, such as audio recordings, braille publications, sign language interpretation, and reduced text versions of laws. Digital platforms and assistive technologies, such screen readers and movies with captions, can also aid in the more efficient distribution of information. In addition to empowering individuals with special needs to comprehend their rights,[34] these initiatives show a dedication to involving them in the awareness-raising process itself.

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[32] CS Banks *et al*, *Including families of children with special needs: A how-to-do-it manual for Librarians* (Neal-Schuman Publisher, Chicago, 2014) 1

[33] L Ocasio-Stoutenburg & B Harry, *Case studies in building equity through family advocacy in special education: A companion volume to meeting families where they are* (Teachers College Press, 2021) 1.

[34] A Darvishy & J Manning, 'Accessible Digital Documentary Heritage: guidelines for the preparation of documentary heritage in accessible formats for persons with disabilities' (2020) <https://digitalcollection.zhaw.ch/bitstream/11475/20991/1/2020_Darvishy-Manning_Accessible-digital-documentary-heritage.pdf> accessed on 6 January 2025.

5. **Community-Based Awareness Programs**

One of the most effective ways to promote policy awareness is through grassroots, community-based programs tailored to Nigeria's diverse cultural and linguistic landscape.[35] These programs should involve local leaders, traditional rulers, and community influencers to address the unique needs of each community. For instance, in Anambra State, campaigns could use Igbo to educate people about the rights of persons with special needs, ensuring that the message resonates with local traditions and values. A practical example is the work of the Joint National Association of Persons with Disabilities (JONAPWD) in Enugu State.[36] To inform families and community members about the Discrimination Against Persons with Disabilities Act and its implications for public places, work, and education, they arranged town hall meetings. At the grassroots level, these regional initiatives make policy provisions more relevant and actionable while also assisting in the reduction of stigma and misinformation.

6. **Leveraging Technology for Dissemination**

In Nigeria, policy awareness can be greatly increased through the use of digital platforms and technology, particularly among younger, urban populations.[37] Campaigns that highlight important facets of disability rights and share success stories of inclusion can be run on social media sites like Facebook, Instagram, and Twitter, focusing on urban areas like Lagos, Abuja, and Port Harcourt. For example, in Lagos State, an NGO named The Inclusion Project used social media to promote the significance of accessible transportation for those with disabilities.[38] In order to start a national dialogue and eventually persuade the Lagos State administration to implement wheelchair-accessible buses, they collaborated with influencers and employed hashtags. This illustration demonstrates how effective internet activism is at elevating voices and encouraging responsibility. Mobile messaging apps like WhatsApp can be used to

[35] S Leonard *et al,* 'The Role of Community Leaders and Local Businesses in Effective Communication Usage for Insecurity Reduction in Ekiti State, Nigeria', *World Journal of Sociology and Law* (2024) 35.
[36] P Okah *et al,* Formal support services for People living With Disabilities (PWDs) in Southeast Nigeria', *Journal of Social Work in Developing Societies*, 5(2) (2023) 50 <https://www.ajol.info/index.php/jswds/article/view/256751/242525> accessed on 3 January 2025.
[37] A Agbeyangi *et al*, 'Nigeria's ICT and Economic Sustainability in the Digital Age', *arXiv:2401.03996v1 [cs.CY]* (2024) <https://arxiv.org/pdf/2401.03996> accessed on 3 January 2025.
[38] World Bank Group, *op cit.*

convey brief, easily readable messages in local languages to underserved and rural areas, making sure that even people without internet access are informed.

7. **Capacity Building and Training**

Another recommendation is the establishment of capacity-building programs for key players, such as schools, doctors, and law enforcement. These programs' primary objective should be to equip these professionals with the knowledge and skills necessary to safeguard and defend the rights of individuals with disabilities.[39] For example, the Kano Disability Rights Commission has trained teachers in inclusive education methods in Kano State to better support kids with disabilities in public schools. To improve service delivery and ensure that policies are implemented successfully, such initiatives might be extended across the country. Workshops for training can also cover topics like handling discrimination complaints, addressing cultural stereotypes about impairments, and designing accessible spaces.[40]

8. **Government Accountability and Monitoring**

Lastly, to guarantee that disability-related laws are implemented effectively, the government must set up strong monitoring and evaluation systems. Establishing impartial organizations to monitor adherence to regulations such as the Discrimination Against Persons with Disabilities Act is part of this.[41] For instance, the administration of Ondo State set up a disability desk office with the responsibility of keeping an eye on accessibility in public spaces and services. These kinds of programs are admirable, but in order to guarantee accountability and openness, they should be extended to other states and involve frequent reporting.[42] In order to enable people with special needs to report rights abuses and offer suggestions for policy changes, policymakers should also work with civil society organizations to establish feedback systems.

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[39] United Nations Human Rights Office of the High Commissioner, *op. cit.*
[40] K Dali, 'The Lifeways we avoid: The role of information avoidance in discrimination against people with disabilities', *Journal of Documentation*, Vol. 74(6) (2018) 1258-1273.
[41] *Ibid.*
[42] H Yu & DG Robinson, 'The New Ambiguity of Open Government', *UCLA L. Rev. Discourse*, Vol. 59 (2011) 178.

6.0 Conclusion

One of the most important steps in developing or building a society that is more equal and inclusive in Nigeria is raising effective policy knowledge of the rights of people with special needs.[43] Significant gaps in public knowledge and implementation persist despite the existence of legislative frameworks such as the Discrimination Against Persons with Disabilities Act. These disparities support structural impediments that prevent people with special needs from fully engaging in healthcare, work, education, and other facets of society. A multidimensional strategy that emphasizes stakeholder engagement, advocacy, and awareness is needed to address these issues. For a country aiming for sustainable development, the path toward inclusiveness is both a moral and legal requirement. Nigeria can unleash the potential of millions of its people by increasing public awareness of disability rights and making sure that policies are properly explained and carried out. Governments, people, corporate sector participants, and civil society organizations will all need to work together to complete this process. By working together, these parties may provide a setting free from prejudice and exclusion, enabling people with special needs to lead happy, meaningful lives. Any policy's potential to significantly affect people's lives is ultimately what determines its success. For Nigeria, this entails going above and beyond rhetorical pledges to promote an inclusive culture where diversity is valued and everyone has an equal chance to contribute to the advancement of the country. The country may provide a standard for other African countries to follow by bridging the gap between policy and practice via persistent campaigning, education, and accountability.

7.0 Recommendations

1. Governments should initiate nationwide campaigns using accessible formats like radio, TV, and social media to educate the public on the rights of persons with special needs.
2. Disability rights and inclusion should be incorporated into school curricula to foster awareness and empathy from an early age.

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[43] NC Umeh, *op. cit.*

3. Train educators, healthcare providers, law enforcement, and policymakers should be trained on how to implement and support inclusive practices effectively.
4. Traditional rulers, religious leaders, and community influencers should be involved in spreading awareness and addressing cultural stigmas about disabilities.
5. Policy information should be made available in braille, sign language, audio formats, and local languages to reach all demographics, including rural and underserved areas.
6. Social media and mobile platforms should be utilized to amplify disability rights campaigns and share success stories to inspire action.
7. Independent monitoring bodies should be established to track the implementation of disability laws and address non-compliance with actionable penalties.
8. NGOs and Private Sector should collaborate to encourage partnerships between government, NGOs, and private businesses to fund, design, and implement inclusive programs and services.

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Institutionalizing Non-Domination Principle in Anti-Corruption Reform of Indonesia's Energy Governance

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ABSTRACT

Corruption in energy governance in Indonesia reveals an imbalance of power between bureaucratic actors, corporations, and the public, giving rise to a form of structural domination that is difficult to overcome through conventional administrative approaches. This study offers a theoretical contribution by applying the principle of non-domination in republicanism theory as an analytical framework to understand the roots of this domination and assess the weaknesses in institutional design that enable corrupt practices, particularly in oil procurement and imports. Through a normative juridical method combined with doctrinal analysis and a case study of corruption at Pertamina during the 2018–2023 period, this study finds that corruption not only causes fiscal losses but also reduces the state's capacity to regulate the supply chain, deepens dependence on private and foreign actors, and weakens economic sovereignty as intended by Article 33 of the 1945 Constitution. The results of the study identify three institutional mechanisms that can operationalize the principle of non-domination in energy governance, namely procedural openness, independence of supervision and management of state-owned enterprises, and public objection mechanisms to review energy policies. These findings emphasize that anti-corruption reform requires a reconstruction of power structures, not just increased administrative *compliance. This research contributes to the literature by combining republicanism theory with energy law and anti-corruption studies, while also opening space for further research on the application of the non-domination framework in other energy sub-sectors and in the governance of strategic resources in developing countries*

Keywords: *Corruption; Economic Sovereignty; Energy Governance; Republicanism*

I. INTRODUCTION

The energy and extractive sectors have a high level of corruption risk, particularly in the form of bribery, procurement contract manipulation, and collusion between the government and private actors. Corruption in this sector is a complex legal issue.[1] Because it involves power relations between the state, business actors, and public officials, which often opens space for the domination of certain actors in strategic decision-making in the energy sector. One example of corruption in oil procurement by PT Pertamina, Subholding, and Cooperation Contractors (KKKS) for the 2018-2023 period is a concrete example of how strategic policies in the energy sector have caused state losses of IDR 193.7 trillion.[2] The large amount of state losses in the energy sector due to corruption will erode economic resources and reduce the state's ability to manage energy for public welfare. The impact of this corruption is extensive, ranging from state financial losses, increased energy inequality, to a weakening of national economic competitiveness. In addition, corruption in energy governance not only reduces the efficiency of the sector but also increases the state's dependence on foreign companies, which can threaten national economic sovereignty.

In Robertus Robet's view, the concept of republicanism emphasizes the importance of people's sovereignty and democratic control over the management of public resources to prevent domination by economic and political elites,[3] such as natural resources. In the

[1] Suhariyanto, Didik, et al. "Pengelolaan Participating Interest Wilayah Kerja Migas Oleh Badan Usaha Milik Daerah." *The Juris*, vol. 8, no. 1, June 2024, pp. 141–46. *ejournal.stih-awanglong.ac.id*, https://doi.org/10.56301/juris.v8i1.1244.
[2] Rosa, Maya Citra. "Korupsi Pertamina Rp 193,7 Triliun Hanya 2023, Berapa Kerugian Selama 5 Tahun?" *KOMPAS.com*, 27 Feb. 2025, https://www.kompas.com/sumatera-utara/read/2025/02/27/083325888/korupsi-pertamina-rp-1937-triliun-hanya-2023-berapa-kerugian.
[3] Robert, Robertus. *Republikanisme*. CV Marjin Kiri, 2021.

context of energy governance, corrupt practices reflect the loss of public control over energy policies that should prioritize the interests of the wider community. However, when decision-making only benefits the interests of a handful of actors who have economic and political power, the objectives of natural resource management are certainly not in accordance with the constitutional mandate as stated in Article 33 paragraph (3) of the Constitution of the Republic of Indonesia, which states that:

> *"The earth, water, and natural resources contained therein are controlled by the state and used for the greatest prosperity of the people."*

This constitutional mandate emphasizes that the state not only has the authority, but also the obligation to ensure that every strategic decision in the energy sector is under public control and directed towards shared prosperity. Therefore, the role of the government in energy management is very important in terms of economic development and maintaining a country's energy sovereignty.[4] Such management must emphasize the importance of accountability, transparency, and public participation in policymaking to ensure that the country's resources are managed for the common good, not just for certain elites.[5] In the energy sector, the application of this principle is essential to avoid abuse of power and corrupt practices, which are often major obstacles to ensuring fair and sustainable access to energy.[6]

The principle of good governance in the energy sector requires accountability and transparency in every policy issued by the government. Law No. 1 of 2025 on State-Owned Enterprises (SOEs) emphasizes that SOEs have a strategic role in the national economy and must be managed based on the principles of good corporate governance. However, cases of corruption in Pertamina's oil governance show a failure to implement these principles, particularly in terms of oversight and accountability of decision-makers.

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[4] Drobush, Iryna, et al. "Ensuring State Sovereignty As A Guarantee Of The Country's Economic Development." *Baltic Journal of Economic Studies*, vol. 11, no. 3, Aug. 2025, pp. 212–21. *www.baltijapublishing.lv*, https://doi.org/10.30525/2256-0742/2025-11-3-212-221.
[5] Sari, Ade Risna. "The Impact of Good Governance on the Quality of Public Management Decision Making." *Journal of Contemporary Administration and Management (ADMAN)*, vol. 1, no. 2, Aug. 2023, pp. 39–46. *journal.literasisainsnusantara.com*, https://doi.org/10.61100/adman.v1i2.21.
[6] Sovacool, Benjamin K. "Expanding Carbon Removal to the Global South: Thematic Concerns on Systems, Justice, and Climate Governance." *Energy and Climate Change*, vol. 4, Dec. 2023, p. 100103. *ScienceDirect*, https://doi.org/10.1016/j.egycc.2023.100103.

Legal uncertainty due to weak oversight of the energy sector can hamper investment and lead to inefficiency in national energy supply. Empirical studies show that countries with high levels of corruption in the energy sector tend to have more expensive energy prices and uneven distribution.[7]

From this description, it can be understood that corruption in the energy sector is a multi-layered problem that requires handling from various dimensions. The causes are not only weak internal governance and ineffective external supervision, but also political intervention that allows certain actors to dominate the decision-making process. This situation shows that corruption is not only financially detrimental but also erodes public trust and weakens the state's ability to maintain strategic control over the energy sector. Recent developments confirm that corruption prevention efforts need to be strengthened through structural reforms and increased transparency[8] so that energy management is not controlled by the interests of a handful of actors.

Research in the field of energy has been conducted by academics and researchers, including Admojo et al., who examined the failure to implement Good Corporate Governance (GCG) in the 2018–2023 Pertamina corruption case, highlighting the weak accountability, transparency, independence, and effectiveness of the three lines of defense as factors that triggered systemic corruption in the state-owned energy company. The analysis was conducted through a qualitative case study based on legal documents, supervisory reports, and governance literature, resulting in recommendations for strengthening the whistleblowing system, reforming organizational culture, evaluating the implementation of ISO 37001, and improving internal and external supervision. This study contributes to mapping the structural vulnerabilities of corporate governance in the aftermath of the scandal.[9]

The fundamental difference with this study lies in its theoretical orientation, as previous studies positioned Good Corporate Governance (GCG) as a technocratic

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[7] Gani, Azmat. "Sustainability of Energy Assets and Corruption in the Developing Countries." *Sustainable Production and Consumption*, vol. 26, Apr. 2021, pp. 741–51. *ScienceDirect*, https://doi.org/10.1016/j.spc.2020.12.023.

[8] AGU, J. C., et al. "Governance and Anti-Corruption Measures in Nigeria: Strategies for Enhancing Transparency, Accountability and Public Trust." *International Journal of Economics and Public Policy*, vol. 8, no. 1, 2024, pp. 1–15. *eprints.gouni.edu.ng*.

[9] Admojo, Muhammad Yansen Suryo, et al. "Implementasi Good Corporate Governance Dalam Menanggapi Tindak Korupsi Study Kasus PT Pertamina." *Innovative: Journal Of Social Science Research*, vol. 5, no. 4, July 2025, pp. 970–80. *j-innovative.org*, https://doi.org/10.31004/innovative.v5i4.19232.

instrument for mitigating corruption, while the author's study uses a republicanism framework and the principle of non-domination, which emphasizes power relations, oligarchic domination, and the loss of public control over energy, which are normative dimensions that were not touched upon in previous studies. The application of the principle of non-domination in republicanism is relevant as a normative framework to ensure that energy policy is free from arbitrary control and remains under public control, so that economic sovereignty can be maintained more effectively. This study aims to analyze how the principle of non-domination in the concept of republicanism can be used as a normative framework to overcome corrupt practices in the energy sector and strengthen economic sovereignty through more transparent and accountable governance.

II. DISCUSSION

1. The Impact of Corruption in the Energy Sector

Based on a report by the Attorney General's Office of the Republic of Indonesia, the import of crude oil and fuel carried out by PT Pertamina Patra Niaga and PT Kilang Pertamina Internasional during the period 2018–2023 involved intermediaries or brokers, without sufficient clarity regarding the basis for disregarding the use of domestic production.[10] This practice causes financial inefficiency for the state because purchasing energy products through intermediaries makes import prices more expensive[11] if directly or by prioritizing domestic supply. This situation increases the budget burden and reduces the effectiveness of public fund utilization. From a constitutional law perspective, this contradicts the concept of the welfare state, which mandates the state to ensure the welfare of the people[12] through fair and equitable management of strategic resources.

In addition, corruption cases at PT Pertamina, particularly those related to the management of crude oil and refinery products, have had a widespread impact on energy policy and consumer protection. This corruption has not only caused losses to state finances, but has also affected fuel subsidy policies, information transparency in the

[10] Kejaksaan Agung Republik Indonesia. *7 Tersangka Ditetapkan Dan Ditahan Dalam Perkara Tata Kelola Minyak Mentah Di Pertamina*. 2025, https://www.kejaksaan.go.id/conference/news/3996/read.
[11] Admojo et al. *Op cit*
[12] Butarbutar, Aloysius Sahala, and Elisabeth Nurhaini Butarbutar. "Peran Hukum Dalam Mewujudkan Negara Kesejateraan Republik Indonesia Yang Berkeadilan Sosial." *Jurnal Hukum Justice*, Feb. 2025, pp. 123–33. *ejournal.ust.ac.id*.

energy sector, and the welfare of the community as consumers to access affordable and sustainable energy will be increasingly difficult. Irregularities in the management of crude oil through fuel blending practices and the manipulation of refinery production reports to encourage increased imports have demonstrated a lack of compliance with the objectives of the national energy policy as stipulated in Article 11 paragraph (3) letter d of Law Number 22 of 2001 concerning Oil and Gas, which prioritizes energy security and efficient utilization of domestic resources[13] in national energy management.

This case illustrates the weak implementation of corporate governance principles in preventing and stopping systemic fraud. To strengthen corruption prevention, state-owned enterprises have a responsibility to apply the principles of Good Corporate Governance (GCG) in accordance with Minister of State-Owned Enterprises Regulation No. PER-01/MBU/2011. This responsibility requires improving the quality of transparency and accountability at every stage of the procurement of goods and services, with implementation referring to the provisions of Presidential Regulation No. 12 of 2021. The application of these rules is expected to ensure that the procurement process is open, traceable, and protected from potential abuse of authority.

2. Application of the Principle of Non-Domination in Corruption Prevention in Energy Sector Management

Republicanism is understood as a political philosophy rooted in sympathy, moral energy, and ideas about freedom and republican forms of government. This doctrine places the public interest above private interests. The term “public” in the framework of republicanism refers not only to formal institutions or structures, but also to citizens who live in solidarity within a political community.[14] Therefore, the concept of republicanism becomes a normative orientation that encourages citizens to reaffirm the public interest as a form of solidarity for active, rational, and equal citizenship in a republic,[15] including

[13] Darmansyah, Erick, and Ariawan Gunadi. “Dinamika Hukum dan Politik dalam Dugaan Kasus Korupsi yang Melibatkan Pertamina: Analisis Yuridis dan Implikasinya terhadap Kebijakan Energi Nasional.” *Jurnal Hukum Lex Generalis*, vol. 5, no. 11, Nov. 2024. *ojs.rewangrencang.com*, https://doi.org/10.56370/jhlg.v5i11.1065.
[14] Robert. *Op cit*
[15] Abjan, Gustamin, et al. “Republicanism-Based Budgeting: Politik Kewargaan Dan Resistensi Terhadap Neoliberalisme Dan Oligarki.” *Jurnal Reviu Akuntansi Dan Keuangan*, vol. 14, no. 3, Oct. 2024, pp. 710–35. *ejournal.umm.ac.id*, https://doi.org/10.22219/jrak.v14i3.36011.

in the management of the energy sector, an area that is often influenced by neoliberal logic, oligarchic domination, the interests of certain elites, and the tendency to concentrate management authority in certain entities.

The principle of republicanism rejects all forms of domination that limit people's access to their rights,[16] not to enrich certain individuals or groups. Article 33 of the 1945 Constitution emphasizes the importance of the state's role in ensuring that energy management remains under public control and is not controlled by capitalist interests. In the perspective of republicanism, the state must prevent any form of domination that harms the people in obtaining benefits from energy resources. This is in line with The Constitutional Court, through Decision No. 85/PUU-XI/2013, that energy management must remain in the control of the state to protect the interests of the people. This decision invalidates provisions in the Oil and Gas Law that provide opportunities for foreign domination in national energy management.

This is in linewith the principle of non-domination in the concept of republicanism, which refers to a condition in which individualsor communities are not under the control of another party that can actarbitrarily (arbitrary power). In energy management, this conceptemphasizes that the state, corporations, and other actors should not controlenergy resources in a way that negates public control, transparency, and accountability.[17] Communities must be given space to participate in energy policymaking to ensure that policies do not only benefit certain groups. The government needs to establish an effective complaint mechanism so that reports from the public can be followed immediately. With the active involvement of the community, energy governance can be more transparent and accountable. Institutional reform is a fundamental step in building more transparent and accountable energy governance.

Robertus Robet explained that republicanism is oriented towards popular sovereignty and emphasizes the importance of transparency and accountability in the management of public resources.[18] The principle of republicanism demands public control over energy policy so that it is not controlled by oligarchs who only pursue

[16] Bellamy, Richard. "Republicanism: Non-Domination and the Free State." *Routledge International Handbook of Contemporary Social and Political Theory*, 2nd ed., Routledge, 2021.
[17] Söylemez, Duygu Ilkhan, and Adnan Söylemez. "Governance Frameworks for Renewable Energy Development: Energy Transition and Public Governance." *Revista de Gestão Social e Ambiental* [São Paulo, Brazil], vol. 18, no. 11, 2024, pp. 1–19. *ProQuest*, https://doi.org/10.24857/rgsa.v18n11-110.
[18] Robert. *Op cit*

personal gain.[19] Any policy relating to the energy sector must be subject to the principles of accountability and transparency. If energy governance is not carried out with these principles, there will be distortions that harm the interests of the people. Legal reform in energy management is a crucial step to improve a system that has experienced various irregularities.

In the republicanism theory proposed by Philip Pettit, freedom in a state does not only mean the absence of intervention, but also freedom from structural domination.[20] If energy policy is controlled by certain groups without a strong monitoring mechanism, then people lose their freedom to access affordable and sustainable energy. Transparency and accountability in energy governance are fundamental aspects to prevent such domination.[21] This is relevant to the principles of Good Corporate Governance (GCG) are an important instrument in ensuring energy governance that is cleaner from corrupt practices and the domination of certain groups.

The principle of transparency demands openness in every decision-making process in the energy sector, so that the public can clearly know how energy resources are managed.[22] Accountability requires every party involved in energy management to be responsible for the policies they adopt and their impact on society. The principle of responsibility ensures that energy companies, both state-owned and private, must carry out their operations in compliance with applicable regulations and be responsible for the public interest. In addition, the principle of independence in GCG emphasizes that energy governance must be free from the intervention of parties with conflicts of interest. The principle of fairness ensures that distribution and access to energy is done equitably, so that there is no monopoly or exploitation of the public.[23]

The principles of Good Corporate Governance (GCG) must be integrated with legal norms governing natural resource management so that energy governance remains

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[19] Ismayani, Ismayani, et al. "Analisis Pengaruh Oligarki Terhadap Demokrasi Dan Hak Asasi Manusia Di Indonesia." *All Fields of Science Journal Liaison Academia and Sosiety*, vol. 2, no. 2, 2022, pp. 385–95. *j-las.lemkomindo.org*, https://doi.org/10.58939/afosj-las.v2i2.355.
[20] Robert. *Op cit*
[21] Mason, Michael. "Transparency, Accountability and Empowerment in Sustainability Governance: A Conceptual Review." *Journal of Environmental Policy & Planning*, Jan. 2020, world. *www.tandfonline.com*, https://www.tandfonline.com/doi/abs/10.1080/1523908X.2019.1661231.
[22] Daffa, Adika Reyhan, and Eliada Herwiyanti. "Tinjauan Literatur Prinsip Good Corporate Governance (GCG) Pada Badan Usaha Milik Negara Indonesia." *Economics and Digital Business Review*, vol. 4, no. 2, Oct. 2023, pp. 217–30. *ojs.stieamkop.ac.id*, https://doi.org/10.37531/ecotal.v4i2.803.
[23] Daffa and Herwiyanti. *Op cit*

in line with national interests. Therefore, every policy related to the energy sector must consider aspects of social justice and avoid the practice of domination of certain groups that are contrary to the principle of community economic sovereignty.[24] The existence of regulations oriented towards the public interest is an important element in preventing privatization practices that can harm the state and the wider community. With policies that prioritize the balance between national interests and business aspects, energy management can remain under state control in accordance with the constitutional mandate.

Realizing energy governance that is free from corruption requires a republicanism-based approach, which rejects domination and ensures that the management of public resources is in favor of the interests of the people. For this reason, several policies can be implemented to prevent abuse of authority in national energy management. The policies that can be implemented are as follows:

a. Strengthening Regulation and the Rule of Law. Corruption in energy governance is inextricably linked to legal loopholes that can be exploited by certain parties. Strengthening regulations is therefore a crucial step to ensure that all energy-related policies remain within constitutional boundaries. Article 33 of the 1945 Constitution must serve as the primary reference in safeguarding energy management from being misused for the benefit of a select few. Any deviations in energy governance must be addressed decisively through effective legal instruments. Moreover, sanctions against corruption in the energy sector should be reinforced to create a deterrent effect and prevent similar misconduct in the future.
b. Transparency and Accountability in Energy Governance. All decisions related to energy management must be accessible and subject to public oversight. Law No. 14 of 2008 on Public Information Disclosure grants the public the right to obtain information regarding the governance of natural resources, including energy. Strategic energy policies, such as cooperation agreements and Pertamina's financial reports, must be formulated transparently and be subject to independent audits. This

[24] Marlina, Heni, and Serlika Aprita. "Penegakan Hukum Terhadap Kasus Korupsi Pt. Timah Sebagai Bentuk Potret Buruk Tata Kelola Sektor Ekstraktif." *The Juris*, vol. 8, no. 1, June 2024, pp. 87–94. *ejournal.stih-awanglong.ac.id*, https://doi.org/10.56301/juris.v8i1.1182.

level of transparency will minimize opportunities for corrupt practices while ensuring that every policy is genuinely implemented in the public interest.

c. Structural Reform of State-Owned Enterprises (SOEs) in the Energy Sector. Pertamina, as a strategic state-owned enterprise (SOE), plays a crucial role in maintaining national energy security. However, political influence often results in corporate policies that serve particular interests rather than the public good. Structural reform in the recruitment system for energy-sector SOE executives must be implemented to ensure that strategic positions are occupied solely by individuals with proven competence and integrity. Furthermore, internal oversight mechanisms must be strengthened through supervisory boards and commissioners with high independence and no political affiliations. These measures will help prevent abuses of power in energy governance.
d. Public Participation and Strengthening Community Oversight. The public has the right to participate in overseeing energy governance. This right can be realized through reporting and complaint mechanisms for suspected violations in the energy sector. The government must provide accessible reporting channels and ensure that every public complaint is addressed seriously. Additionally, civil society organizations should be given the space to monitor energy policies to prevent them from disproportionately benefiting certain groups. The broader the public involvement in oversight, the narrower the opportunities for corrupt practices to thrive in energy governance.
e. Optimizing the Role of Anti-Corruption Institutions and Law Enforcement Agencies. Eradicating corruption in the energy sector requires strong coordination among law enforcement institutions. The Corruption Eradication Commission (KPK), the Attorney General's Office, and the Supreme Audit Agency (BPK) must collaborate effectively in monitoring and investigating alleged corruption cases within the energy sector. Additionally, asset recovery mechanisms must be implemented to ensure that stolen state assets are reclaimed and redirected for public benefit. To uphold integrity, law enforcement agencies must maintain their independence and remain resistant to political pressure. Firm and consistent law enforcement is essential to systematically eliminating corruption in energy governance.

f. Implementation of Republicanism Principles in Energy Governance. The principle of republicanism emphasizes that energy resources must be managed without domination by specific groups. Energy policies should be formulated based on the principles of justice and non-domination to prevent their management from disproportionately benefiting a small elite. Policymaking in the energy sector must also follow a participatory mechanism, involving various stakeholders, including the public, academics, and independent organizations. Furthermore, the state has a responsibility to ensure that energy remains under public control and does not fall into private hands at the expense of national interests. By consistently applying republicanism principles, energy governance can become more transparent, accountable, and oriented toward public welfare.

Realizing energy governance free from corruption requires a strong commitment from various stakeholders, including the government, society, and law enforcement institutions. Policy reforms encompassing regulation, transparency, SOE reform, public participation, and law enforcement must be comprehensively implemented to ensure that energy management genuinely serves the public interest. With the consistent application of republicanism principles, national energy resources can be managed fairly, sovereignly, and sustainably. The state must ensure that every energy policy does not create opportunities for abuse of power or domination by certain interests that contradict the principles of social justice. Strengthening the rule of law and implementing strict oversight in the energy sector are fundamental steps to prevent corruption and ensure that energy resources are managed for the greatest benefit of the people.

III. CONCLUSION

Corruption in Indonesia's energy governance reflects an entrenched structure of arbitrary power, and the Pertamina case demonstrates how opaque bureaucratic-corporate relations undermine economic sovereignty and public accountability; accordingly, the principle of non-domination must serve as an institutional design mandate rather than a normative aspiration. The analysis affirms that procedural openness, independence of supervisory and state-owned enterprise management from political interference, and accessible public-objection mechanisms constitute essential safeguards to prevent domination-offering a more structurally responsive alternative to technocratic governance models. While the research is limited by its single-case focus and the political resistance inherent in challenging existing power hierarchies, it provides a significant theoretical contribution by integrating republicanism into energy and anti-corruption law, thereby reframing governance reform around power distribution and democratic legitimacy. Future applications of these findings require institutional reforms that systematically constrain domination and enable continuous public oversight, while further comparative and empirical research is needed to validate and broaden the applicability of the non-domination framework across energy subsectors and other areas of public governance.

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The Hidden Cost of Creativity: How Poster Design Competitions Facilitate Economic and Moral Rights Appropriation in Indonesia

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ABSTRACT

Design competitions have become a prominent avenue for students and emerging designers in Indonesia to gain visibility, yet the copyright terms embedded in these contests often conceal significant legal and ethical risks. This study investigates whether poster design competitions genuinely empower creators or instead function as mechanisms for the systematic appropriation of economic and moral rights. Using an empirical legal research methodology with qualitative online ethnography, the study observes competition cycles across ministries, local governments, universities, and private institutions. Competition guidelines, terms and conditions, and post-competition publications were coded to identify patterns of copyright transfer, exclusivity obligations, and moral rights waivers, and these findings were interpreted against Indonesia's 2014 Copyright Law and broader socio-legal scholarship. The analysis reveals that many competitions require participants to automatically transfer full copyright ownership merely by submitting their work without a valid written agreement rendering such transfers legally defective. Even more concerning, several competitions implicitly or explicitly demand waivers of moral rights, which are inalienable under Indonesian law. These practices compromise fair attribution, limit portfolio development, and disadvantage young designers who rely on credited works for career advancement. Rather than fostering creativity, *many competitions replicate power imbalances and extract value from creators without adequate recognition or compensation. By exposing how design competitions blur the line between opportunity and exploitation, this study invites deeper reflection on the governance of creative labor in Indonesia. The findings underscore the need for clearer contractual safeguards and regulatory oversight to ensure that competitions operate ethically, legally, and in genuine support of creative development.*

Keywords: *Attribution, Copyright Law, Design Competitions, Economic Rights, Moral Rights.*

I. INTRODUCTION

Globally, design competitions have evolved significantly from their origins, where the primary focus was on aesthetic beauty.[1] Today, they encompass a wide range of objectives and benefits, driven by advancements in digital platforms and the internet.[2] These competitions are no longer just about creating beautiful designs but have become multi-disciplinary events that foster innovation, community building, and collaboration.[3]

In recent years, design competitions have evolved into dynamic platforms that go beyond mere artistic expression. A key trend is the multi-disciplinary approach increasingly adopted in modern competitions.[4] Participants are often required to integrate knowledge from various fields such as engineering, architecture, graphic design, and

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[1] Alexander Bowen-Rotsaert et al., "Australian space design competition: Designing a habitat to collect and process space debris", in *Proceedings of the International Astronautical Congress, IAC*, vol 2019-Octob, 2019, https://www.scopus.com/inward/record.uri?eid=2-s2.0-85079119343&partnerID=40&md5=b38c0d885770a32d617fb133869db9da; Sabrina Adamczyk, Angelika C Bullinger, en Kathrin M Möslein, "Innovation Contests: A Review, Classification and Outlook", *Creativity and Innovation Management* 21, no 4 (2012): 335 – 360, https://doi.org/10.1111/caim.12003.

[2] Onur Mustak Cobanli, Alessandro Deserti, en Cabirio Cautela, "Evolution of design competitions: A scientific study on the state-of-art of design competitions", *Design Principles and Practices* 5, no 3 (2011): 391 – 405, https://doi.org/10.18848/1833-1874/cgp/v05i03/38059.

[3] Onur Mustak Cobanli, "Integrating end-users to the design process through design competitions", in *DPPI'11 - Designing Pleasurable Products and Interfaces, Proceedings*, 2011, https://doi.org/10.1145/2347504.2347568.

[4] Rebecca Blust en David Myszka, "Merging design competition and industry sponsored projects", in *ASEE Annual Conference and Exposition, Conference Proceedings*, 2005, 10277 – 10284, https://www.scopus.com/inward/record.uri?eid=2-s2.0-22544459097&partnerID=40&md5=d726c740fba07821ecf984fd45fcba66.

environmental science.[5] This holistic framework promotes complex problem-solving and encourages contestants to think across traditional disciplinary boundaries, fostering innovation that is both creative and functional.[6]

Reflect to Indonesian experience, the trend of design competitions, particularly for posters and logos, organized by universities, government entities, and private institutions in Indonesia has become increasingly prominent in recent years. This phenomenon reflects a growing emphasis on creativity, innovation, and practical skill application among students and young professionals. Various factors contribute to the rising popularity of these design competitions.

First, the competitive environment within higher education institutions has intensified due to the increasing number of graduates and elevated quality expectations that align with global standards.[7] The global competition has heightened the necessity for graduates to possess both theoretical knowledge and practical skills that can be demonstrated through real-world applications, such as design competitions. This trend aligns with experiential marketing factors that are known to enhance competitiveness, especially in Indonesia's higher education sector.[8]

Go further, these competitions serve as platforms for students and emerging designers to showcase their creativity and gain recognition in the industry.[9] The integration of competition into educational practices aligns with pedagogical goals and fosters an entrepreneurial spirit among participants. Local brands, as indicated by recognize the importance of effective marketing communication strategies to distinguish

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[5] Ronald Baier en Tao Yong, "An interdisciplinary pedagogical teaching approach for engineering, in conjunction with architecture and construction with solar decathlon project", in *ASEE Annual Conference and Exposition, Conference Proceedings*, 2007, https://www.scopus.com/inward/record.uri?eid=2-s2.0-85029037678&partnerID=40&md5=82fb1bb45d9950fe9ed8b0dcec1c1469.

[6] Congcong Liu en Adzira Binti Husain, "The Impact of Design Competitions on the Skill Development and Employability of Chinese Graphic Design Students", *Eurasian Journal of Educational Research* 2024, no 113 (2024): 277 – 289, https://doi.org/10.14689/ejer.2024.113.17; Rui-Lin Lin, "Teaching achievement study of creative design competitions", *Advances in Intelligent Systems and Computing* 536 (2017): 72 – 79, https://doi.org/10.1007/978-3-319-48490-7_9.

[7] Prim Masrokan Mutohar en Nik Haryati, "The Effect of Experiential Marketing Factors on the Competitiveness of Islamic Higher Education in Indonesia", *Saudi Journal of Business and Management Studies*, 2020, https://doi.org/10.36348/sjbms.2020.v05i06.003.

[8] Adamczyk, Bullinger, en Möslein, "Innovation Contests: A Review, Classification and Outlook".

[9] G Marshall Molen, "Benefit of student participation in advanced Vehicle Technology Competitions", in *ASEE Annual Conference and Exposition, Conference Proceedings*, 2010, https://www.scopus.com/inward/record.uri?eid=2-s2.0-85029105478&partnerID=40&md5=c0d8bc2c4d08822b14c9bec6705ecc3d.

themselves in a crowded marketplace. Design competitions provide avenues for these brands to discover fresh talent and ideas that can enhance their visibility.[10]

In addition to fostering creativity and innovation, these competitions contribute to the development of a vibrant design culture in Indonesia. Case studies, such as the redesign of functional items like fish-ball selling carts, illustrate how design can significantly impact local culture and business competitiveness. As shown by Fitorio Bowo in their publication,[11] initiatives that simplify and enhance design have the potential to improve product appeal and competitiveness among local businesses. This relationship between design education and local industry underscores the value of engaging students in practical projects through competitions.[12]

Furthermore, design competitions are often supported or organized by government and private institutions aiming to promote national branding and cultural identity. These entities understand that design plays a pivotal role in shaping Indonesia's image on the global stage. Events like these not only highlight local talent but also encourage collaboration between various sectors, enhancing the overall competitiveness of Indonesian design in the international market.[13]

The issue of copyright transfer in design competitions, particularly within the Indonesian context, has become a critical area of concern at the intersection of intellectual property rights and the creative industries. The real-world impact on students is particularly severe. As emerging designers, students depend heavily on competition entries, coursework, and freelance projects to build their portfolios.[14] When their work is taken, modified, or commercialized without acknowledgment, they lose not only economic value but also professional visibility and career momentum. Studies indicate

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[10] Agsallita Oktiwulan Putri en Frizki Yulianti Nurnisya, "IMOKEY's Integrated Marketing Communication Strategy in Increasing Product Sales in 2022", *Symposium of Literature Culture and Communication (Sylection) 2022*, 2023, https://doi.org/10.12928/sylection.v3i1.13995.

[11] Fitorio Bowo Leksono en Hari Susanta Nugraha, "Design for the Real World: The Case Study of Fish-Ball Seller Cart", *Idealogy Journal of Arts and Social Science*, 2021, https://doi.org/10.24191/idealogy.v6i2.297.

[12] Jorge Rodriguez en Alamgir Choudhury, "Opportunities and challenges for collaboration industry-Academia via sponsored design competitions", in *Proceedings of 2014 International Conference on Interactive Collaborative Learning, ICL 2014*, 2014, 711 – 714, https://doi.org/10.1109/ICL.2014.7017857.

[13] Ismail Bustany et al., "The 2023 MLCAD FPGA Macro Placement Benchmark Design Suite and Contest Results", in *2023 ACM/IEEE 5th Workshop on Machine Learning for CAD, MLCAD 2023*, 2023, https://doi.org/10.1109/MLCAD58807.2023.10299868.

[14] Yubiao Wang et al., "The impact of virtual technology on students' creativity: A meta-analysis", *Computers & Education* 215 (Julie 2024): 105044, https://doi.org/10.1016/j.compedu.2024.105044.

that such practices can discourage creative risk-taking and diminish students' willingness to engage in open innovation environments.[15] Over time, this undermines the developmental purpose of design education, which aims to cultivate independent thinking, originality, and a strong ethical foundation.

For the design industry, widespread rights transfer and copyright misappropriation contribute to broader economic and professional harm. Unauthorized replication and commercial exploitation of design work weaken the competitive advantage of original creators and distort fair market dynamics. Reports by the World Intellectual Property Organization, highlight substantial financial losses in global creative industries caused by copyright infringement and forced rights transfers. This environment fosters mistrust, limits collaboration, and reduces incentives for innovative production. When young designers feel disempowered or exploited early in their careers, the industry faces long-term stagnation as creativity becomes overshadowed by structural inequities.[16]

A growing number of organizations including universities, government institutions, and private companies frequently include contractual clauses that compel participants to surrender full copyright ownership upon submission of their designs. While these competitions often serve as platforms for creativity and innovation, such practices raise serious ethical questions regarding the recognition of creative labor, the fairness of compensation, and the long-term rights of participants.

One of the most prevalent clauses found in these competition agreements is the requirement of full copyright transfer (moral and economic right). By merely submitting an entry, participants are often deemed to have transferred all rights to their work to the organizing body. This means that the organizers are free to use, reproduce, modify, or commercially exploit the designs without any further remuneration or even proper acknowledgment of the original creator. Such terms not only undermine the economic rights of the designers but also severely limit their ability to feature the work in personal

[15] Liguo Zhang et al., "The Impact of Digital Technology Use on Teaching Quality in University Physical Education: An Interpretable Machine Learning Approach", *Applied Sciences* 15, no 14 (09 Julie 2025): 7689, https://doi.org/10.3390/app15147689.
[16] United Nations Conference on Trade and Development, "Creative Economy Outlook 2024" (New York, NY, USA, 2024).

portfolios or use it for future creative projects an issue especially detrimental for young or emerging designers seeking to build a professional presence.[17]

Another restrictive provision commonly included is the exclusivity clause, which prohibits participants from submitting the same design to other competitions or clients. Even after the competition concludes, participants may remain contractually bound, unable to repurpose or monetize their own creative work elsewhere. This restriction significantly narrows the scope of opportunities for designers to gain exposure or generate income from their original creations, stifling both artistic freedom and economic potential.

Moreover, some contracts go as far as requesting participants to waive their moral rights, the legal rights that ensure creators can claim authorship and protect the integrity of their work. By relinquishing these rights, designers may lose the ability to defend their work from distortion or misuse and could be prevented from being publicly associated with their own creations. This not only undermines their personal and professional reputation but also contravenes the fundamental principles of copyright law, which seeks to balance the interests of creators and users. In light of these issues, the structure of many design competitions in Indonesia appears to favor institutional interests at the expense of individual creators' rights. Without stronger legal awareness, ethical oversight, or regulatory guidance, such practices may continue to exploit creative contributions under the guise of opportunity.

This research aims to critically examine the expanding phenomenon of design competitions and to investigate how their evolving structures particularly within the Indonesian context to shape the creative, educational, and economic experiences of participants. As design competitions increasingly integrate multidisciplinary approaches, technological platforms, and institutional interests, this study seeks to analyse the extent to which these competitions contribute to skill development, innovation, and professional exposure for students and emerging designers. At the same time, the research aims to uncover the ethical, legal, and economic implications of contractual mechanisms embedded within competition guidelines, especially clauses requiring the full transfer of copyright and the enforcement of exclusivity provisions. These contractual practices, as

[17] Melissa Boyle, Stacy Nazzaro, en Debra J O'Connor, "Moral Rights Protection for the Visual Arts", *Journal of Cultural Economics*, 2009, https://doi.org/10.1007/s10824-009-9113-3.

highlighted in the broader discussion, often limit participants' ability to retain control over their creative output, showcase their work, or pursue further opportunities, thereby undermining the developmental value that competitions are intended to provide.

Furthermore, this research intends to evaluate how these copyright practices influence the broader design ecosystem, including trust within the creative industry, incentives for innovation, and the sustainability of creative labour. By exploring real cases and institutional practices, this study seeks to reveal the power imbalances between organizers and participants and assess how such imbalances affect the protection of intellectual property rights. The research also aims to identify gaps in regulatory frameworks and educational policies that leave young designers vulnerable to exploitation. Ultimately, this study strives to formulate recommendations for more equitable competition policies and propose guidelines that safeguard creative rights while still enabling competitions to function as meaningful platforms for innovation, talent discovery, and national branding.

The present study adopts an empirical legal research methodology with a qualitative approach, designed to capture how copyright clauses in design competitions are practiced and experienced in the real world.[18] Rather than limiting itself to normative analysis of statutory provisions, this research treats law as it operates in social and institutional settings specifically, in the context of design competitions organized by ministries, central government bodies, local governments, and private entities in Indonesia. The focus is on understanding how contractual terms related to copyright transfer, exclusivity, and recognition of authorship are constructed, justified, and implemented in practice, and how these arrangements affect students and emerging designers participating in such competitions.

Primary data are obtained through online observational studies using a modern ethnographic approach. The researcher systematically observes and documents several design competitions in Indonesia by "following" their full cycle in digital spaces: from public calls and announcements, competition guidelines, and terms and conditions, to the publication of winners and subsequent use of the submitted designs.[19] The unit of analysis

[18] Sulistyowati Irianto, "Enriching legal studies with socio-legal research", *Advancing Rule of Law in a Global Context*, 25 Februarie 2020, 196–209, https://doi.org/10.1201/9780429449031-25.
[19] Sulistyowati Irianto, "Memperkenalkan Kajian Sosio-Legal dan Implikasi Metodologisnya", in *Kajian Sosio-Legal*, red Adriaan; W. Bedner et al., I (Jakarta: Pustaka Larasan, 2012), 1.

includes competitions hosted by ministries and central government agencies, as well as local governments in Central Java and the Special Region of Yogyakarta (DIY), alongside competitions organized by universities and private entities.

In parallel, secondary data are gathered through online library research, which includes academic journal articles, books, policy papers, and institutional reports related to copyright law, creative industries, design competitions, and intellectual property practices.[20] These sources are accessed via digital libraries, research databases, and official publications of organizations such as WIPO, national copyright bodies, and Indonesian government agencies. Secondary data also encompass doctrinal materials on Indonesian copyright law and relevant regulations on Indonesian IPRs. This secondary corpus provides the normative and theoretical background against which the empirical observations are interpreted, allowing the study to contrast the "law in the books" with the "law in action" as reflected in competition practices.[21]

Data analysis is conducted using qualitative, interpretive, and thematic techniques. Competition documents, terms and conditions, and related online materials (such as FAQs, announcements, and post-competition publications) are coded to identify recurring patterns in copyright clauses, especially regarding full transfer of moral and economic rights, limitations on portfolio use, and exclusivity obligations. These patterns are then examined in light of empirical narratives about their impact on students and emerging designers, as previously discussed, and cross-referenced with scholarly debates on creative labor, power imbalance in contracts of adhesion, and the economic implications of rights transfer in creative industries. The goal is to produce a empirical understanding of how copyright is negotiated and, in many cases, unilaterally determined in the context of design competitions.[22] This is research methodology adopted in this study follows a structured and systematic process designed to capture the real-world practices of copyright clauses in poster and design competitions,

[20] Afriansyah Tanjung, Muhammad Rizal, en Dinda Riskanita, "Examining the Dual Nature of Divorce Trial Cases in Indonesia: Private Hearings and Public Verdicts", *Widya Pranata Hukum : Jurnal Kajian dan Penelitian Hukum* 7, no 2 (2025): 291–310.

[21] Afriasnyah Tanjung, "Pengantar Metedo Penelitian Hukum", in *Modul Pengantar Metode Penelitian Hukum Program Studi S1 PJJ Hukum Universitas Siber Muhammadiyah*, I (Kota Yogyakarta: Universitas Siber Muhammadiyah, 2025).

[22] S. Blandy en C. Hunter, "Socio-Legal Perspectives", in *International Encyclopedia of Housing and Home* (Elsevier, 2012), 514–17, https://doi.org/10.1016/B978-0-08-047163-1.00682-2.

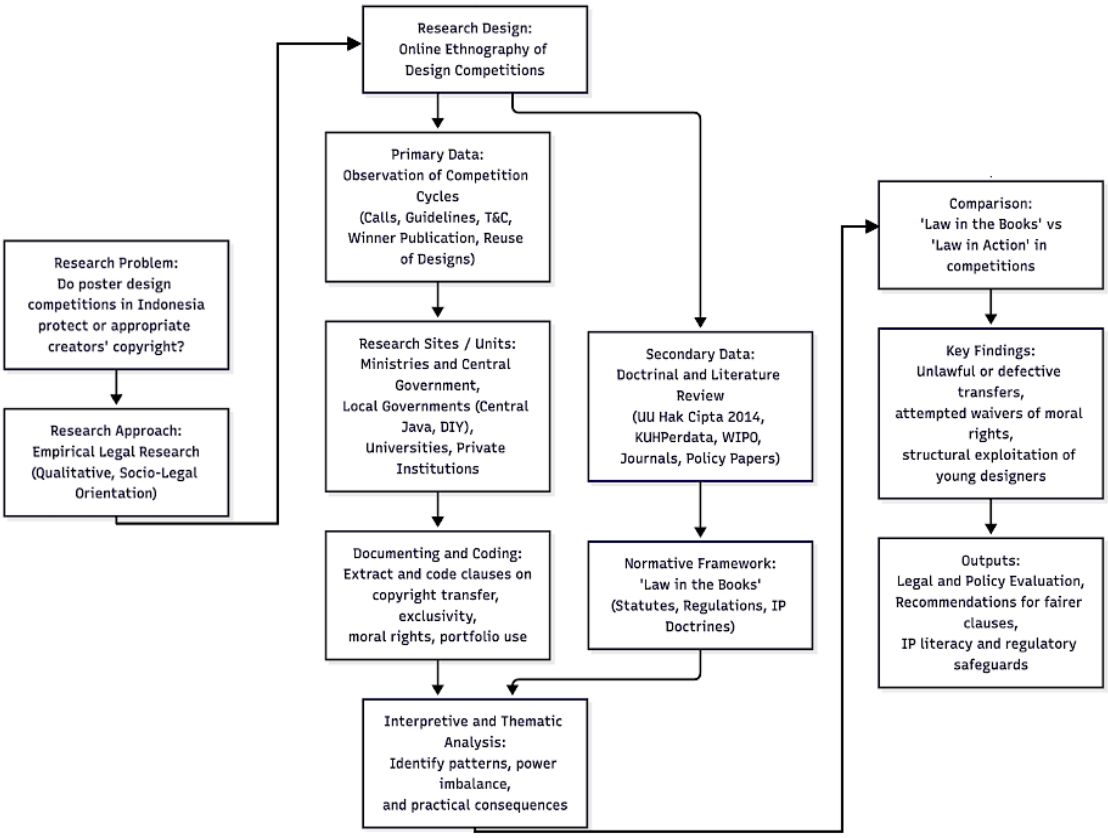

Figure 1 - The methodological flowchart above provides a structured visual roadmap of the entire qualitative research process used in this study

II. DISCUSSION

1. Understanding Economic and Moral Rights in Copyright Law: Global and Indonesia Context

Copyright is a form of intellectual property that protects original works of authorship, including literary, dramatic, musical, artistic, and certain other intellectual works.[23] It grants the creator exclusive rights to reproduce, distribute, perform, display, and create derivative works from their original creation.[24] The primary purpose of copyright law is to balance the interests of creators and the public by providing creators

[23] Bindu Sharma, *Copyright*, *Pharmaceutical Medicine and Translational Clinical Research*, 2017, https://doi.org/10.1016/B978-0-12-802103-3.00017-1.
[24] John Feather, *Rights and wrongs: Old and new perspectives on copyright*, *Research Handbook on Information Policy*, 2021, https://doi.org/10.4337/9781789903584.00036.

with exclusive rights while allowing for certain exceptions and limitations to promote access and innovation.[25]

Copyright law plays a significant role in determining the ownership and protection of designs submitted to design competitions.[26] The implications of copyright law in this context can be complex, involving various aspects of intellectual property rights, dual protection mechanisms, and the specific legal frameworks governing different regions.[27] Copyright law was provided copyright protection is automatically, once a design is created and fixed in a tangible medium, such as architectural plans or drawings.[28] This means that designers do not need to register their designs to receive copyright protection, which can simplify the process of asserting ownership. In some jurisdictions, designs can receive dual protection under both copyright and design law.[29] For example, EU law allows for dual protection, which can provide broader coverage for designers. However, this dual protection can also lead to complexities and potential conflicts between the two legal frameworks.[30]

In Indonesia context, Intellectual Property Rights (IPR) encompass a range of protections for creators, balancing economic rights, which facilitate financial gain from creative works, and moral rights, which preserve the integrity and personal connection of creators to their work. In both global and Indonesian contexts, these two categories of rights have distinct implications for authors and their creations, that is economic rights and moral rights.[31]

In poster design competitions, copyright concerns cannot be reduced solely to questions of ownership or financial gain. Instead, they comprise a complex interplay between economic rights which govern how the poster may be reproduced, distributed,

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[25] Roza Iosifovna Sitdikova et al., "Exceptions to copyright for scientific and educational purposes", *International Journal of Higher Education* 9, no 8 (2020): 67 – 71, https://doi.org/10.5430/ijhe.v9n8p67.
[26] Anirban Mazumder, *Copyright, access and information society*, *Copyright Law in the Digital World: Challenges and Opportunities*, 2017, https://doi.org/10.1007/978-981-10-3984-3_8.
[27] Ronald R Butters, *Language And Copyright*, *The Oxford Handbook of Language and Law*, 2012, https://doi.org/10.1093/oxfordhb/9780199572120.013.0034.
[28] Sharma, *Copyright*.
[29] Phebe Mann, "Who owns the copyright of architectural works and designs?", in *COBRA 2010 - Construction, Building and Real Estate Research Conference of the Royal Institution of Chartered Surveyors*, 2010, https://www.scopus.com/inward/record.uri?eid=2-s2.0-84860447122&partnerID=40&md5=249d74a6568eb3fa5e79811bb63e42fe.
[30] Sitdikova et al., "Exceptions to copyright for scientific and educational purposes".
[31] Hulman Panjaitan et al., "Music Copyright Protection In the Digital Era: Legal Framework and Strategies for Enforcement", *Jurnal Hukum Unissula* 40, no 2 (2024): 235 – 257, https://doi.org/10.26532/jh.v40i2.40525.

commercialized, or adapted and moral rights, which protect the designer's personal connection to the work through attribution and integrity.[32] These two dimensions are inseparable in the context of poster design because posters function simultaneously as creative works, communication media, and economic assets. In many competitions, especially those hosted by governmental and private institutions, the terms and conditions compel participants to surrender not only their economic rights but also their moral rights, often without clear disclosure or fair compensation. This double relinquishment creates a structural vulnerability for young designers, whose careers depend on both income potential and recognition.

Economic rights grant authors the exclusive ability to exploit their works for financial gain. This includes rights to reproduce, distribute, and publicly perform or display their work, as defined in various legal frameworks. economic rights are fundamental for creators to derive income from their intellectual endeavours, thereby incentivizing creativity and innovation.[33] In Indonesia, the 2014 Copyright Law emphasizes the importance of these economic rights, allowing creators to control the use and dissemination of their works. However, this focus on economic exploitation can lead to conflicts, particularly when economic interests overshadow the creator's moral claims to their work.[34]

Economic rights take on heightened significance in poster design competitions because posters are meant to be reproduced, circulated, and publicly displayed across various media. When organizers require participants to surrender these rights, they gain full control to reproduce the winning design for promotional banners, social media campaigns, institutional publications, or even commercial merchandise all without compensating the designer. A poster that could generate substantial economic and reputational value for the institution becomes entirely detached from the creator's ability to profit, control its use, or limit its circulation. This loss of control is especially harmful

[32] Cherng G Ding en NA-TING LIU, "Productivity Changes of Asian Economies by Taking Into Account Software Piracy", *Economic Inquiry*, 2009, https://doi.org/10.1111/j.1465-7295.2007.00117.x.
[33] Samuel Dharma Putra Nainggolan, Ni Made Yordha Astiti, en Diajeng Woro Andini, "Copyright Dan Right to Copy (Pemahaman Dasar Hak Cipta Dan Hak Yang Terkait Dengan Hak Cipta Dalam Bidang Hak Kekayaan Intelektual)", *Hukum Dan Dinamika Masyarakat*, 2022, https://doi.org/10.56444/hdm.v20i2.3551.
[34] Billy Handiwiyanto en Wisnu Aryo Dewanto, "Perlindungan Hukum Terhadap Hak Pencipta Software Yang Nomor Serialnya Dikomersialkan Tanpa Hak Di Cyber Space Berdasarkan Undang-Undang Nomor 28 Tahun 2014 Tentang Hak Cipta", *Dih Jurnal Ilmu Hukum*, 2020, https://doi.org/10.30996/dih.v16i1.2899.

for emerging designers, whose creative work may circulate widely without attribution, making it difficult for them to track third-party uses or rely on the poster as a credible portfolio piece.

The issue becomes more problematic when winning designs are commercialized through merchandise, fundraising materials, or licensing agreements. If economic rights have been transferred, organizers legally convert the designer's work into a revenue-generating asset while the designer receives no royalties or acknowledgment. This dynamic reflects a structural imbalance:[35] organizers obtain monetizable rights simply through participation rules, while designers often students seeking exposure lose both potential income and creative autonomy. Thus, economic rights are not abstract principles but essential protections that determine who ultimately benefits from poster designs and who maintains authority over their creative output.[36]

Moreover, moral rights play a crucial role in poster design competitions because they govern the personal and reputational relationship between the creator and the work. While economic rights determine how a poster may be reproduced or commercialized, moral rights such as the right of attribution, the right to protect the integrity of the work,[37] and, in some jurisdictions, the right to retract ensure that the creator maintains an enduring connection to their artistic expression. This is particularly important for posters, which are public-facing creative outputs used to convey messages, branding, or institutional values. Yet, many poster design competitions, especially those organized by government agencies, universities, and private companies, require participants to waive moral rights either explicitly or implicitly. Such practices have serious consequences for designers, especially emerging creatives who depend on public recognition and the preservation of their creative integrity to build their professional portfolios.[38]

One of the most significant moral rights in this context is the right of attribution, which guarantees that the designer is identified whenever the poster is used, displayed, or

[35] Jung-Yong Lee en Chang-Hyun Jin, "The Role of Ethical Marketing Issues in Consumer-Brand Relationship", *Sustainability*, 2019, https://doi.org/10.3390/su11236536.
[36] Yaojen Liu, "'Creative commons' public licensing for the competitive markets of the publishing, printing, and packaging industries", *Lecture Notes in Electrical Engineering* 369 (2016): 355 – 364, https://doi.org/10.1007/978-981-10-0072-0_46.
[37] Marion Fourcade en Kieran Healy, "Moral Views of Market Society", *Annual Review of Sociology*, 2007, https://doi.org/10.1146/annurev.soc.33.040406.131642.
[38] Heidi Härkönen, "Fashion and Authors' Moral Rights", *GRUR International* 73, no 5 (2024): 406 – 420, https://doi.org/10.1093/grurint/ikae050.

distributed. In many competitions, this right is undermined when organizers publish or utilize winning posters without naming the creator, or when the design is reused in extended campaigns without proper acknowledgment. Commercial products or promotional materials produced from the winning design often omit the designer's name entirely, and adaptations circulated by third parties may provide no attribution.[39] For young designers, losing this recognition is particularly damaging, as attribution is essential for building visibility, showcasing conceptual and stylistic capabilities, and gaining credibility in the design industry. Over time, the absence of proper credit weakens the designer's creative identity and reduces opportunities for employment, collaboration, and commissions.[40]

For students and emerging designers, moral rights are not abstract legal protections but fundamental assets for career development. Posters are public works that showcase conceptual thinking, visual communication skills, creativity, and technical execution. They serve as valuable portfolio pieces, attract potential clients or employers, and help build a recognizable design identity.[41] When competition rules require participants to waive their moral rights, designers lose the ability to maintain authorship records, to publicly claim the work as their own, to object when the work is misrepresented, and to control the narrative surrounding their creative contributions. This loss directly undermines the professional growth of young designers, who rely heavily on visible, credited work to establish themselves in the competitive creative industries.[42] Below is a flowchart illustrating the Combined Analysis: The Interplay of Economic and Moral Rights in Poster Design Competitions,

[39] Xiyin Tang, "The artist as brand: Toward a trademark conception of moral rights", *Yale Law Journal* 122, no 1 (2012): 218 – 257, https://www.scopus.com/inward/record.uri?eid=2-s2.0-84867682876&partnerID=40&md5=adb960287cd1b5818b86f1428dd98d2a.

[40] Sukron Mahmud en Kholis Roisah, "The Concept of IPR Ownership in the Context of the Copyright Legal System and Indonesian Society's Cosmology", *International Journal of Social Science and Human Research*, 2023, https://doi.org/10.47191/ijsshr/v6-i8-12.

[41] Anthoula Papadopoulou, *The digitization of contents in digital libraries: Moral right and limits*, *E-Publishing and Digital Libraries: Legal and Organizational Issues*, 2010, https://doi.org/10.4018/978-1-60960-031-0.ch010.

[42] Jessica Lewis, "With Love and Kisses: Nothing Lasts Forever: An Examination of the Social and Artistic Antiquation of Moral Rights", *International Journal of Cultural Property* 23, no 3 (2016): 267 – 294, https://doi.org/10.1017/S0940739116000151.

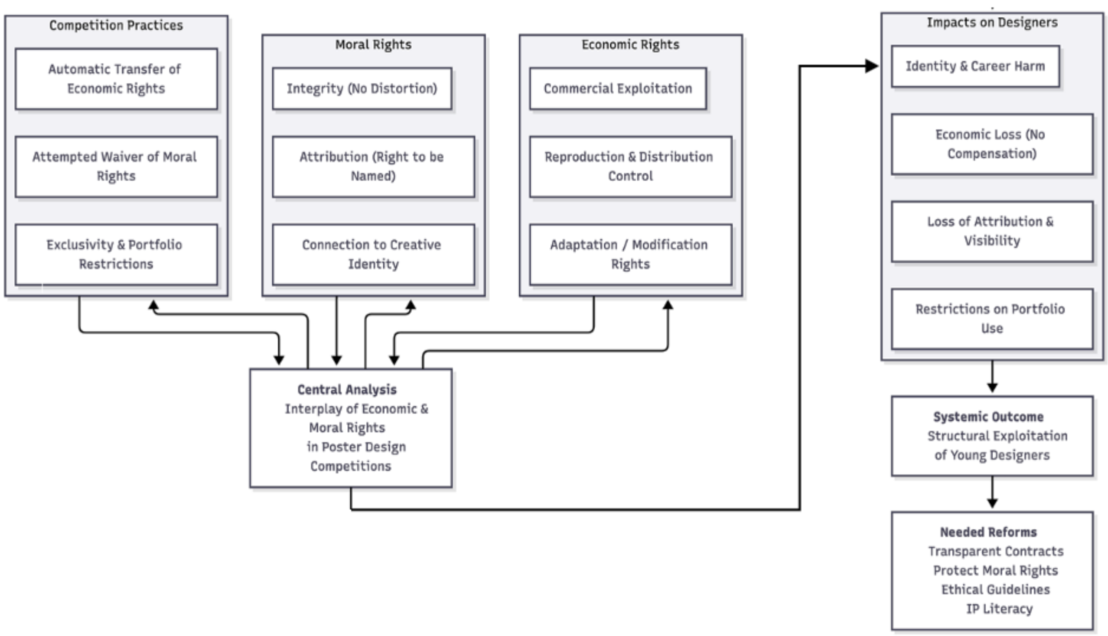

Figure 2 - This flowchart shows how both rights overlap (economic and moral rights), reinforce each other, and create compounded impacts on designers.

Treating economic and moral rights separately obscures the full scope of harm caused by unfair competition terms. In practice, the two rights reinforce and magnify each other such as economic rights determine who benefits from the work and moral rights determine who is acknowledged and associated with the work. When both are taken, organizers acquire total control over the poster's value, meaning, and identity, while the designer is left without any form of benefit financial, professional, or reputational. Understanding the interaction between these rights is therefore essential for assessing whether a design competition respects intellectual property principles, promotes ethical creative engagement, and supports the long-term development of emerging designers.

Globally,[43] there is considerable variation in how economic and moral rights are treated. In the United States, the emphasis is predominantly on economic rights, with moral rights receiving far less emphasis compared to jurisdictions such as France and Germany where moral rights are robustly protected.[44] This disparity raises questions

[43] Laura Moscati, "Origins, Evolution and Comparison of Moral Rights between Civil and Common Law Systems 1", *European Business Law Review* 32, no 1 (2021): 25 – 52, https://doi.org/10.54648/eulr2021002.
[44] Nico Sunarko Putra et al., "The Freedom of Expression in Social Media Based on Creator's Moral Right: A Comparative Study", 2021, https://doi.org/10.4108/eai.18-11-2020.2311770.

about the adequacy of protections afforded to creators in different legal landscapes. the Visual Arts Rights Act of 1990, which was meant to bolster moral rights in the U.S. but has faced criticism for its inefficacy and the transactional burdens it imposes on artists.[45] In contrast, countries influenced by the Berne Convention, including Indonesia, afford moral rights substantial legal weight alongside economic rights. The protection of moral rights is a critical aspect of cultural policy, as it ensures that creators' legacies are maintained and respected, which can promote a healthier arts ecosystem that nurtures ongoing creativity.[46]

Within the Indonesian framework, the Copyright Law of 2014 establishes a clear distinction between economic and moral rights. Article 5 of the Act articulates the dual nature of copyright, ensuring that creators retain moral rights unless explicitly waived, while economic rights can be transferred or licensed.[47] This dual protection is intended to safeguard the creator's relationship with their work, providing a holistic approach to intellectual property that respects both their economic interests and personal integrity.[48] However, challenges remain in enforcing these rights equally. Many creators, especially in artistic sectors, continue to face exploitation, where economic rights are emphasized at the expense of their moral rights.[49] Issues such as copyright infringement and lack of awareness among creators about their rights can further complicate this scenario.[50]

Tabel 1 - Key Differences Between Economic Rights and Moral Rights in Intellectual Property Law

Aspect	Economic Rights	Moral Rights	Indonesian Legal Perspective
Purpose	To enable the creator to gain financial rewards	To protect the personal and	Recognized as rights to benefit economically from works.

[45] William M Landes, "What Has the Visual Arts Rights Act of 1990 Accomplished?", *SSRN Electronic Journal*, 2001, https://doi.org/10.2139/ssrn.270985.
[46] Putra et al., "The Freedom of Expression in Social Media Based on Creator's Moral Right: A Comparative Study"; Boyle, Nazzaro, en O'Connor, "Moral Rights Protection for the Visual Arts".
[47] Handiwiyanto en Dewanto, "Perlindungan Hukum Terhadap Hak Pencipta Software Yang Nomor Serialnya Dikomersialkan Tanpa Hak Di Cyber Space Berdasarkan Undang-Undang Nomor 28 Tahun 2014 Tentang Hak Cipta".
[48] Handiwiyanto en Dewanto.
[49] Maria R U D Tambunan, Bernat Panjaitan, en Nimrot Siahaan, "Legal Protection of Copyright Based on Law Number 28 of 2014 Concerning Copyright", *Journal of Social Research*, 2023, https://doi.org/10.55324/josr.v2i4.807.
[50] Yohana Puspitasari Wardoyo et al., "Problematic on Copyright Execution as Fiduciary Collateral When Debtor Defaults", *Kne Social Sciences*, 2024, https://doi.org/10.18502/kss.v8i21.14820.

Aspect	Economic Rights	Moral Rights	Indonesian Legal Perspective
	through commercial use of the work. [51]	reputational interests of the creator.[52]	
Transferability	Transferable – can be sold, licensed, or assigned to others.[53]	Inalienable – generally cannot be transferred or waived.[54]	Economic rights are transferable (Pasal 16 UUHC 2014); moral rights cannot be transferred (Pasal 5).
Legal Foundation	Based on economic incentives to promote innovation and growth.[55]	Based on moral and personal connection between the creator and the work.[56]	Economic basis acknowledged; moral rights rooted in respect for creators' identity.
Scope	Includes reproduction, distribution, public performance, display, and derivations.	Includes right of attribution and right to integrity.[57]	Economic rights include exclusive rights to use and authorize use; moral rights include right to be named and to object to distortion.
Legal Systems	Prominent in common law countries (e.g., UK, US).	Emphasized in civil law/droit d'auteur countries (e.g., France, Germany).	Indonesia follows civil law tradition, heavily influenced by droit d'auteur.
Duration	Limited in time (e.g., life of author + 50/70 years).	Often extends beyond economic rights; sometimes perpetual.[58]	Economic rights: lifetime of author + 70 years (Pasal 58). Moral rights: perpetual (Pasal 6).

[51] Ranti Fauza Mayana et al., "Economic & Moral Right for Artificial Intelligence Generated Works: Perspective from Indonesia Copyright Law", in *AIBC 2024 - 2024 5th International Artificial Intelligence and Blockchain Conference*, 2025, 39 – 43, https://doi.org/10.1145/3702359.3702365.
[52] Mayana et al.
[53] J J Baloyi, "Demystifying the role of copyright as a tool for economic development in Africa: Tackling the harsh effects of the transferability principle in copyright law", *Potchefstroom Electronic Law Journal* 17, no 1 (2014): 86 – 165, https://doi.org/10.17159/1727-3781/2014/v17i1a2209.
[54] Brian Angelo Lee, "Making sense of 'Moral Rights' in intellectual property", *Temple Law Review* 84, no 1 (2011): 71 – 117, https://www.scopus.com/inward/record.uri?eid=2-s2.0-84855373439&partnerID=40&md5=9d01df40ec4852894400001242ef616e.
[55] Ananya Pandey en Achyutananda Mishra, "Conflict and Coexistence of Human Rights: An Exploratory Study with Reference to Intellectual Property Rights", *Journal of Human Rights and Social Work*, 2025, https://doi.org/10.1007/s41134-024-00361-9.
[56] Hugh Laddie, *Patents – what's invention got to do with it?*, *Intellectual Property in the New Millennium: Essays in Honour of William R. Cornish*, 2004, https://doi.org/10.1017/CBO9780511735042.008.
[57] Yulia, Zinatul Ashiqin Zainol, en F Fatahillah, "Protection of Performers' Rights in Indonesian Copyright Law: Copyrighted Works Uploaded to YouTube", *Sriwijaya Law Review* 7, no 2 (2023): 300 – 317, https://doi.org/10.28946/slrev.Vol7.Iss2.1092.pp300-317.
[58] Lee, "Making sense of 'Moral Rights' in intellectual property".

Aspect	Economic Rights	Moral Rights	Indonesian Legal Perspective
Example Rights	Right to publish, license, adapt, or sell the work. [59]	Right to be named as the author; right to prevent distortion of the work.	Clearly codified in UU Hak Cipta 2014, reflecting international standards.

Additionally, the societal cosmology in Indonesia often interacts with formal IPR protections, creating complexities in ownership and recognition of creative works that may differ from Western legal conceptions. [60] This is compounded by globalization, which pressures local creators to adapt to international standards while retaining their unique cultural identities.[61]

1. **The Legal Considerations Should Designers be aware of regarding Copyright Ownership when Participating in Design Competitions**

When participating in design competitions, it is essential for designers both professionals and students to understand the legal implications surrounding copyright ownership to safeguard their intellectual property (IP) and prevent potential disputes. In many legal systems, including Indonesia, copyright protection for original designs arises automatically upon creation, without the need for registration.[62] According to Law No. 28 of 2014 on Copyright, once a work is fixed in a tangible form, the creator is entitled to economic and moral rights. However, despite the automatic nature of protection, formal registration of copyright with the Ministry of Law can provide stronger legal certainty, especially in cases of infringement or commercial exploitation.[63]

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[59] Olena Baklanova, Mariana Petrova, en Viktor Koval, "Institutional transmission in economic development", *Ikonomicheski Izsledvania* 29, no 1 (2020): 68 – 91, https://www.scopus.com/inward/record.uri?eid=2-s2.0-85087303709&partnerID=40&md5=6428c24aa28adf84271d9f22ec9ec7f6.

[60] Mahmud en Roisah, "The Concept of IPR Ownership in the Context of the Copyright Legal System and Indonesian Society's Cosmology".

[61] Kasmawati Kasmawati en I Gede AB Wiranata, "Urgency of Protection of Intellectual Property Rights in the Era of Economic Globalization", *International Journal of Social Science and Human Research*, 2023, https://doi.org/10.47191/ijsshr/v6-i1-14.

[62] Teddy Mantoro en Yoga Prihastomo, "Intellectual Property Rights information system with location aware capability", in *Proceedings of 2012 IEEE Conference on Control, Systems and Industrial Informatics, ICCSII 2012*, 2012, 41 – 45, https://doi.org/10.1109/CCSII.2012.6470470.

[63] Teddy Mantoro, Yoga Prihastomo, en Media A Ayu, "Intellectual property right dissemination service based on mobile user location in indonesia", *Internetworking Indonesia Journal* 5, no 1 (2013): 21 – 29, https://www.scopus.com/inward/record.uri?eid=2-s2.0-84883787942&partnerID=40&md5=a3f6a8efcff45881dae79bd46e65d190.

Registration is particularly beneficial in contexts involving digital formats. As digital design tools like Building Information Modelling (BIM) become increasingly prevalent, the risk of unauthorized duplication or modification rises. In jurisdictions such as the United States and the European Union, registration offers a more enforceable legal standing in disputes over ownership or unauthorized use. Similarly, in Indonesia, registration is not mandatory but is strongly recommended for evidentiary purposes under Article 1 point 4 and Article 64 of the Copyright Law.[64]

Understanding the legal position of the Copyright Holder becomes even more important when viewed alongside the scope of economic rights explicitly granted under Article 8 of the Indonesian Copyright Law. This article affirms that the Creator or the legitimate Copyright Holder possesses exclusive economic rights over a wide range of exploitative activities involving their work. These rights include the authority to publish the work, reproduce it in any form, translate it, adapt or transform it such as through modifications, rearrangements, or derivative creations and distribute the work or its copies to the public. Additionally, the Copyright Holder retains exclusive control over the performance, announcement, communication, and rental of the work. These provisions collectively demonstrate that economic rights encompass virtually every possible form of commercial or public utilization of a creative work. Importantly, Article 8(2) stipulates that any person who wishes to exercise these economic rights must first obtain formal permission from the Creator or the Copyright Holder, underscoring the legal requirement of consent in all forms of exploitation. Article 8(3) further reinforces this protection by prohibiting any unauthorized reproduction or commercial use of the work. In practical terms, this means that no institution, company, client, or collaborator may reproduce, publish, adapt, distribute, or commercialize a designer's work including commissioned works, competition submissions, or digital outputs without explicit consent from the rightful Copyright Holder.

When connected to the earlier discussion on contractual clarity, these provisions highlight why written agreements are indispensable in creative collaborations. Because copyright ownership may rest with the Creator, the commissioning party, or a subsequent

[64] Sitti Fatimah Maddusila et al., "Copyright Restrictions in Social Media Markets: A Legal Enforcement Challenge", *International Journal of Criminal Justice Sciences* 19, no 2 (2024): 27 – 43, https://doi.org/10.5281/zenodo.19203.

transferee depending on contractual arrangements, the scope of allowed uses must be negotiated and formalized in writing. For commissioned works in Indonesia, this becomes particularly relevant, as Article 8 interacts with the default rule that economic rights in commissioned works belong to the commissioning party unless otherwise agreed.[65] Clear contracts are therefore essential to determine whether the designer retains any economic rights or whether all rights including publication, reproduction, adaptation, distribution, and communication transfer to the client or institution. For digital outputs such as BIM files, illustrations, or complex digital assets, contracts must specify permitted uses to avoid legal ambiguity or unauthorized exploitation. In this way, Article 8 not only outlines the breadth of economic rights but also reinforces the necessity of explicit, written agreements to ensure both legal certainty and the protection of creators in professional practice. [66]

Equally important is the need for education and awareness. Designers should take the initiative to understand copyright law, including both economic and moral rights, the implications of waiving those rights, and the ethical responsibilities involved in design competitions. The Directorate General of Intellectual Property (DGIP) in Indonesia regularly conducts seminars and offers educational resources, but integration of IP literacy into design school curricula remains limited and should be expanded.[67] Below table is a digest of key legal considerations for designers particularly students and young professionals participating in design competitions in Indonesia, based on Indonesian copyright law and best practices:[68]

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[65] Syafrinaldi Syafrinaldi et al., "Artificial Intelligence, Innovation, and Copyright: Comparing Intellectual Property Law in Indonesia and South Korea", *Lex Scientia Law Review* 8, no 2 (2024): 1143 – 1180, https://doi.org/10.15294/lslr.v8i2.1227.

[66] Tasya Safiranita Ramli et al., "Cybersecurity: practices and implementation of song or music copyright royalties on digital platforms in Indonesia", *International Journal of Intellectual Property Management* 15, no 4 (2025): 390 – 403, https://doi.org/10.1504/IJIPM.2025.147796.

[67] Deslaely Putranti et al., "Proposing Digital Copyright Infringements Enforcement through Internet Court in Indonesia: Fostering the Existing E-Court System", red M. Setiyo et al., *E3S Web of Conferences* 622 (04 April 2025): 03006, https://doi.org/10.1051/e3sconf/202562203006.

[68] Archi Rafferti Kriswandani et al., "Integration in Copyright Regulation Enforcement - A Study from Indonesia", *BiLD Law Journal* 7, no 1 (2022): 278 – 287, https://www.scopus.com/inward/record.uri?eid=2-s2.0-85140095972&partnerID=40&md5=41dcd70d663c3df888e9a9a5fe5169f1.

Tabel 2 - Legal Considerations for Designers in Design Competitions (with Indonesian Context)

Aspect	Key Points	Indonesian Legal Reference / Context
Automatic Copyright	Copyright arises automatically upon creation of an original work.	Law No. 28/2014, Article 1 and Article 40. Protection exists once fixed in a tangible form.
Registration	Not mandatory but highly recommended for legal certainty, especially in case of infringement or commercial use.	Article 64 allows for registration at Ministry of Law; Article 1(4) defines benefits of registration.
Digital Design Risks	Increased risks due to digital tools like BIM; registration helps prevent unauthorized use or duplication.	Protection applies to digital works under Article 40 (1) (e.g., drawings, diagrams, designs).
Written Agreements	Contracts must clearly define IP ownership and rights in collaborative or commissioned works.	Article 8: Economic rights in commissioned works belong to the ordering party unless otherwise agreed in writing.
Digital Clauses in Contracts	Contracts should include specific clauses for handling digital IP like BIM models and illustrations.	Not explicitly regulated, but covered under general principles of agreement and protection under *UU Hak Cipta.*
Legal Advice	Legal counsel can help avoid rights waivers, unfair clauses, and misinterpretation of competition terms.	Legal awareness among creators is still low; institutions should promote legal literacy.
Technological Protection	Blockchain and digital fingerprinting can enhance IP protection and traceability in the digital space.	Still emerging in Indonesia, but increasingly adopted by start-ups and IP service providers.
Education and Awareness	Designers need to understand the scope of their economic and moral rights, including risks of waivers and unethical clauses.	DGIP *(Ditjen KI* at Ministry of Law) provides training; however, IP education is not yet integrated into most design programs.
Fair Use and Overprotection	Overprotecting IP can hinder creativity and collaboration. A balanced approach is needed to protect creators while allowing room for innovation.	Articles 43–44 regulate exceptions (fair use), but they are underused and poorly understood in practice.

Finally, while protecting IP is crucial, designers and legal systems must also be cautious not to overprotect, as this can stifle creativity and hinder collaborative innovation. Striking a balance between protection and openness is essential. Indonesia's Copyright Law attempts to reflect this by allowing for fair use exceptions (Articles 43–44), but these provisions are still underutilized and not well understood in practice. In conclusion, designers entering competitions in Indonesia must be both legally vigilant and technologically aware.[69] Through a combination of legal literacy, robust contractual arrangements, digital protection tools, and ethical understanding, they can protect their creative contributions while navigating the dynamic space between innovation and intellectual property rights.[70]

2. Unlawful Copyright Transfer Clauses in Design Competitions and Legal Implication

Design competitions often serve as platforms for creativity, innovation, and professional exposure, particularly for students and young designers. However, some organizers include problematic clauses in their contracts or competition brochures specifically those that require participants to automatically transfer full copyright ownership to the organizer merely by submitting their work. When such a clause is imposed as a condition of participation and not supported by a proper agreement, it may contravene Indonesian Intellectual Property Rights (IPR) law, particularly Law No. 28 of 2014 on Copyright (*UU Hak Cipta).*[71]

According to Article 16 paragraph (2) of the Indonesian Copyright Law, the transfer of economic rights must be done through a written agreement. If a competition organizer inserts a clause within the competition rules or brochures stating that "by submitting, all rights are transferred," without allowing the participant to negotiate, review, or give explicit consent, such a clause does not meet the standard of a legally binding agreement. The lack of a formal, signed contract renders the copyright transfer potentially invalid or unenforceable, and may be challenged under the principles of perikatan *(obligation)* found in Book III of the Indonesian Civil Code *(KUHPerdata*). This situation reflects a lack of informed consent, which is critical in determining the validity of legal agreements.[72]

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[69] Panjaitan et al., “Music Copyright Protection In the Digital Era: Legal Framework and Strategies for Enforcement”.

[70] Ranti Fauza Mayana Tanwir en Daniel Hendrawan, “Alternative resolution of intellectual property disputes as part of investment in the creative industry sector under indonesian law”, *Humanities and Social Sciences Reviews* 7, no 5 (2019): 93 – 97, https://doi.org/10.18510/hssr.2019.7512.

[71] Muhammad Hawin, “Protection of Performers’ Rights under Indonesian Copyright Law and International Conventions”, *KLRI Jounal of Law and Legistaltion* 8, no 1 (2018), http://www.bobborst.

[72] Mazumder, *Copyright, access and information society*.

Even if the organizer successfully obtains the economic rights through a questionable clause, moral rights remain protected and cannot be transferred under any circumstances. As outlined in Article 5 paragraph (2) of the Copyright Law, moral rights include the right to be acknowledged as the creator and the right to object to distortion, mutilation, or modification of the work that may harm the creator's reputation. If the competition terms attempt to waive or extinguish these rights, such clauses are void by law. Organizers who ignore these provisions violate not only legal obligations but also ethical standards of fair attribution and artistic integrity.[73]

When a competition organizer uses, publishes, or commercially exploits submitted designs without a valid copyright transfer agreement, such actions may constitute copyright infringement. Under Article 113 of the Copyright Law, this infringement may lead to both civil liabilities including compensation to the original creator and criminal sanctions. In academic, governmental, or public sector competitions, such practices further raise ethical concerns, as they exploit the creative contributions of participants without fair compensation or recognition. These clauses undermine the principles of fair use, transparency, and creative dignity particularly harmful when participants are students or young professionals with limited bargaining power.[74] Below is a flowchart capturing the key points on unlawful copyright transfer clauses in design competitions and their legal implications in poster design competition,

[73] Tambunan, Panjaitan, en Siahaan, "Legal Protection of Copyright Based on Law Number 28 of 2014 Concerning Copyright".
[74] Ma'mun Murod et al., "Blockchain Based Intellectual Property Management Enhancing Security and Transparency in Digital Entrepreneurship", *Aptisi Transactions on Technopreneurship (ATT)* 7, no 1 (07 Maart 2025), https://doi.org/10.34306/att.v7i1.521.

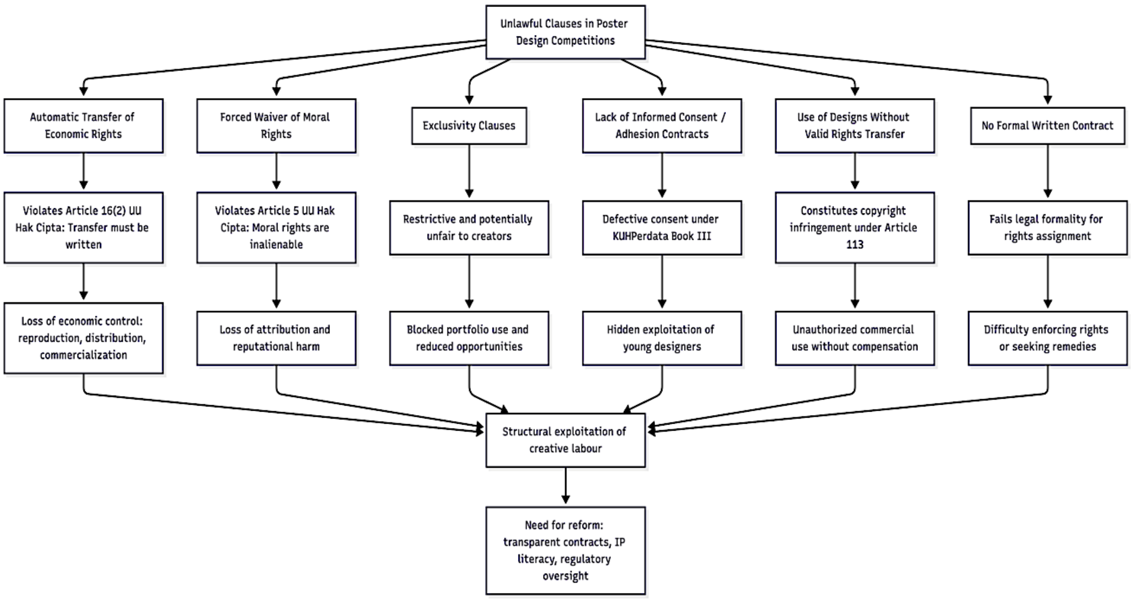

Figure 3 – flowchat to show the chain from clauses, legal status, impact on designers, on the key points on unlawful copyright transfer clauses in design competitions and their legal implications in poster design competitions

III. CONCLUSION

This study finds that many Indonesian poster design competitions employ copyright clauses that are legally invalid and ethically unfair, particularly those requiring automatic transfer of economic rights and implied waivers of moral rights. Such practices do not meet the statutory standards for a valid copyright agreement and effectively enable organizers to appropriate creative works without proper consent, compensation, or attribution. As a result, these competitions undermine the professional development of young designers and distort the principles of fair creative engagement. Strengthening transparency, contractual clarity, and regulatory oversight is essential to ensure that design competitions genuinely protect rather than exploit creative rights.

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Law and Regulation

Kitab Udang-Undang Hukum Perdata

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Antara Hukum dan Geopolitik: Peran Amerika Serikat dan Independensi Mahkamah Internasional pada Sengketa Essequibo

Between Law and Geopolitics: The Role of the United States and the Independence of the International Court of Justice in the Essequibo Dispute

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ABSTRAK

Sengketa teritorial Guyana–Venezuela atas Essequibo kembali mengemuka pasca penemuan cadangan minyak lepas pantai pada 2015 dan meningkatnya keterlibatan Amerika Serikat (AS) melalui dukungan diplomatik serta kerja sama militer. Penelitian ini bertujuan menelaah batas hukum keterlibatan negara ketiga berdasarkan asas non-intervensi dan mekanisme intervensi dalam Mahkamah Internasional (*International Court of Justice;* ICJ), sekaligus menilai dampak dukungan AS terhadap persepsi imparsialitas dan independensi Mahkamah Internasional. Penelitian ini menggunakan pendekatan yuridis normatif dengan metode deskriptif-analitis. Data dikumpulkan melalui penelitian kepustakaan yang meliputi instrumen hukum primer, yurisprudensi relevan, serta literatur akademik dan dokumen resmi. Hasil penelitian menunjukkan bahwa meskipun independensi Mahkamah Internasional tetap terjaga, namun keterlibatan AS dalam proses peradilan di Mahkamah Internasional berpotensi menimbulkan tekanan eksternal terhadap penyelesaian sengketa. Oleh karenanya, para pihak perlu mematuhi *provisional measures*, sedangkan negara ketiga perlu membatasi dukungan pada bentuk non-koersif.

Keywords:* *Sengketa Teritorial; Independensi Mahkamah; Geopolitik

ABSTRACT

The Guyana–Venezuela territorial dispute over the Essequibo has re-emerged following the discovery of offshore oil reserves in 2015 and the growing involvement of the United States (US) through diplomatic support and military cooperation. This study examines the legal limits of third-state involvement under the principle of non-intervention and the intervention mechanism before the International Court of Justice (ICJ), while assessing the impact of US support on perceptions of the ICJ's impartiality and independence. The research adopts a normative juridical approach with a descriptive-analytical method. Data was collected through library research covering primary legal instruments, relevant jurisprudence, academic literature, and official documents. The findings indicate that, although the ICJ's institutional independence remains intact, US involvement surrounding the proceedings may generate external pressure that could affect perceptions of impartiality during dispute settlement. Accordingly, the parties should comply with the ICJ's provisional measures, and third states should limit their support to non-coercive forms

Keywords:* *Territorial Dispute, Judicial Independence, Geopolitics

I. INTRODUCTION

Dalam hukum internasional, penyelesaian sengketa secara damai merupakan pilar utama untuk menjaga stabilitas global. Pasal 2(3) Piagam Piagam Perserikatan Bangsa-Bangsa (PBB) mewajibkan setiap negara anggota untuk menyelesaikan sengketa secara damai tanpa membahayakan keamanan dan kedamaian internasional.[1] Penyelesaian sengketa secara damai dapat ditempuh dengan mekanisme seperti konsiliasi, mediasi, arbitrasi, maupun proses yudisial melalui Mahkamah Internasional atau lembaga

[1] Charter of the United Nations, art. 2, para. 4.

peradilan hukum internasional lainnya.[2] Di antara berbagai mekanisme itu, penyelesaian yudisial Mahkamah Internasional menempati posisi yang sangat penting.

Mahkamah Internasional sebagai organ peradilan utama PBB berwenang mengadili sengketa hukum antarnegara (*contentious cases*) dan memberikan pendapat nasihat (*advisory opinions)* kepada organ-organ PBB dan badan-badan khusus yang berwenang.[3] Dalam sengketa teritorial, Mahkamah Internasional sering dipilih sebagai forum untuk menegaskan batas wilayah dan kedaulatan negara secara final dan mengikat. Meski demikian, proses yudisial di Mahkamah Internasional tidak sepenuhnya terlepas dari dinamika geopolitik. Kepentingan negara-negara besar, nilai strategis suatu wilayah atau sumber daya, serta situasi keamanan regional sering kali memengaruhi cara para pihak menilai independensi dan legitimasi Mahkamah Internasional.[4]

Kasus Guyana menggambarkan bagaimana negara kecil memanfaatkan Mahkamah Internasional sebagai forum utama untuk menyelesaikan sengketa teritorialnya. Guyana merupakan sebuah negara kecil yang secara geografis terletak di kawasan Amerika Selatan, tepatnya di pesisir utara yang berbatasan langsung dengan Venezuela dan menghadap Samudra Atlantik.[5] Sejak ditemukannya cadangan minyak lepas pantai pada tahun 2015 dan dimulainya produksi minyak pada tahun 2019, Guyana telah menjelma menjadi salah satu negara penghasil minyak utama di kawasan tersebut.[6] Aktivitas eksploitasi minyak ini mendorong pertumbuhan ekonomi yang luar biasa, mencapai angka 43,5% pada tahun 2020, menjadikannya salah satu negara dengan pertumbuhan tercepat di dunia.[7] Salah satu wilayah di Guyana yang dikenal memiliki cadangan minyak berlimpah adalah Essequibo, sebuah kawasan strategis yang terletak di perbatasan Guyana-Venezuela. Namun, wilayah ini telah lama menjadi objek sengketa teritorial

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[2] Fajri Matahati Muhammadin, ed., Hukum Internasional: Edisi Ekspansi (Sleman: CV Buku Belaka Maju Jaya, 2025), p. 823.
[3] H. W. A. Thirlway, The International Court of Justice (Oxford: Oxford University Press, 2016).
[4] Amarilla Kiss, "The Legitimacy of the International Court of Justice: The World of International Judges with Special Reference to Latin America," Revista Política Hoje, vol. 25, no. 2, 2016, pp. 55–76, https://periodicos.ufpe.br/revistas/index.php/politicahoje/article/view/8677/14660.
[5] McDonald, L., & Üngör, M. (2021). New oil discoveries in Guyana since 2015: Resource curse or resource blessing. *Resources Policy, 74*, 102363. doi:10.1016/j.resourpol.2021.102363.
[6] McDonald and Üngör, "New Oil Discoveries in Guyana since 2015."
[7] Camilla Leonard, "Oil Exploration in Guyana and Its Impact: A Closer Look at the Labor Sector & the Environmental Policies," Ohio Northern University Law Review 49, no. 1 (2023): 105–128, https://digitalcommons.onu.edu/cgi/viewcontent.cgi?article=1038&context=ilj.

antara kedua negara karena Venezuela mengklaim Essequibo sebagai bagian dari wilayah kedaulatannya.

Konflik Guyana dan Venezuela merupakan konflik yang telah berlangsung sejak tahun 1840, perselisihan ini merupakan warisan dari era kolonial yang mana kala itu Inggris sebagai negara penjajah Guyana berkonflik dengan Spanyol sebagai negara penjajah Venezuela.[8] Awal mula dari adanya konflik ini berasal dari Venezuela yang tidak terima atas hasil penggambaran peta perbatasan wilayahnya atau yang dikenal sebagai *Schomburgk Line* yang dibuat oleh Robert Schomburgk.[9] Dari perspektif hukum internasional, garis tersebut dipandang Inggris sebagai dasar penetapan yurisdiksi wilayah berdasarkan perjanjian kolonial dan prinsip *uti possidetis juris*, yakni bahwa negara baru mewarisi batas administratif yang ditetapkan pada masa kolonial.[10] Namun, Venezuela menilai penetapan itu tidak sah dan merugikan klaim historisnya atas wilayah Essequibo. Venezuela mengklaim zona Essequibo di bawah wilayah kepemilikan hukum Guyana yang meliputi dua pertiga wilayahnya di bagian barat dengan potensi sumber daya alam yang besar.[11]

Venezuela yang tidak terima dengan penggambaran peta *Schomburgk* tersebut kemudian melakukan banding terhadap yurisdiksi wilayah Essequibo dengan mengadakan perjanjian di Jenewa yang ditandatangani pada tanggal 17 Februari 1966 antara Venezuela, Inggris, dan Guyana Inggris (yang kini telah merdeka menjadi negara Guyana pada Mei 1966).[12] Pada perjanjian tersebut, Venezuela mengajukan dalil *null and void* atas putusan arbitrase 1899 mengenai penetapan perbatasan antara Venezuela dan British Guiana.[13] Venezuela berargumen bahwa keputusan arbitrase tersebut tidak sah karena terdapat dugaan manipulasi oleh arbiter.[14]

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[8] Victor Bulmer-Thomas. (2024, March 27). The Guyana–Venezuela dispute in historical perspective. Global Americans. https://globalamericans.org/wp-content/uploads/2024/03/Guyana-Venezuela-VBT.pdf.
[9] Mustabshira, N., and A. Ahmed. "The Essequibo Conundrum: Conflict Analysis of Venezuela-Guyana Border Dispute". *Journal of Peace and Diplomacy*, vol. 5, no. 2, Dec. 2024, pp. 1-17, doi:10.59111/JPD.005.02.071.
[10] James Crawford. Brownlie's Principles of Public International Law. 9th ed., Oxford University Press, 2019, p. 567.
[11] Mustabshira and Ahmed, "The Essequibo Conundrum," p. 2.
[12] Brewer-Carías, A. R. (2006, September). Guyana–Venezuela border dispute. In Max Planck Encyclopedia of Public International Law. Oxford University Press. https://doi.org/10.1093/law:epil/9780199231690/law-9780199231690-e143.
[13] Donovan, T. W. (2004). Challenges to the territorial integrity of Guyana: A legal analysis. Georgia Journal of International and Comparative Law, 32, 661–723. Dikutip dari https://digitalcommons.law.uga.edu/gjicl/vol32/iss3/7/.
[14] Donovan, "Challenges to the Territorial Integrity of Guyana."

Ketegangan terkait sengketa wilayah Essequibo antara Venezuela dan Guyana kembali memanas dalam beberapa tahun terakhir. Penemuan cadangan minyak dalam jumlah besar di lepas pantai Guyana pada tahun 2015 oleh ExxonMobil, perusahaan energi asal Texas, AS, telah memperburuk hubungan antara Guyana dan Venezuela.[15] Penemuan cadangan minyak tersebut memicu meningkatnya ketegangan, karena Guyana menganggap wilayah lepas pantai di sekitar Essequibo berada di bawah kedaulatannya sekaligus hak berdaulat (*sovereign rights*) yang dimilikinya untuk mengeksplorasi sumber daya alam. Sebaliknya, Venezuela menilai langkah tersebut sebagai bentuk pengingkaran terhadap klaim kedaulatan teritorial dan yurisdiksi maritimnya.[16]

Konflik tersebut semakin memanas dengan dipicu oleh kondisi domestik Venezuela yang mengalami krisis multidimensional, termasuk krisis ekonomi yang berdampak langsung pada stabilitas politik dan sosial internal. Pada tanggal 15 Januari 2016, Presiden Nicolás Maduro secara resmi mengumumkan bahwa Venezuela berada dalam keadaan darurat ekonomi nasional (*economic emergency*), sebagai respons terhadap memburuknya kondisi perekonomian domestik.[17] Dalam situasi seperti ini, isu teritorial seperti klaim atas wilayah Essequibo kembali dimanfaatkan oleh pemerintah Venezuela sebagai isu pengalihan perhatian publik dari krisis internal yangs sedang dihadapi. Perubahan status Guyana sebagai produsen minyak utama turut memperkeruh situasi, karena Essequibo dipandang sebagai sumber daya strategis yang berpotensi mengubah keseimbangan ekonomi kawasan.[18]

Konflik antara Guyana dan Venezuela terkait perebutan wilayah Essequibo tidak hanya melibatkan dinamika bilateral, melainkan telah berkembang menjadi isu yang kompleks akibat keterlibatan negara-negara besar non-pihak yang memiliki kepentingan terhadap wilayah Essequibo. Negara-negara besar non-pihak seperti AS dan Rusia turut memainkan peran yang memperkeruh situasi. Venezuela, khususnya di bawah pemerintahan Hugo Chávez dan Nicolás Maduro, telah menjalin hubungan strategis dengan Rusia melalui pembelian senjata dalam skala besar, bantuan keuangan, serta

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[15] Mustabshira and Ahmed, "The Essequibo Conundrum," p. 7.
[16] Mustabshira and Ahmed, "The Essequibo Conundrum," p. 8.
[17] CNN Indonesia, "Linimasa Krisis Venezuela: Redenominasi Mata Uang Bolivar," August 21, 2018, https://www.cnnindonesia.com/internasional/20180821090103-134-323827/linimasa-krisis-venezuela-redenominasi-mata-uang-bolivar.
[18] Allioui, S. (2020). Legitimacy and international courts. *International Journal for Court Administration, 11*(1), 8. Doi:10.36745/ijca.288

dukungan diplomatik Moskow terhadap posisi Venezuela di berbagai forum internasional.[19] Hubungan ini menunjukkan bahwa sengketa Essequibo tidak terlepas dari persaingan pengaruh kekuatan besar di kawasan Amerika Latin.

Di sisi lain, AS secara terbuka menyatakan dukungannya terhadap kedaulatan Guyana, antara lain melalui kerja sama militer dan patroli maritim bersama di perairan yang berdekatan dengan wilayah sengketa. Selain kepentingan strategis kawasan, keterlibatan ini diperkuat oleh kepentingan ekonomi langsung melalui investasi besar-besaran perusahaan minyak asal AS, ExxonMobil, di blok-blok eksplorasi yang berada di zona sengketa.[20] Fakta bahwa perusahaan tersebut menjadi target ancaman eksplisit dari Venezuela menunjukkan adanya tumpang tindih antara kepentingan nasional AS dengan posisi hukum Guyana, sehingga dukungan AS dipersepsikan sebagai faktor yang semakin mempertajam ketegangan dalam sengketa Essequibo. Dalam konteks ini, dukungan AS tidak lagi dapat dipandang sebagai tindakan netral atau politis semata, melainkan berpotensi memiliki implikasi hukum terhadap proses penyelesaian sengketa yang berada di bawah yurisdiksi Mahkamah Internasional.

Implikasi keterlibatan Amerika Serikat menjadi penting karena sengketa wilayah Essequibo antara Guyana dan Venezuela saat ini sedang diperiksa sebagai *contentious case* di Mahkamah Internasional, yang menuntut proses peradilan berjalan independen dari tekanan politik maupun dukungan terbuka negara ketiga. Mahkamah diharapkan menjamin kesetaraan para pihak dan menjaga persepsi imparsialitas dalam memutus sengketa tersebut. Dalam konteks itu, pola dukungan militer, diplomatik, dan ekonomi AS terhadap Guyana menimbulkan pertanyaan sejauh mana keterlibatan negara ketiga tetap selaras dengan asas non-intervensi.

Berangkat dari persoalan tersebut, penelitian ini dituangkan dalam penulisan hukum berjudul "Antara Hukum dan Geopolitik: Peran AS dan Independensi Mahkamah Internasional pada Sengketa Essequibo." Penelitian ini bertujuan mengkaji kedudukan hukum negara ketiga dan batas keterlibatannya dalam penyelesaian sengketa teritorial antarnegera melalui Mahkamah Internasional, serta menganalisis bagaimana keterlibatan

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[19] Guyana Business Journal, "Guarding Guyana: U.S. Security Support Amid Venezuela's Essequibo Ambitions," March 2025, accessed June 16, 2025, https://guyanabusinessjournal.com/2025/03/guarding-guyana-u-s-security-support-amid-venezuelas-essequibo-ambitions/

[20] Krane, J. (2022). The geopolitics of FDI: Can weak states deter hegemons using foreign investment? Resources Policy, 75, 102440. Doi:10.1016/j.resourpol.2021.102440

AS dalam sengketa Guyana–Venezuela memengaruhi independensi Mahkamah dan posisi hukum Guyana. Penelitian ini menggunakan pendekatan yuridis normatif dengan metode deskriptif-analitis melalui penelitian kepustakaan (*library research*) terhadap instrumen hukum primer, yurisprudensi, dan literatur akademik yang relevan. Data tersebut dianalisis secara kualitatif untuk memetakan kerangka normatif dan membandingkannya dengan praktik konkret keterlibatan AS, sehingga tampak konsistensi maupun ketegangan antara ketentuan hukum dan dinamika geopolitik.

II. DISCUSSION

1. Kedudukan dan Batas Keterlibatan Negara Ketiga dalam Sengketa Teritorial Antar Negara menurut Mahkamah Internasional

Pada ruang lingkup hukum internasional, negara ketiga diartikan sebagai negara yang bukan merupakan pihak dalam perjanjian.[21] Dalam konteks penyelesaian sengketa internasional, istilah negara ketiga merujuk pada negara yang tidak secara langsung terlibat dalam konflik antara dua atau lebih negara lainnya.[22] Menurut Pasal 53 Konvensi Wina 1969*, jus cogens* adalah norma yang diterima dan diakui oleh komunitas internasional sebagai keseluruhan, sehingga tidak dapat dikesampingkan oleh perjanjian atau aturan lain mana pun.[23] Sebagai norma yang bersifat tidak dapat diganggu gugat (*non-derogable)* dan memiliki hierarki tertinggi dalam sistem hukum internasional, *jus cogens* mengikat semua negara tanpa kecuali, termasuk negara ketiga, sehingga setiap bentuk keterlibatan mereka dalam sengketa negara lain tetap dibatasi oleh kewajiban untuk tidak bertentangan dengan norma *jus cogens*.

Mahkamah Internasional telah menginterpretasikan prinsip *jus cogens* dalam beberapa kasus internasional yang meliputi sengketa antarnegara. Meskipun Mahkamah Internasional tidak pernah merumuskan definisi eksplisit mengenai prinsip ini, keberadaan dan *jus cogens* sebagai norma berhierarki tertinggi diakui sebagai bagian integral dari sistem hukum internasional. Prinsip non-intervensi merupakan salah satu norma *jus cogens*, yakni prinsip yang bersifat imperatif dan tidak dapat

[21] United Nations, Vienna Convention on the Law of Treaties, 23 May 1969, 1155 U.N.T.S. 331, art. 2(1)(h).
[22] Vienna Convention on the Law of Treaties, art. 2(1)(h).
[23] Vienna Convention on the Law of Treaties, art. 31.

dikesampingkan.[24] Pasal 2 ayat (7) Piagam PBB menegaskan prinsip non-intervensi, yakni larangan bagi suatu negara untuk mencampuri urusan dalam negeri negara lain, khususnya yang termasuk dalam wilayah yurisdiksi domestik.[25]

Mengenai kedudukan negara ketiga di Mahkamah Internasional, Pasal 62 Statuta ICJ telah menegaskan bahwa Mahkamah Internasional memperbolehkan negara ketiga untuk mengajukan permohonan intervensi apabila negara tersebut dapat menunjukkan memiliki kepentingan hukum (*legal interest*) yang mungkin terdampak oleh putusan Mahkamah.[26] Permohonan intervensi yang diajukan oleh negara ketiga tidak bersifat otomatis diterima. Mahkamah memiliki diskresi penuh untuk menilai apakah kepentingan hukum yang diklaim memang layak dan relevan.[27] Prosedur ini diatur secara formal dalam *Rules of Court of the ICJ*, yang mensyaratkan negara pemohon untuk menyampaikan permohonan tertulis disertai dengan uraian kepentingan hukumnya, bukti pendukung, dan alasan mengapa keputusan Mahkamah Internasional bisa memengaruhi kepentingan tersebut.[28] Prosedur ini memerlukan justifikasi hukum yang kuat agar tidak dianggap sebagai bentuk intervensi sepihak.

Prinsip non-intervensi pertama kali dikemukakan secara eksplisit pada kasus internasional dalam perkara *Military and Paramilitary Activities in and against Nicaragua* (Nicaragua v. United States of America) pada tahun 1986, yang menjadi salah satu putusan *landmark* Mahkamah Internasional yang membahas mengenai prinsip non-intervensi. Dalam kasus ini, Republik Nikaragua mengajukan gugatan terhadap Amerika Serikat atas dugaan pelanggaran hukum internasional melalui pemberian dukungan terhadap kelompok bersenjata Contras yang berupaya menggulingkan pemerintahan Nikaragua. Mahkamah menegaskan bahwa "*The principle of non-intervention involves the right of every sovereign State to conduct its affairs without outside interference*." Dalam pertimbangannya, Mahkamah menyatakan bahwa dukungan yang diberikan oleh AS kepada Contras, termasuk pembiayaan, pelatihan militer, serta pemberian informasi intelijen, merupakan bentuk intervensi yang melanggar prinsip non-intervensi. Bahkan ketika intervensi tersebut tidak dilakukan secara langsung melalui penggunaan kekuatan militer, tindakan tersebut tetap

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[24] *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America),* Merits, Judgment, I.C.J. Reports 1986, p. 14, para. 186.
[25] United Nations, *Charter of the United Nations*, 1945, art. 2(7).
[26] United Nations, *Statute of the International Court of Justice*, art. 62(1).
[27] *Statute of the International Court of Justice,* art. 62(2).
[28] *Statute of the International Court of Justice*, arts. 81–86.

dikualifikasikan sebagai pelanggaran serius terhadap kedaulatan suatu negara.[29]

Pertimbangan hukum Mahkamah Internasional dalam perkara Nikaragua menjadi rujukan penting untuk menilai apakah dukungan politik, militer, dan ekonomi negara ketiga terhadap salah satu pihak sudah termasuk intervensi yang dilarang. Dalam kerangka yang sama, pola dukungan AS terhadap Guyana dalam sengketa Essequibo dapat diuji apakah tetap berupa bantuan non-koersif yang sejalan dengan asas non-intervensi atau telah berubah menjadi intervensi yang secara tidak sah membatasi kebebasan para pihak menentukan kebijakan kedaulatan dan jalur penyelesaian sengketa.

Dalam putusannya, Mahkamah Internasional secara tegas membedakan antara tindakan intervensi yang melanggar hukum internasional dengan bentuk pengaruh politik antarnegara yang masih berada dalam batas yang dapat dibenarkan. Mahkamah menekankan bahwa inti dari larangan intervensi terletak pada adanya unsur paksaan.[30] Suatu tindakan baru dapat dikategorikan sebagai intervensi yang dilarang apabila bersifat koersif, yakni bertujuan untuk memaksakan kehendak negara sasaran dan menghambatnya dalam menjalankan kehendak bebasnya.[31] Dalam praktik, sifat koersif dinilai dari tujuan tindakan, jenis sarana yang digunakan baik kekuatan bersenjata, tekanan ekonomi, maupun tekanan politik terorganisasi serta intensitas tekanan yang sedemikian rupa sehingga negara sasaran tidak lagi memiliki ruang kebebasan yang nyata.[32] Unsur koersif ini tidak harus terwujud dalam bentuk penggunaan kekuatan militer secara langsung.

Mahkamah memberikan perbedaan yang jelas antara tindakan yang termasuk ke dalam kategori intervensi terlarang dan tindakan yang tidak demikian. Misalnya, pemberian dana, pelatihan, persenjataan, serta pengorganisasian kelompok pemberontak seperti yang dilakukan oleh AS terhadap kelompok Contras secara tegas dikualifikasikan sebagai bentuk intervensi yang bertentangan dengan hukum internasional. Sebaliknya, tindakan yang semata-mata bersifat kemanusiaan atau pernyataan dukungan politik secara verbal terhadap oposisi tidak dengan sendirinya dianggap sebagai intervensi terlarang, sepanjang tidak mengandung unsur paksaan.

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[29] *Nicaragua v. United States of America,* I.C.J. Reports 1986, para. 115.
[30] "Prohibition of Intervention." *Oxford Public International Law*, accessed 16 June 2025, opil.ouplaw.com/display/10.1093/law:epil/9780199231690/law-9780199231690-e1434.
[31] "Prohibition of Intervention," *Oxford Public International Law*.
[32] Marco Roscini, *International Law and the Principle of Non-Intervention: History, Theory, and Interactions with Other Principles* (Oxford: Oxford University Press, 2024).

Mahkamah menyimpulkan bahwa intervensi yang dilarang adalah campur tangan yang ditujukan untuk memengaruhi keputusan-keputusan yang termasuk dalam ranah eksklusif kedaulatan suatu negara, "*Matters in which each State is permitted, by the principle of State sovereignty, to decide freely*".[33] Ranah ini mencakup pilihan mengenai sistem politik, ekonomi, sosial, serta kebijakan luar negeri suatu negara.

Peristiwa hukum internasional yang mengandung prinsip non-intervensi juga dapat ditemukan dalam kasus permohonan intervensi Nikaragua dalam perkara dugaan genosida yang dilakukan oleh Israel kepada Palestina. Dengan berlandaskan Pasal 62 Statuta ICJ, Nikaragua mengajukan intervensi ke Mahkamah Internasional dengan dasar bahwa ia memiliki kepentingan hukum atas keberlakuan dan implementasi Konvensi Genosida secara universal, serta menganggap bahwa pelanggaran terhadap norma *jus cogens* seperti genosida menimbulkan konsekuensi hukum yang bersifat *erga omnes* (berlaku terhadap semua).[34] Meski permohonan intervensi yang dilakukan oleh Nikaragua belum diputus, kasus ini menunjukkan bagaimana mekanisme Pasal 62 digunakan untuk memperkuat legitimasi hukum intervensi negara ketiga, bukan sebagai alat politik, tetapi sebagai instrumen hukum yang sah ketika didasarkan pada kepentingan hukum konkret.

Pemahaman mengenai batas keterlibatan negara ketiga juga diperjelas melalui praktik intervensi di bawah Pasal 62 Statuta ICJ. Mahkamah telah beberapa kali mengizinkan intervensi ketika negara ketiga berhasil menunjukkan adanya kepentingan yang bersifat hukum (*interest of a legal nature*) yang mungkin terdampak oleh putusan. Dua kasus penting dalam sengketa batas wilayah menjadi preseden utama yakni pada Kasus Land, Island, and Maritime Frontier Dispute (El Salvador v. Honduras) serta kasus Land and Maritime Boundary (Cameroon v. Nigeria). Jika dibandingkan dengan kedua perkara tersebut, intervensi AS dalam sengketa Essequibo lebih condong pada kepentingan ekonomi dan politik terkait dengan investasi perusahaan minyak dan pengaruh strategis di kawasan tersebut, bukan mengenai klaim hak teritorial yang akan ditentukan secara langsung oleh putusan Mahkamah. Karena itu, kepentingan AS lebih tepat dipandang sebagai *factual interest* yakni kepentingan yang hanya bersifat faktual, seperti ekonomi, politik, atau keamanan, tanpa adanya hak atau kedudukan hukum yang

[33] *Nicaragua v. United States of America,* I.C.J. Reports 1986, para. 186.
[34] Hukumonline. "Alasan Nikaragua Minta Intervensi dalam Kasus Genosida Israel." *Hukumonline.com*, hukumonline.com/berita/a/alasan-nikaragua-minta-intervensi-dalam-kasus-genosida-israel-lt65cba44bd0500/. Accessed 16 June 2025.

secara langsung ditentukan oleh putusan Mahkamah.[35] Berbeda dengan *interest of a legal nature* yang menyangkut hak dan kewajiban hukum suatu negara yang akan terpengaruh secara langsung oleh putusan ICJ.

Pada kasus Land, Island and Maritime Frontier Dispute (El Salvador v. Honduras), Nikaragua mengajukan permohonan intervensi. El Salvador menolak, namun dari pihak Honduras tidak berkeberatan. Nikaragua berargumen bahwa kepentingannya akan terdampak karena putusan Mahkamah mengenai status hukum Teluk Fonseca dan perairan di dalamnya secara langsung menyangkut hak-hak Nikaragua.[36] Sebagai salah satu dari tiga negara yang berbagi pesisir di Teluk Fonseca, setiap keputusan mengenai delimitasi dan rezim hukum di teluk tersebut akan secara inheren memengaruhi hak maritim dan kedaulatan Nikaragua.[37] Dalam putusannya, Mahkamah mengizinkan intervensi Nikaragua dengan alasan bahwa Mahkamah tidak perlu memutuskan apakah hak-hak Nikaragua benar-benar akan terdampak, melainkan cukup dengan menyatakan bahwa kepentingan yang diajukan Nikaragua bersifat hukum dan mungkin terdampak oleh putusan.[38] Mahkamah menegaskan bahwa tujuan intervensi adalah untuk memberi tahu Mahkamah tentang sifat hak-hak hukum Nikaragua yang menjadi persoalan dalam sengketa. Hal ini menunjukkan bahwa negara pemohon tidak perlu memiliki yurisdiksi langsung dengan pihak yang bersengketa, yang terpenting adalah validitas kepentingan hukumnya.

Pada kasus Land and Maritime Boundary (Cameroon v. Nigeria), Guinea Ekuatorial mengajukan permohonan intervensi non-pihak yang menyatakan bahwa putusan Mahkamah mengenai batas maritim antara Kamerun dan Nigeria berpotensi merugikan hak-hak kedaulatannya atas wilayah laut di Teluk Guinea.[39] Secara spesifik, Guinea Ekuatorial meminta Mahkamah untuk tidak menetapkan batas maritim di area yang lebih dekat ke pesisir Guinea Ekuatorial daripada ke pesisir Kamerun atau Nigeria.[40] Mereka

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[35] Luiz Eduardo Salles, "Article 62," in *The Statute of the International Court of Justice: A Commentary*, 3rd ed., ed. Andreas Zimmermann et al. (Oxford: Oxford University Press, 2019), 1686–1740.
[36] *Land, Island and Maritime Frontier Dispute* (El Salvador v. Honduras: Nicaragua intervening), Application by Nicaragua for Permission to Intervene, Judgment, I.C.J. Reports 1990, p. 92, para. 105.
[37] *Land, Island and Maritime Frontier Dispute* (El Salvador v. Honduras: Nicaragua intervening), Application by Nicaragua for Permission to Intervene, para. 99.
[38] *Land, Island and Maritime Frontier Dispute* (El Salvador v. Honduras: Nicaragua intervening), Application by Nicaragua for Permission to Intervene, paras. 99–100.
[39] United Nations. "Equatorial Guinea Requests Permission to Intervene in Proceedings of Case concerning Cameroon and Nigeria." *Meetings Coverage and Press Releases*, 30 June 1999, press.un.org/en/1999/19990630.icj585.html.
[40] United Nations, "Equatorial Guinea Requests Permission to Intervene in Proceedings of Case concerning Cameroon and Nigeria."

ingin memastikan bahwa putusan Mahkamah tidak akan berprasangka (*prejudice*) terhadap negosiasi batas maritim mereka di masa depan dengan kedua negara tersebut. Mahkamah mengizinkan permohonan intervensi tersebut pada Oktober 1999 dengan alasan bahwa Guinea Ekuatorial telah berhasil menunjukkan adanya kepentingan hukum yang mungkin terdampak, khususnya terkait delimitasi batas maritim di wilayah di mana ketiga negara memiliki klaim yang berpotensi tumpang tindih.[41] Dengan mengizinkan intervensi, Mahkamah dapat memperoleh informasi yang lebih lengkap untuk membuat putusan yang tidak melanggar hak negara ketiga tersebut.[42]

Analisis perbandingan dari kedua kasus ini menunjukkan bahwa Mahkamah Internasional cenderung pragmatis. Selama negara ketiga mampu mendefinisikan secara spesifik hak-hak kedaulatannya (terutama dalam konteks maritim) yang berisiko terpengaruh oleh putusan akhir, pintu intervensi di bawah Pasal 62. Ini memperjelas pemahaman bahwa keterlibatan negara ketiga bisa bersifat formal dan sah secara hukum melalui mekanisme intervensi, yang sangat kontras dengan dukungan politik atau militer di luar ruang sidang. Secara konseptual, hukum internasional tidak dapat dilepaskan dari dinamika politik global, karena sering kali mencerminkan dominasi kepentingan negara-negara besar. Dalam praktiknya, terkadang hukum tidak berdiri netral, melainkan berfungsi sebagai instrumen legitimasi tindakan politik sebagaimana terlihat pada perang dingin ketika AS maupun Uni Soviet memanfaatkan instrumen hukum internasional untuk memperkuat pengaruh geopolitiknya di berbagai kawasan dunia.[43]

Fenomena dukungan politik dari negara ketiga terhadap salah satu pihak dalam suatu sengketa seperti dukungan AS kepada Guyana dalam sengketa wilayah Essequibo tidak serta merta dikategorikan sebagai intervensi yang dilarang oleh hukum internasional. Perbedaan esensial antara dukungan politik dan tindakan intervensi terletak pada keterlibatan langsung yang berpotensi memengaruhi proses hukum, khususnya di hadapan forum peradilan internasional seperti Mahkamah Internasional.[44] Dukungan yang bersifat politik, moral, atau ekonomi dari negara pihak ketiga pada dasarnya masih berada dalam batas yang dapat diterima, selama tidak disertai dengan unsur paksaan atau

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[41] *Land and Maritime Boundary between Cameroon and Nigeria* (Cameroon v. Nigeria: Equatorial Guinea intervening), Judgment, I.C.J. Reports 2002, p. 303, para. 238.
[42] *Land and Maritime Boundary between Cameroon and Nigeria* (Cameroon v. Nigeria: Equatorial Guinea intervening), Judgment, I.C.J. Reports 2002, para. 238.
[43] Matthew Craven, Sundhya Pahuja, and Gerry Simpson, eds., *International Law and the Cold War* (Cambridge: Cambridge University Press, 2019).
[44] Marko Milanovic, "Revisiting Coercion as an Element of Prohibited Intervention in International Law," *American Journal of International Law*, 2023, doi.org/10.2139/ssrn.4504816.

tidak mengganggu independensi lembaga peradilan.[45] Namun, apabila bentuk dukungan tersebut berkembang menjadi tekanan politik atau upaya membentuk opini internasional yang ditujukan untuk memengaruhi substansi putusan pengadilan, maka hal tersebut dapat menimbulkan kekhawatiran serius terhadap prinsip netralitas dan keadilan dalam penyelesaian sengketa internasional.[46]

Dalam kondisi demikian, tekanan negara ketiga berpotensi bertentangan dengan prinsip *independence of the judiciary* sebagaimana tercermin dalam Pasal 2 Statuta Mahkamah Internasional, sekaligus menggerus prinsip *sovereign equality* para pihak di hadapan pengadilan, yaitu prinsip bahwa setiap negara harus diperlakukan dengan kedudukan hukum yang sama.[47] Dalam konteks sengketa Essequibo, pola dukungan militer, diplomatik, dan ekonomi Amerika Serikat kepada Guyana apabila disertai upaya memengaruhi arah putusan dapat dinilai mendekati bentuk intervensi *de facto* meskipun tidak secara formal memenuhi seluruh unsur intervensi bersenjata yang dilarang oleh hukum internasional.[48]

2. Keterlibatan AS pada Sengketa Guyana–Venezuela dalam memengaruhi Independensi Mahkamah Internasional

Pada Maret 2018, Guyana mengajukan gugatan untuk memulai perlawanannya kepada Venezuela atas wilayah Essequibo ke Mahkamah Internasional.[49] Setelah Guyana mengajukan masalah ini ke pengadilan, Mahkamah Internasional mengeluarkan putusan yang memberlakukan pembatasan pada Venezuela dan Guyana dengan melarang tindakan apa pun yang dapat memperburuk atau memperpanjang sengketa teritorial dengan cara apa pun sampai ada penyelesaian.[50] Meskipun Guyana dan Venezuela telah sepakat untuk tidak menggunakan kekerasan untuk menyelesaikan konflik ini akan tetapi beberapa negara termasuk AS, Brasil, dan sejumlah negara Karibia, telah berupaya menekan Venezuela agar tidak melakukan aksi pencaplokan terhadap wilayah Essequibo. Dilihat dari asas non-intervensi, tekanan tersebut lebih tepat dipahami sebagai tekanan

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[45] Margaret Ariotti, Simone Dietrich, and Joseph Wright, "Foreign Aid and Judicial Autonomy," *The Review of International Organizations*, vol. 17, 2022, pp. 691–715, doi.org/10.1007/s11558-021-09439-9.
[46] Ariotti, Dietrich, and Wright, "Foreign Aid and Judicial Autonomy."
[47] Thirlway, *The International Court of Justice.*
[48] Roscini, *International Law and the Principle of Non-Intervention.*
[49] International Court of Justice, *Memorial of Guyana*, vol. 1, *Arbitral Award of 3 October 1899* (Guyana v. Venezuela), Case No. 171, 19 Nov. 2018, icj-cij.org/node/105918.
[50] *Memorial of Guyana*, vol. 1, *Arbitral Award of 3 October 1899* (Guyana v. Venezuela), Case No. 171.

diplomatik non-koersif yang bertujuan menegakkan larangan penggunaan kekuatan dan penghormatan terhadap keutuhan wilayah (*territorial integrity*), sehingga tidak serta-merta dianggap melanggar kedaulatan sepanjang tidak disertai ancaman atau penggunaan kekuatan yang melampaui batas yang diperbolehkan hukum internasional.

Campur tangan AS dalam sengketa Guyana–Venezuela semakin menonjol sejak penemuan cadangan minyak besar oleh ExxonMobil di lepas pantai Guyana, yang memicu kembali klaim teritorial lama dan memperuncing ketegangan historis antara kedua negara.[51] Dukungan AS terhadap Guyana tampak melalui berbagai kerja sama, seperti pengadaan latihan militer yang bekerjasama dengan Angkatan Pertahanan Guyana. Sebagai respon, Venezuela memperkuat klaim kedaulatannya atas wilayah Essequibo dengan melakukan berbagai tindakan yang secara faktual dianggap sebagai bentuk aneksasi. Berbeda dengan intervensi formal melalui mekanisme Pasal 62 Statuta ICJ, keterlibatan AS dalam sengketa Guyana-Venezuela bersifat eksternal di luar proses peradilan akan tetapi memiliki implikasi signifikan terhadap dinamika sengketa geopolitik yang terjadi di Amerika Selatan.

Dukungan AS terhadap Guyana semakin diperkuat melalui pertemuan penting pada Desember 2023 antara Menteri Luar Negeri AS Antony Blinken dan Presiden Guyana Irfaan Ali. Pada 6 Desember 2023, Blinken melakukan panggilan telepon dengan Ali, menegaskan "dukungan tanpa syarat" Washington terhadap kedaulatan Guyana atas wilayah Essequibo, serta mendesak agar Venezuela menghormati putusan arbitrase 1899 kecuali ditetapkan atau diubah oleh pengadilan yang berwenang.[52] Lebih jauh lagi, sebagai sinyal dukungan yang lebih keras, AS memperluas dukungan nyata dengan meningkatkan kerja sama militer melalui Operasi Penerbangan bersama yang dilakukan oleh Komando Selatan AS (SOUTHCOM) dengan Guyana Defence Force (GDF) pada 7 Desember 2023.[53] Latihan ini merupakan bagian dari upaya untuk meningkatkan

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[51] "Guyana Seeks ExxonMobil's Help as Venezuelan Troops Mass on Border." *The Independent*, accessed 16 June 2025, independent.co.uk/news/guyana-exxonmobil-venezuelan-georgetown-nicolas-maduro-b2707243.html.
[52] Embassy of the Cooperative Republic of Guyana – Kuwait, "Secretary Blinken's Call with H.E. President Dr. Irfaan Ali," accessed 16 June 2025, guyanaembassy-kuwait.com/secretary-blinkens-call-with-h-e-president-dr-irfaan-ali/.
[53] U.S. Embassy in Guyana, "SOUTHCOM to Conduct Flight over Guyana," accessed 16 June 2025, gy.usembassy.gov/southcom-to-conduct-flight-over-guyana/.

kesiapan, keamanan maritim, dan kolaborasi regional dalam merespons potensi ancaman dari Venezuela.[54]

Kehadiran ExxonMobil, perusahaan energi raksasa AS, sebagai aktor utama dalam eksploitasi minyak di lepas pantai Essequibo, menambah lapisan kompleksitas yang signifikan. Meskipun tidak ada bukti bahwa pemerintah AS secara langsung bertindak atas perintah ExxonMobil, kepentingan ekonomi ini secara fundamental membentuk persepsi intervensi. Bagi Venezuela dan pengamat kritis lainnya, keterlibatan AS seringkali tidak didorong oleh komitmen mulia terhadap hukum internasional, melainkan oleh motif neo-imperial untuk melindungi kepentingan modal nasionalnya.[55] Narasi ini memperkuat tuduhan Venezuela bahwa sengketa ini dimanfaatkan AS untuk mengamankan sumber daya energi dan memperluas pengaruhnya. Hal ini merusak kredibilitas AS sebagai pihak penengah dan memberikan amunisi bagi Venezuela untuk mendelegitimasi seluruh proses hukum di Mahkamah Internasional sebagai "peradilan yang dikendalikan kepentingan Barat".

Militerisasi wilayah Essequibo akibat meningkatnya dukungan AS terhadap Guyana tidak hanya berpotensi memperluas dampak terhadap keamanan kawasan, tetapi juga menimbulkan implikasi terhadap independensi Mahkamah Internasional.[56] Sebagai organ peradilan utama PBB, Mahkamah secara fungsional dirancang independen dari pengaruh negara mana pun, sebagaimana ditegaskan dalam Pasal 92 Piagam PBB.[57] Namun, tekanan politik dan dukungan terbuka negara ketiga terhadap salah satu pihak dapat memunculkan persepsi bias dalam proses peradilannya.[58] Ketegangan yang meningkat dapat memicu keterlibatan negara-negara tetangga dan mengganggu stabilitas regional, sehingga memperbesar tekanan politik terhadap proses penyelesaian hukum di

[54] U.S. Embassy in Guyana, "SOUTHCOM to Conduct Flight over Guyana."
[55] "The Imperialists Want a Conflict between Guyana and Venezuela." *Kaieteur News Online*, 12 Feb. 2024, accessed 16 June 2025, kaieteurnewsonline.com/2024/02/12/the-imperialists-want-a-conflict-between-guyana-and-venezuela/.
[56] Cláudia Vidal and Lucas Wietchikoski, "U.S. Hegemony in Latin America: The Southern Command as an Instrument of Consensus and Coercion," *Contexto Internacional*, vol. 44, no. 3, 2022, e20210038, doi.org/10.1590/S0102-8529.20224403e20210038.
[57] United Nations, *Charter of the United Nations*, 1945, art. 92.
[58] Thirlway, The International Court of Justice; United Nations, Charter of the United Nations, 1945, art. 92; United Nations, *Statute of the International Court of Justice*, art. 2.

Mahkamah Internasional.[59] Meski AS secara terbuka mendukung penyelesaian damai melalui jalur hukum internasional dan menyerukan agar Venezuela mematuhi perintah Mahkamah Internasional untuk menahan diri dari tindakan provokatif, keterlibatan aktif AS berpotensi menimbulkan persepsi bahwa proses di Mahkamah kurang sepenuhnya independen.[60]

Dilihat dari waktu pelaksanaannya, latihan militer gabungan yang dilaksanakan oleh Venezuela dan AS bertepatan setelah Venezuela mengumumkan hasil referendum untuk menganeksasi Essequibo dan di tengah meningkatnya ketegangan menjadikannya sebuah "ancaman penggunaan kekuatan" (*threat of force*) yang tersirat.[61] Tindakan ini dapat dilihat sebagai upaya koersif untuk secara langsung memengaruhi Venezuela agar tidak mengambil tindakan militer. Sebaliknya, dari perspektif AS dan Guyana, latihan ini adalah tindakan yang sepenuhnya sah. Setiap negara berdaulat memiliki hak inheren untuk melakukan kerja sama pertahanan dengan negara lain guna meningkatkan keamanannya.[62] Pasal 2 ayat (4) Piagam PBB menyebutkan bahwa latihan militer pada dasarnya tidak dianggap sebagai ancaman apabila dilakukan untuk tujuan defensif, bersifat proporsional, dilaksanakan dengan persetujuan negara tuan rumah, serta tidak disertai ancaman eksplisit penggunaan kekuatan.[63] Dalam kondisi demikian, latihan militer dapat dipahami sebagai bentuk penangkalan (*deterrence*) yang sah.[64] Selama latihan tersebut dilakukan di dalam wilayah kedaulatan Guyana dan tidak melibatkan agresi langsung, AS dapat berargumen bahwa ini adalah praktik normal hubungan antarnegara dan bukan intervensi.

Ketika Venezuela mengajukan keberatannya ke Mahkamah Internasional melalui referendum nasional, tidak terdapat bukti intervensi langsung AS dalam proses hukum

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[59] Hanna M. Mistry, “Transparency as Performance: The ‘As Is’ and ‘As If’ Worlds of International Adjudication,” *Journal of International Dispute Settlement*, vol. 16, no. 3, 2025, pp. 1–22, doi.org/10.1093/jnlids/idaf040.
[60] “US Backs Guyana as Tensions Rise over Contested Essequibo Region.” Voice of America, accessed 16 June 2025, voanews.com/a/us-backs-guyana-as-tensions-rise-over-contested-essequibo-region-/7389278.html.
[61] Malcolm N. Shaw, *International Law*. 9th ed., Cambridge University Press, 2021, pp. 199–205.
[62] “US to Hold Military Exercises with Guyana amid Border Tensions with Venezuela.” *France 24*, 7 Dec. 2023, france24.com/en/americas/20231207-us-to-hold-military-exercises-in-guyana-amid-border-tensions-with-venezuala.
[63] United Nations, *Charter of the United Nations*, art. 2, para. 4.
[64] United Nations, *Charter of the United Nations*, art. 51.

formal. Namun, dukungan politik dan militer yang diberikan AS kepada Guyana secara tidak langsung memengaruhi atmosfer penyelesaian sengketa tersebut. Venezuela secara terbuka menuduh AS melakukan campur tangan dalam konflik ini, dengan menyatakan bahwa Washington memanfaatkan situasi sengketa Essequibo untuk memperluas pengaruhnya di kawasan Amerika Selatan. Tuduhan ini diperkuat oleh langkah-langkah konkret AS, seperti pernyataan dukungan tanpa syarat terhadap kedaulatan Guyana, peningkatan kerja sama militer, serta kehadiran langsung Komando Selatan AS (SOUTHCOM) dalam latihan bersama dengan militer Guyana.[65]

Dilihat dari perspektif prinsip non-intervensi, merujuk pada kasus Nicaragua v. United States of America, dukungan diplomatik AS kepada Guyana pada dasarnya tidak melanggar ketentuan hukum internasional sejauh tidak bersifat koersif.[66] Namun demikian, penyelenggaraan latihan militer bersama di tengah eskalasi ketegangan dengan Venezuela dapat diperdebatkan sebagai bentuk *coercion* atau paksaan yang dilarang dalam hukum internasional.[67] Khususnya larangan ancaman atau penggunaan kekuatan dalam Pasal 2 ayat (4) Piagam PBB dan prinsip non-intervensi yang ditegaskan Mahkamah Internasional dalam perkara Nicaragua v. United States. Pemerintah Venezuela secara terbuka menganggap tindakan tersebut sebagai bentuk intervensi terselubung yang bertujuan mengintimidasi serta memperluas pengaruh geopolitik AS di kawasan Amerika Selatan. Pandangan ini menjadi dasar bagi Venezuela untuk mempertanyakan netralitas Mahkamah Internasional, dengan menganggap bahwa proses penyelesaian sengketa telah dipolitisasi.[68]

Dampak paling serius dan fundamental dari keterlibatan AS dalam sengketa Essequibo bukanlah pada kemungkinan intervensi langsung terhadap proses hukum, melainkan pada penciptaan apa yang dapat disebut sebagai "tekanan atmosferik" (*atmospheric pressure*).[69] Ancaman ini lebih terselubung namun berpotensi lebih merusak daripada campur tangan langsung. Tekanan atmosferik merujuk pada

[65] *Land, Island and Maritime Frontier Dispute* (El Salvador v. Honduras: Nicaragua intervening), Application to Intervene, *I.C.J. Reports* 1990, pp. 134–35, paras. 99–100.
[66] Mohammed S. Helal, “Intervention, Force & Coercion: An Historical Inquiry on the Evolution of the Prohibition on Intervention,” *International Law Studies*, 2024, doi.org/10.2139/ssrn.4884428.
[67] Helal, “Intervention, Force & Coercion.”
[68] Madalina Alexianu, “Effectiveness beyond Compliance: Examining the Goal-Based Impact of the ICJ’s Provisional Measures,” *Hague Yearbook of International Law*, 2024, doi.org/10.2139/ssrn.5089147.
[69] Nienke Grossman et al., eds., *Legitimacy and International Courts* (Cambridge University Press, 2018).

pembentukan sebuah iklim politik, keamanan, dan diplomatik di sekitar sengketa yang begitu intens sehingga mengaburkan sifat murni hukum dari kasus tersebut dan mengubahnya menjadi sebuah kontes geopolitik.[70] Serangkaian tindakan AS mulai dari pernyataan "dukungan tanpa syarat", kehadiran kepentingan ekonomi yakni ExxonMobil, hingga pengerahan aset militer melalui latihan bersama SOUTHCOM secara kolektif telah mentransformasi sengketa ini dari sengketa Guyana-Venezuela menjadi arena yang dipersepsikan sebagai konfrontasi proksi antara AS dan Venezuela.

Dalam atmosfer yang telah dipolitisasi ini, setiap putusan yang menguntungkan Guyana, tidak peduli seberapa kuat dasar hukumnya, akan sangat rentan untuk didelegitimasi. Venezuela, didukung oleh narasi yang telah dibangun, dapat dengan mudah menolak putusan tersebut dengan dalih bahwa itu bukanlah hasil dari penalaran hukum yang netral, melainkan sebuah dikte politik yang dipaksakan melalui Mahkamah.[71] Di sisi lain, keterlibatan AS memperkuat posisi tawar Guyana dan memberi rasa aman terhadap potensi tindakan aneksasi sepihak dari Venezuela, sejalan dengan *provisional measures* yang telah dikeluarkan Mahkamah.[72] Meskipun demikian, langkah militerisasi ini berisiko menghambat proses mediasi dan penyelesaian damai yang dinegosiasikan.[73] Hal ini memperburuk ketegangan regional dan menciptakan persepsi bahwa proses peradilan internasional tidak sepenuhnya bebas dari pengaruh kekuatan politik global.

Dengan demikian, keterlibatan AS dalam sengketa Guyana–Venezuela tidak hanya berdampak pada dinamika bilateral kedua negara, tetapi juga berpotensi mengubah konstelasi geopolitik di kawasan Amerika Selatan serta memengaruhi persepsi terhadap independensi lembaga-lembaga hukum internasional seperti Mahkamah Internasional. Keterlibatan AS dalam sengketa Essequibo menciptakan sebuah paradoks. Secara formal, AS tidak melakukan intervensi dalam proses hukum di Mahkamah Internasional. Namun

[70] Steven Wheatley, "Foreign Interference in Elections under the Non-Intervention Principle: We Need to Talk about 'Coercion'," *Duke Journal of Comparative & International Law*, vol. 31, 2020, pp. 161–197, scholarship.law.duke.edu/djcil/vol31/iss1/3/.
[71] "Venezuela Rejects U.S. Interference in Essequibo Dispute." *teleSUR English*, accessed 16 June 2025, telesurenglish.net/venezuela-rejects-u-s-interference-in-essequibo-dispute/.
[72] Catherine Harris, "Arbitral Award of Oct. 3, 1899 (Guy. v. Venez.) (Provisional Measures) (I.C.J.)," *International Legal Materials*, vol. 63, no. 6, 2024, pp. 967–997, doi.org/10.1017/ilm.2024.20.
[73] Srđan Janković and Volker Roeben, "The Threat of Russia's Force in Ukraine," *Journal on the Use of Force and International Law*, vol. 11, nos. 1–2, 2024, pp. 87–107, doi.org/10.1080/20531702.2024.2415262.

secara substantif, tindakan politik, militer, dan ekonominya secara signifikan mengubah konstelasi sengketa, memperkuat posisi salah satu pihak, dan yang terpenting, menantang persepsi terhadap independensi proses penyelesaian sengketa itu sendiri.

III. CONCLUSION

Keterlibatan negara ketiga dalam penyelesaian sengketa internasional melalui Mahkamah Internasional pada dasarnya diperbolehkan sejauh menghormati asas non-intervensi dan *sovereign equality* serta tidak mengganggu independensi peradilan. Negara non-pihak tidak memiliki dasar untuk mencampuri pokok sengketa kecuali memenuhi syarat *interest of a legal nature* sebagaimana diatur dalam Pasal 62 Statuta ICJ. Sementara itu, kepentingan yang semata-mata bersifat ekonomi atau politik hanya dapat dikualifikasikan sebagai *factual interest*. Dukungan diplomatik, ekonomi, maupun kerja sama pertahanan tetap berada dalam batas yang sah selama tidak mengandung unsur paksaan, tidak dimaksudkan untuk mengendalikan kebijakan inti negara pihak sengketa, dan tidak menekan kebebasan Mahkamah Internasional dalam menjalankan fungsi yudisialnya.

Dalam kerangka tersebut, keterlibatan Amerika Serikat dalam sengketa Guyana–Venezuela atas wilayah Essequibo menciptakan paradoks tersendiri. Di satu sisi, dukungan politik, ekonomi, dan militer AS memperkuat daya tangkal dan posisi tawar Guyana. Namun di sisi lain, menjadikan sengketa ini bagian dari kontestasi geopolitik yang menimbulkan *atmospheric pressure* terhadap proses persidangan serta memicu narasi delegitimasi oleh Venezuela. Pola keterlibatan AS lebih tepat dipahami sebagai *factual interest* yang berada di batas antara bantuan non-koersif dan intervensi *de facto* secara formal tidak memenuhi kriteria intervensi di bawah Pasal 62 Statuta ICJ, tetapi secara politis berpotensi memengaruhi persepsi independensi dan imparsialitas Mahkamah Internasional jika diiringi militerisasi kawasan, ancaman penggunaan kekuatan, atau upaya membentuk opini internasional mengenai arah putusan.

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Tantangan Penyelesaian Sengketa Internasional melalui *Investor-State Dispute Settlement* (ISDS): Studi terhadap Posisi Indonesia dalam Melindungi Kepentingan Umum

Challenges in the Settlement of International Disputes under the Investor–State Dispute Settlement (ISDS) Mechanism: A Study of Indonesia's Approach to Protecting the Public Interest

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ABSTRAK

Penelitian ini membahas tantangan struktural yang muncul dari mekanisme Investor-State Dispute Settlement (ISDS) dan dampaknya terhadap kemampuan negara, khususnya Indonesia, dalam melindungi kepentingan publik. Dalam praktiknya, ISDS sering menempatkan negara dalam posisi subordinat, di mana kebijakan yang ditujukan untuk menjaga hak masyarakat, lingkungan, dan kesehatan publik justru menjadi objek gugatan investor asing. Tujuan penelitian ini adalah menganalisis ketimpangan struktural dalam ISDS, menilai pengaruhnya terhadap kedaulatan regulatif Indonesia, serta mengeksplorasi strategi reformasi hukum investasi yang menyeimbangkan perlindungan investor dan kepentingan publik. Metode penelitian yang digunakan adalah pendekatan yuridis-normatif dengan analisis terhadap perjanjian investasi bilateral dan multilateral, putusan arbitrase, serta kebijakan nasional terkait investasi. Hasil penelitian menunjukkan bahwa dominasi paradigma investor-centric dalam ISDS melemahkan kapasitas negara berkembang untuk merumuskan kebijakan publik progresif. Oleh karena itu, Indonesia perlu menata ulang instrumen hukum investasinya dengan menekankan pada aspek keadilan sosial, transparansi, dan keberlanjutan, tanpa mengurangi kepastian hukum bagi investor. Hasil dari penelitian ini diharapkan dapat menjadi kontribusi bagi perumusan kerangka hukum investasi yang adil, demokratis, dan berpihak pada pembangunan berkelanjutan.

Keywords: ISDS, hukum investasi, keadilan sosial, kedaulatan regulasi, reformasi hukum, Indonesia.

ABSTRACT

This study examines the structural challenges arising from the Investor-State Dispute Settlement (ISDS) mechanism and its impact on a country's ability, particularly Indonesia, to protect the public interests. In practice, ISDS often positions the state in a subordinate role, where policies designed to safeguard societal rights, environmental protection, and public health become targets of foreign investor claims. The study aims to analyze structural imbalances within ISDS, assess their effects on Indonesia's regulatory sovereignty, and explore strategies for reforming investment law to balance investor protection with public interest. The research employs a normative juridical approach, analyzing bilateral and multilateral investment agreements, arbitral decisions, and relevant national policies. The findings of this study indicate that the dominance of the investor-centric paradigm in ISDS weakens the capacity of developing states to formulate progressive public policies. Therefore, Indonesia needs to restructure its investment law instruments by emphasizing social justice, transparency, and sustainability, without diminishing legal certainty for investors. The results of this research are expected to contribute to the formulation of an investment law framework that is fair, democratic, and aligned with sustainable development.

Keywords: ISDS, investment law, social justice, regulatory sovereignty, legal reform, Indonesia.

I. INTRODUCTION

Dalam era globalisasi ekonomi, arus investasi asing langsung (*Foreign Direct Investment*/*FDI*), selanjutnya disebut "FDI" menjadi elemen penting bagi pembangunan suatu negara. Untuk mendukung hal tersebut, banyak negara merancang kerangka hukum yang kondusif, termasuk menyediakan mekanisme penyelesaian sengketa yang menjamin kepastian hukum bagi investor. Salah satu mekanisme yang berkembang secara signifikan adalah (*Investor-State Dispute Settlement*/*ISDS,* selanjutnya disebut "ISDS"), yang memungkinkan investor asing menggugat negara penerima investasi di forum arbitrase internasional apabila merasa dirugikan oleh kebijakan negara tersebut. Menurut data terkini, jumlah kasus ISDS berbasis perjanjian investasi telah melebihi 1.300 kasus secara global hingga akhir 2023, dengan peningkatan lebih dari dua kali lipat dalam dekade terakhir.[1] ISDS umumnya dimasukkan dalam berbagai perjanjian perdagangan dan investasi untuk menyelesaikan perselisihan antara negara dan investor dengan proses yang mengandalkan arbitrase dan berada di luar yurisdiksi pengadilan publik.[2]

Pada dasarnya, ISDS dirancang untuk melindungi investor dari tindakan sewenang-wenang negara, terutama pengambilan aset tanpa ganti rugi yang adil. Perlindungan ini sering kali dituangkan dalam perjanjian internasional, baik bilateral (*Bilateral Investment Treaties*/BITs) maupun multilateral yang mengatur hak dan kewajiban antara negara dan investor asing. Dengan adanya kepastian tersebut, negara berharap dapat menarik lebih banyak investasi asing yang dianggap membawa manfaat ekonomi. Namun, perlindungan hukum ini tidak jarang menimbulkan ketegangan, terutama ketika kebijakan domestik yang ditujukan untuk melindungi kepentingan umum seperti kesehatan, lingkungan, dan keadilan sosial menjadi objek gugatan oleh investor. Hal ini menimbulkan persoalan, mengingat negara merupakan entitas yang dinamis, di mana kepentingan nasional sering kali menuntut perubahan regulasi domestik yang tidak dapat dihindari.

Ketika fleksibilitas regulasi negara dibatasi oleh potensi gugatan investor, tekanan terhadap kedaulatan hukum nasional menjadi semakin nyata. Situasi ini menjadi lebih

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[1] UNCTAD, Facts and Figures on Investor–State Dispute Settlement Cases (2024), hal. 1-2. https://unctad.org/publication/facts-and-figures-investor-state-dispute-settlement-cases.
[2] Fabry, Elvire, and Giorgio Garbasso. *"ISDS in the TTIP: The Devil Is in the Details."* Policy Paper, Notre Europe, Jacques Delors Institute, 2015, p. 4.

kompleks bagi negara-negara berkembang seperti Indonesia, yang menghadapi tekanan besar karena berbagai kebijakan publik tertentu dapat ditafsirkan oleh investor sebagai pelanggaran hak investasi dan berujung pada gugatan miliaran dolar. Fenomena ini dikenal sebagai *regulatory chill*, yaitu kecenderungan negara menghindari kebijakan progresif untuk mencegah risiko gugatan ISDS. *Regulatory Chill* di bawah ISDS menggambarkan keadaan di mana pemerintah menunda atau memutuskan untuk tidak menerapkan regulasi baru, terutama di bidang seperti kesehatan, lingkungan, atau keselamatan publik, karena khawatir akan biaya litigasi yang mahal dan tuntutan kompensasi dari investor asing.[3]

Tinjauan terhadap literatur menunjukkan bahwa reformasi mekanisme ISDS telah menjadi isu perdebatan global. Harshad Pathak (2025), dalam artikelnya yang berjudul *"Reimagining Investor–State Dispute Settlement or How to Map Indeterminacy and Reform Identity"*, menyoroti bahwa mekanisme ISDS memiliki karakteristik *indeterminacy*, yakni ketidakpastian serta terbukanya ruang penafsiran terhadap norma dan struktur mekanisme penyelesaian sengketa tersebut.[4] Bagi negara-negara berkembang seperti Indonesia, "indeterminacy" ini diartikan sebagai ketidakpastian hukum atau ambiguitas dalam interpretasi aturan atau perjanjian dimana akhirnya memperkuat dilema antara menjaga iklim investasi dan mempertahankan ruang kebijakan untuk melindungi kepentingan publik.[5] Ketika setiap forum arbitrase dapat menafsirkan perjanjian secara berbeda, negara tujuan investasi menghadapi ketidakpastian dalam merumuskan regulasi progresif karena khawatir akan digugat, menciptakan fenomena *regulatory chills* sebagaimana dijelaskan dalam pembahasan sebelumnya. Situasi ini menimbulkan pertanyaan mendasar mengenai sejauh mana mekanisme ISDS membatasi ruang kebijakan negara dan secara sistematis menggeser prioritas pembangunan dari perlindungan terhadap kepentingan rakyat menuju akomodasi kepentingan korporasi transnasional.

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[3] Gustavo J. Garcia Sanchez, *"Defrosting Regulatory Chill," University of Pennsylvania Journal of International Law*, forthcoming, *Texas A&M University School of Law Legal Studies Research Paper* No. 23-14, 2023.
[4] Harshad Pathak, *Reimagining Investor–State Dispute Settlement—or How to Map Indeterminacy and Reform Identity*, *Journal of International Dispute Settlement*, vol. 16, no. 1, 2025
[5] Christian, J.P., *Tinjauan kritis sistem penyelesaian sengketa investasi internasional dan dampaknya terhadap kepentingan nasional Indonesia*, Causa: Jurnal Hukum dan Kewarganegaraan, 13(3), 2025, hlm. 4-6.

Meskipun literatur internasional menekankan perlunya pendekatan yang menyeimbangkan hak investor dan hak negara untuk mengatur (*right to regulate*), studi yang secara khusus mengulas strategi kebijakan Indonesia untuk menghadapi ketimpangan struktural dalam ISDS masih relatif terbatas. Sebagian besar studi sebelumnya lebih menekankan kritik umum terhadap ISDS atau perdebatan konseptual di tingkat global, tanpa memberikan pemetaan sistematis mengenai posisi Indonesia, kebutuhan domestik, dan opsi kebijakan konkret yang dapat ditempuh. Dengan demikian, terdapat kesenjangan penelitian terkait pemetaan komprehensif kebijakan nasional Indonesia dalam konteks ISDS. Penelitian ini berupaya mengisi kesenjangan tersebut dengan menghadirkan analisis mengenai strategi kebijakan dan rekomendasi kebijakan yang kontekstual bagi Indonesia, sehingga menawarkan kontribusi empiris dan normatif yang lebih terfokus. Identifikasi dalam persoalan ini sangat penting dalam konteks hukum investasi global yang terus berkembang, karena tanpa pemetaan yang jelas terhadap akar persoalan dan solusi potensial, negara berkembang berisiko tetap berada dalam posisi yang tidak setara di hadapan hukum internasional. Dengan latar belakang ketimpangan posisi tersebut, maka terdapat urgensi bagi Indonesia untuk secara kritis meninjau kembali posisinya dalam sistem penyelesaian sengketa investasi internasional agar mampu menjaga keseimbangan antara kebutuhan investasi asing dan perlindungan terhadap kedaulatan regulasi nasional, khususnya yang menyangkut hak-hak ekonomi, sosial, dan lingkungan masyarakat. Oleh karena itu, kajian ini difokuskan pada analisis bagaimana Indonesia dapat membangun kerangka kebijakan yang adil dan seimbang dalam menghadapi tantangan struktural ISDS, dengan menempatkan kepentingan publik sebagai poros utama dalam pengembangan hukum dan ekonomi nasional. Penelitian ini bertujuan untuk:

1. Menganalisis ketimpangan struktural dalam mekanisme ISDS dan dampaknya terhadap ruang kebijakan Indonesia, terutama dalam regulasi yang berorientasi pada kepentingan publik.
2. Menganalisis kerangka kebijakan yang adil dan seimbang, dengan perlindungan kepentingan umum sebagai dasar pengembangan hukum dan ekonomi nasional.
3. Mengidentifikasi opsi reformasi yang memperkuat right to regulate Indonesia sekaligus mempertahankan daya tarik investasi asing, guna mencapai keseimbangan antara kepentingan ekonomi dan perlindungan publik.

Penelitian ini menggunakan pendekatan yuridis-normatif yang berfokus pada analisis terhadap norma hukum positif, doktrin hukum, serta putusan arbitrase internasional yang relevan. Metode ini dilakukan dengan menelaah perjanjian investasi bilateral maupun multilateral yang memuat ketentuan ISDS, mengkaji putusan arbitrase internasional seperti ICSID (*Centre for Settlement of Investment Disputes*)dan kerangka UNCITRAL (*United Nations Commission on International Trade Law)* yang melibatkan Indonesia, serta meninjau kebijakan nasional terkait investasi dan perlindungan kepentingan publik. Selain itu, penelitian ini juga memperhatikan literatur akademik mengenai teori hukum investasi internasional dan konsep kedaulatan regulasi, sehingga hasil analisis diharapkan mampu memberikan gambaran menyeluruh mengenai ketimpangan struktural dalam mekanisme ISDS dan implikasinya terhadap kapasitas Indonesia dalam melindungi kepentingan umum.

Artikel ini disusun secara sistematis ke dalam beberapa bagian. Bagian II.1 membahas tantangan hukum dan politik dalam perlindungan kepentingan umum serta ketimpangan struktural dalam mekanisme ISDS. Bagian II.2 kemudian mengkaji bentuk-bentuk tantangan struktural dan ketimpangan dalam ISDS yang secara langsung memengaruhi kemampuan negara, khususnya Indonesia, dalam melindungi kepentingan umum. Selanjutnya, Bagian II.3 memaparkan strategi reformasi hukum investasi di Indonesia yang diarahkan untuk menyeimbangkan perlindungan investor dengan kepentingan publik. Artikel ini ditutup dengan kesimpulan yang merangkum temuan utama penelitian, menegaskan urgensi reformasi hukum investasi yang berorientasi pada keadilan sosial, transparansi, dan kedaulatan regulasi, serta menyampaikan rekomendasi konkret bagi Indonesia dalam forum internasional.

II. DISCUSSION

1. Tantangan Hukum dan Politik dalam Perlindungan Kepentingan Umum

1.1 Mekanisme ISDS dan Ketimpangan Struktural

Menurut laporan *United Nations Conference on Trade and Development* (UNCTAD) tahun 2024, hingga tahun 2025 tercatat lebih dari 1.400 kasus ISDS, dengan sekitar 75% di antaranya muncul dalam lima belas tahun terakhir.[6] Pada tahun 2024 saja, tercatat 58 kasus baru yang diajukan, meskipun jumlah sebenarnya kemungkinan lebih tinggi karena sebagian besar proses arbitrase dilakukan secara tertutup.[7] Peningkatan jumlah kasus ISDS tersebut tidak terlepas dari semakin banyaknya perjanjian investasi yang memberikan hak kepada investor untuk menggugat negara melalui mekanisme ISDS. ISDS memberikan akses bagi investor asing untuk menggugat negara penerima investasi melalui arbitrase internasional. Dalam praktiknya, sebagian besar proses arbitrase berlangsung secara tertutup dan bersifat final serta mengikat. Hasil putusan arbitrase tidak selalu dipublikasikan secara terbuka, sebagaimana diatur dalam ICSID Arbitration Rules (2022) yang masih memberikan ruang bagi kerahasiaan proses arbitrase atau sesuai dengan kerangka *United Nations Commission on International Trade Law* (UNCITRAL).[8] Secara prosedural setiap pihak masing-masing dalam sengketa menunjuk satu orang arbitrator dan kedua arbitrator tersebut kemudian memilih arbitrator ketiga sebagai ketua tribunal.[9] Tribunal *ad hoc* yang terbentuk akan memeriksa dan memutus sengketa secara final dan mengikat. Forum arbitrase yang digunakan biasanya telah ditentukan terlebih dahulu dalam perjanjian investasi atau perdagangan yang berlaku.

Selain itu, perlu dipertimbangkan perspektif pendukung ISDS, dengan argumentasi bahwa mekanisme ini penting untuk melindungi investor dari tindakan negara penerima investasi yang sewenang-wenang, sehingga mendorong aliran FDI yang lebih besar ke negara berkembang.[10] Sebagaimana dicatat oleh Rocha, Brauch, dan Mebratu-Tsegaye (2021), para pendukung ISDS berargumen bahwa mekanisme ini diperlukan karena pengadilan domestik di negara berkembang sering dianggap *"inefficient, slow, biased, corrupt, and lacking in international law expertise."* Argumen ini relevan bagi Indonesia, mengingat persepsi terkait independensi dan integritas

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[6] UNCTAD, *Recent Trends in Investor–State Arbitration Cases*, IIA Issues Note No. 2, September 2025. https://unctad.org/publication/recent-trends-investor-state-arbitration-cases

[7] United Nations Conference on Trade and Development (UNCTAD), IIA Issues Note: International Investment Agreements.

[8] ICSID. (2022). *Arbitration, Confidentiality & Transparency (Rules 2022)*

[9] Convention on the Settlement of Investment Disputes between States and Nationals of Other States (ICSID Convention) art 37, ICSID, Chapter IV, Arbitration, International Centre for Settlement of Investment Disputes.

[10] Shoba Chandran, *Reform Needed to Reinforce the Legitimacy of ISDS in Resolving Societal Challenges*, in *The Guide to Investment Treaty Protection and Enforcement – Third Edition* (Global Arbitration Review, 27 October 2025), https://globalarbitrationreview.com/guide/the-guide-investment-treaty-protection-and-enforcement/third-edition/article/reform-needed-reinforce-the-legitimacy-of-isds-in-resolving-societal-challenges.

peradilan dapat memengaruhi keputusan investor asing. Ketidakpercayaan terhadap sistem hukum nasional berpotensi menurunkan minat investasi, yang pada akhirnya dapat merugikan pertumbuhan ekonomi nasional. Namun, kritik terhadap ISDS menekankan bahwa manfaat tersebut sering kali disertai dengan risiko tinggi terhadap kedaulatan negara. Pengalaman Indonesia dalam berbagai sengketa menunjukkan bahwa ISDS berpotensi menghambat kebijakan publik yang progresif.[11]

Mekanisme ini membentuk suatu sistem hukum transnasional yang memungkinkan korporasi lintas negara mengajukan klaim terhadap negara penerima investasi di luar yurisdiksi pengadilan domestik. Meskipun secara normatif bertujuan untuk melindungi kepastian hukum bagi investor, praktiknya menunjukkan bahwa mekanisme ISDS juga menimbulkan ketegangan antara perlindungan hak investor dan kedaulatan negara dalam menetapkan kebijakan publik.[12] Perancangan mekanisme ISDS yang optimal harus memperhitungkan bahwa kompensasi investor tidak semata-mata mengacu pada pengurangan laba, tetapi mempertimbangkan efek terhadap kesejahteraan negara penerima investasi.[13] Dalam konteks negara berkembang penggunaan ISDS tanpa mekanisme yang seimbang berpotensi memperdalam ketimpangan struktural karena negara penerima investasi harus menghadapi klaim bernilai besar yang dapat membatasi ruang kebijakan publiknya, sementara investor menikmati perlindungan yang tidak tersedia bagi pelaku domestik atau masyarakat lokal. Perlindungan tersebut mencakup hak untuk memperoleh perlakuan yang adil dan setara (*fair and equitable treatment*), jaminan non-diskriminasi melalui asas *national treatment* dan *most-favoured nation*, serta perlindungan dari ekspropriasi langsung maupun tidak langsung tanpa kompensasi yang memadai.[14] Ketentuan ini diperkuat oleh hak khusus bagi investor asing untuk menggugat negara tuan rumah melalui mekanisme ISDS di forum arbitrase internasional, seperti ICSID atau UNCITRAL, suatu hak istimewa yang secara struktural menempatkan investor asing pada posisi yang lebih menguntungkan dibandingkan pelaku usaha domestik karena forum ini tidak berada di bawah yurisdiksi nasional negara penerima

[11] Ibid
[12] Junaidi, 'Implikasi Perlindungan Investor Asing dalam Arbitrase Internasional terhadap Kedaulatan Negara: Studi Kasus Churchill Mining' (2024) 2 Kultura: Jurnal Ilmu Hukum, Sosial, dan Humaniora 872, hlm 5–7. https://doi.org/10.572349/kultura.v2i10.3960
[13] F. Stähler, "An optimal investor-state dispute settlement mechanism," *Journal of Economics*, 138 (2023): 1, https://doi.org/10.1007/s00712-022-00800-z.
[14] UNCTAD, *Investment Policy Framework for Sustainable Development* (2015) 32–35.

investasi.[15] Dengan demikian, ISDS bukan hanya sebuah mekanisme penyelesaian sengketa semata, tetapi juga merupakan bagian dari arsitektur hukum dan ekonomi global yang berpotensi memperkuat ketimpangan struktural antara negara penerima investasi dan investor internasional. Oleh karena itu, analisis terhadap ISDS tidak dapat dilepaskan dari analisis terhadap kedaulatan regulasi negara, hak investor, dan keseimbangan antara keduanya.

1.2 Kasus *Churchill Mining* serta Dampaknya terhadap Regulasi Negara

Beberapa perkara ISDS menggambarkan bagaimana mekanisme tersebut memengaruhi kebijakan negara penerima investasi dan menggambarkan ketimpangan struktural dalam hubungan investasi internasional. Banyak di antaranya melibatkan tuntutan kompensasi oleh investor dalam jumlah yang sangat besar hingga milyaran bahkan trilyunan USD. Salah satu contoh signifikan adalah perkara ***Churchill Mining Plc*** dan ***Planet Mining Pty Ltd*** melawan Pemerintah Indonesia. Berdasarkan **Putusan ICSID No. ARB/12/14 dan ARB/12/40,** penyelesaian sengketa ini diajukan kepada *International Centre for Settlement of Investment Disputes* (ICSID) dengan dasar dua perjanjian bilateral investasi (*Bilateral Investment Treaty/BIT*), yaitu BIT antara Pemerintah Kerajaan Inggris dan Irlandia Utara dengan Indonesia tertanggal **24 Maret 1977**, serta BIT antara Pemerintah Australia dengan Indonesia tertanggal **17 November 1992.** *Churchill Mining* mengajukan gugatan arbitrase kepada ICSID pada **22 Mei 2012**, disusul oleh *Planet Mining Pty Ltd* pada **26 November 2012** dengan dasar permohonan yang serupa. Kedua perkara tersebut kemudian digabung untuk disidangkan bersama, namun tetap menghasilkan **putusan terpisah**. Churchill mengajukan permohonan arbitrase dengan mendasarkan yurisdiksinya pada *Article 6 of ICSID Convention*,[16] serta

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[15] Junaidi, 'Implikasi Perlindungan Investor Asing dalam Arbitrase Internasional terhadap Kedaulatan Negara: Studi Kasus Churchill Mining' (2024) 2 *Kultura: Jurnal Ilmu Hukum, Sosial, dan Humaniora* 872, hlm 5–7.

[16] *Article 6 of ICSID Convention, (1) Without prejudice to the powers and functions vested in it by other provisions of this Convention, the Administrative Council shall: (a) adopt the administrative and financial regulations of the Centre; (b) adopt the rules of procedure for the institution of conciliation and arbitration proceedings; (c) adopt the rules of procedure for conciliation and arbitration proceedings (hereinafter called the Conciliation Rules and the Arbitration Rules); (d) approve arrangements with the Bak for the use of the Bank's administrative facilities and services; (e) determine the conditions od service of the Secretary Genderal and of any Deputy Secretary General; (f)adopt the annual budget of revenues and expenditures of the Centre; (g)appove the annual report on the operation of rhe Centre. The decisions refered to in sub-paragraphs (a), (c), and (d) above shall be adopted by a majority of two-thirds of the members of the Administrative Council.*

Article of 7 UK-Indonesia BIT.[17] Permohonan tersebut diajukan terkait sengketa yang timbul dari investasi Churchill pada perusahaan lokal di Indonesia yang bergerak di sektor pertambangan batubara. Dalam permohonan arbitrase tersebut, Churchill mendasarkan argumen hukumnya pada *Article* 3 (2)[18] dan *Article* 5 (1) UK–Indonesia BIT[19], dengan pandangan bahwa tindakan Indonesia dianggap bertentangan dengan kewajiban-kewajiban yang diatur dalam perjanjian tersebut.[20]

Pada akhirnya, ICSID melalui putusan tanggal **6 Desember 2016** menolak seluruh tuntutan Churchill terhadap pemerintah Indonesia dan Churchill diwajibkan membayar kerugian kepada pemerintah Indonesia.[21] Majelis arbitrase menilai bahwa izin pertambangan yang dimiliki penggugat terbukti **palsu**, serta proses *due diligence* yang dilakukan perusahaan tidak memadai.[22] Tribunal juga menegaskan bahwa investasi yang tidak sah menurut hukum nasional tidak layak dilindungi oleh hukum internasional.[23] Dengan demikian, **Indonesia dinyatakan menang** atas gugatan senilai **US$1,31 miliar (sekitar Rp17 triliun).** Selain itu, Indonesia juga menerima **kompensasi sebesar US$8,6 juta** dan penggugat diwajibkan membayar kembali **biaya administrasi sebesar**

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[17] *Article 7 of UK-Indonesia BIT, Reference to International Centre for Settlement of Investment Disputes, (1) The Contracting Party in the territory of which a national or company of the other Contractiong Party makes or intends to make an investment shall assent to any request on the part of such national or company to submit, for conciliation or arbitration, to the Centre established by the Convention on the Settlement of Investment Disputes between States and Nationals of Other States opened for signature at Washington on 18 March 1965 any disputes that may arise in connection with rhe investment*.

[18] *Article 3 UK-Indonesia BIT, Promotion and protection of Invetment, (2)Investment of nationals or companies of either Contracting Party shall at all times be accorded fair and equitable treatment and shall enjoy full protection and security in the territory of the other Contracting Party. Easch Contracting Party shall ensure that the management, maintenance, use, enjoyment or disposal of investments in its territory of nationals or companies of the other Contracting Party are not in any way impaired by unreasonable or discriminatory measures. Each Contracting Party shall observe any obligation it may have entered into with regard to investments of nationals or companies of the other Contracting Party.*

[19] *Article 5 UK-Indonesia BIT. Expropriation, (1)Investments of nationals or companies of either Contracting Party shall not be nationalised, expropriated or subjected to measures having effect equivalent to nationalisation or expropriation (hereinafter referred to as 'expropriation") in the territory of the other Contracting Party except for a public purpose related to the internal nedds of the expropriating Party and againts conpensation. Such conpensation shall amount to the market value of the investment expropriated immediately before the expropriation or impending expropriation become public knowlegde, shall be made without undue delay, shall be effectively realizable and shall be freely transferable. Appropriate provision shall be made for the determination and payment of such compensation. The legality of any expropriation and the amount and method of payment of compensation shall be subject to review by due process of law.*

[20] *Churchill Mining plc and Palanet Mining Pty Ltd Vs Republic of Indonesia Award, 2016, ICSID,* hlm *2*

[21] *Churchill Mining Plc and Planet Mining Pty Ltd v. Republic of Indonesia ward, 2016, ICSID.,* hlm *199.*

[22] *Churchill Mining v Indonesia* (ICSID ARB/12/14; ARB/12/40), Award, para 509.

[23] "Indonesia Menang Lawan Perusahaan Tambang Inggris di Arbitrase Internasional," *VOA Indonesia*, 25 Mar. 2019, www.voaindonesia.com/a/indonesia-menang-lawan-perusahaan-tambang-inggris-di-arbitrase-internasional/4847376.html. ; Lihat juga *Churchill Mining v Indonesia* (ICSID ARB/12/14; ARB/12/40), Award, para 508.

US$800.000.[24] Meskipun Indonesia memenangkan perkara tersebut, sengketa ini memberikan dampak negatif terhadap iklim penanaman modal di Indonesia. Hal ini disebabkan oleh kurangnya kehati-hatian pemerintah dalam proses pemberian izin pertambangan, yang menimbulkan tumpang tindih perizinan serta potensi sengketa investasi di tingkat internasional. Kondisi tersebut berimplikasi pada menurunnya kepercayaan investor asing, karena mencerminkan adanya ketidakpastian regulasi dan lemahnya pengawasan pemerintah terhadap kegiatan investasi di sektor sumber daya alam.[25]

Kasus ini menunjukkan bahwa negara penerima investasi harus berhati-hati dalam proses pemberian izin pertambangan, termasuk memeriksa kelengkapan dokumen, validitas izin, potensi tumpang tindih izin, dan aspek hukum dalam struktur investasi. Kegagalan memenuhi aspek legal dan prosedural yang jelas dapat membuat negara rentan terhadap tuntutan arbitrase atau setidak-nya menciptakan ketidakpastian investasi. Meskipun ICSID diciptakan untuk memberikan kepastian hukum dan penyelesaian cepat, kasus Churchill justru menunjukkan sebaliknya. Aturan BIT lama yang kabur memungkinkan investor nakal menggugat miliaran dolar, meski izinnya terbukti palsu sejak awal. Indonesia harus menghadapi proses selama lima tahun dan mengeluarkan ratusan miliar rupiah untuk membuktikan pemalsuan tersebut. Meski akhirnya menang, kerugian besar tetap tak terhindarkan. Sebagaimana dianalisis oleh Lubis (2022), dasar putusan ICSID telah sesuai dengan prinsip UNIDROIT 2010, namun sekaligus menunjukkan pentingnya aspek substansial dalam kontrak komersial dan investasi untuk mencegah sangketa serupa di kemudian hari.[26]

1.3 Ketidakpastian Norma ISDS

Mekanisme *Investor-State Dispute Settlement* (ISDS) yang dibentuk melalui berbagai perjanjian investasi internasional tidak memberikan kepastian normatif yang

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[24] Ida Ayu Gde Wulan Purnamasari, "Kekuatan Mengikat Keputusan Arbitrase ICSID dalam Penyelesaian Sengketa Penanaman Modal," *Acta Comitas: Jurnal Hukum Kenotariatan* 5, no. 2 (September 2020): 401, https://doi.org/10.24843/AC.2020.v05.i02.p16. Lihat Juga *Churchill Mining Plc and Planet Mining Pty Ltd v. Republic of Indonesia ward, 2016 I.C.S.I.D.*, hlm *199.*

[25] Jurnal Panah Keadilan, "Dampak yang Merugikan Indonesia dalam Sengketa Churchill Mining Plc dan Planet Mining Pty Ltd melalui ICSID," *Jurnal Panah Keadilan* 2, no. 2 (Agustus 2023): 36, https://jurnal.uniraya.ac.id/index.php/PanahKeadilan.

[26] Devi Triana Lubis, "Analisa Putusan ICSID Atas Sengketa Churchill Mining Plc, Planet Mining dengan Pemerintah Indonesia Berdasarkan Prinsip UNIDROIT," *Jurnal Hukum Universitas Trisakti* 1, no. 1 (2022): hlm 31.

stabil bagi negara penerima investasi. Sistem ISDS tidak memiliki bentuk kelembagaan tetap yang seragam, melainkan beroperasi dalam ruang interpretasi yang penuh dengan ketegangan penafsiran. Tantangan ini semakin kompleks dengan keberadaan mekanisme ISDS, yang memungkinkan investor menggugat pemerintah langsung ke forum arbitrase internasional seperti ICSID, tanpa melalui mekanisme peradilan nasional. Harshad Pathak, melalui pendekatan *indeterminacy theory*, menjelaskan bahwa ketidakpuasan terhadap hukum investasi internasional/International Investmen Law(IIL) sebagian besar muncul dari karakter yudisial ISDS yang sangat dipengaruhi oleh latar belakang nilai-nilai politik dan pengalaman para arbitratornya.[27] Norma-norma dalam IIL bersifat lentur dan tidak cukup determinatif untuk menghasilkan satu putusan yang konsisten. Sebaliknya, normal-norma tersebut memungkinkan justifikasi atas berbagai hasil yang saling bertentangan, bergantung pada penilaian nilai subjektif dari para pengambil keputusan.[28]

Dengan kerangka *indeterminacy* sebagaimana diuraikan sebelumnya, dampak nyata dari mekanisme ISDS terlihat jelas pada posisi negara penerima investasi, khususnya negara berkembang seperti Indonesia. Sifat *indeterminate* dalam mekanisme ISDS berdampak langsung terhadap kepastian hukum yang sangat dibutuhkan oleh negara-negara penerima investasi. Ketiadaan standar yang koheren dan konsisten tentang batas perlindungan bagi investor dan ruang regulasi negara, maka tindakan sah pemerintah sering kali dapat ditafsirkan secara kontradiktif dalam forum arbitrase.[29] Akibatnya, negara tidak dapat memperkirakan apakah suatu kebijakan publik akan dianggap melanggar kewajiban internasional atau tidak.

Hal lain yang disebabkan oleh ketidakkonsistenan norma dalam mekanisme ISDS adalah mendorong investor untuk lebih sering mengajukan gugatan, karena sulit untuk memperkirakan sejak awal kemungkinan keberhasilan klaim mereka. Konsekuensinya, negara menghadapi beban biaya tambahan dan menciptakan ketidakefisienan dalam sistem penyelesaian sengketa.[30] Misalnya, dalam kasus *Newmont v. Indonesia*

[27] Harshad Pathak, *Reimagining Investor–State Dispute Settlement—or How to Map Indeterminacy and Reform Identity*, *Journal of International Dispute Settlement*, vol. 16, no. 1, 2025, hlm. 1.
[28] Ibid., hlm. 4.
[29] Ibid., hlm. 5.
[30] Josef Ostřanský, Florencia Sarmiento, dan Suzy Nikiema, *Why Is Investment Treaty and Investor–State Dispute Settlement Reform Needed? Questions & Answers* (Winnipeg: International Institute for Sustainable Development, 2025), 13.

menggambarkan persoalan dimana kebijakan divestasi saham yang bertujuan menjaga kepentingan nasional justru digugat sebagai tindakan diskriminatif.[31] Kasus ini secara empiris menggambarkan bagaimana mekanisme *Investor-State Dispute Settlement* (ISDS) dapat membatasi ruang kebijakan nasional dan memunculkan fenomena *regulatory chill*. Sengketa ini berawal ketika *Newmont Mining Corporation*, melalui entitas hukumnya di Belanda, mengajukan gugatan terhadap Pemerintah Indonesia di ICSID pada tahun 2014 terhadap kebijakan divestasi saham dan larangan ekspor mineral mentah yang diatur dalam Undang-Undang Nomor 4 Tahun 2009 tentang Pertambangan Mineral dan Batubara.[32] Kebijakan tersebut didasarkan pada prinsip kedaulatan permanen negara atas sumber daya alam dan bertujuan untuk meningkatkan nilai tambah ekonomi nasional melalui kewajiban pembangunan smelter domestik.

Namun, kebijakan ini dipersoalkan oleh investor sebagai bentuk pelanggaran terhadap perlakuan yang adil dan setara (*Fair and Equitable Treatment*) serta dianggap mengganggu ekspektasi investasi yang sah (*legitimate expectations*) sebagaimana dua hal tersebut diatur dalam Indonesia-Netherlands BIT (1994).[33] Pemerintah Indonesia kemudian menandatangani Nota Kesepahaman (*Memorandum of Understanding, MoU*) dengan PT Newmont Nusa Tenggara (NNT) pada 3 September 2014, yang secara substansial memberi pengecualian terhadap kebijakan hilirisasi mineral, termasuk kewajiban pembangunan smelter dan bea keluar, sehingga dianggap melemahkan pelaksanaan Undang-Undang Minerba.[34] Kasus ini menjadi contoh dari *regulatory rollback*, yakni kondisi ketika perjanjian investasi bilateral (BIT) antara Indonesia dan Belanda dimanfaatkan oleh investor asing untuk menunda atau melemahkan pelaksanaan undang-undang nasional yang sah.[35] Ketidakpastian interpretasi tribunal arbitrase

[31] Newmont v. Indonesia, ICSID Case No. ARB/14/21.
[32] The case of Newmont Mining vs Indonesia - Transnational Institute (TNI), https://www.tni.org/files/download/newmont-indonesia-case-4.pd
[33] Indonesia–Netherlands Agreement on Encouragement and Reciprocal Protection of Investments (BIT 1994), khususnya Pasal 3 tentang *fair and equitable treatment* dan perlindungan terhadap ekspektasi investasi. Lihat pula laporan sengketa *Newmont Nusa Tenggara et al. v. Republic of Indonesia*, ICSID Case No. ARB/14/15.
[34] Newmont Mining Corp., *Form 10-Q Q3 2014. Lihat juga, SINDOnews. (2014, September 4). Amandemen kontrak renegosiasi Newmont diteken. https://ekbis.sindonews.com/berita/898241/34/amandemen-kontrak-renegosiasi-newmont-diteken*
[35] Apriyanti, E. K. (2025). *Pergeseran paradigma hukum investasi internasional: Menyeimbangkan perlindungan Foreign Direct Investment (FDI) dengan kedaulatan regulasi negara dalam konteks reformasi perjanjian Indonesia pasca-BIT. Media Hukum Indonesia*, 3(4), 217–224. https://doi.org/10.5281/zenodo.17424649

terhadap tindakan regulatif negara menunjukkan sifat *indeterminacy* dalam mekanisme ISDS, yang pada akhirnya menghambat kemampuan negara untuk menetapkan kebijakan publik secara mandiri tanpa ancaman gugatan investor asing. Selain itu, beberapa perjanjian bilateral investasi (BIT) atau perjanjian investasi internasional (PII) mencantumkan ketentuan seperti *fair and equitable treatment* atau *indirect expropriation* yang memiliki rumusan hukum sangat umum dan terbuka terhadap berbagai penafsiran. Ketentuan-ketentuan yang bersifat terbuka ini memungkinkan investor menilai bahwa kebijakan atau regulasi negara penerima investasi memengaruhi keuntungan atau prospek investasi mereka. Ketidakjelasan tersebut dapat menjadi dasar pengajuan gugatan ke forum arbitrase internasional, yang berpotensi menimbulkan kerugian bagi negara penerima investasi.

2. Bentuk Tantangan Struktural dan Ketimpangan dalam ISDS yang Berdampak terhadap Kemampuan Negara Melindungi Kepentingan Umum

2.1 Bentuk-Bentuk Ketimpangan Struktural dalam ISDS

Mekanisme ISDS mencerminkan ketimpangan struktural antara negara penerima investasi (terutama negara berkembang) dan investor asing yang umumnya berasal dari negara maju atau memiliki kapasitas ekonomi yang lebih besar. Ketimpangan struktural ISDS dapat menghambat negara dalam menjalankan mandat perlindungan kepentingan publik. Kajian ini menemukan bahwa ketimpangan tersebut dapat dipetakan ke dalam beberapa bentuk utama. Pertama, salah satu bentuk ketimpangan struktural yang paling mencolok justru terletak pada asimetri hak menggugat (*asymmetry in standing to sue*), di mana hanya investor asing yang diberikan hak eksklusif untuk membawa sengketa ke arbitrase internasional, sementara negara penerima investasi tidak memiliki hak serupa untuk menggugat investor atas pelanggaran kewajiban yang sama. Berbeda dari forum penyelesaian sengketa konvensional yang bersifat timbal balik, ISDS memberikan hak eksklusif bagi investor untuk menggugat negara, tanpa mekanisme sepadan yang memungkinkan negara mengajukan klaim terhadap investor atas pelanggaran komitmen atau kerugian terhadap masyarakat. Ketimpangan ini memperlihatkan bahwa mekanisme ISDS dirancang lebih untuk melindungi kepentingan modal daripada hak-hak warga negara atau lingkungan hidup yang sehat.[36]

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[36] Rachmi Hertanti dan Rahmat Maulana Sidik, *Gugatan Investor & Perampasan Hak Rakyat*, dalam *Majalah IGJ*, Indonesia for Global Justice, 2019, hlm. 5–6.

Kedua, temuan ini menggarisbawahi bahwa ISDS tidak sekadar menghadirkan forum arbitrase, tetapi juga memperkuat relasi kuasa asimetris antara korporasi global dan negara, terutama negara berkembang. Literatur juga menunjukkan bahwa pihak-pihak yang lebih lemah dalam hubungan BIT cenderung dirugikan dalam arbitrase investasi, dan oleh karena itu memiliki insentif terkuat untuk merombak perjanjian investasi yang ada.[37] Sebaliknya, negara dengan posisi tawar yang lebih kuat dapat menegosiasikan klausul yang lebih protektif. Terutama negara-negara berkembang adalah negara responden yang paling sering dalam kasus-kasus ISDS, sementara negara-negara Barat yang maju seperti AS, Belanda, dan Inggris adalah negara asal penggugat yang paling sering.[38] Ini memperkuat pandangan bahwa asimetri kewenangan dalam ISDS tidak hanya muncul dalam mekanisme litigasi tetapi juga dalam fase perjanjian investasi itu sendiri. Sebagai contoh, negara dengan daya tawar rendah sebenarnya memiliki insentif yang lebih besar untuk reformasi perjanjian investasi, namun mereka dibatasi oleh bargaining power mereka yang terbatas. [39]

Ketiga, arbitrase ISDS menempatkan investor sebagai aktor yang memiliki akses ke lembaga adjudikatif internasional yang tidak tersedia bagi warga negara domestik atau komunitas masyarakat di negara penerima investasi. Struktur institusional ISDS, termasuk penunjukan arbitrator, kerahasiaan proses, dan tidak adanya mekanisme banding yang kuat cenderung mengutamakan kepentingan investor dan menekan ruang regulasi negara penerima investasi. Dalam artikel oleh Weghmann & Hall berpendapat bahwa meskipun mekanisme ISDS merupakan alat yang kuat bagi perusahaan multinasional untuk menuntut kompensasi atas kerugian atau hilangnya keuntungan akibat nasionalisasi, remunisipalisasi, atau regulasi terhadap layanan publik tertentu, mekanisme ini tidak berdiri sendiri.[40] Sebaliknya, ISDS dipengaruhi oleh berbagai dinamika, seperti kontradiksi pascakolonial terkait kedaulatan negara di era globalisasi, perdebatan politik mengenai peran kembali sektor publik, serta faktor-faktor yang lebih

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[37] Huikuri, T. A. (2023). Constraints and incentives in the investment regime: How bargaining power shapes BIT reform. *Review of International Organizations, 18*(2), 361–391. Hlm 362 https://doi.org/10.1007/s11558-022-09473-1

[38] UNCTAD (2020b). 'Navigator Penyelesaian Sengketa Investasi'. Pusat Kebijakan Investasi UNTAD. Tersedia di: https://investmentpolicy.unctad.org/investment-dispute-settlement

[39] Huikuri, T. A. (2023). Constraints and incentives in the investment regime: How bargaining power shapes BIT reform. *Review of International Organizations, 18*, 361–391. https://doi.org/10.1007/s11558-022-09473-1. p. 363

[40] Weghmann, V., & Hall, D. (2021). "Investor–state dispute settlement and the public sector: A postcolonial critique," *Journal of International Law and Policy*, 34(4), 490–510, p. 504.

luas seperti bangkitnya populisme nasionalis dan dampak pandemi Covid-19.[41]

Keempat, karena sistem ISDS bergantung pada interpretasi dari komunitas arbitrator yang identitasnya sangat homogen, maka keputusan yang dihasilkan pun cenderung merepresentasikan pandangan politik dan ekonomi yang sempit. Sebagaimana dijelaskan dalam kebijakan ini, mekanisme ISDS memberikan hak-hak substantif dan prosedural yang luas kepada individu dan perusahaan asing semata-mata berdasarkan status kewarganegaraan mereka. Di saat yang sama, ISDS memindahkan fungsi pengembangan dan penafsiran hukum kepada para arbitrator swasta yang tidak berada dalam sistem pengawasan dan akuntabilitas publik yang memadai. Kondisi ini menimbulkan kekhawatiran bahwa ISDS dapat melemahkan sistem hukum nasional dan proses perumusan kebijakan domestik yang demokratis.[42] Dalam situasi ini, negara seperti Indonesia menghadapi tantangan ganda dimana satu sisi harus menjaga kedaulatan kebijakan publiknya, dan di sisi lain harus merespons tekanan sistem hukum internasional yang tidak netral. Hal ini tidak hanya mereduksi otoritas pengadilan nasional, tetapi juga menjadikan negara selalu berada dalam posisi defensif terhadap gugatan yang sering kali spekulatif. Keadaan ini diperparah oleh minimnya transparansi dalam proses arbitrase, yang menyulitkan partisipasi publik dalam perkara yang menyangkut kepentingan umum.

Sebagai respons terhadap tantangan tersebut, Indonesia mulai melakukan pembaruan terhadap pendekatannya terhadap perjanjian investasi. Sejak 2014, Indonesia telah menarik diri dari lebih dari 20 *bilateral investment treaties* (BITs) dan mulai merancang model perjanjian baru yang menekankan perlindungan terhadap ruang kebijakan domestik, seperti memasukkan klausul kewajiban menempuh upaya hukum domestik terlebih dahulu (*exhaustion of local remedies)*, pengecualian untuk kebijakan publik (*carve-outs)*, serta penguatan prinsip transparansi dan pembatasan yurisdiksi arbitrase.[43] Langkah-langkah ini menandai transisi Indonesia dari sekadar *rule taker* menjadi *rule shaper*, yang menempatkan nilai-nilai konstitusional seperti keadilan sosial, perlindungan lingkungan, dan partisipasi publik sebagai prinsip fundamental dalam penyusunan kebijakan investasinya. Dengan demikian, Indonesia tidak sedang meninggalkan ISDS sepenuhnya, melainkan sedang merumuskan ulang posisi dan

[41] Ibid.
[42] Lise Johnson, Lisa E. Sachs & Jeffrey D. Sachs, *Investor-State Dispute Settlement, Public Interest and U.S. Domestic Law*, (2015). hlm 3 Available at: https://scholarship.law.columbia.edu/sustainable_investment_staffpubs/22
[43] Pemerintah Republik Indonesia, *Model Bilateral Investment Treaty* (2015).

identitas hukumnya dalam forum penyelesaian sengketa investasi internasional. Reformasi ini sejalan dengan tuntutan global untuk mentransformasi sistem ISDS dari yang semata-mata melindungi kepentingan investor, menjadi sistem yang juga menjunjung prinsip pembangunan berkelanjutan dan penghormatan terhadap kedaulatan negara.[44]

2.2 Bias Sistemik dan Efek Penghambat Kebijakan Publik

Ketimpangan struktural yang telah dijelaskan pada bagian sebelumnya, disebabkan oleh cara kerja institusional dan desain prosedural dari mekanisme ISDS yang menciptakan bias sistemik. Prosedur arbitrase pada ISDS yang tidak transparan, biaya tinggi, serta panel arbiter yang kerap berasal dari lingkaran industri arbitrase sendiri menciptakan bias sistemik terhadap negara. Kerahasiaan proses arbitrase dan kurangnya transparansi dalam mekanisme ISDS menyebabkan tidak adanya mekanisme akuntabilitas yang efektif. Keputusan arbitrase sering dihasilkan tanpa pengawasan bagi masyarakat lokal yang terdampak langsung oleh proyek investasi, sehingga memperlihatkan adanya pengecualian struktural terhadap perlindungan kepentingan publik. Minimnya akses informasi juga menghambat evaluasi publik terhadap penalaran hukum arbitrator maupun konsistensi antar putusan, sehingga menghasilkan ruang interpretatif yang dapat dimanfaatkan investor untuk memperluas klaim atas tindakan regulatif negara.

Salah satu kritik yang paling mendasar adalah independensi dan imparsialitas para arbiter, yang menjadi krusial mengingat mereka memutus sengketa bernilai tinggi yang melibatkan kedaulatan negara dan kepentingan publik.[45] Biasanya, setiap pihak menunjuk ahli mereka sendiri, termasuk untuk masalah penilaian. Hal ini sering kali menghasilkan perbedaan yang signifikan antara penilaian pihak-pihak dan menimbulkan potensi bias yang tinggi, di mana rezim ISDS menawarkan mekanisme pengendalian yang terbatas atau bahkan tidak ada.[46] Prosedur arbitrase dalam ISDS umumnya didominasi oleh kelompok kecil arbitrator yang berperan sebagai *repeat players* dalam industri arbitrase

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[44] UNCTAD, *Reform of the IIA Regime: Phase 2*, IIA Issues Note No. 2 (2017).
[45] Pahala Christian, J. (2025). Tinjauan kritis sistem penyelesaian sengketa investasi internasional dan dampaknya terhadap kepentingan nasional Indonesia. *CAUSA: Jurnal Hukum dan Kewarganegaraan*, **13**(3). https://doi.org/10.3783/causa.v2i9.2461
[46] Boué, J. C. (2024). 'Lying with numbers' in international arbitration against states. *Journal of International Dispute Settlement*, 15(1), 5–34. https://doi.org/10.1093/jnlids/idae007

internasional, membentuk lingkungan adjudikatif yang memiliki insentif struktural yang problematis. Dalam berbagai kasus, posisi berulang yang mereka miliki membuat para arbiter lebih mengutamakan kepentingan klien dibandingkan memberikan penilaian yang objektif, sekaligus membangun kepentingan institusional dan hubungan ekonomi yang terus terpelihara dalam praktik arbitrase tersebut.[47] Fenomena *revolving door*, di mana arbiter dapat berpindah peran menjadi penasihat investor dalam kasus lain, semakin mempertebal persepsi publik terhadap konflik kepentingan. Struktur ini berpotensi menciptakan dinamika loyalitas atau keberpihakan terhadap pihak yang menunjuk, meskipun arbiter secara formal diwajibkan bertindak independen dan imparsial.[48]

Selain itu, insentif ekonomi dalam industri arbitrase, di mana arbitrator dibayar per kasus dan firma hukum memperoleh keuntungan dari peningkatan jumlah sengketa, semakin memperkuat kecenderungan sistemik ini. Struktur biaya dalam ISDS mencerminkan bias sistemik yang memengaruhi perilaku negara dan menjadi hambatan institusional yang cukup serius. Dalam praktiknya, mekanisme ISDS membutuhkan biaya mencapai jutaan dolar, dengan sebagian besar dialokasikan untuk honorarium firma hukum internasional dan biaya administrasi lembaga arbitrase. Lamanya proses arbitrase, yang dapat berlangsung antara tiga hingga lima tahun semakin memperbesar beban keuangan bagi negara penerima investasi, terutama negara berkembang yang memiliki sumber daya fiskal terbatas. Akibatnya, banyak negara lebih memilih menyelesaikan sengketa melalui perundingan atau bahkan menghindari penerapan kebijakan publik yang berpotensi memicu gugatan (*regulatory chill*), demi menghindari risiko biaya arbitrase yang besar dan beban litigasi akibat ketidakpastian hasil arbitrase. Penelitian juga menunjukkan bahwa perusahaan besar, khususnya dengan aset lebih dari USD 10 miliar, memiliki tingkat keberhasilan lebih tinggi dalam ISDS. Hal ini menegaskan adanya ketimpangan struktural dalam akses dan hasil penyelesaian sengketa.[49] Pola keberhasilan ini bukan sekadar cerminan kapasitas litigasi yang lebih besar, tetapi juga menunjukkan bagaimana struktur ISDS memberi keuntungan lebih besar kepada aktor yang memiliki

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[47] Atanasova, D., Beyer, V., & Ostransky, J. (2024, September). *Compensation and damages in investor-state dispute settlement: Options for reform*. International Institute for Sustainable Development.hlm 10. https://www.iisd.org
[48] Ibid
[49] Fach Gómez, K., & Titi, C. (2023). Facilitating access to investor-state dispute settlement for small and medium-sized enterprises: Tracing the path forward. *European Business Law Review, 34*(7). Advance online publication. https://doi.org/10.2139/ssrn.4323775

sumber daya finansial, legal, dan teknis yang luas. Ketimpangan dalam akses dan hasil penyelesaian sengketa ini memperkuat bias sistemik yang telah dibahas sebelumnya, karena negara akan semakin berhati-hati dalam merumuskan kebijakan publik yang bersinggungan dengan kepentingan korporasi besar.

Tidak adanya mekanisme banding yang efektif juga memperkuat bias ini. Kesadaran akan kekurangan dalam sistem penyelesaian sengketa ini, termasuk sifat sementara (*ad hoc*) dari majelis arbitrase dan tantangan terkait transparansi serta legitimasi, juga diakui dalam berbagai analisis mengenai posisi dan kebijakan Indonesia dalam menghadapi sengketa investasi.[50] Keseluruhan dinamika ini menunjukkan bahwa ISDS tidak berfungsi sebagai mekanisme netral, melainkan sebagai sebuah proses yang memiliki kecenderungan bawaan untuk melindungi kepentingan investor dengan mengorbankan ruang kebijakan negara. Bias sistemik yang timbul dari desain institusional, insentif ekonomi, dan praktik *repeat player* mempersempit kedaulatan regulatif negara, mengurangi transparansi, dan menimbulkan ketidakadilan struktural.

3. Membangun Pendekatan Hukum Investasi Berbasis Keadilan Sosial dan Kedaulatan Regulasi

3.1 Reorientasi Hukum Investasi: *Dari Investor-Centric ke Balance of Interests*

Indonesia berada dalam persimpangan strategis antara kebutuhan untuk menjaga iklim investasi yang kondusif dan mandat konstitusional untuk melindungi kepentingan publik. Ketidakseimbangan dalam perjanjian investasi internasional, khususnya melalui mekanisme penyelesaian sengketa investor-negara (ISDS), telah mengemukakan sebagai persoalan yang menantang kedaulatan negara, keadilan sosial, dan keberlanjutan pembangunan nasional. Dalam konteks tersebut, diperlukan pendekatan hukum dan kebijakan yang secara sadar menegosiasikan ulang posisi negara dalam arsitektur hukum investasi global.

Sebagai respons terhadap dinamika tersebut, Indonesia mulai mengambil langkah-langkah reformasi, antara lain penghentian perjanjian bilateral investasi (BIT) yang timpang dan penyusunan model perjanjian baru yang tidak hanya menjamin perlindungan investor, tetapi juga menegaskan hak negara untuk mengatur demi

[50] Clarissa Nadya Arina, "Logical Consequences In Indonesia's Position In Investment Disputes In Arbitration Forum ICSID," *Indonesian Law Journal* Volume 15, No. 1 (Desember 2022), hlm. 6.

kepentingan umum, termasuk perlindungan atas lingkungan hidup, kesehatan masyarakat, dan hak-hak masyarakat adat.[51] Pendekatan ini menggeser paradigma perlindungan investasi dari model *investor-centric* menuju kerangka *balance of interests*, di mana negara tidak lagi diposisikan semata sebagai objek, tetapi sebagai subjek aktif dalam merumuskan norma hukum internasional. Kebangkitan kembali negara (*return of the state*) dalam sistem investasi internasional menunjukkan bahwa negara penerima investasi menuntut ruang regulasi yang lebih besar dan keterlibatan yang lebih aktif dalam penyelesaian sengketa. [52]

Selain itu, Indonesia memiliki peluang untuk mengambil peran normatif dalam forum reformasi global, seperti UNCITRAL, dengan mendorong pembentukan sistem penyelesaian sengketa yang lebih transparan, akuntabel, dan berorientasi pada tanggung jawab sosial. Partisipasi ini menjadi penting untuk mengatasi maraknya gugatan yang diajukan tanpa itikad baik (*frivolous litigation*) yang menjadikan negara sebagai target atas kebijakan sah yang berakar pada mandat konstitusional. Seperti diungkapkan oleh Krzysztof J. Pelc dalam tulisannya *Does the International Investment Regime Induce Frivolous Litigation?* (SSRN Journal, 2016), munculnya sengketa investasi dalam kerangka perjanjian internasional sering kali berimplikasi serius terhadap kedaulatan negara dan prinsip-prinsip demokrasi.[53] Pelc menyoroti bahwa banyak tuntutan hukum yang diajukan investor terhadap negara bukan semata-mata karena pelanggaran terhadap ketentuan perjanjian, melainkan lebih karena adanya insentif untuk memperoleh kompensasi moneter. Lebih lanjut, Pelc menunjukkan bahwa investor cenderung menargetkan negara-negara dengan sistem demokrasi yang stabil dan lembaga peradilan yang independen, karena kondisi tersebut menjanjikan peluang lebih besar untuk meraih hasil yang menguntungkan melalui mekanisme ISDS.[54] Kritik terhadap sistem ISDS terutama kurangnya transparansi, tidak adanya mekanisme banding, dan potensi bias terhadap investor, mendorong perlunya model alternatif seperti *court-type system* (ICS)

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[51] Perkembangan model perjanjian investasi Indonesia yang mencantumkan *right to regulate* sebagai ketentuan substantif utama.
[52] Tang, Y., Guo, Q. (2025). The Return of the State and the Reform of the International Investment Dispute Settlement Mechanism: Reasons and Reflections. *International Journal of Law and Society*, *8*(3), 140-151. https://doi.org/10.11648/j.ijls.20250803.11
[53] Pelc, Krzysztof, (2016). Does the International Investment Regime Induce Frivolous Litigation?. Available at SSRN: https://ssrn.com/abstract=2778056 or http://dx.doi.org/10.2139/ssrn.2778056
[54] Ibid.

atau sistem yang menempatkan negara bukan hanya sebagai pihak tergugat tapi juga sebagai aktor dengan peran lebih aktif.[55]

3.2 Keadilan Sosial sebagai Prinsip Normatif dalam Reformasi Hukum Investasi

Dalam menghadapi tantangan ketimpangan struktural dalam rezim hukum investasi internasional, Indonesia perlu merumuskan pendekatan hukum investasi yang lebih berakar pada prinsip keadilan sosial dan kedaulatan regulasi. Sejalan dengan gagasan ini, Nicolás M. Perrone dalam wawancaranya dengan *Investment Treaty News* menyoroti bahwa rezim investasi internasional selama ini beroperasi dalam kerangka imajinasi hukum yang sempit yakni membingkai hubungan antara investor dan negara semata sebagai relasi kontraktual yang setara, sambil mengabaikan konteks sosial-politik serta keberadaan masyarakat lokal yang terdampak langsung oleh investasi.[56] Ia menegaskan bahwa, "metabahasa hukum investasi internasional menggambarkan relasi investor dan negara sebagai transaksi yang bersifat netral, padahal dalam praktiknya investor sering kali bekerja sama dengan elit nasional untuk mendorong proyek-proyek ekstraktif yang mengabaikan aspirasi masyarakat lokal."[57]

Pandangan ini memperkuat urgensi bagi Indonesia untuk menggeser paradigma dari model *investor-centric* menuju pendekatan *balance of interests*, di mana negara tidak hanya menjadi pihak yang tunduk pada mekanisme penyelesaian sengketa investor-negara (ISDS), tetapi tampil sebagai subjek normatif yang memperjuangkan kepentingan konstitusional dan aspirasi rakyatnya. Dengan demikian, reformasi hukum investasi harus didasarkan pada pemahaman bahwa investasi bukan sekadar transaksi ekonomi, melainkan bagian dari konstruksi sosial yang harus tunduk pada prinsip keadilan distributif, perlindungan hak masyarakat, serta kedaulatan negara dalam merumuskan kebijakan publik. Penyelesaian sengketa investasi di Indonesia perlu diorientasikan ulang

[55]Reorienting Investment Dispute Resolution in Indonesia: Towards a Fair and Efficient System. (2024). *Journal of Law and Legal Reform*, *5*(3), 1155-1184. https://doi.org/10.15294/jllr.v5i3.4367
[56] Nicolás M. Perrone, wawancara oleh Zoe Williams, "An Interview with Nicolás Perrone on Investment Treaties and the Legal Imagination: How Foreign Investors Play By Their Own Rules", Investment Treaty News (IISD), 24 Juni 2021, https://www.iisd.org/itn/2021/06/24/an-interview-with-nicolas-perrone-on-investment-treaties-and-the-legal-imagination-how-foreign-investors-play-by-their-own-rules/.
[57] Ibid.

agar lebih adil dan efisien, melampaui model ISDS klasik menuju sistem yang mempertimbangkan mekanisme partisipasi dan transparansi. [58]

Reformasi hukum investasi di Indonesia harus bersifat menyeluruh, meliputi revisi kerangka hukum nasional, negosiasi ulang perjanjian investasi yang timpang, serta konsolidasi kebijakan lintas sektor yang konsisten dengan komitmen terhadap perlindungan lingkungan hidup, hak asasi manusia, dan prinsip keadilan sosial. Pendekatan ini sejalan dengan reformasi ISDS global yang sedang dibahas dalam forum internasional seperti UNCITRAL, di mana fokus utamanya adalah meningkatkan transparansi, legitimasi, dan keseimbangan kepentingan antara investor dan negara.[59] Untuk mewujudkan penyelesaian sengketa investasi yang lebih adil dan selaras dengan prinsip keadilan sosial, Indonesia perlu merancang kembali kerangka kebijakan investasinya secara lebih strategis dan berbasis kepentingan nasional.

Pertama, dalam konteks negosiasi ulang maupun penyusunan perjanjian investasi yang baru, diperlukan reformulasi yang tegas dan komprehensif terhadap definisi investasi dan investor dalam perjanjian investasi Indonesia. Langkah ini penting untuk memperjelas batasan mengenai siapa yang berhak mengajukan klaim melalui mekanisme ISDS, serta jenis investasi apa yang seharusnya berada dalam cakupan perlindungan Perjanjian Investasi Bilateral (BIT). Tanpa batasan yang jelas, negara rentan menghadapi klaim yang tidak sesuai dengan tujuan perlindungan investasi maupun kepentingan pembangunan nasional. Dalam mendefinisikan investor, sejumlah kriteria perlu ditetapkan secara ketat, seperti:[60]

1. apakah anak perusahaan di negara tuan rumah yang dimiliki oleh entitas asing dapat dikategorikan sebagai investor yang berhak mengajukan klaim;
2. apakah investor wajib memiliki *substantial business activities* atau kehadiran komersial nyata di wilayah negara tuan rumah; dan
3. apakah pendaftaran, persetujuan, atau verifikasi administratif tertentu menjadi syarat bagi investor untuk memperoleh perlindungan.

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[58] Siallagan, S.P, dkk, 2024, p. 1175
[59] Langford, M., Potestà, M., Kaufmann-Kohler, G., & Behn, D. (2020). *Special Issue: UNCITRAL and Investment Arbitration Reform: Matching Concerns and Solutions*. *Journal of World Investment and Trade*.
[60] Roshana Putri, R. (2019). INDONESIA'S NEW MODEL OF BILATERAL INVESTMENT TREATY: COMPARISON WITH BRAZIL. *Padjadjaran Journal of International Law*, *3*(2), 235-254.hlm 105-106 https://doi.org/10.23920/pjil.v3i2.314

Pembatasan-pembatasan ini lazim diterapkan dalam berbagai model perjanjian modern untuk mencegah *treaty shopping* dan penyalahgunaan yurisdiksi ISDS.

Kedua, mekanisme ISDS saat ini menghadapi berbagai tantangan yang berpotensi mengancam legitimasi sekaligus fungsinya sebagai praktik mendasar dalam hukum internasional.[61] Tidak adanya mekanisme banding menambah tantangan tersebut. Untuk itu, Indonesia dapat mendorong perlunya pembentukan suatu *permanent appellate mechanism* dalam kerangka reformasi ISDS. Dengan adanya banding, para pihak atau pihak ketiga dapat mengajukan keberatan terhadap putusan majelis arbitrase jika terdapat kesalahan hukum atau fakta yang jelas, sehingga putusan tersebut bisa ditinjau ulang oleh badan yang lebih tinggi. Manfaat mekanisme banding, antara lain kemampuannya untuk meningkatkan legitimasi dan kredibilitas sistem ISDS melalui pengawasan hukum yang lebih ketat dan kontrol kualitas yang lebih baik atas putusan arbitrase.[62] Langkah ini berpotensi mendorong perkembangan dan penyamaan praktik hukum investasi internasional dengan membentuk yurisprudensi yang dapat menjadi panduan bagi arbiter dan pihak-pihak terkait di masa mendatang. [63]

Pembentukan mekanisme banding dapat meningkatkan legitimasi dan kredibilitas ISDS, dengan melibatkan profesional yang independen dan memiliki status tetap. Profesional ini akan bekerja secara mandiri, tanpa keterikatan dengan arbiter maupun pihak eksternal seperti firma hukum.[64] Secara keseluruhan, keberadaan mekanisme banding yang bersifat permanen juga dipandang mampu memulihkan legitimasi sistem dengan meningkatkan konsistensi dalam hukum investasi, mengingat bahwa majelis *ad hoc* cenderung menghasilkan tingkat perbedaan putusan yang lebih tinggi dibandingkan badan peradilan tetap yang bekerja dalam kerangka tradisi, kesinambungan, dan kolaborasi kelembagaan.[65] Dengan adanya tribunal permanen, para arbiter dapat

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[61] A. ROBERTS, "Incremental, Systemic, and Paradigmatic Reform of Investor-state Arbitration" (2018) 112(3) *American Journal of International Law* 410.
[62] JILLANI, M. A. H., GHOURI, A. A., & WU, X. (2025). Institutional Design for an Appellate Mechanism in Investor-State Dispute Settlement. *Asian Journal of International Law*, *15*(2), 325–355. https://doi.org/10.1017/S2044251325000098
[63] Arcuri, A., & Montanaro, F. (2018). Justice for all: Protecting the public interest in investment treaties. *Boston College Law Review, 59*(8), 2791.
[64] Grant, T. D., & Kieff, F. S. (2022). Appointing arbitrators: Tenure, public confidence, and a middle road for ISDS reform. *Michigan Journal of International Law, 43*, 171. Available at: https://repository.law.umich.edu/mjil/vol43/iss1/5 . https://doi.org/10.36642/mjil.43.1.appointing
[65] G. Kaufmann-Kohler and M. Potestà (2016). *Can the Mauritius Convention Serve as a Model for the Reform of Investor–State Arbitration in Connection with the Introduction of a Permanent Investment Tribunal or an Appeal Mechanism?*, Geneva Center for Internation Dispute Settlement, 3 June 2016, 18.

menekankan prinsip-prinsip hukum secara lebih konsisten, membangun *jurisprudence* yang dapat menjadi panduan bagi kasus-kasus mendatang, sekaligus memperkuat prediktabilitas sistem.

III. CONCLUSION

Mekanisme ISDS menunjukkan adanya ketimpangan struktural yang menempatkan negara, terutama negara berkembang, dalam posisi inferior terhadap investor asing. Asimetri hak menggugat, dominasi *repeat players*, dan ketidakpastian interpretatif sebagaimana dijelaskan oleh teori *indeterminacy* menciptakan konfigurasi normatif yang rawan menghasilkan bias pro-investor. Reformasi hukum investasi menjadi penting untuk menyeimbangkan perlindungan investor dan kepentingan publik. Perumusan ulang perjanjian investasi perlu diarahkan pada pembatasan cakupan perlindungan investor, penguatan klausul kebijakan publik, dan penerapan *exhaustion of local remedies* sebagai prasyarat sebelum mengakses ISDS. Di tingkat internasional, advokasi terhadap mekanisme banding atau tribunal permanen dalam forum UNCITRAL menjadi langkah strategis untuk memperkuat konsistensi dan legitimasi putusan. Pada ranah domestik, peningkatan tata kelola perizinan dan mitigasi risiko sengketa diperlukan agar kebijakan publik dapat dijalankan tanpa tekanan yang tidak proporsional dari investor.

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Rationale Behind the Indonesia-EFTA Regional Trade Agreement under Article XXIV GATT 1994 on "Substantially All Trade"

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ABSTRACT

The increasing number of Regional Trade Agreements (RTAs) worldwide reflects the shift from multilateral to regional trade liberalization, posing challenges to the World Trade Organization (WTO) framework under Article XXIV of GATT 1994. Indonesia's participation in the Indonesia–EFTA Comprehensive Economic Partnership Agreement (IE-CEPA) raises the question of whether the agreement satisfies the "substantially all trade" requirement and whether it is driven by economic or political rationale. This paper hypothesizes that Indonesia's formation of the IE-CEPA was predominantly political rather than economic, aiming to strengthen diplomatic relations and strategic positioning in Europe rather than to expand market access. Using a normative legal method supported by trade data analysis. The findings reveal that while Indonesia and EFTA have formally satisfied the legal test of "substantially all trade," the underlying rationale for Indonesia's participation is predominantly political rather than economic. The agreement reflects Indonesia's diplomatic ambition to strengthen its strategic relations with Europe, indicating that compliance with the "substantially all trade" clause serves more as a legal formality than an instrument of genuine trade liberalization.

Keywords:* *Article 24 GATT; Indonesia-EFTA; Rationale; RTA; Substantially All Trade.

I. INTRODUCTION

The World Trade Organization (WTO) is a trade organization that comprehensively regulates almost all significant aspects of multilateral international trade. However, many of these crucial aspects are more significantly regulated or integrated by WTO member countries through bilateral agreements or Regional Trade Agreements (RTAs). These directly set aside the fundamental WTO principle of Most-Favoured-Nation (MFN).[1]

Today, nearly all WTO member countries are involved in RTAs at various levels and regions. As of October 22, 2024, only six (6) WTO member countries are not involved in any RTA. The trend of forming RTAs has been unstoppable since the early 1990s, with 373 RTAs recorded in the WTO database as of 2024.[2] The formation of RTAs is not solely based on economic factors but also involves political perspectives, explaining why many WTO member countries participate in RTA formation.[3]

Generally, establishing RTAs, whether in the form of Free Trade Agreements (FTAs) or Customs Unions (CUs), would violate the MFN principle, one of the critical principles of the WTO. However, Article XXIV of the GATT allows RTAs to be a notable exception, provided specific criteria are met.[4] Furthermore, RTAs must promote freer trade among the participating countries without creating obstacles to trade outside the RTA. In other words, RTAs should support the WTO framework without posing any threats or barriers.[5]

The RTA regime has also extended its influence on Indonesia's trade policies. Indonesia participates in numerous RTAs, particularly in the form of FTAs. According to the WTO database, Indonesia has at least sixteen (16) RTAs recorded or in force, not including those in the signing or negotiation stages yet to be entered into the WTO

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[1] Mossner, Louise Eva, "The WTO And Regional Tade: A Family Business? The WTO Compatibility of Regional Trade Agreements with Non-WTO-Members", *World Trade Review,* Vol. 13, Issue. 4, 23 May 2014, p. 634. https://doi.org/10.1017/S1474745613000347
[2] WTO, "Regional Trade Agreement Database", https://www.wto.org/, 22 Oktober 2024 https://rtais.wto.org/UI/PublicMaintainRTAHome.aspx.
[3] World Trade Organization, "Understanding WTO, World Trade Organization Information and External Relations Division", Fifth Edition, Geneva, 2015, p. 8. https://www.wto.org/English/Thewto_E/whatis_e/tif_e/understanding_e.pdf
[4] World Trade Organization, "The WTO and Preferential Trade Agreements: From Co-Existence to Coherence", *World Trade Report*, 2018, p. 42. https://doi.org/10.30875/b51b2f2c-en
[5] *Ibid*,.

database. One of the recently enforced RTAs is the Indonesia-European Free Trade Association Comprehensive Economic Partnership Agreement (IE-CEPA).[6]

Accordingly, this paper seeks to answer the following research question: **Does the Indonesia–EFTA Comprehensive Economic Partnership Agreement (IE-CEPA) satisfy the legal requirement of Article XXIV GATT 1994 on "substantially all trade," and to what extent does political rationale influence its formation?** The research employs a normative legal method complemented by empirical trade data to provide contextual interpretation of Indonesia's obligations under international trade law. This approach is justified on the basis that legal compliance in trade agreements cannot be separated from their underlying political-economic realities.

This academic journal will be divided into five main sections: (1) the scope of RTAs within the WTO framework; (2) the rationale behind WTO member countries forming RTAs; (3) the legal requirements for RTA formation under Article XXIV of the GATT 1994; (4) an in-depth explanation of 'substantially all trade' as outlined in Article XXIV of the GATT 1994; and (5) an analysis of the extent to which the 'substantially all trade' criterion is met in the formation of the Indonesia-EFTA RTA, aiming to determine whether the rationale behind the agreement is political or economic.

This paper employs a normative legal research methodology, which does not merely rely on secondary data but systematically interprets and analyses legal norms governing regional trade agreements. The research adopts a doctrinal approach, focusing on textual and systematic interpretation of Article XXIV of the GATT 1994 and related WTO instruments to examine the legal meaning of "substantially all trade." Doctrinal interpretation is complemented by analytical conceptualization to assess how WTO jurisprudence and scholarly debates construct the legal standards for regional trade agreements. In addition, the study incorporates quantitative and qualitative trade data from the Central Statistics Agency (*Badan Pusat Statistik*)[7] to support normative analysis

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[6] WTO, "Regional Trade Agreement Database", https://www.wto.org/, 22 Oktober 2024 https://rtais.wto.org/UI/PublicMaintainRTAHome.aspx.

[7] BPS is a Non-Ministerial Government Institution accountable directly to the President. BPS organizes basic statistics, facilitates sectoral and special statistics, and publishes its outputs through the Official Statistical News (BRS). It plays a role in developing the National Statistical System, providing data for the government and the public, assisting other institutions in statistical activities, developing statistical methodologies and training, and fostering international cooperation in the field of statistics. BPS, "Profil BPS", https://ppid.bps.go.id/app/konten/0000/Profil-BPS.html?_gl=1*1ltpdm2*_ga*NjcyNTMyMjQwLjE3NDgyMjc0NDg.*_ga_XXTTVXWHDB*czE3Nj

with empirical indicators, allowing the research to evaluate not only the formal compliance of the IE-CEPA with WTO law but also its substantive implications for Indonesia's trade outcomes.

II. DISCUSSION

2.1. The Scope of RTAs within the WTO Framework

Before delving deeper into this journal's discussion, it is essential first to understand what a Regional Trade Agreement (RTA) is. Prior to the emergence of the term RTA during the multilateral trading system era under the World Trade Organization (WTO), various terminologies were used to describe agreements that offered preferential or better treatment than others before the WTO's establishment. The most commonly used terms included Preferential Trade Agreements (PTAs) and Free Trade Agreements (FTAs), while some countries preferred the terms "closer economic partnerships" or "closer economic cooperation".[8] In GATT 1994, the WTO initially used the term "Territorial Application – Frontier Traffic – Customs Unions and Free Trade Areas" in Article XXIV as the legal basis for establishing Customs Unions (CUs) or Free Trade Areas (FTAs), which also recognized interim agreements as steps toward forming CUs or FTAs.

Given the growing complexity and variety of agreements under Article XXIV, the WTO introduced a new term encompassing all preferential agreements among its members: Regional Trade Agreements (RTAs). This term is used in the WTO framework and GATT 1994 to cover all preferential agreements. Consequently, in 1996, the WTO established a special committee, the Committee on Regional Trade Agreements (CRTA), to review each RTA formed by member countries and assess the systemic impact of these agreements on the multilateral trading system.[9] The WTO provides various legal frameworks for RTAs, including Article XXIV of GATT 1994, Article V of the General Agreement on Trade in Services (GATS), Paragraph 2(c) of the Enabling Clause, and the

MwMjAxNTMkbzIkZzEkdDE3NjMwMjAzODYkajQ2JGwwJGgw, accessed on November 12, 2025, at 13:50.

[8] Acharya, Rohini, "Intoduction Regional Trade Agreements: Recent Developments", dalam *Regional Trade Agreements and the Multilateral Trading System*, *ed*. Rohini Acharya, Cambridge University Press, Cambridge, United Kingdom, 2016, p. 16. https://doi.org/10.1017/CBO9781316676493.003

[9] *Ibid*,.

most recent addition, the Transparency Mechanism for Regional Trade Agreements, which laid the foundation for the CRTA's formation.[10]

The current development of RTAs as a form of regional liberalization runs parallel to multilateral trade under the WTO. Since the early 1990s, the number of RTAs has significantly increased, even before the WTO was established with GATT 1994 as its primary legal foundation. During the GATT 1994 era, only about three RTAs were registered annually. In contrast, following the WTO's establishment in 1995, the number of RTA notifications rose significantly to an average of 25 per year. As of October 22, 2024, there are 373 RTAs registered with the WTO, covering trade liberalization in goods and services.[11]

2.2. Rationale Behind WTO Member Countries Forming RTAs

After discussing the development of definitions and terminology related to Regional Trade Agreements (RTAs), it is interesting to explore why WTO member countries have increasingly engaged in RTAs with one another. The influence of trade liberalization can be traced back to a historical perspective. Trade restrictions during the 1930s and World War II significantly harmed the global economy, particularly in Europe. As a response, the General Agreement on Tariffs and Trade (GATT) was established in 1947 to promote multilateral trade liberalization and help rebuild economies devastated by the war.

Over time, however, the focus of economic integration and liberalization among GATT contracting parties shifted from a purely multilateral approach to a more regional one. This shift was driven by the perception that economic integration and liberalization could be achieved more effectively through regional agreements, where countries granted preferential treatment to their trade partners by lowering tariffs more than for other GATT members. Such arrangements were permitted under GATT 1947, as the overarching goal was to facilitate liberalization and economic recovery. In the modern era of multilateral trade governed by the WTO, the rationale behind forming RTAs has expanded. While economic integration and regional liberalization remain central, political considerations have become increasingly significant. RTAs now reflect a combination of economic and political rationales. Countries pursue these agreements to enhance trade and economic

[10] *Ibid*, p. 4-5.
[11] *Ibid*.

cooperation, strengthen political alliances, exert regional influence, and address broader strategic objectives. This evolution underscores how RTAs have transitioned from purely economic tools under GATT to instruments that serve multifaceted economic and political purposes within the WTO framework.

2.2.1. Economic Rationales

The development of Regional Trade Agreements (RTAs) today presents intriguing and challenging aspects for economists. The most common questions surrounding RTAs are: **"Is it beneficial?"** and **"Why is it happening?"** Comprehensive investigations by economists reveal the following key insights about the RTA phenomenon:[12]

1. Rapid Growth

   According to the Committee on Regional Trade Agreements (CRTA), by 2005, at least 334 RTAs were registered with the WTO. Since the WTO's establishment in 1995, the average number of RTA notifications has been around 11 yearly. This rapid increase highlights the growing importance of RTAs in the global trade landscape.
2. Periodic Terminations

   RTAs are not always permanent. For example, the CRTA reported in 2004 that at least 65 RTAs had been terminated, often due to members joining larger Customs Unions (CUs) such as the European Union (EU). This demonstrates the dynamic and evolving nature of trade agreements.
3. Predominance of Free Trade Areas (FTAs)

   Most RTAs are structured as FTAs rather than Customs Unions or other types of trade agreements. FTAs are easier to negotiate because they do not require a standard external tariff, unlike Customs Unions, which necessitate uniform tariffs for external countries.
4. Mostly Bilateral Agreements

   More than 75% of all RTAs notified to the WTO by 2005 were bilateral. These agreements can involve various configurations, such as country-to-country,

[12] D, Viet D. dan William Watson, "Economic Analysis of Regional Trade Agreements", dalam *Regional Trade Agreements and the WTO Legal System*, *ed*. Lorand Bartels & Federico Ortino, Oxford University Press, New York, 2006, p. 18. https://doi.org/10.1093/acprof:oso/9780199206995.003.0002

country-to-FTA, or country-to-CU arrangements. Bilateral agreements are often more manageable and flexible than multilateral negotiations.

5. Complexity within the WTO Framework
The rise in RTAs since the early 1990s correlates with the complexities of the WTO system: *first*, **Tariff Reductions.** The Uruguay Round of trade negotiations resulted in tariff reductions, which were not deemed sufficient to liberalize global trade fully. This shortfall encouraged countries to pursue RTAs, and *second*, **Slow Multilateral Progress.** The slow pace of multilateral negotiations led countries to seek alternative means of trade liberalization through RTAs, which can be negotiated more quickly and tailored to specific needs.
6. Implementation Challenges
Not all RTAs are effectively implemented. Many agreements remain on paper without delivering tangible trade benefits. Excessive regional liberalization can sometimes undermine its effectiveness, prompting countries to return to multilateral approaches, especially when RTAs fail to achieve their intended outcomes.
7. Uneven Geographical Distribution
RTAs are not evenly distributed globally. For example, the EU has numerous bilateral RTAs comparable to those established by the United States. There is also significant RTA activity in Southeast Asia and Africa, but some regions are more engaged than others, reflecting varying levels of regional integration and economic priorities.

These insights underscore the complexities and varied impacts of RTAs, highlighting their potential benefits and challenges within the broader multilateral trading system.

Generally, more liberalized but not fully open trade does not necessarily result in economic prosperity. From an economic perspective, a vital issue concerning the proliferation of Regional Trade Agreements (RTAs) is whether they generate new markets ("**trade creation**") or merely redirect existing markets ("**trade diversion**"). These concepts were first introduced by Jacob Viner in 1950.[13]

[13] Vebiyanto, Sony and Hastarini Dwi Atmanti, "Impact of ASEAN Plus Five Free Trade Area: Trade Creation and Trade Diversion", *Jurnal Ekonomi Pembangunan*, Vol. 20, No. 2, 2022, p.148. https://doi.org/10.29259/jep.v20i2.18718

To illustrate these concepts, consider the following example. Until the 1980s, Canada had a wine industry concentrated in the Niagara Peninsula near the U.S. border. The wine produced was relatively expensive and of low quality, limiting its competitiveness to the domestic Canadian market due to tariff and non-tariff barriers imposed by the United States. Following the establishment of the Canada-U.S. Free Trade Agreement (FTA), which liberalized wine trade between the two countries, Canadian wineries lost market share as they could not compete with higher-quality, lower-priced wines from California. As a result, Canadian consumers benefited from more affordable wine. While the Canadian wine industry experienced losses, consumers enjoyed increased access to better products, and Canadian businesses were able to invest in the United States due to reduced costs. This scenario exemplifies **trade creation**.[14]

Conversely, the Canada-U.S. FTA also led to **trade diversion** in the wine sector between Canada and France. Before the agreement, U.S. and French wines faced import tariffs in Canada. After the FTA took effect, U.S. wines could enter Canada tariff-free, while French wines remained subject to tariffs. This created a competitive disadvantage for French wines, even though they may have been cheaper and of higher quality than those produced domestically in Canada or imported from the United States. Consequently, the agreement diverted trade from a potentially more efficient global supplier (France) to a regional partner (the United States), reducing overall economic welfare.[15]

2.2.2. Political Rationales

The spread of Regional Trade Agreements (RTAs), initially dominated by the economic rationality of countries before and after the WTO era, now reflects a variety of rationales. The most dominant rationale in RTA negotiations is political. This has attracted the attention of political researchers investigating it within the International Political Economy (IPE) framework. IPE scholars explore both the political and economic causes, or a combination of both, behind countries' decisions to engage in RTA negotiations. They have identified at least seven political rationales motivating countries to pursue RTAs:

1. **Regionalism and the marginalization syndrome**

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[14] *Ibid*,.
[15] *Ibid*,.

The primary reason is that countries tend to engage in RTA negotiations to avoid being left behind or marginalized in the global economic and political landscape. Typically, this applies to smaller, poorer, isolated countries or those heavily dependent on other nations.

2. **Security via economic means**
   IPE researchers say countries enter RTA negotiations primarily to enhance their economies. Simultaneously, they use these agreements to assert their national security and presence. For instance, European countries formed the European Coal and Steel Community to prevent future German aggression. Similarly, ASEAN was initially established for economic and cultural cooperation but also served as a defence mechanism against the Cold War influences of the United States and the Soviet Union.
3. **Regionalism and 'new security' needs**
   This rationale extends beyond traditional military threats to include non-military concerns such as environmental degradation, illegal immigration, and organized crime (e.g., drug trafficking and terrorism). An example is the Southern African Development Community (SADC), which aims to facilitate the transportation of goods in Africa while addressing environmental preservation.
4. **Regionalism to increase negotiating leverage**
   Countries may also be motivated to engage in RTA negotiations to enhance their bargaining power on the international stage. This is common among developing countries, which use RTAs as a stepping stone to engage in broader negotiations with developed nations.
5. **Regionalism to lock in domestic reforms**
   Countries might enter RTA negotiations to accelerate domestic trade reforms. By committing to the agreed terms, domestic industries and markets are pressured to comply, thereby speeding up liberalization processes.
6. **Regionalism to accommodate domestic constituents**
   This is arguably the most politically pragmatic rationale. Regional liberalization is often pursued to meet the needs of domestic populations, mainly when governments cannot fully satisfy those needs or when doing so domestically would be prohibitively expensive.

7. **Practical ease of regionalism vs. multilateralism**
   This final rationale underscores the practical advantages of RTAs over multilateral liberalization through the WTO. RTAs are generally easier to negotiate than multilateral agreements, which require consensus among all WTO members, each with different levels of economic development and national interests. This political rationale highlights the slower, more complex nature of multilateral liberalization.

2.3. The Legal Test of "Substantially All Trade" under Article XXIV GATT 1994

Regardless of the economic or political rationality behind each RTA negotiation conducted by individual countries, every WTO member can negotiate RTAs with any country. However, each state must comply with several WTO provisions, considering that the legal basis or standing of RTAs has been established and serves as the foundation for negotiations before and after the WTO's establishment.

Since this journal focuses on trade in goods, it is worth delving further into Article XXIV of the GATT 1994 as the legal standing for trade in goods. Article XXIV:5 of the GATT 1994 provides an exception to WTO members' commitments, allowing the formation of RTAs. This is explained in Article XXIV:5's opening statement: "*Accordingly, the provisions of this Agreement shall not prevent, as between the territories of Members, the formation of a custom union or of a free-trade area*".[16]

Regarding the exception referred to in **Article XXIV:5**, countries intending to form an RTA must first understand the meaning of the exception contained in **Article XXIV:4**, which states:

> "*the Members recognize the desirability of increasing freedom of trade by the development, through voluntary agreements, of closer integration between the economies of the countries parties to such agreements. They also recognize that the purpose of a custom union or of a free-trade area should be to 'facilitate trade between the constituent territories and not to raise barriers to the trade of the other Members with such territories*."

[16] Mitchell, Andrew D. and Nicolas J.S. Lockhart, "Legal Requirement for PTAs Under the WTO", dalam Simon Lester,*ed, al, Bilateral and Regional Trade Agreements : Commentary and Analysis*, Cambridge University Press, Cambridge, United Kingdom, 2015, p. 81. https://ssrn.com/abstract=2664939

The elaboration of this Article is further explained in the **Understanding on the Interpretation of Article XXIV of the GATT 1994** (RTA Understanding). According to the RTA Understanding, each WTO member is required to:[17]

- Recognize the contribution to the expansion of world trade that may be achieved through the formation of RTA;
- Acknowledge that trade expansion is enhanced when internal trade barriers among RTA members are eliminated for all trade and diminished if specific sectors are excluded; and
- Continuously review and negotiate RTAs with other countries to avoid adverse effects on nations outside the RTA.

As explained in the previous Introduction, the scope of **GATT 1994** only covers **Free Trade Areas (FTAs)** and **Customs Unions (CUs)** under **Article XXIV:5**. However, to benefit from FTAs or CUs, a specific objective must be achieved, known as the **elimination of internal trade restrictions**.[18] For **Customs Unions (CUs)**, this is regulated under **Article XXIV:8(a)(1)**, which states: *"duties and other restrictive regulations of commerce (except, where necessary, those permitted under Articles XI, XII, XIII, XIV, XIV, XV, and XX) are eliminated concerning substantially all trade between the constituent territories of the union or at least concerning substantially all the trade in products originating in such territories ..."*

Meanwhile, for **Free Trade Areas (FTAs)**, the same conditions and rules are regulated under **Article XXIV:8(b)**, which states: *"duties and other restrictive regulations of commerce (except, where necessary, those permitted under Articles XI, XII, XIII, XIV, XIV, XV, and XX) are eliminated with respect to substantially all trade between the constituent territories of the union or at least with respect to substantially all the trade in products originating in such territories ..."*

From these two provisions, it can be concluded that both **FTAs** and **CUs** must: (a) Fulfil the elimination of all trade restrictions within the scope of **"substantially all trade"** among RTA members; (b) Ensure that the elimination of trade restrictions includes **tariffs** and other restrictive regulations of commerce (**ORRCs**); and (c)

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[17] *Ibid*, p. 83-84.
[18] *Ibid*, p. 92.

Explicitly allow the continuation of certain necessary restrictions under **Articles XI, XII, XIII, XIV, XV, and XX**.[19]

In the case of **Customs Unions (CUs)**, internal barriers must be eliminated both for **"substantially all trade"** among members and for **"substantially all trade"** for products originating from third-party countries. The provisions of CUs are considered more liberal because they include provisions that eliminate trade barriers for goods regardless of where they were produced. [20]

Under Article XXIV:8(a) of GATT 1994, a Customs Union (CU) requires not only the elimination of internal barriers on "substantially all the trade" among members, but also the adoption of a common external trade policy vis-à-vis third countries. This differs from Free Trade Areas (FTAs), which are only required to remove internal barriers while maintaining independent external tariffs. Therefore, the "substantially all trade" requirement in CUs applies specifically to internal trade among members, whereas the obligation toward third-country products is framed as maintaining "substantially the same duties and other regulations of commerce" among CU members. The broader institutional commitment explains why CUs are often viewed as more trade-integrative than FTAs. [21]

A more in-depth understanding of this distinction is illustrated in the WTO Appellate Body Report *Turkey – Textiles* (1999), where the panel emphasized that the formation of a CU must not lead to the creation of new barriers to trade with non-members. The case clarifies that CU members may impose common external restrictions only when such restrictions are necessary to the functioning of the CU and consistent with Article XXIV. This jurisprudence shows that while CUs may adopt a unified external trade policy, they must still demonstrate that these measures neither violate general GATT obligations nor restrict the competitive conditions for third-party exporters. Thus, the legal framework for CUs is not merely more "liberal," but also more stringent in requiring justification for external measures.[22]

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[19] *Ibid*, p. 93.
[20] Kim, J. B. and L. Yoo, "Tariff Flexibility Amid Formation of Preferential Trade Agreements: WTO Law vs. PTA Law," *World Trade Review*, Vol. 22, No. 5 (2023), p. 682. https://doi.org/10.1017/S1474745623000277
[21] Robert Howse and Joanne Langille, "Continuity and Change in the World Trade Organization: Pluralism Past, Present, and Future," *American Journal of International Law*, Vol. 117, No. 1 (2023), p. 32. https://doi.org/10.1017/ajil.2022.82
[22] Dadush, Uri and Elena Dominguez Prost, "Preferential Trade Agreements, Geopolitics, and the Fragmentation of World Trade," *World Trade Review*, Vol. 22, No. 2 (2023), p. 283. https://doi.org/10.1017/S1474745623000022

From a policy perspective, the deeper integration achieved through CUs indicates a higher degree of political commitment among members, as the harmonization of external tariffs limits national discretion in trade policy. This illustrates why many developing countries, including Indonesia, tend to prefer FTAs over CUs: the political and economic costs of aligning external tariffs are significantly higher. The distinction also helps contextualize Indonesia's engagement with EFTA, confirming that IE-CEPA—being an FTA—was designed primarily to achieve formal compliance with Article XXIV rather than deeper economic integration. This supports the article's finding that Indonesia's rationale was predominantly political rather than driven by substantial economic incentives.[23] In contrast, **Free Trade Areas (FTAs)** follow a provision where eliminating internal barriers to meet the **"substantially all trade"** requirement applies only if the goods originate from RTA member countries.[24]

2.3.1. Divergent Interpretations of "Substantially All Trade" Among WTO Members

The meaning of **"substantially all trade"** in **Article XXIV:8** has been discussed among WTO members for many years. To date, WTO members have disagreed on how **"substantially all trade"** or **"all the trade"** in an RTA must be applied.[25] However, there are two overlapping approaches. The first is the **qualitative approach**, which requires removing barriers to cover **each country's primary sector** within the RTA. The second is the **quantitative approach**, which relies on **statistical thresholds**. An example of this is the fulfilment of the removal of barriers to maintain a **percentage of trade** conducted and agreed upon by both countries before establishing the RTA.[26]

The **qualitative approach** is designed to prevent the parties in the RTA from maintaining barriers in specific sectors that are considered important to protect markets and avoid competition within the domestic economy. This approach is also supported by the rationale for fulfilling the provisions regarding exceptions as previously outlined and determined by the WTO. Furthermore, it represents the commitment of WTO members

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[23] Giorgio Sacerdoti and Luca Borlini, "Systemic Changes in the Politicization of International Trade Relations and the Decline of the Multilateral Trading System," *German Law Journal*, Vol. 24, No. 1 (2023), p. 33. https://doi.org/10.1017/glj.2023
[24] *Ibid*,.
[25] *Ibid*,. *See also* WTO Committee on Regional Trade Agreements, *Coverage, Liberalization Process and Transitional Provisions in Regional Trade Agreements: Background Survey by the Secretariat,* WT/REG/W/46 (5 April 2002).
[26] *Ibid*,.

to engage in more liberal economic integration as their justification for entering into RTA negotiations. If one party excludes a **primary sector** from liberalization, the RTA will be considered not to meet the **"substantially all trade"** requirement. If this approach is used to satisfy the **"substantially all trade"** criterion, the parties to the RTA must also simultaneously negotiate which sectors are considered major or significant for each party.[27]

According to the **quantitative approach**, to meet the requirement of **"substantially all trade"**, it is recommended that the parties eliminate trade barriers for at least **95 percent** of all tariff concessions made under their commitments to the WTO based on the **Harmonised Commodity Description and Coding System (HS Code)** at the six-digit level. The **HS Code** can be used as a reference for the parties to liberalize the sectors and commodities they wish, but with a tariff reduction scheme based on the average of the sectors and commodities that have been liberalized.[28] However, tariffs based on the HS Code may need clarification because commodities have been liberalized. For instance, if trade between the RTA parties is concentrated on a small number of tariffs, and barriers to those sectors are maintained, then most trade activities may fulfil the intention of trade liberalization within the RTA.[29] On the other hand, a significant portion of the tariffs might be dedicated to trade in small quantities. For example, nearly one-quarter of the HS Codes for all agricultural products might result in trade liberalization in only a tiny portion of the sector.[30]

Trade Trade flows are often used as an alternative criterion to tariffs in determining which internal trade barriers should be eliminated within an RTA. The logic is that the removal of internal barriers should correspond to the liberalization of a substantial proportion of actual trade between the parties—typically measured at around 95 percent of total trade in goods. However, relying on trade flows as the basis for liberalization presents several methodological challenges. Actual trade flows may already be distorted

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[27] *Ibid*, p. 94.
[28] *Ibid*,.
[29] *Ibid*,. "*for instance, the EC has pointed out that in agreements involving the Faroe Island, 'well under tariff lines accounted for about 80 per cent of the trade'. Norway, likewise, has observed that in a Faroe Island – Norway Free Trade Agreement, all of the trade between the two parties was conducted under just ten tariff lines".* WTO Committee on Regional Trade Agreements, *Note on the Meetings of 16 – 18 and 20 February 1998,* WT/REG/M/16 (18 March 1998), para. 118 dan 125.
[30] *Ibid*,. *See also* WTO Committee on Regional Trade Agreements, *Note on the meetings of 23 – 24 September 1998,* WT/REG/19 (16 October 1998), para. 18.

by existing tariffs and non-tariff barriers, meaning they do not necessarily reflect the true volume of trade that would occur under freer conditions. As a result, trade-flow-based calculations risk over- or under-estimating the level of trade that should be covered under the "substantially all trade" requirement.[31]

Further difficulties arise in determining how the 95 percent threshold should be measured, particularly whether it should be calculated on a **summation basis** (combined bilateral flows) or on an **individual basis** (each country's imports from the other). To illustrate, suppose Country A exports USD 95 billion of goods to Country B, while Country B exports USD 5 billion to Country A. Under a summation approach, both countries would be required to liberalize 95 percent of the combined bilateral trade value of USD 100 billion, although the parties may differ on whether B must fully liberalize imports from A. In contrast, using the individual approach, each country liberalizes 95 percent of its own imports from the other, resulting in markedly different liberalization obligations. This divergence demonstrates how the choice of method significantly influences the extent of required barrier removal and highlights why trade-flow criteria often create practical and legal ambiguity in RTA negotiations.[32]

2.3.2. Dispute Settlement Body Clarification of "Substantially All Trade": A Flexible, Case-by-Case

Although WTO members have not fully agreed on the definition of "substantially all trade," panels or the Appellate Body (AB) may be required to interpret this terminology in dispute settlement within the WTO. To date, neither the AB nor the panels have formulated a detailed definition of "substantially all trade." In the Turkey – Textiles case, the AB noted that "substantially all trade" is not the same as "all trade," but rather it is a concept that is broadly understood as "more than merely some of the trade."[33]

In another case, to test whether the North American Free Trade Agreement (NAFTA) was consistent with Article XXIV:8(b) in the US – Line Pipe Safeguards case,

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32 *Ibid*,. *See also* WTO Committee on Regional Trade Agreements, *Communication from Australia*, WT/REG/W/22 (30 January 1998), dan *See also* WTO Committee on Regional Trade Agreements, *Note on the Meeting of 16 – 18 and 20 February 1998*, WT/REG/M/16 (18 March 1998), para. 112.

33 *Ibid*, p. 96. *See also* Appellate Body Report, *Turkey – Textiles,* para. 48.

the United States provided evidence that NAFTA eliminated 97 percent of tariffs among the parties, representing nearly 99 percent of the total trade between them in terms of the volume of goods.[34] After reviewing this evidence, without reinterpreting "substantially all trade," the panel considered that the United States had established a prima facie case that NAFTA met the definition of "substantially all trade" under the FTA provisions of Article XXIV:8(b).[35] Subsequently, the AB reviewed the panel's ruling and concluded that the evidence of "substantially all trade" accepted by the panel had no legal effect on the true meaning of "substantially all trade."[36]

2.4. Political Rationale as the Dominant Driver of IE-CEPA

Based on the discussion regarding the rationality and "substantially all trade" concept, the author attempts to illustrate and examine the relationship between these topics in the context of the Indonesia–EFTA Comprehensive Economic Partnership Agreement (IE CEPA) negotiations. Given that the IE CEPA was only signed on December 16, 2018,[37] it is interesting to discuss, even though the agreement has not yet entered into force.

Before the IE CEPA was formed and agreed upon, EFTA itself was a separate RTA that had existed since 1960, consisting of Iceland, Liechtenstein, Norway, and Switzerland.[38] EFTA, as an independent RTA, is an intriguing agreement when examined based on its rationality before analyzing its relationship with Indonesia. EFTA is an example of an RTA with stronger political rationality than economic rationality. The

[34] *Ibid*,. *See also* Panel Report, *US – Line Pipe Safeguads*, para. 7.142.
[35] *See* Panel Report, *US – Line Pipe Safeguads*, para. 7.144.
[36] *Ibid*,. *See also* Appellate Body Report, *US – Line Pipe Safeguards*, para. 198-199.
[37] Indonesia and the member countries of the European Free Trade Association (EFTA) officially signed the Indonesia–EFTA Comprehensive Economic Partnership Agreement (IE-CEPA) on Sunday (December 16) in Jakarta. The signing of the Agreement was carried out by the Minister of Trade of the Republic of Indonesia, Enggartiasto Lukita, together with the Federal Councillor, Head of the Federal Department of Economic Affairs, Education and Research of Switzerland, Johann N. Schneider-Ammann; the Minister for Foreign Affairs and External Trade of Iceland, Guðlaugur Þór Þórðarson; the Minister of Foreign Affairs, Justice, and Culture of Liechtenstein, Aurelia Frick; and the Minister of Trade and Industry of Norway, Torbjørn Røe Isaksen. Quoted from "Indonesia – EFTA Officially Signed the Comprehensive Agreement IE–CEPA," as published on www.kemlu.go.id, accessed on March 23, 2025, at 13:02.
[38] The European Free Trade Association (EFTA) is an intergovernmental organization comprising Iceland, Liechtenstein, Norway, and Switzerland. It was established in 1960 by its then seven member states to promote free trade and economic integration among its members. The four EFTA states are open and developed economies, with trade figures significantly higher than might be expected from a total population of less than 14 million people. EFTA is the ninth largest trader in the world in merchandise trade and the fifth largest in trade in services. EFTA is the third most important trading partner in goods for the European Union and the second most important in services. Quoted from "About EFTA," as published on www.efta.int, accessed on March 23, 2019, at 14:16.

primary purpose of EFTA's formation was to enhance the bargaining power and relations of the EFTA countries with the European Economic Community (EEC) at that time, and it successfully led to the bilateral relationship within the EFTA-EC Free Trade Agreement in 1972.[39]

Interestingly, despite EFTA being an FTA, the four EFTA countries always negotiate RTAs collectively, even though they could negotiate individually since EFTA does not have a standard external tariff agreement, allowing them to manage their tariffs independently, unlike a CU. EFTA has established 29 RTAs with 40 countries[40], currently making EFTA the party with the most RTAs.

As for Indonesia, RTA is considered a long-standing phenomenon since, before the establishment of the WTO, Indonesia had already joined an RTA, namely the ASEAN Free Trade Area (AFTA) in 1992. By 2000, AFTA had successfully increased trade intensity within the ASEAN region by 30-45 percent. In contrast, trade with countries outside the ASEAN region increased by only 7-14 percent annually relative to the regional GDP of ASEAN countries.[41] Thus, the formation of AFTA was strongly driven by economic rationality, which is considered successful.

Although AFTA is strong in its economic rationality, it is interesting to examine its historical perspective. AFTA is an RTA consisting of ASEAN countries, and ASEAN is a regional agreement established in Southeast Asia. The formation of ASEAN is considered to be driven by the concept of **'Security via Economic Means.'** The founding ASEAN delegates sought to build a regional identity to avoid conflict and foster regional security cooperation. ASEAN was established in **1967** with elements of economic cooperation and the development of a regional identity to prevent conflicts among ASEAN countries, especially during the Cold War period.[42] Over time, ASEAN's

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[39] Cottier, Thomas and Marina Foltea, "Constitutional Function of the WTO and RTAs", dalam *Regional Trade Agreements and the WTO Legal System*, *ed*. Lorand Bartels & Federico Ortino, Oxford University Press, New York, 2006, p. 44.

[40] The following are the RTA partner countries with EFTA: **Status (in force)** – Iceland, Albania, Bosnia & Herzegovina, Canada, Costa Rica & Panama, Chile, Colombia, Egypt, Georgia, Hong Kong (China), Israel, Jordan, South Korea, Lebanon, Mexico, Montenegro, Morocco, North Macedonia, the Palestinian Authority, Peru, the Philippines, SACU (South African Customs Union), Serbia, Singapore, Tunisia, Turkey, Ukraine, the European Union, the Faroe Islands, Japan; **(early announced)** – Guatemala, Ecuador, GCC (Gulf Cooperation Council), Indonesia, India, Mercosur (Southern Common Market), Russia, Belarus, Kazakhstan, Vietnam. Source: http://rtais.wto.org, see also "EFTA's Free Trade Agreements Monitor," as published on www.efta.int, accessed on March 23, 2025, at 14:18.

[41] Lorand Bartels and Federico Ortino, *Regional Trade Agreement*, p. 13.

[42] *Ibid*, p. 31.

objectives have shifted, particularly since the establishment of the WTO, by negotiating RTAs with other countries, known as **ASEAN + 1**.[43]

Of all the RTAs Indonesia participates in, as recorded in the WTO database, most are RTAs where Indonesia is not negotiating independently but as part of ASEAN, with trade partners from countries classified as developed or with a higher economic level than ASEAN nations. Therefore, these RTAs have strong rationality, as most ASEAN countries are classified as developing countries.

However, Indonesia has begun negotiating RTAs independently, starting with Japan, which was signed in **2007** and will remain in effect until **2023**. In contrast, ASEAN only concluded an RTA with Japan in **2008**, known as the **Indonesia–Japan Comprehensive Economic Partnership Agreement (IJEPA)**. IJEPA marks an initial milestone for Indonesia in increasing its **leverage** in international relations, particularly in the Asia-Pacific region.

Lastly, Indonesia signed the **IE CEPA**. This RTA is likely driven more by political rationality than economic rationality. As outlined in Article XXIV, the **'substantially all trade'** requirement can be examined and assessed to test this assumption.

The quantitative and qualitative approaches are general approaches for a country to meet the **'substantially all trade'** requirement. However, for Indonesia, a new and updated approach is needed as a test for the formation of the **IE CEPA**. This approach involves assessing Indonesia's trade capacity in exports and imports, so long before Indonesia initiates RTA negotiations, it evaluates whether the potential trade partner can accommodate all of Indonesia's commodity exports. This approach can be referred to as the **"comparative approach."**

[43] RTA partner countries with ASEAN, of which Indonesia is a member: ASEAN–Australia–New Zealand, ASEAN–China, ASEAN–India, ASEAN–Japan, ASEAN–South Korea. Source: http://rtais.wto.org.

Agricultural Products		
Export	***Value (Million USD)***	***% of all exports (±)***
HS1511 *Palm oil and its fractions*	18.513	50
HS1513 *Coconut (copra), or palm kernel oil*	3.028	10
HS3823 *Industrial monocarboxylic acids*	2.991	10
HS0901 *Coffee*	1.187	5
HS1517 *Margarine; edible mixtures oil*	909	5
Import	***Value (Million USD)***	***% of all imports (±)***
HS1001 *Wheat and meslin*	3.628	17
HS1701 *Cane or beet sugar*	2.349	12
HS2304 *Solid residues from soya-bean oil*	1.841	8
HS1201 *Soya beans, whether or not broken*	1.285	6
HS5201 *Cotton, not carded or combed*	1.268	6
Non-Agricultural Products		
Export	***Value (Million USD)***	***% of all exports (±)***
HS2701 *Coal; briquettes, ovoids*	17.868	13
HS2711 *Petroleum gases*	8.861	7
HS2709 *Petroleum oils, crude*	5.238	5
HS4001 *Natural rubber, balata*	5.105	5

HS2603 *Copper ores and concentrates*	3.440	3
Import	***Value (Million USD)***	***% of all imports(±)***
HS2710 *Petroleum oils, oher than crude*	14.980	11
HS2709 *Petroleum oils, crude*	8.232	6
HS8517 *Line telephony electrical apparatus*	3.313	3
HS2711 *Petroleum gases*	2.897	3
HS8708 *Parts for motor vehicles 8701-8075*	2.892	3

Table. 1. Indonesia's Trade Balance Based on WTO Statistics, 2019.
Source: World Trade Organization, WTO Statistics Database (accessed March 28, 2024).

Referring to the table above, Indonesia should negotiate RTAs with countries that can accommodate Indonesia's export commodities, either by maintaining existing markets with new policies (zero tariffs or the removal of non-tariff barriers) or by opening new markets (trade creation) for countries that have not yet absorbed Indonesia's export products, in line with economic rationality. Indonesia must also consider the export commodities of potential RTA partner governments. The potential partner should be an exporter of commodities that Indonesia imports. In this way, Indonesia can apply zero tariffs or impose minimal trade barriers on them.

HSCODE	**Value ($)/ Weight (Kg)**	**EFTA Country**			
		Iceland	**Norway**	**Liechtenstein**	**Switzerland**
0901	$	0	934.352	0	207.604
	Kg	0	195.200	0	41.202
2709	$	0	0		28.442.699

	Kg	0	0	0	122.575
Note	The data for HS codes 1511, 1513, 1517, 2603, 2701, 2711, 3823, and 4001 could not be found through the Statistical Service System (Silastik) of BPS.				

Table 2. Indonesia's Top Five Agricultural and Non-Agricultural Export Sectors to EFTA, 2019.
Source: Processed from BPS Database, *Silastik* (accessed June 20, 2019).

Based on Indonesia's top five export sectors in agriculture and non-agriculture, Indonesia only has two trade records in the coffee sector, valued at USD 934,352 for Norway and USD 207,604 for Switzerland. In the crude oil sector, Indonesia only has a transaction record with Switzerland amounting to USD 28,442,699. Other HS Code trade records were not found. When linked to economic rationality, particularly trade creation, Indonesia is likely targeting the markets of Iceland and Liechtenstein, which have not yet been formed. Therefore, Indonesia's economic approach to the IE CEPA is to open up a broader market. This can be demonstrated by the tariff commitments of the four EFTA countries for Indonesian coffee and crude oil commodities.

HS Code	**Tariff Commitment**			
	Islandia	**Norwegia**	**Liechtenstein**	**Switzerland**
901	Chapter 9: (Ad Valorem= 0%) and (Icelandic Currency/ Kg= 0%)	0901 1100 - 0901 9000: (Ad Valorem=0%) and (Norwegian Currency/Kg=0%)	0901 1100 - 0901 9900: (preferential trade=0% dan MFN Applied Minus=0%) per kg	0901 1100 - 0901 9900: (preferential trade=0% dan MFN Applied Minus=0%) per kg
2709	Chapter 27: (Ad Valorem= 0%) and (Icelandic	Chapter 27: (Ad Valorem=0%) and (Norwegian Currency/Kg=0%)	Chapter 27 = (preferential trade=0% dan MFN Applied	Chapter 27 = (preferential trade=0%

	Currency/ Kg= 0%)		Minus=0%) per kg	dan MFN Applied Minus=0%) per kg
Note	The HS Code used is 2012. The tariffs for Liechtenstein and Switzerland are the same because the Customs Union agreement binds both countries.			

Table 3. EFTA Commitments on Indonesian Exports under IE-CEPA, 2019.
Source: Processed from IE-CEPA Agreement, Annex III (Iceland), Annex IV (Norway), and Annex V (Switzerland)

The table above shows that the tariffs imposed by the four EFTA countries on Indonesian export commodities are an average of zero tariffs. Thus, Indonesia can continue trading with Norway and Switzerland more massively, hoping that Iceland and Liechtenstein will start considering conducting trade transactions with Indonesia on Indonesian export commodities.

Meanwhile, Indonesia's import commodity balance from EFTA countries includes:

HSCODE	Value ($)/ Weight (Kg)	EFTA Country			
		Iceland	Norway	Liechtenstein	Switzerland
2709	$	0	41455911	0	0
	Kg	0	88611001	0	0
2710	$	0	0	0	606
	Kg	0	0	0	19
1001	$	0	0	0	7.741.616
	Kg	0	0	0	34.684.600
5201	$	0	0	0	2.352.022
	Kg	0	0	0	269.846
8517	$	0	538	0	10.678
	Kg	0	2	0	54
8708	$	0	0	0	1.389
	Kg	0	0	0	26
Note	HS Code 1704, 2304, 1201, 2711 could not be found through the Statistical Service System (Silastik) of BPS.				

Table 4. EFTA Commitments on Indonesian Export Products, 2019.

Source: Processed from BPS Database, *Silastik* (accessed June 15, 2019)

From the table above, Iceland and Liechtenstein do not contribute to Indonesia's import of commodities. It can be concluded that only Norway and Switzerland actively contribute to Indonesia's trade balance and domestic needs for several HS Codes. So only Norway and Switzerland can enjoy preferential tariffs through the IE CEPA, which Indonesia follows in the following table:

<table>
<tr><th rowspan="2">HS CODE 2012</th><th rowspan="2">Base Rate</th><th rowspan="2">Category</th><th colspan="5">Years of Entry</th></tr>
<tr><th>1</th><th>2</th><th>3</th><th>4</th><th>5</th></tr>
<tr><td>2709</td><td>0%</td><td>NT0</td><td>0%</td><td>0%</td><td>0%</td><td>0%</td><td>0%</td></tr>
<tr><td>2710</td><td>0%</td><td>NT0</td><td>0%</td><td>0%</td><td>0%</td><td>0%</td><td>0%</td></tr>
<tr><td>1001</td><td>0%</td><td>NT0</td><td>0%</td><td>0%</td><td>0%</td><td>0%</td><td>0%</td></tr>
<tr><td>5201</td><td>0%</td><td>NT0</td><td>0%</td><td>0%</td><td>0%</td><td>0%</td><td>0%</td></tr>
<tr><td>8517</td><td>0%</td><td>NT0</td><td>0%</td><td>0%</td><td>0%</td><td>0%</td><td>0%</td></tr>
<tr><td>8708</td><td>10%</td><td>NT2</td><td>8%</td><td>8%</td><td>6%</td><td>6%</td><td>4%</td></tr>
<tr><td>Note:</td><td colspan="7">The year of entry is only used for the first 5 years compared to the 14 years included in the agreement. NT0 means the elimination of tariffs since the first year of entry into the agreement. At the same time, NT2 means that tariffs must be eliminated periodically, at 0% in the 10th year.</td></tr>
</table>

Table 5. Indonesia's Import Commitments to EFTA under IE-CEPA, 2019.

Source: Processed from IE-CEPA Agreement, Annex II (Indonesia's Commitments).

Referring to both the qualitative and quantitative approaches, the data indicates that Indonesia and EFTA formally meet the requirements of the "substantially all trade" clause under Article XXIV of GATT 1994. However, the fulfilment of this legal threshold does not necessarily translate into economic gains for Indonesia. The IE-CEPA offers limited opportunities for significant export expansion because Indonesia's historical trade flows with several EFTA members particularly Liechtenstein and Iceland are extremely low, with some sectors recording zero transactions. This highlights that compliance with "substantially all trade" remains primarily a *formal* requirement, while its substantive economic impact is minimal.

A comparative analysis further shows that Indonesia's export performance to EFTA markets has historically been weak, and the opening of comprehensive commitments under IE-CEPA does not guarantee trade creation. Even with tariff elimination and market access improvements, EFTA consumers may continue to prefer cheaper and higher-quality imports from other suppliers, thereby limiting Indonesia's ability to benefit from the agreement. As a result, the findings affirm that despite fulfilling the "substantially all trade" requirement, the agreement does not provide Indonesia with meaningful economic advantages reinforcing the conclusion that IE-CEPA's underlying rationale is predominantly political rather than economic.

Moreover, the limited economic impact of IE-CEPA also highlights a broader interpretive issue embedded within the "substantially all trade" clause itself. WTO jurisprudence and scholarly commentary consistently emphasize that SAT is a *coverage obligation*, not a guarantee of economic outcomes. In this sense, compliance is assessed by examining whether tariff lines and trade regulations have been legally liberalized not whether trade volumes actually increase after the agreement enters into force. This distinction is crucial for the IE-CEPA context, where Indonesia may have formally liberalized a sufficient percentage of tariff lines to satisfy SAT, yet the underlying trade structure remains too shallow to generate meaningful export growth. As a result, the gap between *legal coverage* and *economic substance* becomes evident, reinforcing the finding that SAT compliance alone does not correct structural weaknesses in Indonesia's trade performance with EFTA countries.

III. CONCLUSION

The Indonesia–EFTA Comprehensive Economic Partnership Agreement (IE-CEPA) was established under Article XXIV GATT 1994, requiring the elimination of barriers to "substantially all trade." Indonesia and EFTA have fulfilled this formal requirement through comprehensive tariff reductions. However, key empirical indicators—including persistent trade balance deficits, high export concentration in only a few commodity groups, and low tariff-utilization rates for Indonesian exporters—demonstrate that Indonesia's economic gains remain limited, with minimal evidence of trade creation. These observations support the finding that IE-CEPA operates more as a political instrument to strengthen Indonesia's diplomatic positioning in Europe than as a mutually beneficial or efficiency-driven economic pact. Therefore, the agreement reflects a predominance of political rationality over economic efficiency.

A more constructive direction for future negotiations would be for Indonesia to strengthen export complementarity with EFTA members by identifying niche sectors where Indonesian products can realistically penetrate high-standard European markets. Indonesia could also advocate for more substantive RTA evaluation metrics—beyond the formal fulfilment of the "substantially all trade" requirement—such as indicators of supply-chain integration potential, market absorption capacity, domestic value-added resilience, and sector-specific trade elasticity. Incorporating these indicators would ensure that future agreements are assessed not merely through legal coverage, but through their ability to generate measurable economic benefits.

Lastly, Indonesia should reconsider the alignment between its RTA objectives and domestic industrial capabilities, improve monitoring of tariff-utilization and non-tariff barriers, and further investigate structural constraints that limit export competitiveness. Incorporating these improvements would elevate future trade agreements from mere diplomatic tools into instruments capable of delivering substantive economic outcomes.

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Reformasi Tata Kelola Majelis Pengawas Notaris untuk Mewujudkan Akuntabilitas Profesi Notaris di Indonesia

Reforming the Governance Architecture of the Notary Supervisory Council to Strengthen the Accountability Regime Governing Indonesia's Notarial Profession

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ABSTRAK

Notaris berperan penting dalam menjamin kepastian hukum melalui akta otentik, namun tata kelola Majelis Pengawas Notaris di Indonesia masih menghadapi kendala regulasi, kelembagaan, dan digitalisasi. Penelitian ini bertujuan merumuskan reformasi tata kelola untuk memperkuat akuntabilitas profesi notaris. Penelitian mengunakan narrative review terhadap 25 artikel jurnal internasional yang dipilih melalui proses identifikasi, seleksi, dan analisis tematik. Artikel dikaji berdasarkan empat tema yaitu etika, regulasi, kelembagaan, dan teknologi digital. Temuan menunjukkan bahwa regulasi formal tidak cukup menjamin akuntabilitas tanpa dukungan etika profesi dan mekanisme kelembagaan yang kuat. Majelis Pengawas Notaris masih lemah dalam sumber daya dan penegakan sanksi. Sementara itu, digitalisasi melalui akta elektronik, promosi daring, dan blockchain menghadirkan peluang transparansi sekaligus risiko integritas. Kesimpulan, reformasi tata kelola Majelis Pengawas Notaris perlu menggunakan pendekatan hybrid yang mengintegrasikan etika, regulasi, kelembagaan, dan teknologi. Sebagai rekomendasi, penelitian ini mendorong peningkatan kapasitas SDM Majelis Pengawas Notaris, harmonisasi regulasi akta elektronik dan promosi daring, serta pengembangan mekanisme pengawasan yang lebih transparan dan independen, termasuk pemanfaatan teknologi yang relevan. Penelitian ini berkontribusi pada literatur akuntabilitas profesi hukum sekaligus memberikan arahan praktis bagi penguatan pengawasan notaris di Indonesia.

Keywords: Reformasi tata kelola; Majelis Pengawas Notaris; akuntabilitas profesi; narrative review; digitalisasi

ABSTRACT

Notaries play an essential role in ensuring legal certainty through authentic deeds, yet the governance of the Supervisory Council of Notaries in Indonesia continues to face regulatory, institutional, and digitalization challenges. This study aims to formulate governance reforms to strengthen the accountability of the notarial profession. It employs a narrative review of 25 international journal articles selected through a structured process of identification, screening, and thematic analysis. The articles were examined across four thematic areas: ethics, regulation, institutional governance, and digital technology. The findings show that formal regulation alone is insufficient to guarantee accountability without the support of strong professional ethics and effective institutional mechanisms. The Supervisory Council of Notaries remains weak in terms of resources and sanction enforcement. Meanwhile, digitalization through electronic deeds, online promotion, and blockchain offers opportunities for transparency while simultaneously presenting risks to professional integrity. In conclusion, governance reform for the Supervisory Council of Notaries requires a hybrid approach that integrates ethics, regulation, institutional capacity, and technology. As recommendations, this study encourages strengthening the human resource capacity of the Supervisory Council, harmonizing regulations on electronic deeds and online promotion, and developing more transparent and independent oversight mechanisms, including the adoption of relevant technological tools. This study contributes to the literature on professional accountability in law and provides practical guidance for enhancing notarial oversight in Indonesia.

Keywords: governance reform; Supervisory Council of Notaries; professional accountability; narrative review; digitalization

I. INTRODUCTION

Profesi notaris memiliki peran sentral dalam sistem hukum Indonesia, notaris merupakan pejabat umum yang diberi kewenangan oleh negara untuk membuat akta otentik sebagaimana diatur dalam UU No. 2 Tahun 2014, Pasal 1 angka 1 [1]. Sebagai pejabat publik yang berfungsi menjamin kepastian hukum, autentisitas dokumen, serta perlindungan hak-hak masyarakat, notaris memegang posisi strategis dalam sistem hukum Indonesia. Pengawasan terhadap profesi ini dilakukan oleh **Majelis Pengawas Notaris (MPN) yaitu** organisasi resmi pengawasan sebagaimana diatur dalam Pasal 67-70 UUJN dan dipertegas melalui Permenkumham No. 40 Tahun 2015 [2]. Permenkumham tersebut yang mengatur susunan organisasi, tata kerja, serta tata cara pemeriksaan. MPN bertugas memastikan bahwa notaris menjalankan profesinya sesuai ketentuan hukum dan kode etik.

Dalam kerangka tata kelola sektor publik, pengawasan profesi notaris terkait erat dengan konsep **reformasi tata kelola (*governance reform*)**, yaitu upaya sistematis untuk memperbaiki struktur, proses, dan mekanisme institusi agar lebih transparan, responsif, efektif, dan berorientasi pada kepentingan publik. Reformasi tata kelola selalu berkaitan dengan peningkatan **akuntabilitas**, yang dipahami sebagai kewajiban aktor atau lembaga untuk mempertanggungjawabkan tindakan, keputusan, serta penggunaan kewenangannya kepada pihak yang berwenang maupun kepada publik. Dalam konteks profesi hukum, akuntabilitas juga mencakup integritas etis dan legitimasi sosial. Dengan demikian, akuntabilitas notaris tidak hanya didasarkan pada kepatuhan regulatif, tetapi juga pada nilai etika dan kepercayaan masyarakat.

Kedudukan yang strategis ini menuntut standar akuntabilitas tinggi, sebab setiap akta yang dibuat tidak hanya bernilai administratif tetapi juga berdampak langsung pada legitimasi hukum yang berlaku bagi para pihak. Namun, dalam praktiknya, berbagai penelitian memperlihatkan bahwa akuntabilitas profesi notaris di Indonesia masih menghadapi tantangan serius, baik dari aspek regulasi, etika, kelembagaan, maupun teknologi. Penelitian yang dilakukan Heldawati dan Darmadi menunjukkan lemahnya kinerja Majelis Pengawas Daerah Notaris di Pekanbaru karena keterbatasan sumber daya

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manusia, sistem pelaporan yang tidak optimal, dan lemahnya penegakan sanksi, sehingga pengawasan yang dilakukan belum sepenuhnya menjamin akuntabilitas profesi [3]. Hal ini sejalan dengan temuan Mittelstadt yang menegaskan bahwa prinsip etika umum saja tidak cukup menjamin praktik profesional yang akuntabel tanpa disertai mekanisme kelembagaan yang konkret [4]. Dengan demikian, persoalan utama dalam tata kelola Majelis Pengawas Notaris bukan hanya terletak pada aturan formal yang tersedia, melainkan juga pada implementasi pengawasan yang belum efektif dalam menjamin kepercayaan publik terhadap profesi notaris [5].

Alasan mendasar pentingnya penelitian ini dilakukan adalah karena profesi notaris kini menghadapi kompleksitas baru akibat perkembangan teknologi, perubahan regulasi, dan dinamika sosial yang semakin cepat. Ditemukan juga Throughput Model menekankan bahwa dilema etis seperti otonomi, keadilan, privasi, dan martabat manusia menjadi dimensi sentral yang harus diantisipasi oleh setiap profesi, termasuk notaris, dalam menghadapi era digital [6]. Keberadaan akta elektronik memang diakui memiliki kekuatan hukum sempurna, namun regulasi terkait masih terbatas sehingga menimbulkan kesenjangan hukum yang dapat mereduksi akuntabilitas notaris [7]. Di sisi lain, sorotan promosi daring yang dilakukan notaris, yang ternyata menimbulkan ambiguitas dalam implementasi Pasal 4(3) kode etik, sehingga rawan menimbulkan pelanggaran etika [8]. Memang terdapat penawaran solusi teknologi berupa blockchain untuk menjamin transparansi dan *immutability* akta elektronik, meskipun gagasan ini masih bersifat

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konseptual dan belum banyak diuji dalam praktik [9]. Temuan-temuan tersebut memperlihatkan bahwa penelitian ini penting karena berupaya merumuskan strategi reformasi tata kelola yang tidak hanya normatif, tetapi juga adaptif terhadap perkembangan teknologi dan sensitif terhadap nilai-nilai etika, sehingga akuntabilitas profesi kenotariatan dapat terjaga di era digital [10].

Selain aspek teknologi, dimensi kelembagaan juga memperkuat urgensi penelitian ini. Dalam studi tentang lembaga keuangan menegaskan bahwa mekanisme pengawasan yang kuat, independen, dan transparan mampu mencegah penyalahgunaan kewenangan dalam organisasi [11]. Analogi ini sangat relevan dengan Majelis Pengawas Notaris, yang dalam praktiknya sering kali dipersepsikan tidak sepenuhnya independen dari birokrasi negara. Di negara Belgia, profesi notaris yang diposisikan sebagai monopoli privat justru lebih melindungi kepentingan internal profesi daripada kepentingan publik, sehingga menimbulkan persoalan akuntabilitas, sedangkan di Ukraina menunjukkan fungsi preventif notaris di Ukraina yang berperan aktif mencegah konflik hukum, menandakan bahwa pengawasan seharusnya tidak hanya bersifat represif, tetapi juga proaktif dalam menjaga legitimasi profesi [12]. Di Kosovo juga menekankan bahwa notaris sebagai profesi bebas dituntut memiliki tingkat akuntabilitas lebih tinggi karena kewenangan yang luas [13]. Semua temuan tersebut menegaskan pentingnya penelitian ini untuk mengembangkan tata kelola Majelis Pengawas Notaris yang mampu mengintegrasikan fungsi preventif, represif, dan adaptif dalam menghadapi tantangan multidimensi.

Hubungan penelitian ini dengan literatur terdahulu memperlihatkan adanya kontribusi baru yang signifikan. Sebagian besar penelitian mengenai profesi notaris masih

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[12] Frank Verboven and Biliana Yontcheva, "Private Monopoly and Restricted Entry— Evidence from the Notary Profession," *Journal of Political Economy* 132, no. 11 (2024): 3658–3707, https://doi.org/10.1086/730549.

[13] Bedri Bahtiri and Gani Asllani, "Access to Justice in Eastern Europe THE DEVELOPMENT OF NOTARY" 0575 (n.d.): 262–82, https://doi.org/https://doi.org/10.33327/AJEE-18-7.2-a000206.

bersifat normatif-yuridis, sehingga kurang membahas implementasi empiris pengawasan dalam praktik [14]. Sedangkan penelitian di Pekanbaru yang memang masih terbatas sudah menyoroti persoalan empiris sehingga belum memberikan gambaran komprehensif secara nasional [15]. Penelitian ini hadir untuk menjembatani gap tersebut dengan memadukan kajian normatif, empiris, dan komparatif, sekaligus mengadaptasi temuan internasional yang menunjukkan pentingnya peran historis notaris dalam tata kelola publik [16]. Selain itu akuntabilitas yang terlalu birokratis justru dapat mengurangi kepercayaan publik [17]. Selain itu pentingnya kalibrasi akuntabilitas agar tidak berlebihan maupun terlalu lemah [18]. Oleh karena itu, penelitian ini memiliki hubungan erat dengan literatur yang ada sekaligus memberikan kontribusi orisinal dengan menawarkan model reformasi *hybrid* yang lebih kontekstual, adaptif, dan aplikatif untuk profesi notaris di Indonesia

Tujuan penelitian ini adalah merumuskan kerangka reformasi tata kelola Majelis Pengawas Notaris yang dapat mewujudkan akuntabilitas profesi notaris di Indonesia secara komprehensif. Secara khusus, penelitian ini memiliki beberapa tujuan penting. Pertama, menganalisis konsep akuntabilitas profesi notaris secara ontologis dengan meninjau kerangka etika, norma regulasi, dan legitimasi profesi dimata publik. Kedua, menilai efektivitas kelembagaan Majelis Pengawas Notaris dalam melaksanakan fungsi pengawasan terhadap profesi notaris, serta faktor-faktor apa saja yang memengaruhi keberhasilan atau kelemahannya di berbagai daerah di Indonesia. Ketiga, merumuskan strategi adaptif Majelis Pengawas Notaris dalam menghadapi tantangan digitalisasi dan komersialisasi profesi, serta mengintegrasikan teknologi dan nilai sosial-etis dalam membangun tata kelola pengawasan yang adaptif, transparan, dan berorientasi pada

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[14] Kumara Putra, "Characteristics of Notary Deeds for Transactions Through Electronic Media"; Ageng Marta Kusuma, "The Role Of Notaries In The Activity As Witness In The Court," *Journal of Education and Social Science* 12, no. 2 (2019): 74–79; Ong Argo Victoria, Ade Riusma Ariyana, and Devina Arifani, "Code of Ethics and Position of Notary in Indonesia," *Sultan Agung Notary Law Review* 2, no. 4 (2020): 397, https://doi.org/10.30659/sanlar.2.4.397-407.
[15] Heldawati and Darmadi, "Effectiveness of Regional Supervisory Boards In Supervision and Guidance of The Code of Ethics For Notaries In Pekanbaru City."
[16] Verboven and Yontcheva, "Private Monopoly and Restricted Entry— Evidence from the Notary Profession"; Susann Henschel et al., "Air Pollution Interventions and Their Impact on Public Health.," *International Journal of Public Health* 57, no. 5 (2012): 757–68, https://doi.org/10.1007/s00038-012-0369-6; M. E. Bratchel, "City Notaries and the Administration of a Territory: Lucca, 1430-1501," *Papers of the British School at Rome* 86 (2018): 183–205, https://doi.org/10.1017/S0068246217000393.
[17] Hanne Foss Hansen et al., "Balancing Accountability and Trust: University Reforms in the Nordic Countries," *Higher Education* 78, no. 3 (2019): 557–73, https://doi.org/10.1007/s10734-019-0358-2.
[18] Thomas Schillemans, "Calibrating Public Sector Accountability: Translating Experimental Findings to Public Sector Accountability," *Public Management Review* 18, no. 9 (2016): 1400–1420, https://doi.org/10.1080/14719037.2015.1112423.

kepentingan publik. Dengan demikian, tujuan penelitian ini tidak hanya berorientasi pada pengembangan konsep akademik, tetapi juga pada solusi praktis yang dapat memperkuat akuntabilitas dan legitimasi profesi notaris di mata publik.

Penelitian ini menggunakan desain ***narrative review*** untuk menelaah 25 artikel jurnal internasional terkait reformasi tata kelola Majelis Pengawas Notaris dan akuntabilitas profesi kenotariatan. *Narrative review* dipilih karena memberikan fleksibilitas dalam menyintesis temuan konseptual dan empiris dari literatur, sehingga dapat menyusun kerangka reformasi yang komprehensif. Artikel yang dianalisis dipilih dengan kriteria inklusi: membahas isu akuntabilitas profesi hukum, tata kelola kelembagaan, etika, regulasi, atau digitalisasi notariat yang dipublikasikan antara 2010–2025; serta berasal dari jurnal bereputasi.

Instrumen penelitian berupa **protokol kajian literatur** yang memuat kriteria inklusi-eksklusi, pedoman ekstraksi data, serta matriks analisis. Proses pengumpulan data dilakukan melalui empat tahap: pencarian artikel dengan kata kunci relevan, seleksi berdasarkan abstrak, pembacaan penuh artikel yang sesuai, serta pencatatan data utama ke dalam matriks. Dari proses ini, setiap artikel dikategorikan berdasarkan topik etika, regulasi, kelembagaan, maupun digitalisasi profesi.

Analisis data dilakukan dengan metode **tematik naratif**, yaitu mengelompokkan temuan ke dalam tema besar seperti etika profesi, regulasi hukum, mekanisme kelembagaan, dan digitalisasi. Setiap tema kemudian disintesiskan untuk mengidentifikasi pola, kontradiksi, serta celah penelitian yang ada. Hasil analisis menunjukkan bahwa penelitian terdahulu masih terfragmentasi: ada yang berfokus pada aspek normatif hukum, kelembagaan, atau teknologi. *Narrative review* ini berkontribusi dengan mengintegrasikan seluruh dimensi tersebut dalam kerangka reformasi tata kelola Majelis Pengawas Notaris yang adaptif, etis, dan kontekstual.

II. DISCUSSION

2.1 Sintesis Hasil Penelitian

Penelitian mengenai tata kelola profesi hukum, khususnya notaris, telah banyak dilakukan di berbagai negara dengan beragam konteks kelembagaan. Kajian etika profesi memperlihatkan bahwa dilema etis masih menjadi persoalan mendasar dalam praktik hukum. Kerangka Throughput Model menekankan tujuh dilema utama *autonomy,* *privacy, balance of power, security, human dignity, non-maleficence, dan justice* yang muncul dalam praktik profesional di era digital. Hal ini menegaskan bahwa akuntabilitas profesi tidak cukup ditegakkan hanya dengan aturan formal, melainkan memerlukan kerangka etika menyeluruh [19.] Prinsip etika umum pun terbukti tidak mampu menjamin konsistensi praktik etis tanpa adanya mekanisme kelembagaan yang konkret [20]. Oleh karena itu, akuntabilitas etis harus ditempatkan sebagai bagian sentral dari tata kelola profesi.

Selain dimensi etika, regulasi profesi notaris di berbagai negara juga menunjukkan variasi yang signifikan. Di Belgia, profesi notaris berbentuk monopoli privat yang sangat ketat, dengan pengaturan jumlah praktik, wilayah, dan harga jasa, sehingga regulasi lebih banyak melindungi kepentingan industri daripada publik [21]. Di Indonesia, meskipun akta elektronik memiliki kekuatan hukum sempurna, keterbatasan regulasi masih menyisakan celah pengawasan dalam praktik kenotariatan berbasis digital [22]. Celah ini semakin jelas ketika promosi daring notaris belum memiliki aturan etik yang memadai [23]. Gagasan penerapan blockchain memang ditawarkan sebagai instrumen transparansi akta elektronik, namun hingga kini masih bersifat konseptual [24]. Situasi ini memperlihatkan adanya ketidakselarasan antara perkembangan teknologi dengan regulasi profesi, sehingga sistem pengawasan menghadapi keterbatasan dalam mengatur praktik digital.

Dari sisi kelembagaan, tata kelola profesi menuntut keberadaan badan pengawas yang independen, transparan, dan efektif. Pengalaman lembaga keuangan memperlihatkan bahwa akuntabilitas sulit tercapai tanpa pengawas independen yang berfungsi optimal [25]. Dalam konteks hukum sipil di Ukraina, fungsi notaris tidak sekadar mencatat dokumen, tetapi juga berperan preventif dalam mencegah konflik hukum [26]. Di

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[19] Tiron-Tudor, Rodgers, and Deliu, "The Accounting Profession in the Twilight Zone: Navigating Digitalisation's Sided Challenges through Ethical Pathways for Decision-Making."
[20] Mittelstadt, "Principles Alone Cannot Guarantee Ethical AI."
[21] Verboven and Yontcheva, "Private Monopoly and Restricted Entry— Evidence from the Notary Profession."
[22] Kumara Putra, "Characteristics of Notary Deeds for Transactions Through Electronic Media."
[23] Mendes, Mariz, and Coelho, "The Role of Notary Offices in Extra-Judicial Executions of Instruments in Brazil: A Reflection on Justice and Privatization."
[24] Hadi Putra et al., "A Framework for Integrated E-Notary Services Based on Blockchain for Civil Law Notaries: The Case of Indonesia."
[25] Filipović, Jurčević, and Karin, "Role of Management, Supervisory Board and General Assembly of Credit Institution in Corporate Governance."
[26] Kostiantyn Gusarov et al., "Preventive Function of a Notary in the Legal System of Society," *Documenta et Instrumenta* 21 (2023): 111–26, https://doi.org/10.5209/docu.88106.

Indonesia, kelemahan Majelis Pengawas Notaris tercermin dari keterbatasan sumber daya serta lemahnya penegakan sanksi [27]. Sementara itu, di Kosovo, perluasan peran notaris harus diimbangi dengan akuntabilitas tinggi [28]. Keseluruhan temuan ini menunjukkan bahwa efektivitas pengawasan kelembagaan sangat dipengaruhi oleh independensi, kapasitas, dan konsistensi fungsi preventif.

Kajian perbandingan historis maupun kontemporer juga memperkaya perspektif tata kelola profesi. Di Italia abad pertengahan, notaris berfungsi sebagai instrumen legitimasi pemerintahan kota [29]. Di Indonesia, akuntabilitas notaris menuntut keterlibatan aktif dalam melindungi konsumen dari kontrak sepihak [30]. Profesi hukum secara umum juga berperan sebagai *gatekeeper* dalam mencegah kejahatan keuangan. Namun di Kanada, pengawasan profesi hukum menghadapi dilema terkait batas kewenangan *law society* [31]. Pola ini menunjukkan bahwa profesi hukum, termasuk notaris, selalu berada dalam tarik-menarik antara kepentingan publik, independensi profesi, dan regulasi negara.

Lebih jauh, literatur lintas profesi memberi pembelajaran yang relevan bagi tata kelola notariat. Tiga pilar social *accountability* dalam pendidikan kesehatan menekankan pentingnya kemitraan masyarakat, akreditasi berbasis kontribusi sosial, pengembangan kompetensi sesuai kebutuhan masyarakat, serta kepemimpinan publik [32]. Namun, akuntabilitas yang bersifat birokratis justru dapat menurunkan kepercayaan publik, sebagaimana terlihat di sektor akademik [33]. Untuk menjawab kompleksitas tersebut, model Calibrating Public Sector Accountability (CPA) ditawarkan guna mengatur tingkat akuntabilitas sesuai konteks [34]. Di sisi lain, digitalisasi notariat membawa tantangan baru

[27] Heldawati and Darmadi, "Effectiveness of Regional Supervisory Boards In Supervision and Guidance of The Code of Ethics For Notaries In Pekanbaru City."
[28] Bedri Bahtiri and Gani Asllani, "Access to Justice in Eastern Europe THE DEVELOPMENT OF NOTARY."
[29] Bratchel, "City Notaries and the Administration of a Territory: Lucca, 1430-1501."
[30] Deviana Yuanitasari, "The Role of Public Notary in Providing Legal Protection on Standard Contracts for Indonesian Consumers," *Sriwijaya Law Review* 1, no. 2 (2017): 179–89, https://doi.org/10.28946/slrev.Vol1.Iss2.43.pp179-190.
[31] Iryanto Irvan Jaya Rifka Alkhilyatul Ma'rifat, I Made Suraharta, "No Title 済無No Title No Title No Title" 2 (2024): 306–12.
[32] William Ventres, Charles Boelen, and Cynthia Haq, "Time for Action: Key Considerations for Implementing Social Accountability in the Education of Health Professionals," *Advances in Health Sciences Education* 23, no. 4 (2018): 853–62, https://doi.org/10.1007/s10459-017-9792-z.
[33] Hansen et al., "Balancing Accountability and Trust: University Reforms in the Nordic Countries."
[34] Schillemans, "Calibrating Public Sector Accountability: Translating Experimental Findings to Public Sector Accountability."

terkait perlindungan data pribadi, yang semakin mempertegas urgensi regulasi adaptif. Dengan demikian, pembelajaran lintas profesi menegaskan bahwa keseimbangan antara regulasi formal, kepercayaan publik, dan integrasi teknologi merupakan kunci akuntabilitas berkelanjutan.

Struktur akuntabilitas profesi notaris dapat dipahami melalui kerangka konseptual yang menempatkan akuntabilitas sebagai tujuan utama, dengan tiga dimensi utama yang menopang, yaitu etika, regulasi, dan kelembagaan. Ketiga dimensi ini saling terkait dan membentuk fondasi yang menentukan legitimasi, efektivitas, serta kepercayaan publik terhadap profesi notaris.

Dimensi etika berfungsi sebagai inti legitimasi moral yang memastikan bahwa setiap tindakan notaris tidak hanya sesuai dengan hukum, tetapi juga selaras dengan nilai integritas, tanggung jawab sosial, dan kejujuran. Etika menegaskan bahwa akuntabilitas profesi tidak bisa berhenti pada kepatuhan formal, melainkan harus mencakup aspek kepercayaan publik.

Dimensi regulasi memberikan kerangka normatif yang jelas melalui aturan formal. Regulasi menjadi instrumen untuk mengatur batas kewenangan, menetapkan standar perilaku, serta merespons perubahan sosial. Namun, regulasi menghadapi tantangan berupa ketertinggalan terhadap perkembangan teknologi, sehingga perlu terus diperbarui agar selaras dengan dinamika praktik kenotariatan.

Dimensi kelembagaan diwujudkan melalui peran Majelis Pengawas Notaris sebagai lembaga pengawas. Kelembagaan menentukan apakah pengawasan dapat dijalankan secara independen, transparan, dan konsisten. Tanpa kapasitas kelembagaan yang memadai, baik etika maupun regulasi akan sulit ditegakkan secara efektif.

Di sisi lain, teknologi digital menjadi faktor yang melintasi seluruh dimensi tersebut. Digitalisasi seperti akta elektronik, promosi daring, dan blockchain menghadirkan peluang transparansi sekaligus risiko kesenjangan antara praktik dengan aturan yang ada. Oleh karena itu, teknologi digital tidak dapat dipisahkan dari etika, regulasi, maupun kelembagaan, karena ia memengaruhi cara akuntabilitas profesi dijalankan di era modern.

Dengan demikian, akuntabilitas profesi notaris dibangun di atas tiga pilar utama: etika, regulasi, dan kelembagaan yang seluruhnya harus mampu beradaptasi dengan perkembangan teknologi digital. Integrasi keempat unsur ini menjadi kunci bagi terwujudnya tata kelola profesi notaris yang akuntabel, berintegritas, dan relevan dengan tuntutan masyarakat kontemporer.

Secara keseluruhan, tinjauan literatur ini memperlihatkan bahwa reformasi tata kelola Majelis Pengawas Notaris dalam mewujudkan akuntabilitas profesi kenotariatan harus memperhitungkan tiga dimensi utama: etika profesi, regulasi dan teknologi, serta kelembagaan pengawasan. Ketiga dimensi ini saling terkait dan dipengaruhi oleh pengalaman lintas profesi maupun lintas negara. Dengan demikian, akuntabilitas profesi notaris hanya dapat dicapai melalui integrasi kerangka etis yang kuat, regulasi yang adaptif terhadap teknologi, serta kelembagaan pengawas yang independen dan berkapasitas.

Sebagai hasil akhir dari telaah literatur, temuan-temuan penelitian yang beragam perlu dipetakan agar terlihat keterhubungan antar-dimensi yang membentuk kerangka reformasi tata kelola profesi notaris. Pemetaan ini divisualisasikan dalam sebuah diagram yang menggambarkan bagaimana etika, regulasi, kelembagaan, dan digitalisasi saling berkaitan dalam mendorong akuntabilitas profesi notaris. Diagram ini menjadi jembatan antara hasil analisis literatur dengan perumusan sintesis konseptual penelitian.

Diagram : Reformasi Tata Kelola Notariat

Diagram tersebut menggambarkan siklus reformasi tata kelola profesi notaris yang diarahkan untuk memperkuat akuntabilitas. Empat elemen utama ditampilkan dalam bentuk lingkaran berkesinambungan, yang kemudian mengarah pada panah berwarna biru sebagai simbol tujuan akhir, yaitu akuntabilitas profesi notaris.

1. **Institusi (*Institutional Governance*), d**ilambangkan dengan ikon gedung, menggambarkan pentingnya Majelis Pengawas Notaris sebagai lembaga inti dalam pengawasan profesi. Reformasi tata kelola tidak dapat berhasil tanpa lembaga yang independen, transparan, dan memiliki kapasitas memadai.
2. **Regulasi (*Regulation*), d**ilambangkan dengan ikon timbangan hukum, yang menunjukkan bahwa keberadaan aturan formal adalah fondasi dasar. Namun, regulasi harus selaras dengan perkembangan sosial dan tidak boleh terjebak dalam formalisme semata.
3. **Etika (*Ethics*), d**ilambangkan dengan ikon hati, menekankan bahwa nilai etis merupakan inti legitimasi profesi notaris. Akuntabilitas tidak hanya soal kepatuhan hukum, tetapi juga menyangkut kepercayaan publik yang dibangun melalui integritas, kejujuran, dan tanggung jawab sosial.
4. **Digitalisasi (*Digitalization*)**, dilambangkan dengan ikon komputer, menunjukkan bahwa transformasi digital seperti akta elektronik, promosi daring, hingga blockchain telah menjadi bagian tak terhindarkan dari praktik notariat. Di sini muncul tantangan: kebijakan dan regulasi sering tertinggal dari teknologi (*policies lagging behind technology*).

Keempat unsur diatas saling terkait dan membentuk siklus reformasi. Kelembagaan yang kuat akan mampu menegakkan regulasi secara konsisten; regulasi yang responsif akan mendukung penerapan etika; etika yang dijaga akan memperkuat legitimasi kelembagaan; sementara digitalisasi akan mempercepat sekaligus menuntut inovasi tata kelola. Panah biru di ujung lingkaran melambangkan arah gerak reformasi menuju peningkatan akuntabilitas profesi notaris sebagai outcome yang diharapkan dari keseluruhan proses ini.

Untuk memperjelas hasil sintesis dan memudahkan pembaca melihat hubungan antar-dimensi yang teridentifikasi, rangkuman temuan utama disajikan dalam bentuk tabel. Tabel ini berfungsi sebagai representasi ringkas dari analisis literatur, yang menghubungkan antara isu etika, regulasi, kelembagaan, dan digitalisasi dengan tantangan serta implikasinya bagi reformasi tata kelola Majelis Pengawas Notaris (MPN).

Tabel : Temuan, Tantangan dan Implikasi Reformasi Tata Kelola MPN

Dimensi	**Temuan Utama**	**Tantangan**	**Implikasi bagi Reformasi Tata Kelola**
Etika (*Ethics*)	Akuntabilitas tidak cukup dengan prinsip umum, perlu kerangka etika konkret dan implementatif	Dilema etis dalam praktik digital: integritas, privasi, dan keadilan	Penyusunan kode etik adaptif yang mengikat profesi notaris di era digital
Regulasi (*Regulation*)	Regulasi tertinggal dari perkembangan teknologi (akta elektronik, promosi daring, blockchain)	*Policy lag* dalam menghadapi inovasi digital	Harmonisasi regulasi formal dengan perkembangan teknologi, termasuk aturan promosi dan keamanan data
Kelembagaan (*Institutional Governance*)	Majelis Pengawas Notaris menghadapi keterbatasan independensi, kapasitas, dan konsistensi sanksi	Lemahnya pengawasan dan implementasi disiplin profesi	Reformasi kelembagaan menuju badan pengawas independen, transparan, dan berdaya
Digitalisasi (*Digitalization*)	Teknologi menjadi bagian tak terelakkan dari praktik notariat	Risiko kesenjangan antara teknologi dengan regulasi	Penerapan teknologi tata kelola (misalnya blockchain) sebagai instrumen transparansi
Arah Reformasi	Integrasi etika, regulasi, kelembagaan, dan digitalisasi	Multidimensionalitas isu akuntabilitas	Tujuan akhir: akuntabilitas profesi notaris yang berkelanjutan

Rangkuman dalam tabel tersebut memperlihatkan bahwa reformasi tata kelola Majelis Pengawas Notaris tidak dapat dilakukan secara parsial. Keempat dimensi yang teridentifikasi etika, regulasi, kelembagaan, dan digitalisasi harus dipahami sebagai satu kesatuan yang saling memperkuat. Etika menjadi fondasi legitimasi moral, regulasi memberikan kepastian hukum, kelembagaan memastikan mekanisme pengawasan berjalan, sementara digitalisasi menghadirkan tantangan sekaligus peluang bagi transparansi dan inovasi tata kelola. Dengan mengintegrasikan keempat dimensi ini secara konsisten, reformasi diharapkan dapat menghasilkan sistem pengawasan profesi notaris yang lebih akuntabel, adaptif terhadap perkembangan zaman, serta mampu menjaga kepercayaan publik.

Berdasarkan analisis terhadap 25 artikel jurnal, diperoleh tiga pola utama. Pertama, akuntabilitas profesi tidak cukup ditegakkan dengan prinsip etika umum, melainkan memerlukan kerangka etika yang konkret dan dapat diimplementasikan. Kedua, regulasi profesi sering kali tertinggal dalam menghadapi perkembangan teknologi, sehingga pengawasan atas akta elektronik, promosi daring, dan penggunaan blockchain perlu mendapat perhatian khusus. Ketiga, kelembagaan pengawas seperti Majelis Pengawas Notaris masih menghadapi tantangan serius berupa independensi, kapasitas, dan konsistensi penegakan sanksi. Dengan demikian, sintesis ini menegaskan bahwa isu akuntabilitas profesi notaris bersifat multidimensional, melibatkan etika, regulasi, kelembagaan, dan teknologi yang semuanya harus diperhatikan dalam upaya reformasi tata kelola Majelis Pengawas Notaris di Indonesia.

2.2 Konsep Akuntabilitas Profesi Notaris dalam Tata Kelola Majelis Pengawas Notaris

Hasil penelitian memperlihatkan bahwa akuntabilitas profesi notaris merupakan inti dari legitimasi sosial yang melekat pada peran notaris sebagai pejabat umum. Dilema etis seperti otonomi, keadilan, keamanan, serta martabat manusia menjadi isu fundamental dalam praktik profesional di era digital [35]. Temuan ini menggarisbawahi bahwa regulasi formal saja tidak cukup menjamin legitimasi profesi notaris jika tidak disertai dengan kerangka etis yang kuat. Prinsip etika umum pun bersifat terbatas apabila tidak ditopang

[35] Tiron-Tudor, Rodgers, and Deliu, "The Accounting Profession in the Twilight Zone: Navigating Digitalisation's Sided Challenges through Ethical Pathways for Decision-Making."

oleh mekanisme kelembagaan yang konkret [36]. Dengan demikian, hasil penelitian ini mengonfirmasi bahwa secara ontologis, akuntabilitas profesi notaris harus dipahami sebagai konstruksi multidimensional yang mencakup aspek normatif, etis, dan kelembagaan. Peran preventif notaris dalam mencegah konflik hukum merupakan wujud akuntabilitas substantif yang tidak sekadar bersifat represif [37]. Di Kosovo, notaris sebagai profesi bebas justru dituntut untuk lebih akuntabel karena memiliki kewenangan luas [38]. Perspektif ini menggarisbawahi bahwa akuntabilitas bukan hanya reaktif, melainkan juga proaktif dalam mencegah penyalahgunaan kewenangan. Melalui kajian historis di Italia, notaris sejak lama berperan sebagai penjaga legitimasi pemerintahan kota [39]. Temuan ini memperlihatkan kontinuitas peran notaris sebagai instrumen tata kelola publik. Dalam konteks Indonesia, dilema ontologis juga terlihat pada hak ingkar notaris yang mencerminkan ketegangan antara perlindungan rahasia jabatan dan tuntutan transparansi [40]. Integritas profesi hanya dapat dijaga jika kode etik benar-benar ditegakkan oleh Majelis Pengawas Notaris [41]. Keseluruhan temuan ini menegaskan akuntabilitas notaris sebagai inti legitimasi sosial yang harus diletakkan pada kerangka etis, regulatif, dan kelembagaan secara seimbang.

Penelitian ini memberikan dasar teoretis yang kuat bahwa akuntabilitas notaris bukan sekadar kepatuhan hukum, tetapi legitimasi publik yang lahir dari kepercayaan sosial. Penelitian ini berkontribusi pada ilmu sosiologi hukum dengan memperluas pemahaman bahwa akuntabilitas profesi hukum tidak bisa direduksi pada norma formal, melainkan juga harus berakar pada nilai etika dan kepercayaan masyarakat. Hal ini penting karena memperlihatkan bagaimana profesi hukum, khususnya notaris, dapat menjaga legitimasi sosialnya di tengah tantangan modern. Implikasi teoretisnya adalah perlunya konsep *hybrid* akuntabilitas yang menggabungkan etika, regulasi, dan praktik kelembagaan. Implikasi praktisnya adalah perlunya Majelis Pengawas Notarismenegakkan kode etik secara lebih konsisten, sehingga akuntabilitas dapat diterima publik, bukan sekadar sah secara hukum.

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[36] Mittelstadt, "Principles Alone Cannot Guarantee Ethical AI."
[37] Gusarov et al., "Preventive Function of a Notary in the Legal System of Society."
[38] Bedri Bahtiri and Gani Asllani, "Access to Justice in Eastern Europe THE DEVELOPMENT OF NOTARY."
[39] Bratchel, "City Notaries and the Administration of a Territory: Lucca, 1430-1501."
[40] Kusuma, "The Role Of Notaries In The Activity As Witness In The Court."
[41] Victoria, Ariyana, and Arifani, "Code of Ethics and Position of Notary in Indonesia."

2.3 Efektivitas Kelembagaan Majelis Pengawas Notaris

Hasil penelitian memperlihatkan bahwa efektivitas Majelis Pengawas Notaris sangat bergantung pada kapasitas kelembagaan dan konteks implementasi di lapangan. Kelemahan sistem pelaporan, keterbatasan sumber daya manusia, dan lemahnya penegakan sanksi menyebabkan pengawasan di Pekanbaru tidak optimal [42]. Efektivitas tata kelola dalam lembaga keuangan ditentukan oleh independensi, transparansi, dan kapasitas pengawas, dan analogi ini relevan untuk Majelis Pengawas Notaris di Indonesia [43]. Pentingnya kalibrasi akuntabilitas, di mana pengawasan yang terlalu longgar membuka ruang penyalahgunaan sementara yang terlalu ketat menimbulkan resistensi birokratis, juga telah ditunjukkan melalui model *Calibrating Public Sector Accountability (CPA)* [44]. Fenomena *decoupling*, yaitu perbedaan antara desain aturan dan implementasi lapangan, menjelaskan mengapa banyak aturan pengawasan gagal diimplementasikan secara efektif [45]. Budaya diam dalam profesi hukum turut memperburuk situasi karena pelanggaran etika sulit terungkap [46]. Bahkan, akuntabilitas yang terlalu birokratis dapat menimbulkan resistensi aktor [47]. Data ini memperlihatkan bahwa epistemologi pengawasan harus menekankan pemahaman empiris terhadap praktik kelembagaan, adaptasi aktor, dan budaya sosial. Dengan demikian, hasil penelitian menunjukkan bahwa efektivitas Majelis Pengawas Notaris ditentukan oleh kombinasi regulasi formal, kapasitas kelembagaan, strategi adaptasi, dan konteks sosial-budaya.

Point ini menegaskan perlunya pendekatan empiris untuk menilai efektivitas pengawasan. Kontribusi ilmiahnya adalah memperkaya literatur akuntabilitas profesi dengan menunjukkan bahwa kelembagaan pengawas tidak cukup hanya dinilai dari kerangka hukum, tetapi juga dari implementasi praktis dan interaksi sosial. Penelitian ini memperlihatkan bahwa Majelis Pengawas Notaris di Indonesia masih menghadapi kelemahan serius yang berakar pada keterbatasan sumber daya dan budaya diam.

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[42] Heldawati and Darmadi, "Effectiveness of Regional Supervisory Boards In Supervision and Guidance of The Code of Ethics For Notaries In Pekanbaru City."
[43] Filipović, Jurčević, and Karin, "Role of Management, Supervisory Board and General Assembly of Credit Institution in Corporate Governance."
[44] Schillemans, "Calibrating Public Sector Accountability: Translating Experimental Findings to Public Sector Accountability."
[45] Angèle Christin, "Algorithms in Practice: Comparing Web Journalism and Criminal Justice," *Big Data and Society* 4, no. 2 (2017): 1–14, https://doi.org/10.1177/2053951717718855.
[46] Veronica Root and V Irginia L R Ev, "Notre Dame Law School," 2018.
[47] Bratchel, "City Notaries and the Administration of a Territory: Lucca, 1430-1501."

Implikasi teoretisnya adalah perlunya memperluas epistemologi pengawasan yang menggabungkan data normatif, empiris, dan kultural. Implikasi praktisnya adalah perlunya peningkatan kapasitas Majelis Pengawas Notaris, baik dalam bentuk pelatihan SDM, sistem pelaporan yang transparan, maupun penegakan sanksi yang konsisten, agar akuntabilitas benar-benar terjaga.

2.4 Respons Majelis Pengawas Notaris terhadap Digitalisasi dan Komersialisasi Profesi

Hasil penelitian memperlihatkan bahwa digitalisasi dan **komersialisasi profesi merupakan tantangan baru. K**omersialisasi profesi adalah **proses ketika praktik notariat semakin terdorong oleh orientasi pasar, persaingan jasa, dan motif ekonomi sehingga berpotensi menggeser fungsi publik profesi hukum, hal ini** menghadirkan tantangan baru bagi Majelis Pengawas Notaris. Akta elektronik memang sah secara hukum, tetapi regulasi yang belum lengkap menimbulkan ketidakpastian dalam implementasinya [48]. Promosi daring notaris juga menghadapi ambiguitas kode etik, yang berpotensi melemahkan integritas profesi [49]. Blockchain ditawarkan sebagai solusi untuk meningkatkan transparansi akta digital, meskipun gagasan ini masih bersifat konseptual [50]. Liberalisasi notariat di Belanda bahkan menimbulkan risiko orientasi bisnis yang mengikis fungsi publik [51]. Profesi hukum juga dapat menjadi bagian dari masalah korupsi global apabila hanya berorientasi pada keuntungan, tetapi sebaliknya dapat menjadi bagian dari solusi jika terlibat dalam *collective action* menjaga integritas [52]. Neoliberalisme turut menghadirkan risiko deprofesionalisasi profesi hukum ketika orientasi pasar mengalahkan orientasi sosial [53]. Reformasi formal pun tidak akan efektif tanpa penguatan akuntabilitas domestik. Banyak tugas hukum kini dapat digantikan oleh

[48] Hadi Putra et al., "A Framework for Integrated E-Notary Services Based on Blockchain for Civil Law Notaries: The Case of Indonesia."
[49] Mendes, Mariz, and Coelho, "The Role of Notary Offices in Extra-Judicial Executions of Instruments in Brazil: A Reflection on Justice and Privatization."
[50] Hadi Putra et al., "A Framework for Integrated E-Notary Services Based on Blockchain for Civil Law Notaries: The Case of Indonesia."
[51] Market Effect, "The Hybrid Notary in a Split between Office and Enterprise," 2012, 1–37.
[52] Jasmine Elliott, "The Corporate Legal Profession's Role in Global Corruption: Obligations and Opportunities for Contributing to Collective Action," *Crime, Law and Social Change* 81, no. 2 (2024): 185–201, https://doi.org/10.1007/s10611-023-10119-5.
[53] Hilary Sommerlad, "Social Justice Lawyering and the Rise and Fall of Democratic Citizenship : Reflections on the de- Professionalisation of Practitioners Practitioners," *International Journal of the Legal Profession* 5958 (2025): 1–25, https://doi.org/10.1080/09695958.2025.2540431.

teknologi, meskipun resistensi profesional masih kuat terhadap penggunaan algoritme prediktif [54]. Semua data ini menunjukkan bahwa Majelis Pengawas Notaris harus merespons tantangan digitalisasi dan komersialisasi dengan strategi adaptif yang menyeimbangkan teknologi, etika, dan kepentingan publik.

Penelitian ini memperlihatkan urgensi tata kelola adaptif di era digital. Kontribusi ilmiahnya adalah menghadirkan pemahaman baru bahwa pengawasan notariat tidak bisa hanya berorientasi pada regulasi hukum, tetapi harus responsif terhadap dinamika pasar dan teknologi. Penelitian ini memperkaya literatur akuntabilitas profesi dengan menghubungkan isu teknologi, etika, dan komersialisasi dalam satu kerangka aksiologis. Implikasi teoretisnya adalah perlunya konsep akuntabilitas adaptif yang mengintegrasikan fungsi preventif, represif, dan adaptif dalam pengawasan. Implikasi praktisnya adalah perlunya Majelis Pengawas Notaris mengembangkan regulasi khusus untuk promosi daring, memperjelas regulasi akta elektronik, serta mempertimbangkan penggunaan blockchain untuk memperkuat transparansi.

2.5 Implikasi Penelitian

Hasil penelitian ini memiliki implikasi penting. **Secara teoretis**, penelitian berkontribusi pada literatur akuntabilitas profesi hukum dengan menghadirkan model reformasi *hybrid* yang mengintegrasikan etika, regulasi, kelembagaan, teknologi, dan budaya profesi. Penelitian juga memperluas epistemologi pengawasan dengan menekankan pentingnya pendekatan empiris dan kultural. **Secara praktis**, penelitian ini memberikan rekomendasi kebijakan untuk memperkuat Majelis Pengawas Notaris, antara lain peningkatan kapasitas Sumber Daya Manusia (SDM), penguatan regulasi akta elektronik dan promosi daring, serta pengembangan mekanisme pengawasan yang lebih transparan dan independen. Penelitian juga mendorong notaris untuk menjaga fungsi publiknya di tengah tekanan komersialisasi.

2.6 Batasan Penelitian

Meskipun penelitian ini memberikan kontribusi signifikan, terdapat sejumlah keterbatasan. Pertama, *narrative review* yang dilakukan hanya mengandalkan 25 artikel

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[54] Michael Simon et al., "Lola v Skadden and the Automation of the Legal Profession," *Yale Journal of Law and Technology* 20, no. 1 (2018): 234–310, https://heinonline.org/HOL/Page?handle=hein.journals/yjolt20&id=234&div=6&collection=journals.

internasional yang dipilih berdasarkan kriteria tertentu, sehingga kemungkinan terdapat literatur relevan lain yang tidak terjaring. Kedua, sebagian literatur yang digunakan masih bersifat konseptual, seperti mengenai blockchain yang belum sepenuhnya terbukti secara empiris. Ketiga, penelitian ini belum melakukan validasi empiris di berbagai daerah di Indonesia, sehingga rekomendasi masih bersifat konseptual dan normatif. Keempat, aspek budaya profesi seperti budaya diam sulit diukur hanya dari literatur, sehingga membutuhkan penelitian lapangan lebih lanjut. Oleh karena itu, penelitian lanjutan perlu dilakukan dengan pendekatan empiris di berbagai daerah, serta menguji secara langsung efektivitas model *hybrid* reformasi tata kelola yang diusulkan

III. CONCLUSION

3.1 Kesimpulan

Penelitian ini menegaskan bahwa reformasi tata kelola Majelis Pengawas Notaris merupakan kebutuhan mendesak untuk mewujudkan akuntabilitas profesi notaris di Indonesia. Temuan utama memperlihatkan bahwa akuntabilitas profesi notaris bersifat multidimensional, mencakup etika, regulasi, kelembagaan, serta teknologi digital. Analisis literatur memperlihatkan bahwa regulasi formal saja tidak cukup, karena dilema etis dan budaya profesi juga berpengaruh besar terhadap legitimasi publik. Efektivitas Majelis Pengawas Notaris sangat bergantung pada kapasitas kelembagaan, independensi, dan konsistensi dalam penegakan sanksi. Selain itu, perkembangan teknologi digital seperti akta elektronik, promosi daring, dan blockchain menghadirkan tantangan sekaligus peluang baru. Dengan demikian, penelitian ini memberikan kontribusi penting dalam memperluas pemahaman akuntabilitas profesi notaris tidak hanya sebagai norma hukum, tetapi juga sebagai legitimasi sosial yang harus dijaga secara berlapis.

Kontribusi penelitian ini terhadap bidang keilmuan terletak pada pengembangan kerangka *hybrid* reformasi tata kelola yang mengintegrasikan dimensi etika, regulasi, kelembagaan, teknologi, dan budaya profesi. Pendekatan ini memberikan jawaban atas kesenjangan penelitian sebelumnya yang cenderung normatif dan parsial. Hasil penelitian menegaskan pentingnya pendekatan empiris dalam menilai efektivitas kelembagaan, serta relevansi kajian lintas profesi dan internasional dalam memperkaya perspektif lokal. Penelitian ini juga memberikan landasan konseptual untuk menyeimbangkan fungsi preventif, represif, dan adaptif dalam pengawasan profesi hukum. Signifikansinya terletak pada kemampuan penelitian ini menghubungkan teori dan praktik, sekaligus memberikan rekomendasi aplikatif bagi penguatan Majelis Pengawas Notaris di Indonesia. Oleh karena itu, penelitian ini tidak hanya berkontribusi pada kajian hukum kenotariatan, tetapi juga memperkaya literatur sosiologi hukum dan tata kelola profesi secara umum.

3.2 Saran

Untuk penelitian di masa depan, penting dilakukan studi empiris yang lebih luas di berbagai daerah di Indonesia guna memvalidasi temuan konseptual yang telah disusun. Kajian lapangan akan membantu mengungkap variasi efektivitas Majelis Pengawas Notaris yang dipengaruhi oleh faktor sosial, politik, dan budaya lokal. Penelitian mendatang juga perlu menguji secara langsung implementasi teknologi digital dalam praktik kenotariatan, termasuk efektivitas regulasi akta elektronik dan potensi penggunaan blockchain. Selain itu, aspek budaya profesi seperti budaya diam dan resistensi terhadap pengawasan perlu diteliti lebih dalam melalui pendekatan kualitatif dan etnografi organisasi. Penelitian komparatif dengan negara lain yang memiliki sistem notariat berbeda juga akan memperkaya rekomendasi reformasi di Indonesia. Dengan demikian, penelitian masa depan dapat memperkuat temuan ini sekaligus memberikan solusi yang lebih aplikatif dan sesuai dengan dinamika profesi notaris di era digital.

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Analisis Efektivitas Program Penyuluhan Hukum dalam Menekan Penyakit Masyarakat dan Kenakalan Remaja di Kota Bogor

Analysis of the Effectiveness of Legal Counseling Programs in Reducing Social Illnesses and Juvenile Delinquency in Bogor City

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ABSTRAK

Kesadaran hukum merupakan faktor krusial dalam mencegah timbulnya penyakit masyarakat dan kenakalan remaja. Fenomena penyalahgunaan narkotika, pergaulan bebas, tawuran, serta berbagai bentuk perilaku menyimpang lainnya mencerminkan lemahnya pemahaman dan kepatuhan terhadap norma hukum di kalangan masyarakat, khususnya generasi muda. Rendahnya kesadaran hukum ini tidak hanya berdampak pada meningkatnya potensi pelanggaran hukum, tetapi juga mengancam ketertiban sosial dan stabilitas keamanan di lingkungan masyarakat. Penelitian ini memfokuskan pada dua permasalahan utama, yaitu (1) faktor-faktor penyebab rendahnya kesadaran hukum masyarakat, dan (2) model konseptual kesadaran hukum yang dapat diterapkan untuk mencegah perilaku menyimpang. Tujuan penelitian ini adalah mengidentifikasi faktor determinan yang mempengaruhi rendahnya kesadaran hukum serta merumuskan model kesadaran hukum berbasis kolaborasi yang dapat diimplementasikan secara terpadu oleh pemerintah, aparat penegak hukum, lembaga pendidikan, tokoh masyarakat, dan keluarga. Metode yang digunakan adalah yuridis normatif dengan pendekatan kualitatif melalui analisis terhadap literatur, peraturan perundang-undangan, dan hasil penelitian terdahulu yang relevan. Hasil kajian menunjukkan bahwa rendahnya kesadaran hukum dipengaruhi oleh rendahnya tingkat pendidikan hukum masyarakat, lemahnya fungsi kontrol sosial keluarga, minimnya keterlibatan tokoh agama dan masyarakat dalam pembinaan moral, serta *inkonsistensi penegakan hukum.Model konseptual kesadaran hukum yang diusulkan dalam penelitian ini menekankan pendekatan partisipatif, kontekstual, dan berkelanjutan, dengan melibatkan berbagai pihak mulai dari keluarga, sekolah, komunitas, hingga media digital. Penegakan hukum yang tegas namun humanis juga menjadi pilar penting untuk menumbuhkan budaya hukum yang tidak hanya dipahami, tetapi juga dipraktikkan dalam kehidupan sehari-hari.*

Kata Kunci: Kesadaran Hukum, Penyakit Masyarakat, Kenakalan Remaja.

ABSTRACT

Legal awareness is a crucial factor in preventing the emergence of social ills and juvenile delinquency. The phenomena of drug abuse, promiscuity, brawls, and various other forms of deviant behavior reflect a weak understanding and compliance with legal norms among the community, especially the younger generation. This low legal awareness not only has an impact on increasing the potential for legal violations, but also threatens social order and security stability in the community. This study focuses on two main problems, namely (1) the factors causing low legal awareness in the community, and (2) a conceptual model of legal awareness that can be applied to prevent deviant behavior. The purpose of this study is to identify the determinants that influence low legal awareness and to formulate a collaboration-based legal awareness model that can be implemented in an integrated manner by the government, law enforcement officers, educational institutions, community leaders, and families. The method used is a literature study with a qualitative approach through analysis of literature, laws and regulations, and the results of relevant previous research. The results of the study indicate that low legal awareness is influenced by the low level of legal education in the community, weak social control functions of families, minimal involvement of religious and community leaders in moral development, and inconsistency in law enforcement. The proposed conceptual model emphasizes early legal education, strengthening the role of the family, optimizing religious and social activities, increasing persuasive public campaigns, and implementing firm but humane law enforcement.

Keyword: Legal Awareness, Social Disease Law, Juvenile Deliquency.

I. INTRODUCTION

Kesadaran hukum merupakan fondasi utama bagi terciptanya masyarakat yang tertib, berkeadilan, dan harmonis. Dalam konteks kehidupan sosial, kesadaran hukum tidak hanya diartikan sebagai kemampuan mengenal dan memahami aturan hukum secara normatif, tetapi juga mencerminkan kepatuhan yang lahir dari kesadaran moral dan tanggung jawab sosial.[1] Seperti dikemukakan oleh Soerjono Soekanto, kesadaran hukum meliputi empat aspek penting: pengetahuan hukum, pemahaman hukum, sikap hukum, dan pola perilaku hukum dalam kehidupan sehari-hari.[2] Artinya, hukum akan benar-benar hidup dalam masyarakat apabila nilai dan norma yang terkandung di dalamnya terinternalisasi dalam kesadaran individu.

Namun, dalam kenyataannya, fenomena sosial di berbagai daerah, termasuk Kota Bogor, menunjukkan bahwa kesadaran hukum masyarakat masih berada pada tingkat yang memprihatinkan. Banyak warga yang memandang hukum sekadar sebagai seperangkat aturan yang mengikat secara formal, tanpa memahami esensi moral dan sosial yang melandasinya. Fenomena penyakit masyarakat seperti penyalahgunaan narkoba, kenakalan remaja, pergaulan bebas, perjudian daring, tawuran antarpelajar, dan penyebaran konten negatif di media sosial menggambarkan lemahnya nilai kepatuhan hukum dan kontrol sosial.[3]

Data empiris yang dirilis oleh Badan Narkotika Nasional (BNN) tahun 2024 mencatat peningkatan kasus penyalahgunaan narkoba di kalangan remaja sebesar 14% dibandingkan tahun sebelumnya.[4] Fakta ini mengindikasikan bahwa upaya preventif yang telah dilakukan pemerintah dan aparat hukum belum sepenuhnya berhasil menekan perilaku menyimpang. Ironisnya, sebagian besar pelaku merupakan remaja yang tidak memiliki pemahaman memadai mengenai konsekuensi hukum atas tindakan

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[1] Hasibuan, E.S. (2021). *Hukum Kepolisan dan Criminal Policy dalam Penegakan Hukum*. Depok: Rajawali Press, h.38

[2] Soekanto, S. (1982). *Kesadaran Hukum dan Kepatuhan Hukum*. Jakarta: Rajawali Press, h. 81

[3] Adani, F., & Tando, C.E. (2025). "Analisis Kualitas Pelayanan Penyuluhan Hukum dalam Meningkatkan Kesadaran Hukum". *Devote: Jurnal Pengabdian Masyarakat Global*, 4(3). https://doi.org/10.55681/devote.v4i3.4215

[4] Badan Narkotika Nasional. (2023). *Statistik Penyalahgunaan Narkotika di Kalangan Pelajar*. Jakarta: BNN RI.

mereka. Mereka terjebak dalam perilaku berisiko tanpa kesadaran bahwa setiap pelanggaran hukum membawa dampak sosial, moral, dan yuridis yang serius.

Kondisi ini diperparah oleh lemahnya fungsi kontrol dari keluarga dan lingkungan sosial. Banyak keluarga di perkotaan seperti Bogor yang terjebak dalam kesibukan ekonomi, sehingga pengawasan terhadap anak menjadi minim. Peran sekolah dalam menanamkan pendidikan karakter dan kesadaran hukum juga belum maksimal, karena kurikulum masih terlalu berorientasi pada aspek kognitif, bukan afektif. Sementara itu, tokoh masyarakat, pemuka agama, dan aparat lokal belum sepenuhnya memainkan peran strategisnya dalam memberikan pembinaan hukum yang bersifat edukatif dan persuasif. Akibatnya, remaja tumbuh dalam ruang sosial yang longgar dari nilai moral dan hukum, sementara akses terhadap informasi global yang bebas di dunia digital semakin memperluas potensi perilaku menyimpang.[5]

Salah satu upaya strategis yang telah dilakukan pemerintah bersama lembaga penegak hukum adalah program penyuluhan hukum. Secara konseptual, penyuluhan hukum merupakan instrumen pendidikan masyarakat untuk menumbuhkan kesadaran hukum, meningkatkan pengetahuan tentang hak dan kewajiban, serta menumbuhkan budaya hukum yang kuat.[6] Melalui kegiatan ini, diharapkan masyarakat, terutama generasi muda, mampu memahami bahwa hukum bukan sekadar ancaman sanksi, melainkan sarana untuk menjaga keseimbangan sosial dan melindungi kepentingan bersama[7].

Namun, efektivitas program penyuluhan hukum di lapangan sering kali belum sesuai dengan harapan. Banyak kegiatan penyuluhan yang masih bersifat seremonial, tidak berkelanjutan, dan menggunakan pendekatan satu arah. Materi yang disampaikan sering kali terlalu teoretis, menggunakan bahasa hukum yang kaku dan sulit dipahami oleh masyarakat awam, apalagi oleh kalangan remaja. Akibatnya, pesan-pesan hukum

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[5] Nuraeny, H., & Utama, T.K. (2021). *Hukum Pidana dan HAM (Perlindungan Hukum Terhadap Anak dan Perempuan)*. Jakarta: Raja Grafindo Persada.

[6] Aryani, E., & Triwanto. (2021). “Penyuluhan Hukum tentang Kenakalan Remaja dan Penanganannya”. *Empowerment: Jurnal Pengabdian Masyarakat*, 4(3). https://doi.org/10.25134/empowerment.v4i03.4384

[7] Kusumaningsih, R., & Ridiawati, R. (2025). “Penyuluhan Hukum Tentang Kenakalan Remaja di Era Digitalisasi”. *JILPI: Jurnal Ilmiah Pengabdian dan Inovasi*, 3(3). https://doi.org/10.57248/jilpi.v3i3.561

yang disampaikan tidak tertanam kuat dalam kesadaran peserta. Tidak jarang pula, kegiatan ini dilakukan hanya untuk memenuhi kewajiban administratif lembaga tertentu, tanpa evaluasi yang jelas terhadap dampak sosialnya.[8]

Kondisi ini menunjukkan perlunya evaluasi empiris terhadap sejauh mana program penyuluhan hukum di Kota Bogor benar-benar efektif dalam menekan penyakit masyarakat dan kenakalan remaja. Efektivitas yang dimaksud bukan hanya dilihat dari seberapa banyak kegiatan yang dilaksanakan, melainkan dari sejauh mana perubahan perilaku hukum dan sosial yang terjadi setelah program dilaksanakan.[9] Dengan kata lain, penyuluhan hukum yang efektif harus mampu menghasilkan transformasi nilai dalam diri masyarakat—dari sekadar tahu hukum menjadi sadar dan patuh hukum.[10]

Selain itu, dalam konteks pembangunan hukum nasional, penyuluhan hukum yang efektif merupakan bagian integral dari strategi *law enforcement through education*, yaitu penegakan hukum melalui pendekatan edukatif.[11] Strategi ini menempatkan masyarakat bukan sebagai objek hukum yang harus diatur, tetapi sebagai subjek hukum yang berdaya, aktif, dan berpartisipasi dalam mewujudkan ketertiban sosial. Pendekatan ini sejalan dengan teori kesadaran hukum Soerjono Soekanto yang menekankan bahwa kepatuhan terhadap hukum hanya akan lahir apabila masyarakat memiliki pemahaman yang cukup tentang nilai dan tujuan hukum itu sendiri.

Lebih jauh lagi, penelitian ini memiliki urgensi akademik dan praktis yang tinggi. Secara akademik, penelitian ini diharapkan dapat memberikan kontribusi teoritis terhadap pengembangan konsep penyuluhan hukum berbasis kesadaran sosial dan kearifan lokal. Sementara secara praktis, hasil penelitian ini dapat menjadi acuan bagi pemerintah daerah, aparat penegak hukum, lembaga pendidikan, dan organisasi masyarakat dalam merancang program penyuluhan hukum yang lebih relevan,

[8] Munandar, E.A. et al. (2024). "Efektivitas Sosialisasi Hukum dalam Mengurangi Kenakalan Remaja di Kecamatan Cibeber". *Jurnal Kabar Masyarakat.* 2 (3). https://doi.org/10.54066/jkb.v2i3.2370

[9] Nuraeny, H. (2011). *Kebijakan Hukum Pidana dan Pencegahannya*. Jakarta: Sinar Grafika.

[10] Adillah, A.S., Ridwan, M., Lomo, P.W., *et al.* (2024). "Analisis Kriminologi terhadap Kejahatan oleh Anak yang Tergabung dalam Gengster (Studi Bogor)". *Indonesian Journal of Law and Justice*, 1(3). https://doi.org/10.47134/ijlj.v1i3.2115

[11] Shafira, M., Achmad, D., *et al.* (2022). *Sistem Peradilan Pidana*. Bandar Lampung: Pusaka Media, h. 77

partisipatif, dan berdampak nyata.

Dengan demikian, penelitian berjudul "Efektivitas Program Penyuluhan Hukum dalam Menekan Penyakit Masyarakat dan Kenakalan Remaja di Kota Bogor" memiliki makna penting dalam upaya membangun sinergi antara hukum, pendidikan, dan sosial kemasyarakatan. Melalui kajian ini diharapkan dapat ditemukan model penyuluhan hukum yang ideal—yakni model yang mampu menanamkan nilai hukum tidak hanya dalam pemikiran, tetapi juga dalam tindakan dan perilaku sosial masyarakat.

Penelitian ini menggunakan metode yuridis normatif, dengan menempatkan hukum sebagai norma tertulis yang hidup dan berfungsi di tengah masyarakat. Pendekatan yang digunakan mencakup:[12]

1. Pendekatan Perundang-undangan (*Statute Approach*), yaitu menganalisis berbagai ketentuan hukum yang berkaitan dengan kesadaran hukum, ketertiban umum, pembinaan remaja, dan pencegahan penyakit masyarakat.
2. Pendekatan Konseptual *(Conceptual Approach)*, yang menelaah teori-teori kesadaran hukum, konsep kenakalan remaja, dan prinsip penyuluhan hukum dari perspektif para ahli hukum, sosiologi, dan pendidikan.
3. Pendekatan Kasus.

Melalui pendekatan tersebut, penelitian ini diharapkan mampu memberikan gambaran yang komprehensif tentang sejauh mana program penyuluhan hukum di Kota Bogor telah mencapai tujuannya, serta merumuskan rekomendasi strategis untuk memperkuat peran hukum dalam membangun masyarakat yang lebih sadar, tertib, dan bermoral di masa mendatang.

Rumusan Masalah

Permasalahan utama dalam penelitian ini berangkat dari masih rendahnya kesadaran hukum masyarakat Kota Bogor, yang tampak dari meningkatnya penyakit masyarakat dan kenakalan remaja. Kondisi ini menimbulkan pertanyaan mengenai

[12] Roestamy, M., Suhartini, E., & Ani, Y. (2020). *Metodologi Penelitian Hukum dan Penulisan Artikel Ilmiah Hukum*. Bogor: Unida Press.

faktor-faktor apa saja yang menyebabkan kesadaran hukum masyarakat tidak berkembang secara optimal. Selain itu, perlu dikaji sejauh mana program penyuluhan hukum yang telah dilaksanakan pemerintah daerah mampu memberikan perubahan pengetahuan, sikap, dan perilaku hukum di tengah masyarakat. Di samping dua persoalan tersebut, penelitian ini juga mempertanyakan bagaimana model konseptual kesadaran hukum yang ideal dapat dirumuskan agar lebih efektif dalam mencegah penyakit masyarakat dan kenakalan remaja melalui sinergi antara keluarga, sekolah, komunitas, media digital, dan aparat penegak hukum.

Tujuan Penelitian

Penelitian ini bertujuan untuk mengidentifikasi dan menganalisis faktor-faktor yang menyebabkan rendahnya kesadaran hukum masyarakat di Kota Bogor, baik yang bersifat internal maupun eksternal. Selanjutnya, penelitian ini bermaksud mengevaluasi efektivitas program penyuluhan hukum yang telah dijalankan pemerintah daerah dalam meningkatkan pemahaman dan kepatuhan masyarakat terhadap norma hukum. Selain itu, penelitian ini bertujuan merumuskan model konseptual kesadaran hukum yang komprehensif, partisipatif, dan berkelanjutan sebagai strategi preventif dalam menekan penyakit masyarakat dan kenakalan remaja, sehingga dapat menjadi rujukan bagi perumusan kebijakan maupun pengembangan program penyuluhan hukum di masa mendatang.

II. DISCUSSION

1. Faktor Penyebab Rendahnya Kesadaran Hukum Masyarakat

Berdasarkan hasil kajian yuridis normatif dan analisis literatur empiris, rendahnya kesadaran hukum masyarakat di Kota Bogor bukan sekadar persoalan pengetahuan yang kurang, melainkan refleksi dari lemahnya internalisasi nilai-nilai hukum dalam berbagai aspek kehidupan sosial. Kesadaran hukum sebagai bagian dari budaya hukum (*legal culture*) tidak lahir secara spontan, melainkan terbentuk melalui proses panjang sosialisasi, pendidikan, dan pengalaman hukum yang konsisten dalam masyarakat.[13]

Dalam pandangan Soerjono Soekanto (1982), kesadaran hukum memiliki empat dimensi penting: pengetahuan hukum, pemahaman hukum, sikap terhadap hukum, dan pola perilaku hukum.[14] Keempat dimensi ini harus berkembang secara seimbang agar masyarakat tidak hanya mengetahui aturan, tetapi juga menghargai dan menerapkannya dalam kehidupan nyata. Di Kota Bogor, ketidakseimbangan keempat dimensi ini menjadi faktor mendasar yang menyebabkan masyarakat cenderung memandang hukum hanya sebagai dokumen formal yang mengikat secara administratif, bukan sebagai pedoman moral dan sosial.

Tabel 1.

Faktor Penyebab Rendahnya Kesadaran Hukum Masyarakat di Kota Bogor

No	Faktor Penyebab	Deskripsi Singkat	Dampak
1	Kurangnya Pendidikan Hukum Sejak Dini	Pendidikan hukum belum terintegrasi secara menyeluruh di sekolah.	Pengetahuan hukum rendah, rawan terjerumus perilaku menyimpang.
2	Lemahnya Fungsi Pengawasan Keluarga	Orang tua kurang mengawasi perilaku anak karena kesibukan atau ketidaktahuan hukum.	Anak mencari figur dan aturan di luar rumah yang belum tentu positif.
3	Pengaruh Lingkungan Negatif	Pergaulan bebas, geng motor, dan tawuran memengaruhi perilaku remaja.	Normalisasi perilaku melanggar hukum di lingkungan sosial.
4	Inkonsistensi Penegakan Hukum	Penindakan pelanggaran tidak konsisten dan terkesan diskriminatif.	Menurunkan kepercayaan masyarakat terhadap

[13] Brawijaya, A., Munawar, W., & Paramita, M. (2019). "Bogor City Government Policy Model on Sharia Financing for Micro Enterprises Through Islamic Microfinance Institution". *Proceeding of The 3rd Conference on Accounting, Business & Economics*. https://journal.uii.ac.id/icabe/article/view/14728

[14] Soekanto, *Ibid.*,

hukum dan aparat penegak hukum.

Sumber: Hasil analisis peneliti berdasarkan studi pustaka dan kajian literatur (2025).

Adapun penjelasan dari tabel diatas sebagai berikut :

a. Kurangnya Pendidikan Hukum Sejak Dini

Salah satu penyebab utama rendahnya kesadaran hukum masyarakat adalah belum optimalnya pendidikan hukum sejak usia dini, yang umumnya merujuk pada rentang usia 6–18 tahun sebagaimana tercakup dalam jenjang pendidikan dasar dan menengah berdasarkan Undang-Undang Nomor 20 Tahun 2003 tentang Sistem Pendidikan Nasional. Pada rentang usia ini, pembentukan karakter dan internalisasi nilai hukum seharusnya mulai ditanamkan melalui proses pendidikan yang aplikatif dan relevan dengan kehidupan siswa. Namun, materi hukum di sekolah masih bersifat formalistik dan teoritis. Kurikulum jarang membuka ruang bagi metode pembelajaran yang lebih kontekstual, seperti simulasi kasus, diskusi etika sosial, atau praktik penyelesaian masalah yang menumbuhkan empati terhadap konsekuensi pelanggaran hukum. Akibatnya, siswa memahami hukum sebatas hafalan pasal, bukan sebagai nilai yang membentuk perilaku sehari-hari. Di Kota Bogor, sebagian besar sekolah masih berorientasi pada capaian akademik sehingga aspek pembentukan karakter dan kesadaran hukum belum menjadi prioritas. Padahal, di era digital yang sarat pengaruh negatif, literasi hukum menjadi kebutuhan mendasar bagi remaja.

b. Lemahnya Fungsi Pengawasan Keluarga

Faktor keluarga juga memiliki peranan penting dalam membentuk kesadaran hukum anak. Dalam teori sosial hukum, keluarga dipandang sebagai "sekolah pertama" bagi pembentukan moral dan etika.[15] Namun, di masyarakat urban seperti Bogor, banyak keluarga menghadapi disfungsi pengawasan akibat kesibukan ekonomi dan perubahan gaya hidup. Orang tua sering kali tidak memahami

[15] Yusuf, N.Y., Virya S.Y., et al (2025). "Penyuluhan Hukum Untuk Meningkatkan Kesadaran Tentang Bahaya Kenakalan Remaja dan Akibat Hukumnya pada Siswa SMA 8 Kendari". *Sabangka Abdimas: Jurnal Pengabdian Masyarakat Sabangka.* 4 (1). https://doi.org/10.62668/sabangkaabdimas.v4i01.1379

pentingnya memberikan bimbingan hukum dan nilai disiplin kepada anak-anak mereka.

Banyak kasus kenakalan remaja bermula dari ketidakhadiran pengawasan keluarga yang efektif. Anak-anak yang tumbuh tanpa figur otoritatif sering mencari teladan di luar rumah, baik melalui lingkungan pergaulan maupun media digital, yang belum tentu mengandung nilai positif. Hal ini menegaskan pentingnya peran keluarga dalam menanamkan nilai kepatuhan terhadap aturan sejak dini, tidak hanya melalui larangan, tetapi melalui contoh nyata perilaku yang sesuai dengan norma sosial dan hukum.

c. Pengaruh Lingkungan Sosial yang Negatif

Lingkungan sosial memiliki pengaruh besar dalam membentuk perilaku hukum individu. Di beberapa wilayah Kota Bogor, terutama daerah padat penduduk dan kawasan pinggiran, fenomena seperti tawuran pelajar, geng motor, penyalahgunaan alkohol, dan perjudian online masih sering terjadi. Dalam konteks ini, Menurut Muyassar teori *differential association* relevan untuk menjelaskan bahwa perilaku menyimpang dipelajari melalui interaksi sosial.[16]

Penelitian Muyassar dkk.[17] menemukan bahwa penyuluhan hukum berbasis nilai Pancasila mampu menurunkan kecenderungan tindakan negatif pada siswa jika dilakukan secara berkelanjutan dan didukung komunitas sekolah. Hasil tersebut memberikan bukti empiris bahwa pembinaan hukum berbasis komunitas efektif untuk lingkungan yang berisiko tinggi.

Apabila seorang individu terus-menerus berinteraksi dalam lingkungan yang permisif terhadap pelanggaran hukum, maka nilai-nilai penyimpangan tersebut akan dianggap wajar atau bahkan diterima sebagai norma baru.[18] Fenomena ini

[16] Muyassar, Y., Klara Dawi., et al. (2024). "Penyuluhan Hukum Terkait Pencegahan Kenakalan Remaja Melalui Penguatan Nilai-Nilai Pancasila di SMP Pelita Harapan". *Almufi Jurnal Pengabdian Kepada Masyarakat.* 4 (1). https://doi.org/10.63821/ajpkm.v4i1.347

[17] Muyassar, Y., Klara Dawi., et al. (2024). "Penyuluhan Hukum Terkait Pencegahan Kenakalan Remaja Melalui Penguatan Nilai-Nilai Pancasila di SMP Pelita Harapan". *Almufi Jurnal Pengabdian Kepada Masyarakat.* 4 (1). https://doi.org/10.63821/ajpkm.v4i1.347

[18] Rahim A., Ramdhani, A.M, et al (2025). "Efektivitas Penyulhan Hukum Sebagai Upaya Preventif Terhadap Permasalahan Hukum di kantor Sukanto". *Jurnal Abdimas Bina Bangsa.* 6 (2). https://doi.org/10. 46306/ jabb. v6i2. 1867

memperlihatkan bahwa pembinaan hukum di masyarakat tidak cukup dilakukan melalui aturan tertulis, melainkan juga melalui pembentukan budaya hukum yang positif di tingkat komunitas, seperti organisasi remaja, karang taruna, dan lembaga keagamaan.

d. Inkonsistensi Penegakan Hukum

Salah satu faktor krusial yang menyebabkan menurunnya kesadaran hukum adalah inkonsistensi dalam penegakan hukum. Ketika masyarakat melihat bahwa pelanggaran hukum ditindak secara tidak adil—misalnya kasus kecil ditindak tegas sementara pelanggaran besar diabaikan—maka kepercayaan terhadap hukum akan melemah. Dalam kerangka teori Lawrence M. Friedman, hal ini berkaitan dengan lemahnya sinergi antara substansi hukum, struktur hukum, dan budaya hukum.[19]

Substansi hukum (aturan perundang-undangan) di Indonesia sebenarnya sudah memadai, termasuk di tingkat daerah seperti Kota Bogor yang memiliki berbagai perda dan kebijakan ketertiban umum. Namun, struktur hukum, yang mencakup aparat penegak hukum, belum sepenuhnya menunjukkan konsistensi dan integritas dalam pelaksanaan tugas. Ketika masyarakat merasakan adanya ketimpangan dalam penegakan hukum, maka kepatuhan mereka cenderung menurun, dan hukum kehilangan otoritas moralnya.

e. Rendahnya Partisipasi Sosial

Selain faktor-faktor di atas, partisipasi sosial masyarakat dalam penegakan norma hukum juga masih rendah. Masyarakat sering bersikap pasif terhadap pelanggaran hukum di sekitar mereka dengan alasan "bukan urusan saya". Sikap apatis ini menjadi penghambat utama bagi pembentukan budaya hukum yang kuat.[20] Padahal, dalam sistem hukum yang demokratis, keterlibatan masyarakat dalam mengawasi dan menegakkan hukum merupakan wujud nyata dari kesadaran hukum kolektif.

Partisipasi masyarakat dapat diwujudkan melalui pelaporan pelanggaran hukum,

[19] Friedman, Lawrence M. (1975). *The Legal System: A Social Science Perspective*. New York: Russell Sage Foundation.

[20] Pieter S. & Fenetiruma R.P., Suradinata P.E., (2025). "Penyuluhan Hukum Pencegahan Kenakalan Remaja Pada Siswa-Siswi SMP Negeri 2 Merauke". *Jurnal Pengabdian Masyarakat,* 2(1). https://jurnal.asthagrafika.com/index.php/sjp/article/view/107

keterlibatan dalam forum warga, atau dukungan terhadap kegiatan penyuluhan hukum berbasis komunitas. Tanpa partisipasi aktif masyarakat, hukum akan kehilangan fungsinya sebagai sarana pengendalian sosial yang efektif.

f. Minimnya Keteladanan dari Aparat dan Tokoh Publik

Keteladanan merupakan faktor penting dalam membangun kesadaran hukum. Dalam banyak kasus, perilaku aparat penegak hukum atau pejabat publik yang melanggar aturan menjadi preseden buruk bagi masyarakat. Ketika masyarakat menyaksikan penegak hukum tidak konsisten, menerima suap, atau menyalahgunakan wewenang, maka mereka cenderung meniru perilaku tersebut atau merasa bahwa pelanggaran hukum adalah hal biasa.

Dalam konteks sosial Kota Bogor, kehadiran tokoh masyarakat, tokoh agama, dan pemimpin daerah yang berintegritas sangat dibutuhkan untuk menjadi contoh nyata penerapan nilai hukum dan moral. pembangunan kesadaran hukum harus dimulai dari atas, melalui reformasi etika aparat dan pejabat publik.

Dari sudut pandang Lawrence M. Friedman, rendahnya kesadaran hukum ini merupakan hasil interaksi antara tiga elemen sistem hukum: substansi hukum (peraturan yang berlaku), struktur hukum (aparat penegak hukum), dan budaya hukum (nilai-nilai dan sikap masyarakat terhadap hukum).[21] Di Kota Bogor, substansi hukum sebenarnya memadai, tetapi struktur hukum dan budaya hukum masyarakat belum bersinergi optimal.

2. Efektivitas Program Penyuluhan Hukum di Kota Bogor

Program penyuluhan hukum di Kota Bogor merupakan salah satu strategi pemerintah daerah dan aparat penegak hukum untuk menekan angka penyakit masyarakat dan kenakalan remaja. Bentuk kegiatannya cukup beragam, mulai dari sosialisasi bahaya narkotika di sekolah dan kampus, penyuluhan pergaulan sehat di tingkat kelurahan, hingga kampanye anti-tawuran melalui media sosial dan radio lokal. Pendekatan ini secara umum telah mampu menjangkau berbagai lapisan masyarakat, khususnya kalangan muda yang menjadi kelompok rentan terhadap perilaku menyimpang.

[21] Nuraeny, H. (2011). *Kebijakan Hukum Pidana dan Pencegahannya*. Jakarta: Sinar Grafika.

Meskipun cakupan kegiatan cukup luas, efektivitas penyuluhan hukum masih terbatas pada peningkatan pengetahuan hukum tanpa diikuti perubahan signifikan dalam perilaku hukum.[22] Banyak remaja yang sudah tahu bahwa narkotika dan tawuran dilarang oleh hukum, namun tetap terlibat karena pengaruh lingkungan atau lemahnya kontrol sosial. Kondisi ini menunjukkan adanya kesenjangan antara pemahaman kognitif dan perilaku nyata, yang dalam teori pendidikan hukum disebut sebagai *knowledge-behavior gap*.[23]

Salah satu hambatan utama adalah kurangnya diferensiasi materi penyuluhan. Materi yang disampaikan sering kali bersifat umum dan tidak disesuaikan dengan usia, latar belakang pendidikan, atau budaya lokal peserta. Misalnya, metode yang digunakan di sekolah menengah sama dengan di komunitas warga dewasa, padahal kebutuhan informasi dan pendekatan komunikasinya jelas berbeda. Akibatnya, pesan hukum tidak terserap secara maksimal dan kadang dianggap hanya sebagai formalitas acara.

Selain itu, metode komunikasi yang digunakan cenderung monoton, berbentuk ceramah formal dengan minim interaksi. Padahal, menurut pendekatan *experiential learning*,[24] partisipasi aktif peserta dalam diskusi, simulasi kasus, atau permainan edukatif akan membuat pesan hukum lebih mudah diingat dan diinternalisasi. Hambatan lain adalah tidak adanya pengukuran dampak secara sistematis setelah program selesai. Tanpa evaluasi kuantitatif dan kualitatif, pemerintah sulit menilai keberhasilan dan memperbaiki kelemahan program di masa mendatang.

Jika merujuk pada teori *legal socialization*, penyuluhan hukum akan efektif apabila memenuhi tiga syarat: partisipatif, kontekstual, dan berkelanjutan.[25] Sayangnya, penyuluhan yang hanya dilakukan sesekali dan tanpa keberlanjutan cenderung menghasilkan kesadaran hukum yang bersifat sementara. Untuk itu, perlu pergeseran

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[22] Mozin, N., Yunus, R., & Ngiu, Z. (2021). Penyuluhan Pendidikan Hukum Tentang Pencegahan Perilaku Kenakalan Remaja. *Jurnal Abdidas*, *2*(5), 1049-1053. https://doi.org/10.31004/abdidas.v2i5.413

[23] Adani, F., & Tando, C. E. (2025). Analisis Kualitas Pelayanan Penyuluhan Hukum Dalam Meningkatkan Kesadaran Hukum. *Devote: Jurnal Pengabdian Masyarakat Global*, *4*(3), 247–257. https://doi.org/10.55681/devote.v4i3.4215

[24] Hasibuan, E.S. (2021). *Hukum Kepolisan dan Criminal Policy dalam Penegakan Hukum*. Depok: Rajawali Press.

[25] Pieter S. & Fenetiruma R.P., Suradinata P.E., (2025). "Penyuluhan Hukum Pencegahan Kenakalan Remaja Pada Siswa-Siswi SMP Negeri 2 Merauke". *Jurnal Pengabdian Masyarakat,* 2(1). https://jurnal.asthagrafika.com/index.php/sjp/article/view/107

paradigma dari sekadar “memberi tahu hukum” menjadi “membangun budaya hukum” yang hidup di tengah masyarakat. Hal ini dapat dicapai melalui keterlibatan aktif keluarga, sekolah, komunitas, dan media digital yang dikemas secara kreatif.

3. Model Konseptual Kesadaran Hukum untuk Pencegahan Penyakit Masyarakat dan Kenakalan Remaja

Berdasarkan hasil kajian hukum dan teori yang relevan, model konseptual yang diusulkan meliputi:

Tabel 2. Model Konseptual Kesadaran Hukum untuk Pencegahan Penyakit Masyarakat dan Kenakalan Remaja

Komponen Program	Strategi Pelaksanaan	Pelaksana	Indikator Keberhasilan
Pendidikan Hukum Formal	Integrasi kurikulum berbasis studi kasus	Sekolah, Dinas Pendidikan	Siswa memahami materi hukum dan menerapkannya dalam perilaku
Pendidikan Hukum Non-Formal	Penyuluhan berbasis komunitas dan kelompok pemuda	LSM, Tokoh Masyarakat	Penurunan pelanggaran ringan di komunitas
Penguatan Peran Keluarga	Pelatihan pengawasan anak dan penggunaan media sosial	PKK, Forum Orang Tua	Orang tua aktif mengawasi dan membimbing anak
Edukasi Digital	Konten edukasi hukum di media sosial	Pemerintah, Influencer Lokal	Meningkatnya interaksi positif di platform digital
Penegakan Hukum Humanis	Sanksi edukatif dan pembinaan bagi pelanggar usia remaja	Kepolisian, Kejaksaan	Pelanggar muda menunjukkan perubahan perilaku positif

Sumber: Rancangan model konseptual peneliti, diadaptasi dari teori kesadaran hukum Soerjono Soekanto dan literatur terkait (2025).

Model konseptual kesadaran hukum yang dirancang ini merupakan hasil sintesis antara teori kesadaran hukum Soerjono Soekanto dan pendekatan multidisipliner yang mencakup aspek pendidikan, sosial, teknologi, dan penegakan hukum humanis. Model ini tidak hanya menekankan pentingnya pengetahuan hukum secara kognitif, tetapi juga mendorong pembentukan sikap dan perilaku hukum yang reflektif, partisipatif, serta sesuai dengan nilai-nilai sosial masyarakat modern. Dalam konteks pencegahan penyakit masyarakat dan kenakalan remaja di era digital, model ini berfungsi sebagai pedoman sistematis bagi pemerintah, lembaga pendidikan, dan masyarakat dalam membangun generasi muda yang sadar hukum dan berintegritas sosial.

1. Pendidikan Hukum Formal

Pendidikan hukum formal ditempatkan sebagai pilar utama dalam model konseptual ini. Integrasi materi hukum ke dalam kurikulum pendidikan dasar dan menengah bukan hanya bertujuan memperkenalkan norma-norma hukum, tetapi juga menanamkan pemahaman praktis tentang akibat hukum dari setiap tindakan.[26] Pendekatan studi kasus menjadi metode utama agar siswa tidak sekadar menghafal aturan, tetapi mampu menganalisis, menilai, dan memutuskan tindakan yang sesuai hukum dalam situasi nyata. Misalnya, studi kasus mengenai bullying, penyalahgunaan media sosial, atau pelanggaran lalu lintas remaja dapat dijadikan bahan pembelajaran yang kontekstual.

Pelaksanaan strategi ini menuntut kolaborasi antara sekolah dan Dinas Pendidikan untuk mengembangkan modul hukum yang relevan dengan usia dan lingkungan siswa. Penguatan kapasitas guru melalui pelatihan pendidikan hukum juga menjadi komponen penting agar proses pembelajaran tidak bersifat teoritis semata, melainkan aplikatif dan membentuk kesadaran normatif. Keberhasilan program ini dapat diukur melalui indikator perilaku, seperti menurunnya pelanggaran tata tertib

[26] Thomas, S., Itasari, E. R. ., Sagio, I. ., Bangun, B. H. ., Elida, S. A. ., Purwanti, E. ., Wulandari, R. ., Arsensius, A., Erwin, E., Darajati, M. R. ., & Kinanti, F. M. . (2024). Sosialisasi Penguatan Kesadaran Hukum Tentang Kenakalan Remaja Di Sekolah Menengah Atas. Jurnal Pengabdian Kepada Masyarakat Nusantara, 5(4), 5072-5076. https://doi.org/10.55338/jpkmn.v5i4.4335

sekolah, meningkatnya partisipasi siswa dalam kegiatan sosialisasi hukum, serta munculnya pemahaman kritis terhadap nilai keadilan sosial.

2. Pendidikan Hukum Non-Formal

Selain pendidikan formal, jalur non-formal memiliki kontribusi signifikan dalam menanamkan kesadaran hukum di kalangan masyarakat luas, terutama remaja yang tidak lagi berada di bangku sekolah. Melalui penyuluhan berbasis komunitas, LSM, organisasi pemuda, dan tokoh masyarakat dapat menjadi agen perubahan sosial yang menyampaikan nilai-nilai hukum dengan pendekatan partisipatif. Penyuluhan hukum ini bersifat dialogis, bukan top-down, agar masyarakat merasa terlibat dalam proses pembentukan kesadaran kolektif.

Strategi non-formal juga mencakup kegiatan sosial seperti pelatihan kepemimpinan pemuda berbasis hukum, diskusi publik, hingga simulasi peradilan semu di lingkungan masyarakat. Dengan cara ini, hukum tidak lagi dipandang sebagai instrumen represif, melainkan sebagai pedoman moral dan sosial yang melindungi kepentingan bersama. Indikator keberhasilan terlihat dari berkurangnya tindak pelanggaran ringan seperti vandalisme, perkelahian remaja, atau perilaku menyimpang di lingkungan sekitar, serta meningkatnya partisipasi masyarakat dalam kegiatan hukum berbasis komunitas.

3. Penguatan Peran Keluarga

Keluarga merupakan fondasi awal pembentukan kesadaran hukum individu. Dalam model ini, penguatan peran keluarga diarahkan melalui program pelatihan bagi orang tua tentang strategi pengawasan anak di era digital dan bagaimana menanamkan nilai-nilai hukum dalam kehidupan sehari-hari.[27] PKK, forum orang tua, dan lembaga masyarakat berperan dalam menciptakan ruang komunikasi yang efektif antara orang tua dan anak.

Pelatihan ini mencakup pengenalan terhadap berbagai potensi risiko hukum di dunia maya, seperti cyberbullying, pencurian data pribadi, dan penyebaran konten ilegal. Orang tua dilatih agar mampu menjadi "role model" hukum bagi anak-anaknya melalui keteladanan, konsistensi dalam penegakan aturan rumah tangga, dan

[27] Astrini, N.R, et al (2025) "Penyuluhan Hukum Terkait Pencegahan Kenakalan Remaja Pada Seka Teruna Teruni (STT) Di Kecamatan Seririt". *Caraka: Jurnal Pengabdian Kepada Masyarakat*, *5*(1), 9-16. https://journal.mpukuturan.ac.id/index.php/caraka/article/view/1131

penggunaan media sosial yang bijak. Keberhasilan strategi ini dapat diukur dari meningkatnya interaksi positif antara anggota keluarga, menurunnya keterlibatan anak dalam aktivitas berisiko hukum, serta meningkatnya partisipasi keluarga dalam kegiatan sosial kemasyarakatan.

4. Edukasi Digital

   Dalam era media sosial yang mendominasi kehidupan remaja, edukasi digital menjadi instrumen yang sangat penting untuk membangun kesadaran hukum berbasis teknologi. Pemerintah bersama influencer lokal, kreator konten, dan komunitas digital dapat berkolaborasi menciptakan konten edukatif yang menarik, seperti video pendek, infografis hukum, podcast, atau kampanye interaktif di platform digital.

   Tujuan dari edukasi digital ini bukan sekadar menyebarluaskan informasi hukum, tetapi juga membentuk budaya digital yang sehat dan bertanggung jawab. Remaja didorong untuk menjadi "digital citizen" yang memahami etika bermedia sosial, menghormati privasi orang lain, dan tidak menyebarkan informasi hoaks. Efektivitas program dapat dilihat dari meningkatnya engagement positif terhadap konten edukasi hukum, berkurangnya ujaran kebencian atau konten negatif, serta meningkatnya pelaporan masyarakat terhadap pelanggaran digital melalui kanal resmi pemerintah.

5. Penegakan Hukum Humanis

   Elemen terakhir dari model konseptual ini menekankan pentingnya pendekatan humanis dalam penegakan hukum terhadap pelanggaran yang dilakukan oleh remaja. Hukum harus berfungsi bukan hanya sebagai alat penjera, tetapi juga sebagai sarana pembinaan moral dan sosial. Oleh karena itu, model ini mengusulkan penerapan sanksi edukatif dan program pembinaan yang menitikberatkan pada rehabilitasi perilaku, seperti layanan konseling, kegiatan sosial, dan pendidikan keterampilan hukum dasar.

   Kepolisian dan kejaksaan diharapkan mengedepankan prinsip *restorative justice*, yaitu menyelesaikan pelanggaran dengan mengutamakan pemulihan hubungan sosial antara pelaku, korban, dan masyarakat. Pendekatan ini terbukti lebih efektif dalam mencegah kenakalan remaja berulang dibandingkan hukuman konvensional yang bersifat represif. Indikator keberhasilan dapat dilihat dari menurunnya angka pelanggaran berulang (recidivism), meningkatnya kepatuhan remaja terhadap hukum, serta munculnya perilaku adaptif dan positif di lingkungan sosial mereka.

Secara keseluruhan, model konseptual ini menegaskan bahwa kesadaran hukum tidak dapat dibangun melalui pendekatan tunggal, melainkan melalui sistem sosial yang saling terhubung antara pendidikan, keluarga, komunitas, media digital, dan lembaga penegak hukum. Kesadaran hukum harus bersifat *empowering*, bukan sekadar menakut-nakuti masyarakat dengan ancaman sanksi.

Model ini juga memiliki implikasi strategis bagi kebijakan publik, khususnya dalam penyusunan program nasional pembinaan kesadaran hukum bagi remaja dan masyarakat urban. Pemerintah daerah dapat mengadopsi model ini ke dalam *Rencana Aksi Daerah (RAD) Kesadaran Hukum Masyarakat*, sementara lembaga pendidikan dapat menjadikannya pedoman integrasi nilai hukum dalam kurikulum karakter.

Selain itu, keberhasilan implementasi model sangat bergantung pada keberlanjutan kolaborasi lintas sektor. Tanpa dukungan kebijakan yang kuat, anggaran yang memadai, serta partisipasi masyarakat yang aktif, model ini hanya akan menjadi konsep normatif. Namun, bila dijalankan secara konsisten dan berkesinambungan, model konseptual kesadaran hukum ini berpotensi menjadi instrumen preventif yang efektif dalam menekan gejala penyakit masyarakat dan kenakalan remaja secara signifikan.

Kebaruan penelitian ini terletak pada penyusunan model konseptual kesadaran hukum yang mengintegrasikan pendekatan pendidikan formal, pendidikan non-formal, penguatan keluarga, ekosistem digital, serta penegakan hukum humanis dalam satu kerangka preventif yang komprehensif. Berbeda dari penelitian sebelumnya yang cenderung menitikberatkan pada penyuluhan hukum konvensional atau analisis normatif semata, penelitian ini menawarkan strategi multidisipliner yang menyesuaikan karakteristik sosial masyarakat urban dan dinamika perilaku remaja di era digital. Integrasi edukasi digital dan kolaborasi lintas sektor—seperti sekolah, komunitas, pemerintah, influencer, serta lembaga penegak hukum—menjadi aspek pembeda yang memberikan kontribusi teoretis baru bagi literatur kesadaran hukum, sekaligus memperkaya pendekatan empiris dalam pencegahan penyakit masyarakat dan kenakalan remaja. Dengan demikian, model yang dihasilkan tidak hanya memiliki nilai akademik, tetapi juga memberikan alternatif kebijakan yang inovatif, adaptif, dan aplikatif bagi pemerintah daerah maupun pemangku kepentingan lainnya.

III. CONCLUSION

Kesadaran hukum memiliki peran strategis dalam mencegah penyakit masyarakat dan kenakalan remaja di Kota Bogor. Rendahnya kesadaran ini dipengaruhi oleh minimnya pendidikan hukum sejak dini, lemahnya pengawasan keluarga, pengaruh lingkungan negatif, dan ketidakkonsistenan penegakan hukum. Program penyuluhan hukum pemerintah memang membantu meningkatkan pengetahuan, tetapi belum efektif dalam mengubah perilaku karena materi yang kurang kontekstual, metode penyampaian yang monoton, serta ketiadaan mekanisme evaluasi yang berkelanjutan. Penelitian ini mengusulkan model kesadaran hukum berbasis partisipasi, konteks lokal, dan keberlanjutan yang melibatkan keluarga, sekolah, komunitas, dan media digital, serta didukung oleh penegakan hukum yang tegas tetapi tetap humanis.

Hasil penelitian ini memberikan implikasi praktis bagi pemerintah daerah untuk merancang program penyuluhan hukum yang lebih adaptif, berbasis kebutuhan lokal, dan terintegrasi dengan inisiatif pendidikan karakter di sekolah maupun komunitas. Secara akademik, temuan ini memperkaya literatur mengenai pembangunan budaya hukum di tingkat kota melalui pendekatan kolaboratif dan multilevel, sekaligus membuka ruang penelitian lanjutan terkait efektivitas model penyuluhan berbasis digital dan komunitas. Dengan demikian, rekomendasi yang dihasilkan dapat menjadi dasar bagi pembentukan kebijakan penyuluhan hukum yang lebih inovatif, terukur, dan berjangka panjang.

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