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LEGAL WRITINGS

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Implikasi Perubahan Kebijakan Undang-Undang No.3 Tahun 2020 tentang Perubahan Atas Undang-Undang No.4 Tahun 2009 Tentang Pertambangan Mineral dan Batubara Terhadap Penurunan Kualitas Lingkungan Hidup Provinsi Kalimantan Selatan

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A. PENDAHULUAN

Indonesia dikenal sebagai salah satu negara yang kaya akan sumber daya mineral batubara dan pemerintah berhak melindungi pengelolaan sumber daya alam tanpa berpihak pada siapa pun. Faktanya, kerap terjadi tumpang tindih regulasi yang menimbulkan masalah dalam penyelenggaraan pemerintahan nasional Indonesia. Dari sudut pandang ketidakrelevanan dengan prosedur pembentukan undang-undang, salah satu hal yang akan dibahas adalah terkait revisi UU Minerba,¹ Kontroversi revisi UU Mineral dan Batubara (UU Minerba) memang mengkhawatirkan. Pasalnya, terdapat beberapa substansi dalam undang-undang yang dapat menimbulkan masalah yang dianggap merugikan masyarakat. Salah satu hal terpenting yang menimbulkan kontroversi adalah waktu pembentukannya, yakni banyaknya perubahan kewenangan di tingkat daerah yang langsung digantikan oleh pemerintah pusat. Badan legislatif yang tidak bisa diakses oleh publik. Pemerintah dan DPR terlalu terburu-buru melakukan revisi UU Minerba di tengah pandemi virus corona (Covid-19) hanya dalam kurun waktu tiga bulan, yakni sejak Februari hingga Mei 2020 dimana seharusnya fokus pemerintah adalah menangani virus corona (Covid-19) ini.² Revisi UU Minerba juga disahkan tanpa melibatkan partisipasi masyarakat terdampak aktivitas tambang, yang mana seharusnya masyarakat Indonesia memiliki hak dalam berpartisipasi dalam pembentukan peraturan perundang-undangan, tetapi pada kenyataannya suara rakyat seakan tidak dihiraukan. Padahal, partisipasi masyarakat diperlukan agar tercipta undang-undang yang progresif dan dapat mengatasi permasalahan di masyarakat.

¹ Imas Novita Juaningsih, 2020, Polemik Revisi Undang-Undang Minerba Dalam Dinamika Tata Negara Indonesia, *Peneliti Pusat Studi Konstitusi dan Legislasi Nasional (Poskolegnas) Universitas Islam Negeri Syarif Hidayatullah Jakarta*, 4(3), 103-106.

² Anisatul Umah, 2020, RUU Minerba Sah Jadi UU, Siapa yang Paling Diuntungkan?, <https://www.cnbcindonesia.com/news/20200513075533-4-158049/ruu-minerba-sah-jadi-uu-siapa-yang-paling-diuntungkan>, contact@cnbcindonesia.com, 1 Maret 2021, (14:30).

B. RUMUSAN MASALAH

- a. Apa Latar Belakang Revisi UU Minerba?
- b. Bagaimana Dampak Revisi UU Minerba Terhadap Penurunan Kualitas Lingkungan Hidup Provinsi Kalimantan Selatan?

C. ANALISIS

a. Latar Belakang Revisi UU Minerba.

Salah satu sumber daya alam yang berpotensi untuk meningkatkan kesejahteraan rakyat adalah pertambangan. Dalam melakukan pengelolaan sumber daya alam, Pemerintah seharusnya mengacu pada ketentuan Pasal 33 ayat (3) UUD NRI 1945 yang dengan tegas menyatakan “Bumi dan air dan kekayaan alam yang terkandung di dalamnya dikuasai oleh negara dan dipergunakan untuk sebesar-besar kemakmuran rakyat.”. RUU tentang Perubahan atas Undang-Undang Nomor 4 Tahun 2009 tentang Pertambangan Mineral dan Batubara resmi disahkan pada Sidang Paripurna DPR RI pada Selasa, 12 Mei 2020³. Pembahasan RUU Minerba merupakan kelanjutan atau *carry over* dari DPR periode sebelumnya. RUU ini merupakan usul DPR dan ditetapkan sebagai program legislasi nasional (prolegnas) prioritas tahun 2020.⁴

Diberlakukannya UU Minerba Tahun 2009 menandai perubahan mendasar dalam tata kelola pertambangan. Sistem kontrak / perjanjian dihentikan dan diubah menjadi sistem izin usaha pertambangan (IUP). Hingga saat itu, UU Minerba 2009 memiliki nilai strategis, terutama karena sistem perizinan pertambangan menjamin status negara lebih kuat dari pada korporasi. Banyak perusahaan tambang yang tetap menjalankan rencana kontrak karya dengan dalih kontrak belum berakhir juga transisi dari merealisasikan kontrak ke izin pertambangan tidak lancar. Dalam Pasal 22A Undang-Undang Dasar Negara Republik Indonesia Tahun 1945 yang berbunyi “Ketentuan lain tentang tata cara pembuatan hukum diatur lebih lanjut dengan undang-undang”.⁵ Pembentukan Peraturan Perundang-Undangan didasarkan pada pemikiran bahwa Indonesia adalah negara hukum. Menurut Undang-

³ Lihat Pasal 33 ayat (3) Undang-Undang Negara Republik Indonesia Tahun 1945.

⁴ Tsarina Maharani, 2020, Polemik Pengesahan RUU Minerba, Siapa yang Diuntungkan, <https://nasional.kompas.com/read/2020/05/12/06210271/polemik-pengesahan-ruu-minerba-siapa-yang-diuntungkan?page=all>, redaksikm@kompas.co.id, 2 Maret 2020, (14:22).

⁵ Lihat Pasal 22A Undang-Undang Negara Republik Indonesia Tahun 1945.

Undang, segala aspek kehidupan di bidang kemasyarakatan, kebangsaan, dan status negara, termasuk pemerintahan, harus didasarkan pada undang-undang yang sesuai dengan sistem hukum nasional. Oleh karena itu, dipandang perlunya untuk melakukan revisi terhadap UU Minerba. Pertimbangan lain atas perlunya revisi UU Minerba adalah mendorong hasil pertambangan hilir menjadi basis re-industrialisasi dan peningkatan nilai tambah hasil tambang. Agenda strategisnya adalah membebaskan Indonesia dari jebakan produsen bahan baku murni dalam rantai nilai global.⁶ Dengan berlakunya PP turunan dari UU seperti PP Nomor 1 Tahun 2014 yang didalamnya menyebutkan kewajiban pembangunan fasilitas pemurnian mineral tambang atau *smelter* yang harus rampung tiga tahun setelah PP diterbitkan. Pasalnya, banyak perusahaan tambang yang kesulitan memenuhi persyaratan tersebut saat harga komoditas sedang turun. Dengan berlakunya undang-undang tersebut, harga mineral jatuh. Banyak perusahaan pertambangan tutup dan mengalami kesulitan keuangan.⁷

Anggota Komisi VII DPR RI Maman Abdurrahman menyatakan revisi UU Minerba sudah berlandaskan prinsip transparansi, akuntabilitas dengan mengundang semua pihak yang dianggap memiliki kompetensi untuk mengutarakan pendapat. Selain itu, ia menegaskan bahwa dasar revisi UU Minerba sudah berdasarkan atas asas kemaslahatan negara, dengan tetap memperhatikan kebutuhan seluruh aspek negara. Hal tersebut, lanjutnya, juga sejalan dengan upaya pemerintah untuk meningkatkan pendapatan negara dan mendorong peningkatan kesejahteraan masyarakat di sektor minerba.⁸ Namun nyatanya, disetujuinya UU Minerba ini menuai kontroversi dari berbagai kalangan. Pasalnya, selain pembahasan yang cepat, beberapa pasal dalam Undang-Undang tersebut dinilai hanya mengakomodasi kepentingan pengusaha pertambangan.⁹

Dari sisi proses pembahasan RUU ini dilakukan tertutup dan tidak dapat diakses publik. Pembahasan RUU Minerba tidak melibatkan Dewan Perwakilan Daerah (DPD RI),

⁶ Ahmad HM Ali, 2019, Revisi UU Minerba untuk Siapa?, <https://mediaindonesia.com/opini/276947/revisi-uu-minerba-untuk-siapa>, redaksi.micom@mediaindonesia.com, 2 Maret 2020, (14:40).

⁷ Ami Chan, 2016, Tiga Alasan UU Minerba Harus Direvisi, <https://www.tambang.co.id/tiga-alasan-uu-minerba-harus-direvisi-10266/>, redaksi@tambang.co.id, 4 Maret 2020, (14:45).

⁸ M Razi Rahman, 2020, Anggota DPR sebut revisi UU Minerba sesuai prinsip transparansi, <https://www.antaranews.com/berita/1798673/anggota-dpr-sebut-revisi-uu-minerba-sesuai-prinsip-transparansi>, redaksi@antara.co.id, 1 Maret 2020, (15:38).

⁹ Alif Ichwan, 2020, Revisi UU Minerba, Ini Beberapa Pasal yang Tuai Polemik, <https://money.kompas.com/read/2020/05/13/085813226/revisi-uu-minerba-ini-beberapa-pasal-yang-tuai-polemik>, redaksikcm@kompas.co.id, 1 Maret 2020, (15:51).

padahal DPD mempunyai kewenangan untuk ikut membahas RUU ini. Pengamat Hukum Pertambangan dan SDA Universitas Tarumanagara Ahmad Redi mengatakan RUU Minerba jelas hanya dalam rangka mengakomodir perusahaan-perusahaan Perjanjian Karya Pengusahaan Pertambangan Batubara (PKP2B), tanpa berpikir bagaimana konsep ideologis penguasaan minerba oleh negara untuk kemakmuran rakyat.¹⁰ Hindun Mulaika, aktivis kampanye Iklim dan Energi dari Greenpeace Indonesia, juga mengatakan kepentingan oligarki atau kelompok elite yang melatarbelakangi pengesahan UU Minerba baru di tengah pandemi virus corona. UU Minerba yang direvisi akan menguntungkan tujuh perusahaan yang dimiliki oleh orang-orang yang terkait dengan lingkaran kekuasaan, diantaranya yaitu PT Arutmin Indonesia, yang habis izinnya tahun 2020. Juga PT Kendilo Coal Indonesia, yang akan habis izinnya tahun 2021. Kemudian, PT Kaltim Prima Coal (2021), PT Adaro Energy Tbk (2022), PT Multi Harapan Utama (2022), PT Kideco Jaya Agung (2023), dan PT Berau Coal (2025). Perusahaan-perusahaan ini bekerja keras untuk mendapatkan jaminan atas *refinancing* (pembiayaan kembali) utang-utang mereka. Keberadaan hutang jatuh tempo ini menjadi risiko tersendiri, jika perusahaan tersebut tidak memiliki rencana pembiayaan *refinancing plans*.¹¹

UU minerba yang baru ini juga akan menjadi musuh banyak pemda, karena kewenangan daerah mutlak dikepras. Perubahan sentralisasi tersebut berdampak negatif terhadap kerusakan lingkungan karena mengakibatkan hilangnya pengawasan pemda terhadap kegiatan pertambangan, hilangnya pendapatan daerah, hingga tata kelola pertambangan nasional. Pemda memiliki kapasitas pengawasan yang lebih kuat daripada pemerintah pusat karena lokasi yang berdekatan dengan wilayah pertambangan. Setidaknya 19 pasal telah direvisi demi menghapus kewenangan pemda. 2 Bab ditambah, 51 Pasal ditambah, 83 Pasal diubah, 9 Pasal dihapus, sehingga total perubahan pasal berjumlah 143 pasal dari 217 pasal, atau sekitar 82 persen dari jumlah pasal yang ada dalam Undang-Undang Nomor 4 Tahun 2009. Pasal dalam UU Minerba ini menjadi jalan tengah bagi pemerintah dan para raksasa tambang. Detil pengaturannya harus dipantau ketika Peraturan Pemerintah telah diterbitkan sebagai petunjuk teknis dan pelaksanaan UU versi baru ini.¹²

¹⁰ Anisatul Umah. *Loc, Citt*.

¹¹ Adhi Wicaksono, 2020, ICW: Terjadi Pembajakan Negara Lewat Revisi UU Minerba, <https://www.cnnindonesia.com/nasional/20200513164015-20-502999/icw-terjadi-pembajakan-negara-lewat-revisi-uu-minerba>, redaksi@cnnindonesia.com, 1 Maret 2020 (18:40).

¹² Arif Gunawan, 2020, Ini Isi Revisi UU Minerba: Musuh Pemda, Kawan Pengusaha, <https://www.cnbcindonesia.com/news/20200512113750-4-157843/ini-isi-revisi-uu-minerba-musuh-pemda-kawan-pengusaha>, redaksi@cnnindonesia.com, 4 Maret 2020 (16:15).

b. Dampak Revisi UU Minerba Terhadap Penurunan Kualitas Lingkungan Hidup Provinsi Kalimantan Selatan.

Tujuan pemerintah dengan merevisi UU Minerba yang mempermudah perusahaan dalam mengembangkan bisnis, melakukan eksplorasi tambahan, dan mengundang investor baru. Hal tersebut dapat meningkatkan PDB negara, namun kegiatan eksplorasi sumber daya alam di Indonesia selama ini banyak menimbulkan masalah bagi kualitas lingkungan hidup. Dalam Pasal 22 huruf a dan d UU Minerba hasil revisi tentang kriteria menetapkan WPR telah membuka ruang bagi penambangan di sungai dengan luas maksimal 100 ha, setelah mengubah luas maksimal sebelumnya 25 ha. Kementerian LHK juga mencatat, terjadinya penurunan luas hutan alam pada periode 1990-2019 sebesar 62,8% di DAS Barito Wilayah Kalsel. Penurunan terbesar terjadi dalam rentang 1990-2000 yang menyentuh 55,5%. Pada 1990, luas hutan di DAS Barito Kalsel masih 803.104 ha, namun pada 2019 hanya tersisa sebesar 333.149 ha.¹³ Sedangkan Luas Daerah Aliran Sungai Barito Kalimantan Selatan seluas 1,8 juta ha yang artinya kawasan hutan di DAS Barito Wilayah Kalsel hanya tersisa 18% jauh dibawah standar Undang-Undang Kehutanan, pasal 18 ayat 2 Undang-Undang Nomor 41 tahun 1999 Tentang Kehutanan¹⁴ menetapkan tutupan hutan di sebuah DAS atau pulau minimal 30% agar area tersebut masih mampu menyerap curah hujan yang tinggi agar tak terjadi erosi yang kini batas minimal tutupan hutan 30% dihapus dari ayat itu dalam UU Cipta Kerja. Aturan yang menambah batas maksimal ruang penambangan di sungai hingga 100 ha ini dapat semakin mengurangi luas kawasan hutan di DAS sehingga berpotensi menyebabkan bencana lingkungan seperti banjir.

Lalu Penambahan pasal 128 A dalam UU Cipta Kerja¹⁵ yang mengatur bahwa bagi pelaku niaga yang bergerak di bidang usaha hilir dan meningkatkan nilai tambah batubara dapat diberikan perlakuan tertentu terhadap kewajiban perpajakan negara, yaitu royalti sebesar 0%. Royalti adalah biaya yang harus dibayarkan pengusaha kepada negara setelah mengeruk sumber daya mineral dan batubara. Meski penghapusan royalti sebenarnya merupakan insentif, hal itu jelas bermasalah. Dampak pasal ini akan menyebabkan negara

¹³ Anton Setiawan, 2021, Ketika DAS Barito Bobol Tersengat Anomali Cuaca, <https://indonesia.go.id/ragam/budaya/sosial/ketika-das-barito-bobol-tersengat-anomali-cuaca>, indonesiagoid@mail.kominfo.go.id, 11 Maret 2020 (01.59).

¹⁴ Lihat pasal 18 ayat 2 Undang-Undang Nomor 41 tahun 1999 Tentang Kehutanan

¹⁵ Lihat Pasal 128 A UU No. 11 Tahun 2020 tentang Cipta Kerja.

kehilangan pendapatan yang cukup besar dari royalti dan memungkinkan perusahaan batu bara menyimpan dananya dengan aman di kantongnya. Padahal, pemungutan royalti 0% bisa berdampak pada meningkatnya jumlah pertambangan di daerah-daerah, termasuk Kalimantan Selatan.¹⁶

PSN yang diatur dalam UU Cipta Kerja khususnya Pasal 173¹⁷ tentang Kemudahan Proyek Strategis Nasional memungkinkan badan usaha untuk melakukan proses pengadaan tanah yang tidak dapat dilaksanakan oleh pemerintah. Jika situs tersebut ditetapkan sebagai proyek strategis nasional, maka setiap warga negara Indonesia harus menyerahkan kepemilikan tanah. Tanah sering kali dianggap sakral bagi sebagian orang Indonesia. Tidak hanya sebagai sumber tempat tinggal dan kehidupan, tetapi juga peninggalan sejarah dan nenek moyang menjadi sangat berarti. UU Cipta Kerja maupun UU Minerba telah memberikan kekuasaan besar kepada perusahaan milik negara dan perusahaan swasta yang tidak pada tempatnya. Oleh karena itu, mereka secara hukum menguasai tanah masyarakat dan menikmati haknya untuk menjamin kelangsungan proyek.¹⁸

Ditambah lagi adanya Pasal 162 dan 164 UU Minerba. Pasal 162 menyebut bahwa "Setiap orang yang merintang atau mengganggu kegiatan Usaha Pertambangan dari pemegang IUP, IUPK, IPR atau SIPB yang telah memenuhi syarat-syarat sebagaimana dimaksud dalam Pasal 136 ayat (2) dipidana dengan pidana kurungan paling lama 1 (satu) tahun atau denda paling banyak Rp100.000.000,00". Pasal ini dapat membuat para pengusaha tambang semakin leluasa dalam mengeksploitasi SDA secara besar besaran tanpa memikirkan penolakan dari warga setempat dan aktivis. Kasi Pembinaan Usaha Pertambangan Provinsi Kalimantan Selatan, Gunawan Sardjito, menyebutkan bahwa dampak besar yang terjadi dari kegiatan pertambangan adalah perubahan bentang alam¹⁹ Adapun Pasal 164 mengatur soal sanksi tambahan bagi orang yang dimaksud dalam Pasal 162. Sanksi tambahan itu berupa perampasan barang yang digunakan dalam melakukan tindak pidana, perampasan keuntungan yang diperoleh dari tindak pidana, dan/atau kewajiban membayar biaya yang timbul akibat tindak pidana.

¹⁶ WALHI, *Omnibus Law; Kitab Hukum Oligarki*, Fraksi Rakyat Indonesia.

¹⁷ Lihat Pasal UU No. 11 Tahun 2020 tentang Cipta Kerja Pasal 173.

¹⁸ WALHI, *Omnibus Law; Kitab Hukum Oligarki*, Fraksi Rakyat Indonesia, Halaman 7.

¹⁹ Nurul Listiyani, *Dampak Pertambangan Terhadap Lingkungan Hidup di Kalimantan Selatan dan Implikasinya Bagi Hak-Hak Warga Negara*, 2017, 9(1), 77.

Kemudian dalam Pasal 165 UU Minerba lama memuat sanksi pidana bagi pejabat yang korupsi Izin Usaha Pertambangan (IUP), Izin Pertambangan Rakyat (IPR), dan Izin Usaha Pertambangan Khusus (IUPK). Pasal itu berbunyi “Setiap orang yang mengeluarkan IUP, IPR, atau IUPK yang bertentangan dengan Undang-Undang ini dan menyalahgunakan kewenangannya diberi sanksi pidana paling lama 2 (dua) tahun penjara dan denda paling banyak Rp200.000.000.” Namun, ketentuan ini hilang dalam UU Minerba yang baru.²⁰ Sejumlah pihak menilai hilangnya undang-undang ini membuka pintu korupsi di industri pertambangan. Tak dapat dipungkiri bahwa kegiatan eksploitasi besar-besaran yang dilakukan selama ini menimbulkan telah banyak menimbulkan kerugian bagi masyarakat, seperti: menyebabkan banjir, rusaknya hutan di wilayah usaha pertambangan, tingginya tingkat pencemaran sungai di sekitar areal penambangan. revisi pada UU Minerba yang memudahkan dan mendorong para investor untuk meningkatkan kegiatan eksploitasi bertentangan dengan semangat pengembangan energi baru dan terbarukan yang lebih ramah lingkungan.

D. KESIMPULAN

Tujuan pemerintah melakukan revisi UU Minerba adalah untuk mengurangi regulasi yang tumpang tindih demi mempermudah perusahaan dalam mengembangkan bisnis, melakukan eksplorasi tambahan, dan mengundang investor baru memiliki tujuan positif untuk ekonomi negara yakni dapat meningkatkan PDB negara, namun kegiatan eksplorasi sumber daya alam di Indonesia selama ini banyak menimbulkan masalah bagi kualitas lingkungan hidup.

Pembahasan revisi UU Minerba di tengah pandemi virus corona menimbulkan banyak kontroversi yang dilakukan secara tertutup, tidak bisa diakses oleh publik, dan hanya dibahas dalam kurun waktu tiga bulan yaitu dari bulan Februari hingga Mei 2020. Revisi UU Minerba disahkan tanpa melibatkan partisipasi masyarakat terdampak aktivitas tambang, yang mana seharusnya masyarakat Indonesia memiliki hak dalam berpartisipasi dalam pembentukan peraturan perundang-undangan, tetapi pada kenyataannya suara rakyat seakan tidak dihiraukan. Padahal, partisipasi masyarakat diperlukan agar tercipta undang-undang yang progresif dan dapat mengatasi permasalahan di masyarakat.

²⁰ Lihat UU No. 3 Tahun 2020 tentang Minerba Pasal 165.

Kebijakan terkait Bumi dan air dan kekayaan alam yang terkandung di dalamnya sudah sepatutnya dibuat untuk memenuhi kebutuhan masyarakat luas, bukan segelintir masyarakat. Kebijakan yang memiliki dampak buruk bagi lingkungan hidup masyarakat perlu dikaji kembali agar dapat terwujudnya kesejahteraan bagi seluruh elemen masyarakat, tidak hanya segelintir masyarakat, dan terciptanya stabilitas alam dan lingkungan.

E. SARAN

Adanya kebijakan revisi UU Minerba yang mendatangkan kontra, membuktikan bahwa implementasi dari regulasi tersebut tidak selaras dan beroperasi secara optimal. Saran penulis terkait permasalahan yang sedang terjadi adalah:

- 1) Pemerintah sebaiknya membatalkan beberapa pasal yang merugikan banyak kalangan;
- 2) Adakan klausul yang menegaskan kewajiban reklamasi pasca tambang dan jaminan reklamasi disertai dengan sanksi yang tegas;
- 3) Sahkan RUU Masyarakat Adat dan dorong RUU Energi Terbarukan;
- 4) Pemerintah perlu menyebarluaskan informasi tentang regulasi UU minerba terkini kepada masyarakat dan mengembalikan jiwa Pancasila.

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Peran dan Fungsi Pengawasan Otoritas Jasa Keuangan Terhadap Perlindungan Konsumen dalam Sektor Perbankan

Oleh Nabila Khoirunnisa dan Darryl Sephandra Hesatama

Latar Belakang

Undang-Undang Nomor 7 Tahun 1992 tentang Perbankan telah dinyatakan dengan tegas bahwa sebagai Pelaku Usaha Jasa Keuangan (PUJK) dalam melakukan usahanya harus berasaskan demokrasi ekonomi dengan menggunakan prinsip kehati-hatian, dimana demokrasi ekonomi dalam hal ini merupakan demokrasi ekonomi yang berdasarkan Pancasila dan Undang-Undang Dasar 1945.¹ Selain bertujuan dalam pengembangan perekonomian nasional, UU Perbankan juga mengatur bagaimana pembinaan dan pengawasan demi kepentingan nasabah yang merupakan salah satu implementasi dari asas keamanan dan keselamatan konsumen dalam Undang-Undang Nomor 8 Tahun 1999 tentang Perlindungan Konsumen atau UUPK.

PUJK atau lembaga perbankan, merupakan salah satu lembaga keuangan yang mempunyai nilai strategis dalam kehidupan perekonomian negara. Lembaga tersebut dimaksudkan sebagai perantara pihak-pihak yang memiliki kelebihan dana (*surplus of funds*) dengan pihak-pihak yang kurang dan memerlukan dana (*lack of funds*).² Berdasarkan Pasal 28 huruf a Undang-Undang Nomor 21 Tahun 2011 tentang OJK telah menegaskan bahwa OJK berwenang melakukan pencegahan kerugian konsumen dan masyarakat dengan memberikan informasi dan edukasi kepada masyarakat, dapat meminta pemberhentian kegiatan Lembaga Jasa Keuangan jika berpotensi merugikan masyarakat, dan tindakan-tindakan preventif lainnya. Namun dewasa ini, banyak laporan mengenai kasus pelanggaran klausula antara bank dan nasabah yang menyebabkan kerugian pihak konsumen sehingga mempertanyakan kapasitas hukum dari UUPK dan kinerja lembaga pengawasan perbankan itu sendiri.

Menurut David M. L. Tobing, menyebutkan bahwa terdapat paradoks dalam penegakan UUPK, tepatnya pada penerapan klausula baku. David mendapatkan datanya melalui riset dengan metode empiris sosiologis dan mendapatkan kesimpulan yang ironis. UUPK yang

¹ Lihat Pasal 2 Undang-Undang Nomor 7 Tahun 1992 tentang *Perbankan*.

² M. Djumhana, 2000. *Hukum Perbankan di Indonesia*. Citra Aditya Bakti, Bandung. Hlm. IX.

seharusnya melindungi konsumen, justru menempatkan konsumen di posisi yang lemah atau bahkan sebagai konsumen tidak tersosialisasikan bagaimana hak konsumen seharusnya sehingga tidak tercapainya tujuan dari Pasal 3 UUPK itu sendiri yang mana perlindungan konsumen bertujuan untuk menciptakan sistem yang dapat memberikan unsur kepastian hukum dan keterbukaan serta akses informasi mengenai hak konsumen.³

I. Fakta Hukum

1. Perlindungan konsumen adalah segala upaya yang menjamin adanya kepastian hukum untuk memberi perlindungan kepada konsumen.⁴
2. Pelaku Usaha Jasa Keuangan (PUJK) adalah Bank Umum, Bank Perkreditan Rakyat, Perusahaan Efek, Penasihat Investasi, Bank Kustodian, Dana Pensiun, Perusahaan Asuransi, Perusahaan Reasuransi, Lembaga Pembiayaan, Perusahaan Gadai, dan Perusahaan Penjaminan, baik yang melaksanakan kegiatan usahanya secara konvensional maupun secara syariah.⁵
3. Klausula Baku adalah setiap aturan atau ketentuan dan syarat-syarat yang telah dipersiapkan dan ditetapkan terlebih dahulu secara sepihak oleh pelaku usaha yang dituangkan dalam suatu dokumen dan/atau perjanjian yang mengikat dan wajib dipenuhi oleh konsumen.⁶
4. Otoritas Jasa Keuangan adalah lembaga yang independen dengan fungsi lembaga yang independen yang mempunyai fungsi, tugas, dan wewenang pengaturan, pengawasan, pemeriksaan, dan penyidikan dalam sektor jasa keuangan.

³Edwim Elnizae. 2020. Ironi Penggunaan Klausula Baku bagi Konsumen Indonesia. *Hukumonline*. Diakses pada: <https://www.hukumonline.com/berita/baca/lt5f5f2b9992aa3/ironi-penggunaan-klausula-baku-bagi-konsumen-indonesia/>.

⁴ Lihat Pasal 1 Undang-Undang Nomor 8 Tahun 1999 tentang *Perlindungan Konsumen*.

⁵ Lihat Pasal 1 Peraturan Otoritas Jasa Keuangan Nomor 1/POJK.07/2013 tentang *Perlindungan Konsumen Sektor Jasa Keuangan*.

⁶ Lihat Pasal 1 Undang-Undang Nomor 8 Tahun 1999 tentang *Perlindungan Konsumen*.

II. Rumusan Masalah

1. Bagaimana perlindungan dan kepastian hukum bagi nasabah dalam sektor perbankan i Indonesia sesuai dengan Undang-Undang Nomor 8 Tahun 1999 tentang Perlindungan Konsumen dan Undang-Undang Nomor 10 Tahun 1998 tentang Perbankan?
2. Bagaimana penegakan Klausula Baku antara pihak perbankan dan nasabah?
3. Bagaimana mekanisme pengawasan OJK jika terjadi pelanggaran dari pihak perbankan?

III. Dasar Hukum

4. Undang-Undang Dasar Negara Republik Indonesia 1945
5. Undang-Undang Nomor 8 Tahun 1999 tentang Perlindungan Konsumen
6. Undang-Undang Nomor 10 Tahun 1998 tentang Perbankan
7. Undang-Undang Nomor 21 Tahun 2011 tentang Otoritas Jasa Keuangan
8. Peraturan Pemerintah Nomor 25 Tahun 1999 tentang Pencabutan Izin Usaha, Pembubaran, dan Likuidasi Bank
9. Peraturan Bank Indonesia Nomor: 7/7/PBI/2005 tentang Penyelesaian Pengaduan Nasabah
10. Peraturan Otoritas Jasa Keuangan Nomor 1/POJK.07/2013 tentang Perlindungan Konsumen Sektor Jasa Keuangan

IV. Analisis

1. Pemahaman Perlindungan Nasabah dalam Perbankan di Indonesia

Indonesia telah mengesahkan Undang-Undang Nomor 8 Tahun 1999 tentang Perlindungan Konsumen atau UUPK demi mewujudkan suatu masyarakat adil dan makmur serta terjamin secara hukum. Hal tersebut menjadikan UUPK sebagai batu uji suatu regulasi dalam pelayanan, termasuk dalam jasa layanan perbankan. Perbankan sebagai pelaku usaha jasa keuangan bertugas menghimpun dana dari masyarakat ini tentunya memiliki peranan penting dalam rangka melindungi masyarakat konsumen secara umum dalam Undang-Undang Nomor 10 Tahun 1998 tentang Perubahan Atas Undang-Undang Nomor 7 Tahun 1992 tentang Perbankan. Perlindungan hukum terhadap nasabah dalam UU Perbankan memberikan kejaminan terhadap penjagaan rahasia atau segala sesuatu yang berhubungan mengenai nasabah

penyimpan dan simpanannya.⁷ Sebagai konsumen, nasabah juga memiliki kewenangan terhadap segala informasi sesuai Pasal 29 ayat (4) UU Perbankan, sehingga sudah seharusnya terdapat sosialisasi mengenai segala informasi kepada nasabah sebagai tindakan preventif.

Nasabah sebagai pengguna jasa layanan perbankan memiliki hak-hak untuk dilindungi yang meliputi prinsip perlindungan konsumen yaitu transparansi, perlakuan yang adil, keandalan, kerahasiaan dan keamanan data atau informasi konsumen, serta penanganan pengaduan yang cepat dan biaya terjangkau.⁸ Berdasarkan Peraturan Bank Indonesia Nomor 7/7/PBI/2005, Bank Indonesia telah menetapkan bahwa tiap-tiap bank memiliki kewajiban dalam menyelesaikan setiap pengaduan yang diajukan nasabah maupun perwakilan nasabah, maka dari itu tiap bank diwajibkan memiliki unit yang dibentuk khusus di setiap kantor bank untuk menangani hingga menyelesaikan pengaduan tersebut.⁹

2. Penegakan Klausula antara Pihak Perbankan, Nasabah, dan Otoritas Jasa Keuangan (OJK)

Dalam perkembangan ekonomi yang pesat, kebutuhan akan perjanjian dalam bentuk klausula baku semakin marak dikarenakan cepat dan praktis. Namun, kelebihan dari klausula baku adalah yang menjadi kelemahannya juga dikarenakan semua syarat-syarat yang berada dalam klausula baku telah ditentukan oleh pihak pelaku usaha tanpa adanya proses negosiasi dengan konsumen. Pada umumnya klausula baku dapat berlaku dalam bentuk dokumen atau surat panjang, baik kertas maupun digital, pada suatu produk dari pelaku usaha kepada konsumen yang digunakan untuk mendapat persetujuan dari pihak konsumen sebelum menggunakan suatu produk. Pada faktanya, tidak semua orang membaca seluruh isi klausula baku dan cenderung untuk langsung

⁷ Lihat Pasal 1 angka 28 Undang-Undang Nomor 10 Tahun 1998 tentang *Perbankan*.

⁸ Pasal 2 huruf e Peraturan Otoritas Jasa Keuangan Nomor 1/POJK.07/2013 tentang *Perlindungan Konsumen*.

⁹ Lihat Pasal 2 dan Pasal 4 Peraturan Bank Indonesia Nomor 7/7/PBI/2005 tentang *Penyelesaian Pengaduan Nasabah*.

setuju dengan klausula-klausula tersebut. Yang menjadi kekhawatiran adalah jika pihak pelaku usaha mencantumkan klausula pengalihan tanggung jawab (eksonerasi).

Menurut J. Satrio, klausula eksonerasi adalah “*suatu klausula dalam suatu perjanjian, dimana ditetapkan adanya pembebasan atau pembatasan dari tanggung jawab tertentu, yang secara normal menurut hukum seharusnya menjadi tanggung jawabnya.*” Menurut beliau klausula eksonerasi dimungkinkan karena adanya asas kebebasan berkontrak. Ironis saat salah satu asas terpenting dalam terbentuknya kontrak justru menjadi penyebab munculnya kerugian konsumen yang dapat dijustifikasi melalui hukum. Hal ini membawa akibat yaitu hak dan kewajiban pihak yang tidak seimbang, cenderung lebih berat atau menguntungkan pelaku usaha.¹⁰

Salah satu penyebab klausul eksonerasi lahir, adalah karena adanya justifikasi dari asas kebebasan berkontrak. Dengan adanya asas tersebut, maka dapat dikatakan bahwa klausula eksonerasi tidak melanggar apapun secara hukum perdata, hanya saja pada klausula baku hanya didominasi oleh salah satu pihak saja yaitu pihak pelaku usaha yang menyodorkan perjanjian baku, sedangkan pada pihak yang disodorkan perjanjian yaitu pihak konsumen hanya memiliki kebebasan dalam hal: (1) Kebebasan untuk membuat atau tidak membuat perjanjian dan (2) Kebebasan untuk memilih pihak siapa ia ingin membuat perjanjian. Hal ini mendorong penyalahgunaan keadaan yang tergantung pada apakah konsumen sangat membutuhkan perjanjian atau tidak.¹¹

Menurut Mariam Darus Badruzaman “campur tangan pemerintah merupakan pergeseran hukum perdata ke dalam proses pemasyarakatan (*vermaatschappelijking*) untuk kepentingan umum.” Beliau menyatakan bahwa seiring perkembangan waktu, hukum perdata yang saat ini merupakan hukum privat, manusia antar manusia, jika menyangkut kepentingan umum akan mendapat perlindungan dari pemerintah.¹²

¹⁰ J.Satrio, 1995. *Hukum Perikatan, Perikatan yang Lahir dari Perjanjian Buku I*. PT. Citra Aditya Bakti. Bandung. Hlm. 120.

¹¹ Munir Fuady, 2020. *Pengantar Hukum Bisnis, Menata Bisnis Modern di Era Global*, Citra Aditya Bakti. Bandung. Hlm. 11-12.

¹² Mariam Darus Badruzaman, 1981. *Perjanjian Baku (Standard) Perkembangannya di Indonesia, dalam Beberapa Guru Besar Berbicara tentang Hukum dan Pendidikan Hukum (Kumpulan Pidato Pengukuhan)*. Bandung. Alumni. Hlm. 95.

Salah satu wujud penegakan hukum dari pemerintahan mengenai klausula baku berada dalam Pasal 18 UUPK yang menentukan berbagai ketentuan dan larangan dalam klausula baku. Sebelum adanya OJK, melalui Pasal 29 Ayat (4) UU Nomor 10 tahun 1998 tentang Perbankan yang menyatakan “*Untuk kepentingan nasabah, bank wajib menyediakan informasi mengenai kemungkinan timbulnya risiko kerugian sehubungan dengan transaksi nasabah yang dilakukan melalui bank.*”¹³ Serta dalam Bab VI Pasal 28-31 UUOJK mengenai Perlindungan konsumen dan masyarakat yang menyatakan kewajiban OJK untuk melakukan tindakan pencegahan kerugian konsumen, layanan pengaduan konsumen, dan pembelaan hukum kepada konsumen. Lalu yang menjadi pertanyaan jika terjadi kelalaian pengawasan dari OJK tersendiri. Apakah BI, bank sentral, dapat melakukan intervensi dengan menggunakan kebijakannya dan keputusannya?

3. **Interupsi BI Ketika Terjadi Kelalaian Pengawasan oleh OJK?**

Bank Indonesia/Bank Sentral adalah lembaga negara yang mempunyai wewenang untuk mengeluarkan alat pembayaran yang sah dalam suatu negara Indonesia, merumuskan dan melaksanakan kebijakan moneter, mengatur dan menjaga kelancaran sistem pembayaran, menjalankan fungsi *lender of last resort*, dan sebelum munculnya Otoritas Jasa Keuangan (OJK), sesuai dalam Pasal 23 UUD 1945, menuturkan bahwa bank sentral Indonesia adalah Bank Indonesia yang mengeluarkan dan mengatur peredaran uang kertas¹⁴ yang kemudian kedudukannya diatur lebih lanjut dalam UU Nomor 6 Tahun 2009 tentang Perubahan Undang-Undang Nomor 2 Tahun 2008 dan perubahan kedua Undang-Undang Nomor 23 Tahun 1999 Tentang Bank Indonesia.

Sebelumnya, dalam kegiatan sehari-hari BI memberikan fokus pengawasan pada 2 (dua) jenis bank yaitu Bank Umum (komersil) dan Bank Perkreditan Rakyat (BPR). Bank Indonesia mengemban tugas dalam mengatur dan mengawasi bank sesuai dengan ketentuan UU Nomor 6/2009, mereka berwenang untuk menetapkan peraturan, memberikan dan mencabut izin atas kelembagaan dan kegiatan usaha

¹³ Lihat Pasal 29 Ayat (4) UU Nomor 10 tahun 1998 tentang *Perbankan*.

¹⁴ Lihat Pasal 23 Undang-Undang Dasar Negara Republik Indonesia Tahun 1945.

tertentu dari bank, melaksanakan pengawasan terhadap bank, dan mengenakan sanksi sebagaimana tertera dalam UU. Dengan pernyataan tersebut maka dapat ditarik kesimpulan wewenang, tanggung jawab, dan kewajiban BI sebelum ada OJK adalah untuk memberikan pembinaan dan pengawasan terhadap bank dengan upaya-upaya yang bersifat preventif maupun represif.

Seiring berjalannya waktu, pertumbuhan populasi semakin meningkat yang menyebabkan meningkatnya kebutuhan ekonomi sehingga peran lembaga jasa keuangan, bank umum/komersil, semakin diperlukan untuk menjaga peredaran uang dan kelancaran transaksi masyarakat dan untuk menjaga stabilitas nilai rupiah. Hal ini menjadi dasar dibentuknya UU OJK pada tahun 2011 yang tujuannya adalah untuk tugas pengawasan agar Bank Sentral dapat lebih fokus untuk menjaga stabilitas nilai rupiah dan OJK yang mengawasi arus transaksi antara lembaga jasa keuangan di seluruh Indonesia dengan para nasabah yang hendak melakukan aktivitas perbankan. Dalam Pasal 1 angka 1 UU OJK, menjelaskan bahwa OJK merupakan lembaga independen yang bergerak dengan wewenang untuk melakukan pengaturan, pengawasan, pemeriksaan, dan penyidikan. Hal ini menunjukan bahwa OJK sekarang memiliki wewenang utuh dalam bidang pengawasan yang sebelumnya dimiliki oleh BI.

Namun ada beberapa hal yang mana OJK dapat bekerja sama dengan BI dalam hubungan perbankan sesuai dengan tertera dalam Pasal 39 UU OJK yang menyatakan bahwa *“Dalam melaksanakan tugasnya, OJK berkoordinasi dengan Bank Indonesia dalam membuat peraturan pengawasan di bidang Perbankan”*. Dalam hal pengawasan, karena berlakunya asas *“lex posteriori derogate legi priori”*, UU OJK akan meniadakan fungsi UU BI yang lama. Wewenang pengawasan tersebut tertera dalam Pasal 7 UU OJK yang meliputi pengawasan mengenai lembaga bank, kesehatan bank (*credit adequacy ratio*), aspek kehati-hatian bank, dan pemeriksaan bank.¹⁵ Maka kita dapat menarik kesimpulan bahwa kecuali termasuk dalam kategori Pasal 39 UU OJK maka BI tidak dapat melakukan intervensi dalam bentuk apa pun.

¹⁵ Lihat Pasal 7 Undang-Undang Nomor 21 Tahun 2011 tentang Otoritas Jasa Keuangan.

V. Kesimpulan dan Saran

Perkembangan ekonomi yang pesat mendorong pentingnya lembaga perbankan sebagai alat yang mengatur arus ekonomi suatu negara. Oleh sebab itu, OJK memiliki kewajiban sebagai badan pengawas jasa keuangan agar terjaminnya hak dan keamanan nasabah sebagai subjek pengguna jasa perbankan.

Dengan berbagai undang-undang yang memiliki asas kepastian hukum bagi nasabah, implementasi perlindungan hukum dalam hubungan antara nasabah dan lembaga jasa keuangan ini masih belum terpenuhi sehingga diperlukannya kepekaan kepada penegakan hukum dan pelaksanaan regulasi yang mana telah dibuat demi keberlangsungan hubungan antara nasabah dan bank, dimana diperlukannya penekanan dalam pelaksanaannya di tiap lembaga jasa keuangan yang dapat menguatkan asas-asas dalam perlindungan konsumen.

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The Intricate Nature of Abortion and The Regulations Surrounding It

By: FransiscaWindaPuspita and Muhammad Rafif Putra Nanda

Issues:

There are a lot of points of view considering the acceptance of the act of abortion, but ultimately there are two sides of the motion. Those who accept it and deemed that it is understandable to do it and also those who are against it. Abortion is commonly associated with the major consequences of unplanned pregnancy by those who aren't ready to have a family yet, typically for people in their teenage years. Many people believe that abortion represents a woman's right to do what they want with their own body, while many other people believe that abortion is equivalent to the murder of an innocent soul. This begs the question, would it be the right choice to imprison a woman for choosing to do an abortion.

Facts:

According to Law no. 36 year 2009 regarding health (Health Law) in article 75 point 1 stipulates that basically, everyone is prohibited from doing an abortion.¹ But based on Guttmacher Institute research, Indonesian law allows abortion in medical emergencies, as well as in cases of severe fatal anomaly.² In the latter situation, if the woman is married, both she and her husband must consent. The law was expanded in 2009 to legalize abortion in cases of rape, but only up to six weeks gestation. Moreover, the research also shows that 4.5 million births occur each year in Indonesia, around 760,000 or 17% of births are unwanted or mistimed births.³ The research also identifies the methods of Indonesian in doing

¹ Law no.36 year 2009, Article 75, point 1

² Guttmacher Institute, November 2020. Induced Abortion in Indonesia.

<https://www.guttmacher.org/fact-sheet/induced-abortion-indonesia#>, March 11th 2021

³ *Ibid.*

abortion, wherein in 2018, a majority of women (73%) who had an abortion self-managed it. About one in five women (21%) reported obtaining an abortion from a doctor or midwife. The remaining 6% went to either a traditional provider or a pharmacist.⁴ Also, few women (6%) reported obtaining a surgical procedure, 16% used pills or other medication and 39% used some other method, such as a massage performed by a traditional provider.⁵ During this pandemic, according to the BKKBN (Badan Kependudukan dan Keluarga Berencana Nasional) data, there were at least 420,000 unwanted pregnancies in Indonesia from March to September 2020.⁶

Regulation:

Criminal sanctions for perpetrators of illegal abortion are also regulated in the Criminal Code ("KUHP" = Kitab Undang - Undang Hukum Pidana).

Analysis:

Following the aforementioned statement, Regulation of the Minister of Health Number 3 of 2016, abortion is an effort to remove the product of conception from the uterus before the fetus can live outside the womb.⁷ Meaning that the definitions given to us specifically on what abortion is according to the constitution, it is fair to say that in doing abortion, a life of a child is not necessarily taken away by them. Since it is stated that what is removed from abortion is the product of conception from the uterus before the fetus can live

⁴ Guttmacher Institute, November 2020. Induced Abortion in Indonesia.
<https://www.guttmacher.org/fact-sheet/induced-abortion-indonesia#>, March 11th 2021

⁵ *Ibid.*

⁶ Loasana, Nina. December 2020. Contraception use drops, unwanted pregnancies rise during pandemic.
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⁷ Regulation of the Minister of Health Number 3 of 2016, Article 1, Point 1

outside the womb, which means that the child is not even alive yet when the abortion operation is taking place, therefore crossing off the possibility of the process of abortion considered to be a murder

Government Regulations No. 61 year 2014 about reproductive health set a maximum limit of up to 40 days of pregnancy is deemed allowed to go through abortion⁸. In Indonesia where the majority of the citizen are Muslims, in fact, According to World Population Review data, the current Muslim population in Indonesia by 2020 reaches 229 million people or 87.2% of the total population of 273.5 million people⁹, it has become apparent that the point of view taken by the country's social stigma, especially in the Muslim community believes that the human spirit is breathed when the fetus is 120 days old.

The variety of statistical data released by several institutions regarding the frequency of abortion indicated the reality of abortion as an iceberg phenomenon. Data released is data that is visible and recorded on the surface, temporarily the reality that happened is far more than what is recorded. In 1999 WHO researched 4 provinces in Indonesia (North Sumatra, Jakarta, Yogyakarta, and North Sulawesi) shows the rate of 2.3 million abortion cases by category 600,000 failed family planning, 700,000 economic conditions, 1,000,000 because of miscarriage with various factors. Based on this research WHO estimates that 10-50% of maternal deaths are caused by abortion. This data is confirmed by the BKKBN data which recorded the number of cases of abortion reached 2.4 million in 2012. Even though there are rules about abortion being forbidden. There are also exceptions within the constitution regarding which of the following cases would be permitted to be done under strict circumstances. It is explained in the "Laws of The Republic of Indonesia Number 36 of 2009 About Health" in the following article:

Article 75

(1) Everyone is prohibited from having an abortion.

⁸ Government Regulations No. 61 Tahun 2014, Article 31, Point 2

⁹ D. Drew, and M. David, World's Muslim population more widespread than you might think, January 31st, 2017, ddesilver@pewresearch.or, March 11th at 01.00 A.M.

(2) The prohibition as intended in paragraph (1) can be excluded based on the following cases:

- a. an indication of a medical emergency detected from early pregnancy age, both of which are life-threatening to the mother and/or fetus, suffering from a genetic disease, weight and/or congenital disabilities, or can't be repaired making it difficult for the baby to be able to live outside of the womb; or
- b. pregnancy as a result of rape can cause psychological trauma for the rape victim.¹⁰

Also, there are criminal sanctions for those who disobey or who are doing an illegal abortion whether it is from the woman's perspective and those people who are helping the abortion process. Based on the Criminal code article:

Article 346

A woman who deliberately aborts or terminates her womb or orders someone else to do so shall be punished by a maximum imprisonment of four years.

Article 347

1) Any person who deliberately aborts or kills a woman without her consent, shall be punished by a maximum imprisonment of twelve years.

Article 348

1) Any person who deliberately aborts or kills a woman with his consent, shall be punished by a maximum imprisonment of five years and six months.

Article 349

If a doctor, midwife, or medicine officer assists in committing a crime under article 346, or commits or assists in committing one of the crimes described in

¹⁰ Laws of The Republic of Indonesia Number 36 of 2009 About Health, Article 75, Point 1 and 2

articles 347 and 348, then the penalty specified in that article can be increased by one third and the right to carry out a search in where the crime was committed.¹¹

Looking at article 346 in the Criminal Code, it is highlighting that a woman has a limited space of freedom in choosing what she wants to do and the article itself has an ambiguity in stating what is being considered as a child in a woman's womb. This has been stated in Regulation of the Minister of Health Number 3 of 2016 about the definition of abortion itself where it happens before the fetus live in the womb it is not considered as killing a living that means there should not be any sanctions such as imprisonment for woman.

Even if there are already regulations giving explanations about the exceptions of the imprisonment, what if the reason for the abortion itself would be to save the unborn child from a life that they wouldn't want. What if the soon-to-be parents aren't ready yet to take care of a child. It raises questions on whether the child should still be born or not. The cost to raise a child has a high amount of sum that unplanned pregnancy would just be too much to handle for unready parents with low income, causing more poverty for the country, as Isabel Sawhill Ph. D. once said in her presentation, "If we could reduce unplanned pregnancies, we would also reduce child poverty and improve social mobility. In my 2014 book, *Generation Unbound*, I estimate that the growth of single-parent families, now driven almost entirely by unwed and unplanned childbearing, has led the child poverty rate to be 25 percent higher than it would be if we had stabilized the proportion of such families at 1970 levels."¹²

Conclusion

¹¹ Criminal Code of Indonesia Article 346,347,348,349

¹² S. Isabel, June 2017, *Reducing Poverty by Reducing Unplanned Pregnancies*, *SMeraw@brookings.edu*, March 11th at 01.24 A.M.

Abortion is still a never-ending problem especially in Indonesia due to the ambiguity of law in this country and the social stigma that happens to surround it. Such laws like the Laws of The Republic of Indonesia Number 36 of 2009 About Health that state about abortion being prohibited. The authors would like to propose that there should be a revision about the imprisonment for the act of abortion because forced situations sometimes don't only speak of the events that will take place instantaneously. If a woman is forced to not do abortion affected by the fear of breaking the law, it would mean that the woman might suffer in carrying the unborn child out and taking care of them until they grow out, considering that the majority of women considering doing abortion has monetary difficulty, it would just add up poverty in the world since they won't be able to support themselves, let alone the unborn child. It should be clear that there should be a regulation added in regards to how the monetary standings of the women in question where there should be restrictions on what is considered to have a monetary difficulty and which aren't so that the unborn child would have a better likelihood to live a happy life in the future.

The Struggle Inside: Labor Rights Violation Surrounding PepsiCo's Exit

By: Alia Arraina Sandra and Danis Nayla Sakinah

The statement regarding PepsiCo's resignation drew a lot of reactions from the public. Most of whom felt disappointed, confused, and upset. As a result of this action, of course, inevitably many snack products and soft drinks under their auspices were withdrawn from the market. This is the result of the breakup of PepsiCo's collaboration with PT. Anugerah Indofood Barokah Makmur (AIBM), which carries out the packaging, sales, and distribution of products from PepsiCo. It is known the reason why the long-standing cooperation between PepsiCo and AIBM ran aground due to disputes between the two. An investigation by the NGO Rainforest Action Network found that there were violations of labor rights in the IndoAgri palm plantation owned by the Salim Group, which is the main company of the AIBM company, in North Sumatra.

According to the Roundtable on Sustainable Palm Oil where they received a complaint from the Indonesian Labour Rights Association (OPPUK), Rainforest Action Network (RAN), and International Labour Rights Forum (ILRF) against PT. PP London Sumatra Indonesia Tbk (a subsidiary of PT. Salim Ivomas Pratama Tbk) regarding workers exploitation on two palm oil plantations owned and operated by RSPO member and Indofood subsidiary PT. London Sumatra in June 2016.¹ Key findings from the investigation in a report published by RAN, OPPUK, and ILRF titled, “The Human Cost of Conflict Palm Oil: Indofood, PepsiCo’s Hidden Link to Worker Exploitation in Indonesia”, conclude that:

1. Indofood categorized many of its long-time workers as temporary and placed them at heightened risk through precarious employment practices
2. Indofood paid its workers unethically low wages
3. Children worked on Indofood plantations
4. Indofood did not provide adequate health and safety protection for many workers, and casual maintenance workers were exposed to highly hazardous pesticides.

¹ Roundtable on Sustainable Palm Oil, 2016. Complaint.
<https://askrspo.force.com/Complaint/s/case/50090000028ErzBAAS/detail>, April 16th 2021 (14.30)

5. Indofood undermined Freedom of Association²

Violations allegations filed against PT. LONSUM related to labor rights violations is not the first time. The Institute for Community Studies and Advocacy (ELSAM) also issued a position paper on "Human Rights Violations in the Oil Palm Plantation Area of PT PP Lonsum Tbk-North Sumatra" in 2010. Derived from the results of ELSAM research from 2004-2007, by sending field researchers to PT PP's plantation Lonsum Tbk-North Sumatra in Deli Serdang, Serdang Bedagai, and Simalungun. ELSAM tried to dig up the testimonies of residents of Pargulaan Village, Simpang Empat Village, Cempedak Lobang Village, Naga Rejo Village, and Naga Timbul Village regarding the practices of dominant human rights violations in the area.³ The violations cases that occurred among them ranged from incidents of using force, vandalism, and road blockades in land dispute resolution, application of arbitrary working hours and systems, arbitrary wage systems, poor work safety protection systems, to child labor use..

In Indonesia, labor rights have been regulated in the Manpower Law, this law contains labor rights, especially regarding labor welfare. According to Article 31 of the Manpower Law Number 13 of 2003 states that "every worker has the same rights and opportunities to choose, get, or change jobs and earn decent income at home or abroad", thus, employers must comply with this rule. Criminal sanctions that will be given to employers or employers who violate are given various forms of punishment, fines, and imprisonment.

The punishment for imprisonment of 2-5 years and/or a fine of Rp.200-500 million is given to people who employ or involve children in work. A prison sentence of 1-5 years and/ or a fine of Rp. 100-500 million is given to employers who do not include their company employees in the

² Rainforest Action Network, 2016. The Human Cost of Conflict Palm Oil: Indofood, PepsiCo's Hidden Link to Worker Exploitation in Indonesia.
https://www.ran.org/wp-content/uploads/rainforestactionnetwork/pages/15889/attachments/original/1467043668/The_Human_Cost_of_Conflict_Palm_Oil_RAN.pdf?1467043668, April 16th 2021 (15.00)

³ Lembaga Studi dan Advokasi Masyarakat, 2010. Pelanggaran Hak Asasi Manusia di Kawasan Perkebunan Kelapa Sawit PT PP Lonsum Tbk-Sumatera Utara.
https://lama.elsam.or.id/downloads/1372924048_Pelanggaran_HAM_di_Kawasan_Perkebunan_Kelapa_Sawit_PT_PP_Lonsum_Sumatera_Utara.pdf, April 17th April 2021 (12.44)

pension program. Sanctions for 1-4 years imprisonment and/or a fine of Rp100-400 million are given to parties who violate the provisions on⁴:

1. Employing Foreign Workers Who Do Not Comply With The Regulations (Article 42 Paragraph (1) And (2));
2. Employing Children (Article 68);
3. Employing Children In Light Work Not In Accordance With The Requirements (Article 69 Paragraph (2));
4. Does Not Provide Opportunities For Worship For Workers (Article 80);
5. Does Not Provide The Rightful Morning Rest For Workers Who Want To Give Birth (Article 82));
6. Pay Wages Lower Than The Minimum Wage (Article 90 Paragraph (1));
7. Obstruct The Right To Strike Employees (Article 143 Paragraph (1));
8. And Not Re-employing Workers After Being Proven Innocent Or Giving The Right To Termination Of Employment (Article 160 Paragraph (4) And (7)).

The International Labour Organization (ILO), a specialized body of the United Nations with the mission to uphold social justice and globally recognized human and labor rights, is the primary international organization that implements and enforces international labor law. Its primary goals are to foster workplace freedom, facilitate fair job conditions, improve social security, and strengthen dialogue on workplace issues. The bulk of international labor law is derived from the ILO's labor laws.⁵

Labor law, internationally regulated under the International Labor Organization or known as ILO. The ILO's goals are stated in the Preamble to the ILO Constitution as well as the Annex to the Constitution titled Declaration concerning the aims and purposes of the International Labour Organization (the "Declaration of Philadelphia"). These goals serve as the foundation for the creation of universal labor standards.

⁴ SmartLegalID, 2019. "Sanksi di UU Ketenagakerjaan yang Wajib Diketahui oleh Pengusaha" <https://smartlegal.id/galeri-hukum/lainnya/2019/02/27/sanksi-uu-ketenagakerjaan/>, April 12th 2021 (20.45)

⁵ ILO, 2014. Rules of the Game: a brief introduction to International Labour Standards.

The International Labour Organization's Declaration on Fundamental Principles and Rights at Work. This declaration is binding on all Member States and binds them to respect and promote four types of values and rights, regardless of whether they have ratified the applicable Conventions. All four categories are freedom of association and the effective recognition of the right to collective bargaining, the abolition of involuntary or compulsory labor, the abolition of child labor, and the abolition of work and occupation discrimination (Article 2).⁶

In regards to ILO ratification K-138 by Indonesian government, considering the regulations and indictment above, PT Lonsum failed to meet the deadline set by the complaints panel that had resulted in the Complaints Panel issuing the first letter of warning to PT Lonsum. Followed by a notice issued to SIMP as the parent. However, SIMP has failed to meet the deadline set by the complaints panel. By reason of the aforementioned breach of the decision by PT Lonsum and due to the extent of the breach, the refusal to engage constructively and collaboratively with the RSPO decision that becomes evident that PT Lonsum and SIMP are refusing and unwilling to meet RSPO's standards and principles expected of its members. Hereby, they terminated the membership of SIMP as being the Parent of PT Lonsum with immediate effect.⁷

The issue of rights violation isn't new in labor fields. The emergence of manpower law and organization as well as institutions that regulate the rights and obligations of workers is an exact form of government guaranteeing protection for Indonesian workers in order to avoid any kind of oppression from certain parties. Labor rights violation in palm plantation is one of the violations that are often highlighted by the mainstream media. Indonesia, which is one of the largest importing countries of palm oil, obviously opens up many jobs for laborers. However, unfortunately, there are so many violations that go undetected. Labor rights violations are often undermined and underestimated, since the majority of workers do not have a voice, where most are small people who are oppressed because of their economic conditions, even though they are the foundation and driving force for the running of an organization, agency, and company.

⁶ Ibid.

⁷ RSPO Complaints Panel.

International Legal Overview on Japanese Whale Hunting Activities

By Daffarel Abdillah, Thariq Rafif Wardhana, and Tarissa Zahra Hidayanti

International Legal Overview on Japanese Whale Hunting Activities

Whale hunting has been a human activity for thousands of years. Whale hunting or whaling, is the hunting of whales for food and oil. Whaling was once conducted around the world by seafaring nations in pursuit of the giant animals that seemed as limitless as the oceans in which they swam. However, since the mid-20th century, when whale populations began to drop catastrophically, whaling has been conducted on a very limited scale. It is now the subject of great scrutiny, both by formal regulatory bodies and by nongovernmental organizations.¹ Norway was one of the first nations to hunt whales, dating back over 4000 years.² The Japanese started hunting whales with a hand harpoon centuries later, in the 12th century. Whales became a marine commodity used by Japanese citizens shortly after that. Japanese people use anything from meat to bones to fat layers to oil. To date, a total of 38,539 large whales have been confirmed to have been killed by several nations in 1986, including Japan, Norway, and Iceland.³

This is a concern since, because whales have a slow reproductive cycle, large-scale hunting will result in extinction. Whales, in particular, play an important role in reducing carbon emissions and are an important part of marine ecosystems. A great whale will accumulate an average of 33 tons of carbon over its lifespan before its carcasses fall to the ocean floor. This is far more than a tree, which can only consume up to 48 pounds of CO₂ per year.⁴ Furthermore, whale dung is a phytoplankton food source that consumes 4x the total carbon consumed by the Amazon forest each year and provides 85 percent of the oxygen we breathe.⁵ Therefore, whale conservation in the form of halting hunting is critical, as whales play an important role in environmental protection.

However, after Japan signed a moratorium on stopping hunting in 1986, Japan has once again allowed whaling for commercial purposes. In fact, after signing the moratorium, Japan had never stopped hunting whales. For years, they hunt the whales up to the Antarctic under the guise

¹ Gordon Jackson. 2007. Whaling Human Predation. <https://www.britannica.com/topic/whaling>. 17 May 2021 (13.43)

² Meghan E. Marrero and Stuart Thornton. 2011. Big Fish: A Brief History of Whaling. <https://www.nationalgeographic.org/article/big-fish-history-whaling/>. 16 May 2021 (15.25).

³ Damian Carrington, 2018. Japan killed 50 whales in Antarctic protected areas, data shows. <https://www.theguardian.com/environment/2018/sep/04/japan-killed-50-whales-in-antarctic-protected-area-data-shows>. 16 May 2021 (16.10).

⁴ Jana Randow, 2019. One Whale Is Worth Thousands of Trees in Climate Fight, New Report Says. <https://time.com/5733954/climate-change-whale-trees/>. 16 May 2021 (16.30).

⁵ Samarpita Basu and Katherine R.M. Mackey. 2018. Phytoplankton as Key Mediators of the Biological Carbon Pump: Their Responses to a Changing Climate *Sustainability Journal* 10(3): 1-18.

of scientific research. In 2013, Australia took Japan to the International Court of Justice (ICJ) to question the legality of its Antarctic whaling program, and in 2014, the ICJ found that the whaling was "not for the purposes of scientific research" and ordered Japan to end its Antarctic whaling program immediately. Japan fulfilled the order but reintroduced the program in 2015 with slightly different research objectives. Nevertheless, the program was specifically designed to achieve a commercial goal, and in 2017, Japanese lawmakers and Fisheries Agency officials publicly admitted that scientific whaling is Japan's way of ensuring a return to commercial whaling in the future. The International Whaling Commission (IWC) rejected Japan's request to resume commercial whaling in 2018, and Japan declared its intention to leave the IWC in December of that year. Japan formally left the IWC on June 30, 2019, and commercial whaling resumed the next day.

Japanese Government argues that whale hunting is a part of their national identity and a culture that has lasted for a long time. They also stated their whale hunting activities are sustainable and won't be a threat to the whales population, even though they have yet to prove it.⁶ This runs counter to the United Nations Convention Law of The Sea (UNCLOS), which Japan has ratified and states that countries that have ratified must conserve marine mammals and adhere to IWC guidelines. Furthermore, of the 383 whale hunting quotas released by Japan, one out of three hunted species, the Sei Whale, is an endangered whale. This whaling cannot be justified unless there is a pressing need for it.

In accordance with international law, legal protection for all whale species has been sought since 1948, when the International Whaling Commission (IWC) was established, an organization whose objective is to conserve whale numbers and organize a safe whale hunting industry. The International Whaling Commission (IWC) was established in 1946 as a follow-up to the International Convention for the Regulation of Whaling (ICRW), which was drafted by 15 governments in 1946.⁷ Several whale species had been overexploited to the point of extinction at the time, and the international community saw it as imperative to save them from extinction.

The IWC's policy to conserve whales for the first 20 years did not prevent industrial whaling. For the first 20 years, IWC focuses on the whaling industry business aspect⁸, then the whale population keeps depleting. As a result, a meeting was called in 1982 to explore a moratorium on commercial whaling. In the end, 25 countries voted in favor of banning

⁶Nikkei Asia, 2019. Japan has yet to prove commercial whaling is sustainable. <https://asia.nikkei.com/Opinion/The-Nikkei-View/Japan-has-yet-to-prove-commercial-whaling-is-sustainable>. 16 May 2021 (17.30).

⁷Michigan State University. Detailed Discussion: The Global Protection of Whales. <https://www.animallaw.info/article/detailed-discussion-global-protection-whales>. 17 May (13.00).

⁸WWF. https://www.panda.org/discover/knowledge_hub/endangered_species/cetaceans/cetaceans/iwc/iwc_successes_failures/?. 17 May 2021 (14.10).

commercial whaling, while 7 nations voted against it and 5 nations abstained. Therefore, whaling for commercial purposes was outlawed in 1986.

The existence of this moratorium prevents whale hunting from being commercialized, even though it is not absolute. Indigenous interests (Indigenous Whaling) and scientific interests (Scientific Whaling / Special Permit Whaling) are exempt from the whaling ban.⁹ The legality of whaling for scientific purposes is stated in Article VIII (1) of the ICRW which states:

“Notwithstanding anything contained in this convention any Contracting Government may grant to any of its nationals a special permit authorizing that national to kill, take, and treat whales or purposes of scientific research subject to such restrictions as to the number and to such other conditions as the Contracting Government thinks fit, and the killing, taking, and treating of whales in accordance with the provisions of this article shall be exempt from the operation of this convention.”

Apart from the moratorium on commercial whale killing, UNCLOS also contains provisions for whale protection under international legal instruments. UNCLOS authorizes fishing in international waters, which is consistent with the idea of *res communis*. However, UNCLOS also establishes restrictions for marine mammals, as indicated in Articles 65 and 120, which states:

Article 65

“Nothing in this Part restricts the right of a coastal State or the competence of an international organization, as appropriate, to prohibit, limit, or regulate the exploitation of marine mammals more strictly than provided for in this Part. States shall cooperate with a view to the conservation of marine mammals and in the case of cetaceans shall in particular work through the appropriate international organizations for their conservation, management, and study.”

Article 120

“Article 65 also applies to the conservation and management of marine mammals in the high seas.”

In short, Article 65, which is part of the Chapter on the Exclusive Economic Zone, specifies that governments shall collaborate to conserve marine mammals, particularly cetaceans, through international organizations. The rules of Article 65 also apply on the high seas, according to Article 120. As a result of this agreement, whales belonging to the cetacean order are implicitly protected.

⁹ Olivia Martha Setyonugroho, et al. 2019. Indigenous Whaling Tradition in the Faroe Islands under International Law. *UDAYANA JOURNAL OF LAW AND CULTURE* 3(2): 184-203.

Following that, international legal protection to the whales also can be found in Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), which includes most of the whales in Appendix 1 such as Minke Whale, Sei Whale, and Sperm Whale, Humpback Whale, etc. indicating that the species must be preserved and not hunted. Furthermore, Japan accepted the pact, putting them under obligation to protect the whale species listed in Appendix 1.

Nevertheless, despite all of the protections in place to preserve whales, Japan's decision to keep slaughtering whales raises attention in the global community. As previously said, Japan did it for the purpose of scientific research. Whaling for scientific purposes is permitted under IWRC regulations. The regulation, as stated in Article VIII, states that:

"Notwithstanding anything contained in this convention any Contracting Government may grant to any of its nationals a special permit authorizing that national to kill, take, and treat whales or purposes of scientific research subject to such restrictions as to the number and to such other conditions as the Contracting Government thinks fit, and the killing, taking, and treating of whales in accordance with the provisions of this article shall be exempt from the operation of this convention."

There is no further explanation of the meaning of "scientific research" in the article, leaving the interpretation of the term open to interpretation. In terms of scientific research, the international world has frequently condemned Japanese whale hunting for this purpose. The Japanese Whale Study Program Under Special Permit in the Antarctic (JARPA), for example, sells whale meat after it has been utilized for research.¹⁰ JARPA is carried out twice, namely JARPA I and JARPA II.

During the process, this study was criticized for using lethal methods that harm marine ecosystems and reduce whale populations to the point where they can be labeled as endangered.¹¹ IWC recommends that the JARPA II program be halted until the research results from JARPA I have been reviewed. Japan, on the other hand, disregarded the warning and proceeded to hunt whales for "scientific research". Australia and New Zealand then sued because they believed Japan had broken its international commitments under the ICRW's provisions.

Whale hunting that violates international law on the basis of "scientific research" exposes Japan as a hypocrite because it consistently violates the ratified international law rules. The long history of Japan's relationship with the Pope, which incorporates the country's culture, is the

¹⁰BBC, 2019. What is whaling and why's it controversial?. <https://www.bbc.co.uk/newsround/46715160>. 19 May 2021 (09.30).

¹¹Rizza Oktavia Tunggal Putri, et al. 2016. IMPLIKASI PUTUSAN ICJ BERKAITAN DENGAN SENGKETA ANTARA JEPANG DAN AUSTRALIA MENGENAI PERBURUAN PAUS ILEGAL DI WILAYAH ANTARTIKA (STUDI TERHADAP PUTUSAN ICJ NO. 226 TAHUN 2014). *Diponegoro Law Journal* 5(3) : 1-15.

explanation. Whale hunting is done to fill nutritional demands and to follow the Japanese people's beliefs. Because Buddhism, the majority religion at the time, prohibited its followers from consuming land animals so that Japanese people turned to marine animals to supplement their nutrition. This tradition persisted for hundreds of years until the 19th century, specifically during World War 2, when whale numbers were extremely popular among Japanese people. From the late 1940s to the mid-1960s whale was the single biggest source of meat in Japan.¹²

It answers why Japan is now back hunting whales. The country has been whaling for hundreds of years and the government insists eating whales is an important part of Japan's food culture. Taiji, a western town in the Higashimuro District, was a famous town known for whaling but gained notoriety for also hunting dolphins. The town still has a whaling ship that is taking part in today's hunt.¹³ Since whale hunting has been a culture in Japan, especially in the Taiji region, it is hard for Japan to comply with the whale hunting moratorium without sustainable quotas. Responding to the matter in 2018 Japan tried to convince the IWC to allow the whale hunt under sustainable quotas, but it failed. With the rejection of the Japanese request, Japan left the IWC in July 2019.

Seeing this incident, The IWC has failed to provide a middle ground that would have made it easier for both parties. Japan has agreed to comply with the moratorium but asked for relief in the form of licensing for whaling but under the quota limitation seeing Japan has a custom culture regarding whaling, and the request was rejected without consideration causing Japan to leave the IWC. In case if IWC provides a special license for Japan whaling under sustainable quota, it will not harm both parties as well as other parties, considering whale hunting in Japan's request is given a quota limitation.

Concerning the legality of Japan's whaling action, Since Japan has left the IWC, Japan has no obligation to comply with the following rule and it does bring into question whether or not Japan would be consistent with the convention." By leaving the IWC, this means Japan will no longer hunt whales in the Antarctic, as it did under its earlier research program. Even though Japan has withdrawn from the International Whaling Commission (IWC), the legal opinion commissioned by the Australian Marine Conservation Society (AMCS) and the International Fund for Animal Welfare (IFAW) outlines how the country still has a raft of obligations under international law.¹⁴ Darren Kindleysides, chief executive of AMCS, said: "Japan has run away from the International Whaling Commission but its whaling can't escape the reach of international law". Also, Since Japan's whaling takes place in international waters, the CITES

¹²BBC, 2019. Japan whaling: Why commercial hunts have resumed despite the outcry. <https://www.bbc.com/news/world-asia-48592682>. 15 May (11.20).

¹³Elisa Menendez, 2019. Why is whaling so important to Japan?. <https://metro.co.uk/2019/07/01/whaling-important-japan-10095488/>. 15 May 2021 (12.10).

¹⁴Australian Marine Conservation Society, 2019. Japan's commercial whale hunting risks international legal action. <https://www.marineconservation.org.au/japans-commercial-whale-hunting-risks-international-legal-action-says-new-legal-opinion/>. 18 May 2021 (14.02).

(the Convention on Trade in Endangered Species) Standing Committee ruled that Japan had violated trade restrictions for this endangered species. Japan has until Feb. 1st, 2019, to fix their violation and report back to CITES. Reports in Japanese media claim Japan's government will make changes to their whaling plans to comply with the CITES decision, likely reducing or eliminating hunts for sei whales while continuing the slaughter of other whales.¹⁵

The scientific excuse Japan uses for whale hunting also has not been proved yet. Which implies that Japan has violated Article 65 and Article 120 stated in UNCLOS. Japan has faced a variety of problems, including the country's cultural requirements of whale hunting, international law, and conventions that prohibit whale hunting, as well as a dramatized global point of view of whale hunting. For now, Japan is still violating several regulations that have been set by the global community regarding whale hunting and there is still an obligation Japan needs to fulfill for Japanese society culture that must be addressed. Japan has to resolve its duty without violating the laws quickly, considering the whale population will become extinct over time. Indeed, whaling in Japan is a culture and a national identity. And according to the ICRW indigenous interests (Indigenous Whaling) and scientific interests (Scientific Whaling / Special Permit Whaling) are both excluded from the whaling moratorium. Japan, on the other hand, could not use this as an excuse to continue whaling. Although whaling has developed a culture over thousands of years, it is actually done for commercial purposes.

In conclusion, Japan ideally should stop hunting whales. If Japan insists on whaling, they should implement very tight whaling quotas. since there is no longer a pressing need for whale meat, and demand has fallen drastically.¹⁶ Aside from that, Japan has also joined the CITES agreement regarding whale species that must be protected and not hunted in Appendix 1. So Japan should have committed to protecting the whale species mentioned in Appendix 1. However, in fact Japan has violated the agreements. The issue of commercial whaling in Japan has even been addressed before the International Court of Justice. On the basis of scientific research, they also lied about whaling. Until it was uncovered that Japan was still commercially hunting whales. Of course, this is unjustifiable.

Furthermore, despite the fact that Japan has quit the IWC, it should have been allowed to ignore the IWC's rules. However, some sources claim that Japan still has obligations of international law. Also, because Japan's whaling occurs in international waters, the CITES Standing Committee ruled that Japan had broken trade limits for this endangered species. Given

¹⁵ Mark J Palmer, 2018. CITES Rules Japan Whaling Violates International Law. <http://savedolphins.eii.org/news/entry/cites-rules-japan-whaling-violates-international-law>. 15 May 2021 (08.15).

¹⁶ Nippon, 2019. Whale Meat No Longer a Major Protein Source in Japan. <https://www.nippon.com/en/features/h00361/>. 22 May 2021 (16.45).

that the whale population would go extinct over time, Japan must rapidly address its responsibilities without violating the law.

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Digital Economy : Cryptocurrency Dominates The Stock Market and Regulations

Behind It

**By: Cartier Ichsanitaliia Lembayung, Grandson Tamaro Simanjuntak, Samuel Hilman
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On May 4th 2021, one bitcoin was valued at \$56,000.¹ Bitcoin is the world's first decentralized cryptocurrency (no central authority and no third party in transactions) created by Satoshi Nakamoto in 2009. This is what makes it so popular and recognized as a de facto cryptocurrency for mainstream investors. The advantage of bitcoin over other financial instruments is that it is not tied to a tangible asset and is considered a deflationary currency which means the more people want and buy it, the higher its value will be.

Nevertheless, the manifestation of polemics regarding the circulation and the use of bitcoins among the world's community is inevitable. Many investors invest their capital there but on the other hand, there are some government officials who are kind of less supportive about the existence of these cryptocurrencies, more specifically, bitcoin. Gita Gopinath, an economic counsellor at the International Monetary Fund said, *"Bitcoin is an example of a cryptocurrency that doesn't serve the role of money at all. It's a very speculative investment class. In terms of substituting for what money is, I don't think it comes close."* (April 21st 2021) price on quote date \$54,996.31.² The argument given is strengthened by the decline of bitcoin's rate on June 14th, 2021 to \$38,928.44.

¹ Komaraju, A, 2021, *5 Promising Cryptocurrencies That You Can Buy In May 2021*, Analytics Insight, <https://www.analyticsinsight.net/5-promising-cryptocurrencies-that-you-can-buy-in-may-2021/>, June 14th 2021.

² Rovella, D, 2021, *Bitcoin Bulls and Bears*, Bloomberg, <https://www.bloomberg.com/features/bitcoin-bulls-bears/>, June 14th 2021.



BTCUSD Rates by Coin Market Cap (\$38,928.44)

Based on fact, the presence of cryptocurrency triggers the formation of a fundamentally new system of economic relations where the exchange of assets takes place without involving centralized financial institutions or other intermediaries. The security and reliability of transactions between counterparties is provided by a distributed ledger system that controls and reliably records committed transactions with the help of cryptographic functions also known as a blockchain. Cryptocurrency is a new phenomenon in public life challenges the state with difficult tasks arising from the need for legal regulation of newly emerged and intensively developing social relations – providing the balance of interests of various stakeholders, strategic planning is oriented toward building a digital economy, which is impossible without this blockchain.³

Blockchains are digital sequences of numbers coded into computer software that permit the secure exchange, recording, and broadcasting of transactions between individual users operating anywhere in the world with Internet access. Like any technological changes, the development of blockchains drew on and combined several existing technologies. Blockchains are intended to be maintained by all users in

³ O S Bolotaeva, A A Stepanova, S S Alekseeva , 2009, The Legal Nature of Cryptocurrency, *IOP Conference Series: Earth and Environmental Science*, Vol. 272, (No. 3), Pg. 1.

manners meant to be immutable, unless users arrive at a clear consensus to undertake changes.⁴

One of several things that use blockchain as the technology is cryptocurrency. Cryptocurrency or cryptographic money is a virtual type of cash that is used as alternative money, where the currencies are generated and traded by cryptographic process. Most of these cryptocurrencies are decentralized in computer-based networks and based on peer-to-peer technology and open-source cryptography that does not depend on central authorities such as central banks or other administrative institutions. In our legal system, the definition of cryptocurrencies could be found in the explanation of Article 34 letter A, that is “What is meant by “virtual currency” is digital money issued by a party other than the monetary authority obtained by mining, purchasing, or transferring gifts, including Bitcoin, BlackCoin, Dash, Dogecoin, Litecoin, Namecoin, Nxt, Peercoin, Primecoin, Ripple, and Ven. Not included in the definition of virtual currency is money electronic.”

Looking back at history, the first, not perfect, cryptocurrency was created by Berkeley Programmer David Chaum called e-cash using a Blind Signature technology, which is the purpose of it to be an untraceable payment system that separates people from the transactions they made in 1983. Next in 1997, someone called Adam Beck introduced the first proof-of-work algorithm, the algorithm would be an important source for controlling the circulation of cryptocurrencies. In the same year, another member of cyberpunks and a researcher at Microsoft company named Wei Dei released a cryptocurrency called B-money that implements the concept of decentralization. Seven years later, Hal Finney, a computer scientist and another member of cyberpunks developed proof-of-work protocol by Adam Beck into Reusable Proof of Work (RPOW). RPOW would allow the user to transfer a digital token then delete and make a new token. The process of it would be known as the first digital cash system proof-of-work. In the same year, 2014, released another failed cryptocurrency named Bit Gold, that was created by another computer scientist and cryptographer called Nick Szabo. Bit Gold is a protocol consisting of a combination of the decentralized concepts of Wei Dei and RPOW. Then in 2009, the first perfect

⁴ Campbell-Verduyn, M, 2018. *Bitcoin and beyond: Cryptocurrencies, blockchains, and global governance*, EconStor, <https://www.econstor.eu/handle/10419/181975>, June 14th 2021.

cryptocurrency, Bitcoin, was launched. The launch was made after a paper entitled Bitcoin: A Peer-to-Peer Electronic Cash System, written under the pseudonym Satoshi Nakamoto, was released. And now, per Jan 2021, the calculation of the number of cryptocurrencies is more than 4,000.⁵

Regulations

1. BI Regulation Number 19/12/PBI/2017

This regulation explains that fintech are prohibited to conduct payment system activities using virtual currency.

2. Commodity Futures Trading Supervisory Agency Regulation Number 5 of 2019 concerning Technical Provisions for the Implementation of the Physical Market for Crypto Assets on the Futures Exchange.

This regulation explains that Indonesia considers cryptocurrency as crypto assets and classifies it as a commodity that can be used as the subject of futures contracts.

Cryptocurrencies can be a means of payment for goods and services, and, for example, US law specifically stipulates that it can be a unit of payment through which wages are paid. In some countries, cryptocurrency has become a recognized and accepted unit of settlement by various subjects in the market. The US Financial Crimes Enforcement Network (FinCEN) believes that transactions involving the exchange of cryptocurrencies for fiat money should be regulated in the same way as operations involving the exchange of fiat money only.⁶

Contrary to the US, China explicitly banned exchange or financing activities between banknotes and “coin substitution” in 2017. This can be seen from the announcement of the People's Bank of China (“PBoC”) and five other ministries, that financing uses cryptocurrencies, such as ICOs. , "essentially an unauthorized public financing of illegal, and suspected involvement in the sale of illegal coins, illegal

⁵ Conway, L, 2021, *The 10 Most Cryptocurrencies Other Than Bitcoin*. investopedia.com, <https://www.investopedia.com/tech/most-important-cryptocurrencies-other-than-bitcoin/>, June 21th 2021.

⁶ Rain Xie, 2019, Why China had to “Ban” Cryptocurrency but the U.S. did not: A Comparative Analysis of Regulations on Crypto-Markets Between the U.S. and China’, *Washington University School Of Law*, Vol. 18 (No. 2), Pg. 457.

issuance of securities, illegal fundraising, financial fraud, pyramid sales, and other illegal and criminal activities in September 2017."⁷

From these particular datas, it can be concluded that cryptocurrencies are still not allowed and legal in several countries. This creates an issue while transacting with any parties from such countries.

A series of Indonesian policies towards cryptocurrencies to date seem skeptical. First, BI Regulation Number 19/12/PBI/2017 which prohibits fintech from processing payment transactions using virtual currencies, hit hard the entire virtual currency ecosystem in Indonesia. Following this ban, Indonesian Bitcoin payment platforms, including Toko Bitcoin and Bitpay, closed voluntarily in October 2017, and other extant virtual currency exchanges such as ArtaBit, Luno and Indodax are gripped by desperate concerns over the government making aggressive steps to remove the entire virtual currency industry in Indonesia.⁸

Second, when the Bitcoin market price peaked from December 2017 to January 2018, Government concerns also hit new highs. Bank Indonesia, the Indonesian Ministry of Finance, and the Center for Financial Transaction Reports and Analysis (PPATK) all issued press releases warning the public against the use or investment of virtual currencies. At the same time, the Financial Supervisory Service Authority (OJK) and Bank Indonesia simultaneously officially appealed to the public not to own, acquire or trade cryptocurrencies following a pre-launch event for cryptocurrency-based investment products by Aladin Capital, a global financial group based in the United States. United States and Switzerland.⁹

Third, as the price of Bitcoin has weakened significantly since then, there was no explicit attempt by the Government to adopt regulations governing activities with virtual currencies as part of the fintech industry, until the Futures Trading Regulatory Agency (CoFTRA), under the Ministry of Commerce, announced that they have approved a decree allowing trading of cryptocurrencies as commodities on futures exchanges. The decree resulted as Commodity Futures Trading Supervisory Agency Regulation Number 5 of 2019 concerning Technical Provisions for the

⁷ *Ibid*, Pg. 475.

⁸ Soonpeel Edgar Chang, 2018, Legal Status of Virtual Currency in Indonesia in The Absence of Specific Regulations, *Indonesian Law Review*, Vol. 8, (No. 3), Pg. 329.

⁹ *Ibid*, Pg. 329.

Implementation of the Physical Market for Crypto Assets on the Futures Exchange. It shows that Indonesia considers cryptocurrency as crypto assets and classifies it as a commodity that can be used as the subject of futures contracts. In addition to these regulations, Indonesia has now established a new regulation that explains that there are 229 types of crypto that can be traded on the physical market for crypto assets.

Even though there is a regulation that made cryptocurrency seems legal, its reach among various parties in the market (e.g., investors, owners, sellers, buyers, developers, stock exchange business holders, secured creditors, various parties to the offer), prime public, or interest holders) remain very limited. The failure of the judiciary or academics to explore theoretical developments in the field only exacerbates the situation.¹⁰

In other words, at this point in its development, Indonesia does not accommodate the basic principles of global policy but is simply sticking to piecemeal regulations while avoiding the hard work of successfully creating a clear regulatory approach to this challenging subject. While the Government's skepticism about the health of the cryptocurrency market is completely understandable, how to protect the various parties in the existing market is a distinct issue that requires urgent attention from policymakers, legal practitioners, judiciaries and academic researchers.

Cryptocurrencies have seen their biggest boom since late 2017 that has attracted a lot of eyeballs. Investors are eyeing the top cryptocurrencies to add a mix to their portfolios. Bitcoin, an exemplar cryptocurrency, recently hit a record high of \$63,000 before seeing high sales. Nevertheless, the manifestation of polemics regarding the circulation and the use of bitcoins among the world's community is inevitable.

In our legal system, the definition of cryptocurrencies could be found at the explanation of Article 34 letter A, that is "What is meant by "virtual currency" is digital money issued by a party other than the monetary authority obtained by mining, purchasing, or transferring gifts, including Bitcoin, BlackCoin, Dash, Dogecoin, Litecoin, Namecoin, Nxt, Peercoin, Primecoin , Ripple, and Ven. Not included in the definition of virtual currency is money electronic."

¹⁰ Ibid, Pg. 330.

The use of cryptocurrencies differs in many countries, depending on their own constitutions. There are certain countries that allow the use of cryptocurrencies. However, there are some countries that still do not allow the use of cryptocurrencies.

US law specifically stipulates that it can be a unit of payment through which wages are paid. The US Financial Crimes Enforcement Network (FinCEN) believes that transactions involving the exchange of cryptocurrencies for fiat money should be regulated in the same way as operations involving the exchange of fiat money only.

Contrary to the US, China explicitly banned exchange or financing activities between banknotes and “coin substitution” in 2017. This can be seen from the announcement of the People's Bank of China (“PBoC”) and five other ministries, that financing uses cryptocurrencies.

A series of Indonesian policies towards cryptocurrencies to date seem skeptical. First, BI Regulation Number 19/12/PBI/2017 which prohibits fintech from processing payment transactions using virtual currencies, hit hard the entire virtual currency ecosystem in Indonesia. Second, the Financial Supervisory Service Authority (OJK) and Bank Indonesia simultaneously officially appealed to the public not to own, acquire or trade cryptocurrencies. Third, as the price of Bitcoin has weakened significantly since then, there was no explicit attempt by the Government to adopt regulations governing activities with virtual currencies as part of the fintech industry. The decree resulted as Commodity Futures Trading Supervisory Agency Regulation Number 5 of 2019, It shows that Indonesia considers cryptocurrency as crypto assets and classifies it as a commodity that can be used as the subject of futures contracts, Indonesia has now established a new regulation that explains that there are 229 types of crypto that can be traded on the physical market for crypto assets. In other words, at this point in its development, Indonesia does not accommodate the basic principles of global policy but is simply sticking to piecemeal regulations while avoiding the hard work of successfully creating a clear regulatory approach to this challenging subject.

Issue Arises: On Turkey's Withdrawal from Istanbul Convention

**By: Mikhael Bernand Harianja, Raissa Zandra Saraswati, and Zahra
Audrey Padalas**

Through the Presidential Decree issued on March 20th, Turkey's government declared their withdrawal from the Council of Europe Convention that aims to prevent and protect women's rights against violence.¹ The withdrawal's decision promptly received many protests from both women's groups and many harsh social media critics. They argue that the withdrawal can cause a major impact on women's rights protection for the incoming regulations.

There are many reasons covered due to the withdrawal. One of the most significant reasons is the pressure from the religious conservatives and various Muslim orders after viewing the Convention as an affront to national's fundamental principle on the basis that it destroys Turkish tradition family values and promotes homosexuality.²

In the principle of international law, an international convention or treaty is an agreement between different countries that becomes legally binding to a particular State when that State ratifies it. Signing does not make a convention binding, but it indicates support for the convention's principles and the country's intention to ratify it.³ In this case, however, the Istanbul Convention was ratified by Turkey in 2012, followed by another 11 European nations. The main purpose of the convention itself is to provide a unique legal instrument for protecting

¹ Commissioner for Human Rights. (2021, March 22). *Turkey's announced withdrawal from the Istanbul Convention endangers women's right*, Council of Europe Portal. <https://www.coe.int/en/web/commissioner/-/turkey-s-announced-withdrawal-from-the-istanbul-convention-endangers-women-s-rights>.

² Aksoy, H. (2021, March 29). *What lies behind Turkey's withdrawal from the Istanbul Convention?*. German Institute for International and Security Affairs. <https://www.swp-berlin.org/en/publication/what-lies-behind-turkeys-withdrawal-from-the-istanbul-convention>.

³ *Vienna Convention on the Law of Treaties*. (1969, May 22). UNTS. Article 34 (entered into force 1980, January 27) [VCLT]

women against violence with coverage not only domestic, but other forms of violence against women, including psychological and physical abuse, sexual harassment, rape, crimes committed in the name of so-called "honor," stalking, and forced marriage.

According to the fact, the existence of the Istanbul Convention bears a considerable impact on Turkey's legislative drafting. One of the legal products created in accordance with the Istanbul Convention was Law No 6284 to Protect Family and Prevent Violence against Women. The Istanbul Convention indeed has a strong impact on the creation of regulations that protect women's rights by providing bases to examine.

Here are a few regulations concerning the issue that would be discussed in this paper;

1. The Universal Declaration of Human Rights (**UDHR**)
2. The Convention on the Elimination of All Forms of Discrimination against Women (**CEDAW**)
3. the Council of Europe's Convention on Preventing and Combating Violence against Women and Domestic Violence (**Istanbul Convention**)
4. Turkey's Constitution of 1982 with Amendments through 2017 (**Art. 2**)

Pursuant to the principles contained in UDHR, it generally implies that girls and women and boys and men have the same right. Although the UDHR is not legally binding among nations, as its title suggests, universal – meaning it applies to all people in all countries around the world. The protection of the rights and freedoms set out in the Declaration has been incorporated into many national constitutions and domestic legal frameworks.⁴

⁴ Vazques, Catalina. (2018). *WHAT IS THE RELEVANCE OF THE UNIVERSAL DECLARATION OF HUMAN RIGHTS 70 YEARS AFTER ITS ADOPTION?*. Amnesty International. <https://www.amnesty.org/en/what-we-do/universal-declaration-of-human-rights/#:~:text=The%20UDHR%20is%2C%20as%20its, constitutions%20and%20domestic%20legal%20frameworks.>

However, the rights of women, including the principles of equality generally imposed by UDHR, are specifically enumerated and defined through the CEDAW and Istanbul Convention. Although Turkey might have officially exited from the Istanbul Convention, it, however, has ratified The Convention on the Elimination of all Forms of Discrimination Against Women back in 1985. However, many groups view Turkey's withdrawal from the Istanbul Convention as a form of lacking dedication by the government to protect women's rights and equality principle any further.

Turkey likewise ranks poorly on the gender equality index. This inequality is fueled by the high rate of femicides and domestic abuse in Turkey. According to the 2021 World Economic Forum's Gender Gap Index, Turkey is ranked 133rd out of 156 countries, making the country lag from other European countries⁵. Many fear that by withdrawing from the Istanbul Convention, women's rights will further deteriorate, considering that the aim of the convention itself is to provide protection to violence against women and domestic violence.

Moreover, the concern might emerge from the reason behind Turkey's withdrawal. Although it has not been confirmed, some Justice and Development Party (AKP) acknowledged that the withdrawal was conducted after several pressures and intense lobbying by the religious conservatives and Islamic Fundamentalists. However, this condition, in some way, did not align with Article 2 Constitution of Turkey. Article 2 describes Turkey as a nation that embraces secularism as one of its principles.⁶

As defined by Cambridge Dictionary, Secularism is a belief that should not involve the ordinary social and political activities of a country. In this regard, the government of Turkey has conducted inclusiveness in operating on behalf of a certain group, instead of upholding secularism as one of the Principles that

⁵ The Global Gender Gap Report 2021. World Economic Forum 2021.
<https://www.weforum.org/reports/global-gender-gap-report-2021>.

⁶ The 1982 Constitution of The Republic of Turkey (1982, November 7). *Article 2*. Parliament of The Republic of Turkey (2017 referendum).

generally aim to serve people as a whole without considering their political ideology, economic interest, or religion.

Even though the existence of foreseeable direct effects due to Its exit, similar to any bold contradiction toward Turkey's constitutional law is absent. Many predict this withdrawal will cause women's rights to be deprived and gender equality will not be guaranteed under future lawmaking. Moreover, the fact that Turkey has already rank poorly in the gender equality Index, the decision to withdraw from the Istanbul Convention is surely considered imprecise.

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