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PENDAHULUAN

Indonesia sebagai negara yang menjadikan hukum sebagai kekuatan tertinggi berdasarkan Pancasila dan Undang-Undang Dasar 1945, memberikan jaminan kepada seluruh warganya untuk memperoleh kepastian, ketertiban, dan perlindungan hukum yang berlandaskan kebenaran dan keadilan. Hukum mengatur segala interaksi antara individu, baik hubungan antar individu, antara individu dengan kelompok atau masyarakat, maupun antara individu dengan pemerintah. Hukum merupakan elemen yang tidak dapat dipisahkan dari kehidupan masyarakat, sehingga di mana ada masyarakat, di situ ada norma hukum. Jaminan kepastian, ketertiban, dan perlindungan hukum ini tentu memerlukan upaya konkret agar dapat terlaksana dengan baik, sebagai bentuk tanggung jawab negara dalam mencapai kemakmuran dan kesejahteraan seluruh rakyat Indonesia. Hukum berperan dalam menjaga dan mengatur keseimbangan antara kepentingan individu yang cenderung egois dengan kepentingan bersama, sehingga konflik dapat dihindari. Oleh karena itu, hukum secara hakiki harus memiliki kepastian dan keadilan agar dapat berfungsi dengan semestinya.

Hukum tidak hanya sekedar perangkat peraturan, tetapi juga merupakan alat untuk mencapai harmoni dalam masyarakat. Dengan adanya kepastian hukum, individu dan kelompok dalam masyarakat dapat berinteraksi dengan jelas mengenai hak dan kewajibannya. Ketertiban hukum memastikan bahwa aturan yang ada ditegakkan dan dihormati, sementara perlindungan hukum memberikan rasa aman bagi setiap warga negara bahwa hak-hak mereka dilindungi dan keadilan dapat ditegakkan. Untuk mewujudkan hal tersebut, diperlukan langkah-langkah nyata seperti pembaruan hukum, penegakan hukum yang konsisten, serta pendidikan dan penyuluhan hukum kepada masyarakat. Selain itu, penting pula untuk memastikan bahwa para penegak hukum bekerja secara profesional dan beretika, sehingga



kepercayaan publik terhadap sistem hukum dapat terjaga. Dengan demikian, penegakan hukum yang pasti dan adil tidak hanya berfungsi sebagai penegak aturan, tetapi juga sebagai fondasi untuk menciptakan masyarakat yang sejahtera dan harmonis, selaras dengan cita-cita negara berdasarkan Pancasila dan UUD 1945.

Etika adalah konsep yang berkaitan dengan penilaian terhadap baik atau buruknya perilaku seseorang. Di sisi lain, moral merujuk pada perilaku itu sendiri, apakah dianggap baik atau buruk. Etika terdiri dari gagasan-gagasan dan cita-cita tentang perilaku manusia yang diidamkan sebagai kebaikan. Etika selalu memberikan contoh-contoh perilaku yang ideal, sedangkan moral memberikan penilaian terhadap sejauh mana contoh-contoh tersebut diimplementasikan dalam kehidupan nyata. Dengan demikian, seseorang yang beretika adalah individu yang menunjukkan contoh perilaku yang patut diteladani, sementara orang yang bermoral adalah individu yang mengamalkan dan menjalankan keteladanan tersebut dalam kehidupan sehari-hari. Etika berfungsi sebagai panduan atau standar perilaku yang diinginkan, memberikan kerangka acuan bagi individu untuk menilai tindakan mereka sendiri dan orang lain. Moralitas, pada gilirannya, adalah penerapan nyata dari prinsip-prinsip etika tersebut.¹

Sebagai ilustrasi, seorang pemimpin yang beretika akan menetapkan standar tinggi dalam integritas dan keadilan, memberikan contoh melalui tindakannya. Para pengikut atau anggota masyarakat yang bermoral kemudian akan mengikuti jejak tersebut, mengadopsi dan menerapkan nilai-nilai etika tersebut dalam perilaku mereka sendiri. Pentingnya etika dan moral dalam kehidupan sosial tidak bisa diabaikan. Etika menyediakan arah dan pedoman bagi perilaku yang diinginkan, sementara moral menunjukkan komitmen individu terhadap nilai-nilai tersebut dalam tindakan sehari-hari. Keduanya bekerja secara sinergis untuk membentuk masyarakat yang adil, harmonis, dan beradab.

Etika dan moral mencakup berbagai aspek kehidupan manusia secara luas, terutama dalam interaksi sosial antar manusia, termasuk dalam hubungan kerja dan profesi. Contoh dari hubungan ini antara lain adalah antara penggugat dengan hakim, advokat dengan kliennya, jaksa dengan terdakwa, dan notaris dengan kliennya.

¹ Supirman Rahman & Nurul Qamar, *Etika Profesi Hukum*, Makassar, Refleksi, 2014, hlm. 4

Salah satu bidang yang menjadi fokus etika dan moral adalah perilaku dalam pekerjaan yang memerlukan keahlian khusus, yang dikenal sebagai profesi. Profesi adalah pekerjaan yang membutuhkan pengetahuan teori dan teknis yang mendalam, serta harus dijalankan dengan kejujuran. Karena masyarakat sangat bergantung pada keahlian dan integritas para profesional ini untuk menerapkan sistem keadilan, maka mereka yang menjalankan profesi tersebut harus memenuhi persyaratan tertentu agar dapat menjalankan tugas dan fungsinya dengan profesional. Profesi tidak hanya mengandalkan pengetahuan dan keterampilan, tetapi juga menuntut adanya standar etika yang tinggi. Para profesional diharapkan untuk bekerja dengan integritas, transparansi, dan tanggung jawab, karena keputusan dan tindakan mereka memiliki dampak signifikan terhadap individu dan masyarakat. Misalnya, seorang hakim harus memutuskan perkara dengan adil tanpa bias, seorang advokat harus menjaga kerahasiaan dan kepentingan kliennya, seorang jaksa harus mengejar kebenaran dengan jujur, dan seorang notaris harus memastikan keabsahan dokumen-dokumen penting. Dengan demikian, etika dan moral berperan penting dalam memastikan bahwa para profesional menjalankan tugasnya dengan baik dan sesuai dengan standar yang telah ditetapkan. Ini penting untuk membangun kepercayaan publik dan memastikan bahwa sistem keadilan berfungsi dengan baik.

Profesionalisme yang dilandasi oleh etika dan moral yang kuat tidak hanya meningkatkan kualitas layanan yang diberikan, tetapi juga memelihara keadilan dan kesejahteraan dalam masyarakat. Profesi di bidang hukum yang populer di era digital mencakup hakim, jaksa, advokat, notaris, dan berbagai unsur institusi berwenang berdasarkan undang-undang. Para pekerja hukum ini berfungsi sebagai pejabat umum di bidangnya, dengan tugas utama memberikan pelayanan publik secara adil dan tanpa diskriminasi sesuai ketentuan hukum. Mereka dilengkapi dengan pedoman hukum (hukum perundang-undangan) dan pedoman etika serta moral profesi (kode etik profesi). Tanggung jawab mereka mencakup tanggung jawab hukum dan moral, memastikan tindakan mereka sesuai dengan integritas, kejujuran, dan prinsip keadilan. Misalnya, seorang hakim harus membuat keputusan berdasarkan fakta dan hukum tanpa bias, jaksa harus mengejar keadilan dengan kebenaran, advokat harus mewakili klien dengan setia sambil menghormati hukum, dan notaris harus memastikan



keabsahan dokumen. Dengan mematuhi pedoman hukum dan kode etik, profesional hukum menjaga integritas sistem hukum dan membangun kepercayaan masyarakat terhadap keadilan.²

Undang-Undang Dasar Negara Republik Indonesia Tahun 1945 menegaskan bahwa Indonesia adalah negara hukum. Oleh karena itu, prinsip-prinsip negara hukum harus ditegakkan. Untuk mewujudkan prinsip-prinsip ini dalam kehidupan bermasyarakat dan bernegara, peran dan fungsi penegak hukum yang bebas, mandiri, dan bertanggung jawab sangat penting, selain lembaga peradilan dan instansi penegak hukum lainnya. Melalui jasa hukum yang diberikan, kepentingan masyarakat pencari keadilan, termasuk upaya memberdayakan masyarakat dalam menyadari hak-hak fundamental mereka di hadapan hukum, dapat diwujudkan. Dalam ilmu hukum, selain norma hukum, terdapat juga norma lain yang menopang ketertiban dalam masyarakat, yaitu norma etika. Norma etika untuk berbagai kelompok profesi dirumuskan dalam bentuk kode etik profesi. Kode etik adalah prinsip-prinsip moral yang melekat pada suatu profesi dan disusun secara sistematis. Kode etik profesi merupakan norma yang ditetapkan dan diterima oleh kelompok profesi, yang mengarahkan atau memberi petunjuk kepada anggotanya tentang bagaimana seharusnya berperilaku, sekaligus menjamin mutu moral profesi tersebut di mata masyarakat.

Prinsip-prinsip umum yang dirumuskan dalam setiap profesi akan berbeda satu sama lain. Kode etik berfungsi sebagai sarana kontrol sosial, mencegah campur tangan pihak luar, mencegah kesalahpahaman dan konflik, serta mengawasi apakah anggota kelompok profesi telah memenuhi kewajiban mereka. Tujuannya adalah menjunjung tinggi martabat profesi, menjaga dan memelihara kesejahteraan para anggota, meningkatkan pengabdian anggota, meningkatkan mutu profesi dan organisasi, meningkatkan layanan, memperkuat organisasi, menghindari persaingan tidak sehat, menjalin hubungan erat antar anggota, dan menentukan standar baku. Penegak hukum wajib menaati norma-norma penting dalam penegakan hukum, yaitu kemanusiaan, keadilan, kepatutan, dan kejujuran, serta melaksanakan kode etik dengan baik. Namun, dalam praktiknya, penerapan norma-norma ini sering kali tidak berjalan mulus dan bahkan menimbulkan berbagai permasalahan. Hambatan dan kendala sering muncul

² Supirman Rahman & Nurul Qamar, *Etika Profesi Hukum*, Makassar, Refleksi, 2014, hlm.5

dalam pelaksanaan kode etik, yang menghalangi penegak hukum menjalankan tugasnya sesuai dengan prinsip-prinsip yang diharapkan.

Hukum merupakan alat pengendalian sosial, dikenal sebagai penegakan hukum. Efektivitasnya dapat dinilai dengan mempertimbangkan sistem pengendalian sosial secara keseluruhan. Jika pada beberapa bidang, seperti pendidikan formal, metode lain lebih efektif, hukum hanya berperan sebagai alat pendukung. Pengetahuan tentang pengendalian sosial membantu menilai sejauh mana hukum dapat berfungsi sebagai alat pengendalian. Hukum tidak berdiri sendiri, melainkan berinteraksi dengan mekanisme sosial lainnya, seperti norma-norma dalam pendidikan. Pemahaman ini membantu merancang kebijakan hukum yang lebih efektif untuk menjaga ketertiban sosial dan keadilan.

Masalah keadilan merupakan isu kompleks yang umumnya dihadapi oleh hampir semua masyarakat, termasuk di Indonesia. Hal ini disebabkan oleh pandangan umum bahwa hukum memiliki dua tugas utama: menciptakan kepastian hukum dan mewujudkan keadilan bagi seluruh masyarakat. Namun, hingga saat ini, masalah kepastian hukum dan keseimbangan masih menjadi tantangan yang sulit dipecahkan di Indonesia, terutama karena negara ini mengalami transformasi hukum sejak tahun 1942.³ Suatu keadaan yang adil dapat tercapai ketika tidak ada perselisihan, dan hal ini dapat dicapai apabila setiap anggota masyarakat melaksanakan tugas dan kewajibannya sesuai dengan posisi dan peranannya dalam masyarakat. Ini menekankan pentingnya partisipasi aktif dari seluruh warga masyarakat dalam menciptakan lingkungan yang adil dan harmonis. Dalam konteks ini, hukum bertindak sebagai alat untuk mencapai tujuan tersebut, namun perlu diperhatikan bahwa keadilan tidak selalu dapat dicapai hanya melalui lembaga hukum semata. Diperlukan juga partisipasi dan kesadaran kolektif dari seluruh anggota masyarakat untuk menciptakan kondisi yang adil dan setara bagi semua individu.

Umumnya, masyarakat Indonesia cenderung memilih penyelesaian konflik dengan cara yang diplomatis dan damai. Mereka lebih condong kepada kompromi daripada menetapkan siapa yang benar atau salah, dengan harapan mengakhiri perselisihan tanpa menimbulkan konflik sosial yang lebih besar. Kecenderungan ini

³ Soerjono Soekanto, Pokok – Pokok Sosiologi Hukum, Jakarta, Rajagrafindo Persada, 2006, hlm.183-184

tercermin dari budaya sosial yang dikenal sebagai "shame-culture", yang umum dijumpai di Asia, termasuk Indonesia. Di Indonesia, peran para profesional hukum masih terbilang minim. Profesional hukum merujuk kepada individu yang menjalani profesi berdasarkan keahliannya dalam bidang hukum, seperti pengacara, notaris, dan hakim. Menurut konsep Rueschemeyer, profesi dianggap sebagai pekerjaan pelayanan yang (1) menerapkan pengetahuan sistematis untuk menyelesaikan masalah yang (2) sangat relevan dengan nilai-nilai sentral masyarakat. Kalangan hukum profesional dianggap memiliki keahlian khusus yang dibutuhkan untuk menangani masalah-masalah hukum, dan oleh karena itu, mereka dianggap sebagai ahli yang dapat membantu dalam menyelesaikan konflik hukum.

Namun, masih terdapat tantangan dalam memperkuat peran para ahli hukum di Indonesia. Meningkatkan kesadaran akan pentingnya menggunakan jasa ahli hukum dan memperluas akses terhadap layanan hukum yang berkualitas dapat membantu masyarakat dalam menyelesaikan perselisihan dengan lebih efektif dan adil. Ini memerlukan kerjasama antara pemerintah, lembaga hukum, dan masyarakat sipil untuk meningkatkan peran serta para ahli hukum dalam menyelesaikan masalah-masalah hukum yang dihadapi masyarakat.

Metode penelitian adalah cara ilmiah untuk mengumpulkan data dengan tujuan khusus, yang pada intinya adalah untuk memperoleh pengetahuan yang benar. Pengetahuan yang benar ini dapat digunakan untuk menjawab pertanyaan atau mengatasi ketidaktahuan tertentu.⁴ Dalam penelitian hukum, metode yang umum digunakan adalah penelitian normatif, yang dilakukan dengan meneliti bahan pustaka atau kepustakaan. Penelitian hukum normatif ini bertujuan untuk menganalisis hukum sebagai suatu sistem norma yang terstruktur. Dengan demikian, penelitian hukum yang dilakukan adalah penelitian yuridis normatif, yang fokusnya adalah pada analisis terhadap sistem norma hukum. Penelitian semacam ini memerlukan pemeriksaan dan interpretasi terhadap peraturan hukum, putusan pengadilan, dokumen-dokumen hukum, dan literatur hukum lainnya untuk memahami dan mengevaluasi struktur serta fungsi hukum dalam masyarakat.

⁴ Soerjono Soekanto, Pokok – Pokok Sosiologi Hukum, Jakarta, Rajagrafindo Persada, 2006, hlm.193

PEMBAHASAN

Etika Profesi Hukum

Secara etimologis, "etika" berasal dari bahasa Yunani Kuno, yaitu "ethos", yang memiliki beragam makna seperti tempat tinggal, kebiasaan, adat, akhlak, watak, perasaan, sikap, dan cara berpikir. Dalam bentuk jamak, "etika" berarti adat kebiasaan. Istilah ini sudah dikenal sejak masa Aristoteles untuk merujuk pada filsafat moral. Aristoteles menjelaskan bagaimana interaksi sosial dan penghargaan terhadap sesama manusia seharusnya didasarkan pada altruisme, bukan egoisme, dengan memperhatikan kepentingan orang lain. Aristoteles juga menyebut manusia sebagai "zoon politicon", yang menandakan sifat manusia sebagai makhluk sosial.

Secara etimologis, etika adalah ajaran tentang baik dan buruk yang diterima umum mengenai sikap, perbuatan, kewajiban, dan sebagainya. Etika sering diidentikkan dengan moral atau akhlak, yang berkaitan dengan nilai-nilai. Dalam konteks ini, etika membahas tentang predikat nilai susila atau tindakan manusia yang baik dan buruk. Beberapa definisi tentang etika meliputi:

- Etika adalah cabang utama filsafat yang mempelajari nilai atau kualitas, mencakup analisis dan penerapan konsep seperti benar-salah, baik-buruk, dan tanggung jawab (Istiono Wahyu dan Ostaria).
- Etika adalah ilmu yang berkaitan dengan baik-buruk, hak, serta kewajiban moral (Rafik Issa Bekum).
- Etika adalah bidang ilmu normatif yang menemukan apa yang harus atau tidak boleh dilakukan oleh individu (Rafik Issa Bekum).

Dengan demikian, etika memainkan peran penting dalam membimbing perilaku manusia dan menetapkan standar moral yang diterima dalam masyarakat.

Aristoteles adalah filsuf pertama yang menjadikan etika sebagai cabang filsafat tersendiri. Dalam pandangan Aristoteles, etika berkaitan dengan pencarian hidup yang baik dan bagaimana mencapainya. Hidup yang baik menurut Aristoteles adalah hidup yang memiliki kualitas, ketentraman, dan makna. Menurutnya, manusia mencapai hidup yang berkualitas ketika mereka berhasil mencapai tujuan hidupnya. Dengan mencapai tujuan hidup, manusia mencapai kebenaran sepenuhnya. Manusia berusaha untuk mencapai nilai-nilai dan tujuan utama hidupnya, yaitu kebahagiaan, yang dalam



bahasa Yunani disebut eudaimonia. Dalam pandangan Aristoteles, kebahagiaan bukanlah hanya sekedar kenikmatan sesaat atau kesenangan fisik semata, melainkan keadaan keselarasan dan kebermanaan hidup yang dicapai melalui pemenuhan potensi dan kepenuhan diri manusia. Oleh karena itu, mencapai kebahagiaan tidak hanya melibatkan kepuasan materi, tetapi juga pengembangan moral, intelektual, dan spiritual. Aristoteles memandang kebahagiaan sebagai tujuan utama manusia, yang hanya dapat dicapai melalui kehidupan yang bermakna dan berarti.⁵

Menurut Hook, etika berkaitan dengan pilihan moral yang harus dibuat oleh manusia. Keadaan etis muncul saat manusia dihadapkan pada pilihan antara yang baik dan yang buruk, bahkan terkadang antara yang kurang buruk. Proses pengambilan keputusan untuk membuat pilihan inilah yang menciptakan situasi etis. Thompson menganggap bahwa etika adalah domain prinsip-prinsip yang diatur oleh imperatif-imperatif moral. Meskipun etika memiliki prinsip-prinsip umum, namun menurut pandangan Hook, diperlukan spesifikasi dan rincian yang lebih rinci. Oleh karena itu, profesi-profesi yang bergantung pada fungsi dan tanggung jawab individu memerlukan kode etik khusus. Kode etik untuk suatu profesi mungkin berbeda dengan kode etik profesi lainnya karena mempertimbangkan konteks dan kebutuhan spesifik profesi tersebut. Meskipun perlu spesifikasi dan rincian, Koehn menekankan bahwa etika yang bersifat mengesahkan tidak dapat secara mekanis memberikan instruksi terperinci tentang perilaku profesional. Sebaliknya, etika harus memberikan pedoman umum dan menetapkan batasan bagi perilaku profesional.⁶

Kata "profesi" dan "profesional" memiliki berbagai arti yang sering digunakan dalam percakapan sehari-hari. Secara umum, "profesi" dapat diartikan sebagai pekerjaan atau pekerjaan tetap untuk mencari nafkah, baik yang legal maupun ilegal. Dalam arti yang lebih teknis, "profesi" merujuk pada kegiatan tetap yang dilakukan dengan keahlian khusus untuk memperoleh nafkah, yang berkaitan dengan karya dan hasil karya yang berkualitas tinggi dengan imbalan yang tinggi. Keahlian tersebut biasanya diperoleh melalui pengalaman, pendidikan formal di lembaga tertentu,

⁵ Soerjono Soekanto & Sri Mamudji, Penelitian Hukum Normatif Suatu Tinjauan Singkat, Jakarta, PT. Raja Grafindo Persada, 2004, hlm.13-14

⁶ Fahmi M. Ahmadi. Jaenal Arifin, Metode Penelitian Hukum, Jakarta, Lembaga Penelitian UIN Syarif Hidayatullah, 2010, hlm. 3

pelatihan intensif, atau kombinasi dari semua itu. Dalam konteks ini, istilah "profesional" dan "profesionalisme" sering dibedakan dari "amatir" dan "amatirisme", terutama dalam bidang olahraga. "Profesional" mengacu pada seseorang yang menjalankan pekerjaan secara tetap dan terampil, sementara "amatir" mengacu pada mereka yang melakukan kegiatan tersebut secara non-profesional atau tidak berpengalaman.⁷

Etika profesi adalah sikap etis yang menjadi bagian integral dari cara hidup seseorang dalam menjalankan profesi mereka. Hanya individu yang menjalankan profesi tersebut yang dapat menilai apakah perilaku mereka sesuai dengan tuntutan etika profesi atau tidak. Karena orang awam mungkin tidak memiliki pengetahuan teknis yang cukup, mereka tidak dapat secara akurat menilai apakah suatu perilaku mengemban profesi sesuai dengan etika. Oleh karena itu, kepatuhan terhadap etika profesi sangat bergantung pada akhlak individu yang menjalankan profesi tersebut. Hal ini menegaskan pentingnya memiliki moral dan integritas yang kuat dalam praktik profesional.

Di samping itu, praktik profesional seringkali menimbulkan situasi yang kompleks di mana sulit untuk menentukan perilaku yang sesuai dengan tuntutan etika profesi. Perilaku dalam praktik profesional juga memiliki potensi untuk memberikan dampak negatif yang signifikan terhadap para pencari keadilan. Hal ini menunjukkan bahwa para praktisi profesional membutuhkan panduan objektif yang lebih konkret untuk mengatur perilaku mereka.⁸

Oleh karena itu, dalam lingkungan praktisi profesional, diperlukan seperangkat aturan perilaku sebagai pedoman yang harus diikuti dalam menjalankan profesi. Aturan ini dikenal sebagai kode etik profesi, yang bisa berbentuk tertulis maupun tidak tertulis. Saat ini, kode etik umumnya tersedia dalam bentuk tertulis yang ditetapkan secara resmi oleh organisasi profesi terkait. Tujuan utama dari kode etik ini adalah menjaga martabat profesi dan melindungi masyarakat dari penyalahgunaan keahlian dan otoritas profesional. Secara fundamental, kode etik termasuk dalam kategori kaidah moral positif yang mengarah pada perilaku yang sesuai dengan nilai-

⁷ MF Rahman Hakim, *Etika dan Pergulatan Manusia*, Surabaya, Visipres, 2010, hlm. 13

⁸ Siti Marwiyah, *Penegakan Kode Etik Profesi di Era Malapraktik Profesi Hukum*, Bangkalan Madura, UTM Press, 2015, hlm. 3



nilai etika dan moral.

Kode Etik Profesi

Kode etik profesi adalah panduan bagi sikap, perilaku, dan tindakan yang dilakukan dalam menjalankan tugas sehari-hari dalam suatu profesi. Kode etik profesi memiliki peran penting sebagai penyeimbang terhadap aspek negatif dari suatu profesi, seperti suatu kompas moral yang menunjukkan arah yang benar bagi profesi tersebut. Selain itu, kode etik juga bertujuan untuk menjamin kualitas moral profesi tersebut di mata masyarakat.⁹ Untuk agar kode etik dapat berfungsi dengan baik, penting bagi kode etik tersebut dibuat oleh para praktisi profesi itu sendiri. Kode etik tidak akan efektif jika hanya didikte dari pihak luar, seperti instansi pemerintah atau lembaga lainnya, karena tidak mencerminkan nilai-nilai dan aspirasi yang hidup dalam komunitas profesi itu sendiri. Instansi luar hanya dapat mendorong pembuatan kode etik dan membantu dalam proses perumusannya. Agar efektif, kode etik profesi harus menjadi bentuk pengaturan diri yang berasal dari dalam profesi itu sendiri.

Melalui penyusunan kode etik profesi, suatu profesi akan menetapkan standar yang jelas untuk mewujudkan nilai-nilai moral yang dianggap penting. Hanya kode etik yang mencerminkan nilai-nilai dan aspirasi yang diakui oleh profesi itu sendiri yang akan memiliki dampak yang signifikan dan menjadi landasan untuk dilaksanakan secara konsisten dan tekun. Salah satu syarat penting agar kode etik berhasil adalah pengawasan yang berkelanjutan terhadap pelaksanaannya. Hal ini bertujuan untuk mencegah kemungkinan terjadinya demoralisasi dalam profesi tersebut. Oleh karena itu, profesi yang didasarkan pada landasan moral atau norma-norma etis yang dapat dijadikan kode etik akan sangat relevan. Beberapa fungsi kode etik termasuk:

- Kode etik profesi berfungsi sebagai panduan untuk mengawasi perilaku moral, dengan sanksi yang lebih bersifat psikologis dan institusional. Pelanggaran terhadap kode etik tidak hanya melanggar hukum, tetapi juga bertentangan dengan nilai-nilai moral profesi. Oleh karena itu, para praktisi profesi diharapkan menjalankan pelayanan profesional dengan berpegang pada sikap etis.

⁹ Muhammad Nuh, *Etika Profesi Hukum*, Bandung: Pustaka Setia, 2011. hlm, 123

- Kode etik profesi membantu membangun integritas moral yang kuat di kalangan praktisi profesi. Integritas ini diharapkan mampu mengatasi berbagai tantangan tanpa mengorbankan citra profesi.
- Martabat dan identitas suatu organisasi profesi ditentukan oleh kualitas penerapan kode etik. Dengan kode etik, hak-hak klien dan kepentingan masyarakat umum dapat dipertahankan.
- Kode etik profesi membantu anggota profesi untuk tetap menjaga martabat dalam praktik profesional mereka. Dengan adanya kode etik ini, profesi tersebut dapat menghindari perilaku yang melanggar norma-norma dan menjaga integritas profesi.

Kode etik menjadi semakin krusial terutama ketika profesi hukum dihadapkan pada tantangan yang semakin berat dan kompleks. Pelaksanaan kode etik dalam profesi hukum lebih bergantung pada penyelenggara profesi itu sendiri, dengan masyarakat (klien) memiliki peran terbatas dalam fungsi pengawasan. Keputusan, tindakan, dan kreativitas dalam praktik hukum hanya akan menghasilkan dampak yang positif jika penyelenggara profesi memiliki niat baik dan komitmen untuk menerapkannya dengan sungguh-sungguh. Oleh karena itu, penting bagi penyelenggara profesi hukum untuk memperkuat penerapan kode etik dalam menjaga kualitas dan integritas profesi hukum.

Peranan etika profesi hukum dalam penegakan hukum yang baik

Manifestasi konkrit dari kode etik adalah penerapan pedoman perilaku yang telah ditetapkan dalam suatu profesi. Implementasi etika profesi, sebagaimana yang dijelaskan dalam kode etik, terhubung erat dengan budaya yang ada di dalam masyarakat. Budaya tersebut, dalam konsep idealnya, mencakup nilai-nilai dan norma-norma yang memberikan arah serta mengatur perilaku manusia dalam masyarakat. Salah satu aspek dari budaya ini adalah etika secara umum. Selain itu, budaya juga melibatkan unsur ilmu pengetahuan. Dalam konteks ini, ilmu pengetahuan terkait dengan budaya, sehingga aplikasi dan perkembangan ilmu pengetahuan turut terkait dengan budaya masyarakat yang bersangkutan. Dengan demikian, penerapan kode etik



dalam suatu profesi juga menjadi bagian dari dinamika budaya dan ilmu pengetahuan yang ada dalam masyarakat tersebut.

Penerapan prinsip etika dalam pelaksanaan suatu profesi mensyaratkan penggunaan ilmu tertentu untuk mengatasi berbagai persoalan masyarakat. Namun, penggunaan ilmu tersebut harus selaras dengan nilai-nilai budaya masyarakat yang bersangkutan. Artinya, dalam menjalankan profesi, pemanfaatan ilmu pengetahuan harus sejalan dengan nilai-nilai etika yang berlaku dalam kerangka budaya masyarakat, sehingga profesi tersebut memberikan manfaat yang maksimal bagi masyarakat. Meskipun dalam ilmu tertentu dalam suatu profesi memungkinkan tindakan tertentu, namun hal tersebut tidak boleh dilakukan jika bertentangan dengan prinsip etika. Sebagai contoh, dalam bidang medis, untuk menguji suatu pengobatan baru, tidak etis jika manusia dijadikan subjek percobaan tanpa pertimbangan etis yang matang. Begitu juga dalam bidang hukum, meskipun penyidikan seringkali menuntut teknik-teknik tertentu untuk memperoleh informasi, penggunaan cara-cara yang melanggar hak asasi manusia, seperti penyiksaan, secara etis tidak dapat diterima.

Etika profesi dan hukum sama-sama mengandung nilai-nilai yang mengatur perilaku manusia, tetapi dengan fokus yang berbeda. Hukum menetapkan aturan luar yang harus diikuti oleh individu, sedangkan etika bertujuan untuk membentuk sikap batiniah yang baik pada manusia. Meskipun memiliki persamaan dalam sifat normatif dan tujuan sosial, yaitu mengarahkan manusia untuk berperilaku sesuai dengan norma masyarakat, keduanya memiliki perbedaan dalam penerapan sanksi. Sanksi dalam etika profesi hanya berlaku bagi anggota profesi tertentu, sedangkan sanksi hukum berlaku untuk seluruh warga negara atau masyarakat. Pelanggaran etika profesi ditangani oleh organisasi profesi yang bersangkutan, sementara pelanggaran hukum ditangani sesuai dengan peraturan-peraturan yang berlaku dalam hukum umum. Kode Etik Profesi mengandung kewajiban-kewajiban yang mencakup tanggung jawab pada diri sendiri, masyarakat umum, rekanan, dan individu atau profesi yang dilayani. Dengan demikian, kode etik dapat dilihat sebagai bagian integral dari sistem hukum, yang menetapkan standar perilaku yang diharapkan dari anggota profesi.



Pelaksanaan hukum dalam kehidupan sehari-hari memiliki peran yang sangat penting karena inti dari tujuan hukum terletak pada pelaksanaannya. Hubungan antara keteraturan sosial dan aspek normatif menjadi salah satu alat untuk menciptakan keteraturan hukum, yang meliputi bidang politik, ekonomi, pertahanan keamanan, budaya, dan lain-lain. Keteraturan hukum bertujuan untuk menciptakan lingkungan masyarakat yang aman dan tenteram, oleh karena itu, aturan harus ditegakkan dan diterapkan secara tegas melalui upaya memastikan kepastian hukum. Kepastian hukum tidak hanya berarti keberadaan peraturan hukum, tetapi juga dapat terwujud melalui keputusan-keputusan yang diambil oleh pejabat yang berwenang. Dalam situasi nyata, hukum diwakili oleh keputusan konkret, meskipun secara abstrak hukum adalah seperangkat peraturan. Penerapan aturan hukum pada peristiwa tertentu selalu membutuhkan penilaian yang kemudian direspon dengan keputusan yang sesuai.

Dalam upaya penegakan hukum suatu negara, beberapa aktor utama yang memiliki peran yang sangat penting dikenal sebagai catur wangsa penegak hukum, yaitu hakim, jaksa, advokat, dan polisi. Hakim, sebagai pelaksana kekuasaan yudikatif, adalah lembaga penegak hukum yang mewakili kepentingan negara. Sementara itu, jaksa dan polisi adalah lembaga penegak hukum yang mewakili kepentingan pemerintah. Di sisi lain, advokat adalah lembaga penegak hukum yang mewakili kepentingan masyarakat. Peran advokat menjadi penting karena mereka dapat menjaga keseimbangan antara kepentingan negara dan pemerintah. Melalui pemberian jasa hukum, advokat menjalankan tugas profesi untuk menjaga tegaknya hukum dan keadilan demi kepentingan masyarakat pencari keadilan.

Dalam sistem penegakan hukum suatu negara, terdapat beberapa faktor kunci yang memiliki peran yang sangat penting, yang dikenal sebagai catur wangsa penegak hukum. Ini meliputi hakim, jaksa, advokat, dan polisi. Hakim bertindak sebagai penegak hukum yang mewakili kepentingan negara melalui pelaksanaan kekuasaan yudikatif. Sementara itu, jaksa dan polisi bertugas mewakili kepentingan pemerintah. Advokat, di sisi lain, merupakan lembaga penegak hukum yang mewakili kepentingan masyarakat. Peran advokat sangat penting karena mereka membantu menjaga keseimbangan antara kepentingan negara dan pemerintah. Melalui pemberian jasa hukum, advokat menjalankan tugas profesional mereka untuk memastikan tegaknya

hukum dan keadilan demi kepentingan masyarakat yang mencari keadilan.¹⁰

Penegakan hukum yang efektif memerlukan penegak hukum yang mampu mengubah keharusan hukum menjadi kenyataan dalam kehidupan masyarakat dan negara. Salah satu indikator keberhasilan dalam mewujudkan hukum adalah kemampuan penyelenggara profesi hukum dalam menangani berbagai jenis kejahatan, baik konvensional maupun kejahatan korporasi. Kriteria utama bagi seorang penyelenggara hukum yang baik adalah independensinya dan integritas moral yang kuat, serta kemampuan teknis dan kedewasaan etis dalam menangani tugasnya. Untuk mencapai standar tersebut, diperlukan kehadiran sarjana dan praktisi hukum yang memenuhi kualifikasi sebagai berikut:

- Sikap kemanusiaan dalam penegakan hukum menekankan perlunya perlakuan manusiawi terhadap individu yang terlibat dalam proses hukum. Ini berarti bahwa manusia harus dihormati dan dianggap sebagai individu yang memiliki martabat dan hak-haknya sendiri. Seorang sarjana hukum dituntut untuk tidak hanya memahami hukum secara formal, tetapi juga untuk menganalisis dan menginterpretasikan hukum dengan memperhatikan aspirasi dan dinamika masyarakat. Dengan memiliki sikap kemanusiaan ini, seorang sarjana hukum dapat menjadi penyelenggara hukum yang humanis, memiliki kualifikasi teknis dan etis yang matang.¹¹
- Sikap keadilan yang berbasis pada nilai-nilai kemanusiaan menuntut agar penyelenggara hukum memperhatikan kebutuhan dan aspirasi masyarakat dalam menegakkan hukum. Penegakan hukum yang benar bukan hanya didasarkan pada keuntungan pribadi, tetapi juga pada panggilan keadilan. Menunjukkan sikap keadilan bukanlah hal yang mudah, karena seringkali dihadapi dengan tantangan dan godaan yang mengarah pada tindakan yang tidak adil. Namun, penyelenggara hukum yang teguh pada kode etik akan tetap mempertahankan integritasnya dan mampu mengatasi berbagai rintangan.
- Kemampuan untuk melihat dan menilai nilai-nilai objektif dalam suatu kasus adalah kualitas penting bagi seorang penyelenggara hukum. Ini melibatkan

¹⁰ Fauzie Yusuf Hasibuan, Hukum dan Dunia Peradilan di Indonesia, Jakarta, Fauzie & Partners, 2007, hlm. 1

¹¹ Abdulkadir Muhammad, Etika Profesi Hukum. PT. Citra Aditya Bakti, Bandung, 1997, hlm. 116



analisis yang cermat terhadap fakta-fakta dan pijakan hukum yang relevan. Penyelenggara hukum yang objektif mampu menyeimbangkan antara kebutuhan praktis dalam menyelesaikan kasus dan prinsip-prinsip intelektual dalam mengembangkan ilmu hukum. Mereka juga mampu mempertahankan konsistensi dalam menerapkan hukum sesuai dengan kebutuhan masyarakat.

- Sikap kejujuran adalah prinsip fundamental bagi penegak hukum. Mereka harus menjauhkan diri dari perilaku curang dan berkomitmen untuk bertindak sesuai dengan kebenaran dan keadilan. Kejujuran ini tercermin dalam tindakan rasional, pelayanan yang manusiawi, komunikasi yang sopan, perlakuan yang hormat terhadap semua individu, dan pertimbangan yang berdasarkan hukum dan fakta. Penegak hukum yang jujur akan bertindak sesuai dengan norma-norma moral dan profesionalitas mereka, serta selalu berusaha untuk menegakkan keadilan dengan integritas dan kepatutan.

Sikap kejujuran adalah prinsip moral yang menjadi pedoman tertinggi bagi penyelenggara profesi hukum. Kehilangan sikap ini dapat memiliki dampak yang rumit dan serius bagi masyarakat dan negara. Kehadiran kejujuran dalam praktek profesi hukum menjadi penentu utama dalam menangani berbagai kasus hukum dan mencegah timbulnya masalah sosial dan hukum yang baru. Ketidakjujuran seringkali menjadi akar dari berbagai pelanggaran hukum dan moral di masyarakat. Oleh karena itu, menjaga sikap jujur dalam praktik penyelenggaraan hukum menjadi kunci utama dalam menjaga stabilitas nasional dan kesejahteraan masyarakat, terutama bagi mereka yang kurang berpengaruh. Dengan mempertahankan integritas dan kejujuran, penyelenggara profesi hukum dapat menjadi penjaga aspirasi dan keadilan bagi masyarakat yang lebih kecil.

KESIMPULAN

Kesimpulan dari paparan di atas adalah bahwa etika profesi hukum memegang peranan penting dalam penegakan hukum yang baik dan menjaga kepercayaan masyarakat terhadap sistem hukum. Etika profesi tidak hanya menjadi pedoman bagi perilaku penyelenggara hukum, tetapi juga merupakan fondasi yang mendukung



integritas, keadilan, dan kejujuran dalam praktik hukum. Dalam praktiknya, penerapan etika profesi memerlukan komitmen yang kuat dari individu yang menjalankan profesi hukum, termasuk hakim, jaksa, advokat, dan polisi. Sikap kemanusiaan, keadilan, objektivitas, dan kejujuran adalah beberapa nilai inti yang harus dijunjung tinggi dalam menjalankan tugas sebagai penyelenggara hukum.

Selain itu, kode etik profesi berperan sebagai panduan yang menjaga moralitas dan integritas profesi hukum. Kode etik memberikan standar perilaku yang diharapkan dari anggota profesi dan menetapkan kewajiban-kewajiban yang berkaitan dengan tanggung jawab moral terhadap klien, masyarakat, rekanan, dan profesi yang dilayani.

Dalam konteks penegakan hukum, penyelenggara profesi hukum memiliki tanggung jawab untuk mengedepankan keadilan dan menjaga hak-hak individu. Mereka juga harus mampu mengambil keputusan yang objektif dan menghormati prinsip-prinsip moral dalam menjalankan tugas mereka. Dengan demikian, kesimpulannya, etika profesi hukum tidak hanya menjadi pedoman moral, tetapi juga merupakan landasan yang diperlukan untuk menjaga kepercayaan masyarakat terhadap sistem hukum dan menjamin terwujudnya keadilan yang merata bagi semua individu dalam masyarakat.



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Peugah Laot: Wujud Optimalisasi Kinerja Panglima Laot dalam Mencapai *Ecological Security*

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1. Pendahuluan

Latar Belakang

Salah satu prinsip hukum yang dikenal dengan "Harmonia inter leges et traditiones", yang berarti Harmonisasi antara hukum dan tradisi. Adagium hukum tersebut dapat menggarisbawahi betapa pentingnya menyelaraskan hukum modern dengan tradisi dan nilai-nilai masyarakat adat untuk memastikan kesejahteraan dan perlindungan mereka. Hal ini juga selaras dengan bunyi Pasal 28I ayat (4), Undang-Undang Dasar Negara Republik Indonesia Tahun 1945, yaitu "Identitas budaya dan hak masyarakat hukum adat diakui dan dihormati dalam sistem hukum negara". Indonesia melalui peraturan perundang-undangan telah berkomitmen untuk menjamin hak-hak masyarakat adat dan memberikan perlindungan hak asasi manusia kepada masyarakat adat yang ada di Indonesia. Indonesia sendiri merupakan sebuah negara yang kaya akan tradisi, budaya, dan agama. Sebagai sebuah negara kepulauan dengan luas laut mencapai lebih dari 5,8 juta kilometer persegi, hal tersebut tentu telah banyak membawa keuntungan bagi Indonesia. Keuntungan yang didapatkan Indonesia di antaranya kekayaan keanekaragaman hayati dan sumber daya alam yang berlimpah di daratan maupun di perairan. Salah satu daerah di Indonesia yang kaya akan tradisi dan sumber daya alamnya ialah Aceh.

Aceh dikenal karena kekayaan budaya dan nilai agama yang mendalam. Ciri khas ini mempengaruhi pembentukan serta pelaksanaan peraturan perundang-undangan di daerah tersebut, secara tidak langsung mencerminkan karakteristik unik Aceh yang tidak bisa dibandingkan dengan daerah lain di Indonesia. Undang-Undang Nomor 11 Tahun 2006 tentang Pemerintahan Aceh¹, merupakan dasar hukum yang memberikan otonomi khusus kepada Aceh untuk mengatur dan mengelola urusan pemerintahan dan pembangunan daerah. Kemudian ada pula Undang-Undang Nomor 15 Tahun 2008 tentang Pembentukan Kabupaten dan Kota di

¹ Undang-Undang Nomor 11 Tahun 2006 tentang Pemerintahan Aceh



Aceh², Yang menjadi dasar pembentukan dan pengaturan daerah otonom di Aceh termasuk pembentukan lembaga-lembaga lokal seperti halnya lembaga Panglima Laot yang sampai saat masih berperan aktif dalam bidang kemaritiman Aceh.

Panglima Laot telah ada sejak periode 1607 hingga 1636, selama pemerintahan Sultan Iskandar Muda di Aceh. Pada awalnya, tugas Panglima Laot meliputi mobilisasi pasukan untuk peperangan melawan penjajah serta pemungutan pajak dari kapal-kapal yang berlabuh di Pelabuhan Aceh³. Seiring perkembangan zaman eksistensi panglima laot bergeser secara perlahan menjadi sebuah lembaga kearifan lokal yang diakui di Aceh. Disisi lain kondisi geografis Aceh yang dikelilingi oleh lautan membuat sebagian besar masyarakatnya bergantung pada profesi nelayan. Oleh Karena itu peran lembaga Panglima Laot sangat penting untuk mengatasi berbagai permasalahan kemaritiman di Aceh. Peran Panglima Laot antara lain mencakup memelihara kekuatan kekeluargaan dan solidaritas antar nelayan, menyusun serta mengawasi aturan adat atau hukum adat, memeriksa metode dan jenis penangkapan ikan, serta mensosialisasikan perkembangan teknologi dan hubungan manusia dengan alam. Panglima Laot juga berfungsi sebagai representasi masyarakat nelayan dalam berbagai hal, seperti menyelesaikan sengketa dengan nelayan asing, menyampaikan aspirasi nelayan lokal terhadap kapal asing, dan melakukan negosiasi lainnya, untuk menciptakan hubungan yang saling menguntungkan antara pemerintah dan masyarakat nelayan.⁴

Perkembangan teknologi dan ilmu pengetahuan tidak menghentikan peran dan fungsi Panglima Laot. Sebaliknya, Panglima Laot terus memperbarui informasi dan pengetahuannya melalui pemerintah dan lembaga-lembaga terkait perikanan dan kelautan. Namun terkadang muncul permasalahan dimana lembaga panglima laot kurang mampu berkolaborasi secara efektif dengan pemerintah. Hal ini biasanya disebabkan karena adanya ketidakselarasan perubahan aturan dengan kebiasaan masyarakat dan Ketidakpastian hukum akibat kurangnya inisiatif pemerintah dalam membuat kebijakan formil di bidang kemaritiman masyarakat pesisir Aceh. Alhasil sering terjadi konflik antar sesama masyarakat pesisir. Masalah tersebut sulit untuk diselesaikan dikarenakan sering kali panglima laot tidak mampu menyampaikan

² Undang-Undang Nomor 15 Tahun 2008 tentang Pembentukan Kabupaten dan Kota di Aceh

³ Adli, M. 2012. "Pembangunan Berkelanjutan Berbasis Kearifan Lokal Sektor Perikanan." (57): 309–21.

⁴ Satria, A. 2009. Ekologi Politik Nelayan. LKiS Yogyakarta

aspirasinya kepada pihak pemerintah dikarenakan terbatasnya kesempatan dan kurangnya partisipasi panglima laot dalam perumusan kebijakan pemerintah. Miskomunikasi antara panglima laot dan pemerintah dapat menyebabkan ketidaksejahteraan rakyat pesisir Aceh. Oleh karena itu panglima laot perlu untuk di gandeng agar bisa secara efektif untuk menyuarakan aspirasi masyarakat pesisir kepada pemerintah, sehingga diharapkan nantinya dapat tercipta hubungan baik antara masyarakat pesisir dengan pemerintah hingga bermanfaat pada peningkatan dan pembangunan sumber daya manusia masyarakat pesisir Aceh.

b. Rumusan Masalah

1. Bagaimana peran Panglima Laot sebagai lembaga kearifan lokal dalam menyelesaikan permasalahan sektor kelautan di wilayah pesisir Aceh?
2. Apa saja tantangan yang Panglima Laot hadapi dalam menyelesaikan permasalahan masyarakat nelayan di Aceh?
3. Bagaimana optimalisasi dalam menyelesaikan permasalahan antara Panglima Laot dan Pemerintah?

2. Pembahasan

a. Kedudukan Hukum Panglima Laot sebagai Lembaga Adat Istiadat

Salah satu prinsip hukum yang dikenal dengan adagium "*Spreekhuis van de wet*" menyatakan bahwa apa yang tertulis dalam undang-undang adalah hukum yang berlaku. Penerapan prinsip ini terlihat dalam UU No. 11 Tahun 2006 tentang Pemerintahan Aceh, khususnya pada Pasal 98 ayat (1)⁵, yang menyebutkan bahwa lembaga adat berfungsi sebagai wadah partisipasi masyarakat dalam pemerintahan. Lebih lanjut, ayat (3) menjelaskan bahwa salah satu lembaga tersebut adalah Panglima Laot. Dengan demikian, keberadaan lembaga Panglima Laot memiliki dasar legal yang kuat di mata hukum. Menindaklanjuti regulasi

⁵ UU No. 11 Tahun 2006 tentang Pemerintahan Aceh pasal ayat (1)

tersebut, Aceh sendiri juga sudah mengeluarkan peraturan yang mengatur lebih lanjut terkait dengan Tupoksi dari Panglima Laot.⁶

Qanun No. 9 Tahun 2008 tentang Pembinaan Kehidupan Adat dan Adat Istiadat secara umum menjelaskan mengenai penyelesaian sengketa atau perselisihan berdasarkan adat, termasuk adat laot. Dalam Pasal 14 ayat (5) huruf a⁷, disebutkan bahwa penyelesaian sengketa secara adat laot dilakukan oleh tokoh adat seperti Panglima Laot. Qanun No. 10 Tahun 2008 tentang Lembaga Adat, terutama pada Pasal 27 dan 28 di bagian kesembilan, memberikan rincian mengenai struktur organisasi, wewenang, tugas, dan fungsi Panglima Laot. Salah satu kewenangan Panglima Laot, sebagaimana tercantum dalam Pasal 28 ayat (1) huruf d, ialah:

“...mengadvokasi kebijakan di bidang kelautan dan perikanan untuk meningkatkan kesejahteraan nelayan.”⁸

Ketentuan tersebut menunjukkan bahwa peran Panglima Laot tidak hanya terbatas pada penyelesaian perselisihan berdasarkan adat laot. Jika dianalisis lebih mendalam, *Ratio Legis* dari Pasal 28 ayat (1) ini memberikan penjelasan bahwa Panglima Laot memiliki kewenangan yang lebih luas, termasuk berkontribusi dalam pemerintahan untuk memajukan sektor kelautan dan perikanan. Sesuai dengan Pasal 4 UU No. 1 Tahun 2023 yang menegaskan asas wilayah atau teritorial, kewenangan Panglima Laot ini memiliki batasan wilayah yang jelas, diperkuat dengan pembagian peran antara Panglima Laot di tingkat Lhok, Kabupaten/Kota, dan Aceh.⁹

b. Implementasi Pembatasan Wilayah Pesisir dalam Qanun 1/2020 Tentang Rencana Zonasi Wilayah Pesisir dan Pulau-Pulau Kecil Aceh Tahun 2020-2040

Dalam wawancara dengan Dr. Teuku Muttaqin Mansur, M.H., seorang dosen hukum adat di Universitas Syiah Kuala, beliau menjelaskan bahwa wilayah adat laut di Aceh pada dasarnya merupakan laut bebas. Namun, siapa pun yang ingin melaut di wilayah Aceh harus mematuhi aturan yang berlaku. Menurut Qanun No. 1 Tahun 2020, khususnya pada Pasal 6 ayat 3 tentang Zona Perikanan Tangkap, batas maksimal kekuasaan Panglima Laot adalah 4 mil dari garis pantai. Meskipun demikian, di Aceh terdapat kasus di mana Lhok yang berdekatan

⁶ UU No. 11 Tahun 2006 tentang Pemerintahan Aceh pasal ayat (3)

⁷ Qanun No. 9 Tahun 2008 tentang Pembinaan Kehidupan Adat dan Adat Istiadat pasal 14 ayat (5) huruf a

⁸ Qanun No. 10 Tahun 2008 tentang Lembaga Adat pasal 27 dan 28

⁹ UU No. 1 Tahun 2023 pasal 4

mengalami konflik wilayah, sehingga pemerintah menetapkan aturan bahwa batas antar Lhok dibagi rata, yang mengurangi batasan menjadi hanya 2 mil per Lhok karena adanya tumpang tindih wilayah.¹⁰

Dr. Teuku Muttaqin, yang juga peneliti tentang masyarakat pesisir dan hukum adat Aceh, menyatakan bahwa masalah yang dihadapi oleh para Panglima Laot saat ini adalah ketiadaan pelaksanaan pembatasan wilayah secara formal oleh pemerintah daerah, baik bupati maupun walikota di Aceh. Sehingga, ditakutkan akan timbul ketidakpastian hukum dan potensi konflik di antara para Panglima Laot, terutama di wilayah-wilayah Lhok yang saling berdekatan. Tanpa batas wilayah yang jelas dan diakui secara resmi, terjadi tumpang tindih klaim atas area perairan, yang dapat mengganggu aktivitas perikanan, menurunkan efisiensi pengelolaan sumber daya laut, serta memperburuk hubungan antar komunitas nelayan.¹¹ Di Maluku, khususnya di kalangan masyarakat Haruku, terdapat komunikasi yang baik antara pemerintah dan masyarakat adat dalam hal pembatasan wilayah. Hal ini berkontribusi pada minimisasi kekurangan dalam mengoptimalkan daerah yang dikuasai oleh masyarakat adat¹². Maka dari itu, sinergitas antara pemerintah dan masyarakat adat pesisir terutama para Panglima Laot di Aceh memerlukan ‘Jembatan’ guna mempermudah komunikasi antar keduanya.

c. Optimalisasi Peran Pemuda Melalui Organisasi Peugah Laot

Peran Panglima Laot sangat signifikan dalam sektor kelautan dan perikanan, termasuk sebagai penjaga *Ecological Security*. Peran ini diwujudkan melalui upaya menjaga lingkungan laut di Aceh, seperti pelestarian biodiversitas, pencegahan abrasi, dan pengelolaan sumber daya perikanan, yang pada akhirnya mendukung keberlanjutan perikanan tangkap¹³. Oleh karena itu, akan sangat disayangkan jika fungsi ini terbatas karena kurangnya inisiatif pemerintah dalam menetapkan batas formal wilayah pesisir. Mengambil contoh di daerah Maluku yang mana memiliki sistem penguasaan laut adat yang diatur dalam sasi laut, yang mana terdapat hubungan baik antara pemerintah adat dan masyarakat adat sehingga komunikasi yang terjalin untuk

¹⁰ Qanun No. 1 Tahun 2020 pasal 6 ayat (3)

¹¹ Wawancara dengan Dr. Teuku Muttaqin Mansur, M.H., Dosen dan peneliti tentang masyarakat pesisir dan hukum adat Aceh, pada 23 Agustus 2024 di Banda Aceh

¹² Andri Hernandi et al. "Perbandingan Sistem Penguasaan Laut Adat di Desa Haruku Maluku dengan Sistem Penguasaan Laut Nasional." *Jurnal Sosioteknologi* 16, no. 3 (2017).

¹³ Elly Irhana Savitri et al. "Peran Panglima Laot Dalam Meningkatkan Ketahanan Sosial Masyarakat Pesisir Aceh." *Jurnal Education and Development* 10, no. 2 (2022).

menentukan batasan tiap wilayah lebih jelas dan terukur, sehingga dapat meminimalisir terjadinya sengketa hak wilayah setiap masyarakatnya.

Ecological Security menjadi bentuk keharmonisan antara nelayan dan alam, di mana mereka menjaga keberlanjutan sumber daya laut melalui adat dan tradisi yang dipertahankan dari generasi ke generasi. Maka, Panglima Laot memainkan peran penting dalam memastikan bahwa praktik-praktik ini tetap relevan dan efektif di tengah perkembangan zaman.

Lantas bagaimana pemuda dapat berkontribusi secara aktif dalam optimalisasi sektor kelautan dan perikanan?. Juris muda dapat memberikan kontribusi signifikan dalam organisasi pembentukan organisasi yang menjadi penghubung efektif antara pemerintah, Panglima Laot, dan masyarakat pesisir. Mereka dapat membantu dalam merancang dan menginterpretasikan kebijakan maritim yang tidak hanya mempertimbangkan aspek hukum, tetapi juga kearifan lokal yang telah menjadi bagian dari kehidupan masyarakat Aceh selama berabad-abad. Dengan pemahaman mereka tentang hukum lingkungan dan adat, mahasiswa hukum dapat memastikan bahwa kebijakan yang diterapkan tidak hanya melindungi ekosistem laut tetapi juga mendukung kesejahteraan ekonomi dan budaya masyarakat adat.

Selain itu, pemuda bisa berperan dalam advokasi dan penyuluhan hukum, memberikan pemahaman yang lebih baik kepada nelayan tentang hak dan kewajiban mereka dalam pengelolaan sumber daya laut. Mereka dapat terlibat dalam program-program edukasi yang dirancang oleh Peugah Laot untuk mengurangi kesalahpahaman terhadap kebijakan pemerintah dan mencegah potensi konflik. Dengan mendampingi Panglima Laot dalam dialog kebijakan, pemuda dapat memastikan bahwa suara dan aspirasi masyarakat pesisir terwakili dengan baik, sehingga kebijakan yang dihasilkan lebih inklusif dan adil. Maka dari itu, penulis menginisiasikan pembentukan organisasi Peugah Laot yang merupakan organisasi nirlaba dengan berperan sebagai jembatan vital antara pemerintah dan nelayan yang diwakili oleh Panglima Laot, dalam mengelola dan melaksanakan kebijakan terkait wilayah teritorial laut adat. Didirikan dengan tujuan utama untuk memfasilitasi komunikasi, kolaborasi, dan koordinasi antara para pemangku kepentingan ini, Peugah Laot menjadi ujung tombak dalam upaya menciptakan harmoni antara perlindungan lingkungan laut dan kesejahteraan ekonomi masyarakat pesisir yang bergantung pada sumber daya alam tersebut. Peugah Laot memiliki makna dan tanggung jawab sebagai penjaga harmoni antara hukum adat dan tradisi maritim yang diwakili oleh Panglima Laot dan kebijakan modern yang diatur oleh pemerintah Aceh.

Sebagai jembatan penghubung, organisasi ini mengemban tugas penting dalam mempertahankan kearifan lokal aceh yang telah diwariskan dari generasi ke generasi, sekaligus menyesuaikan dan mengintegrasikannya dengan perkembangan regulasi dan kebijakan yang bertujuan untuk melindungi dan melestarikan ekosistem laut.

Organisasi Peugah Laot serupa dengan Aliansi Masyarakat Adat Nusantara (AMAN)¹⁴ yang merupakan organisasi masyarakat independen yang memiliki tujuan untuk menciptakan kehidupan yang adil dan makmur bagi seluruh komunitas adat di Indonesia. AMAN aktif dalam berbagai tingkat, mulai dari lokal hingga internasional, dalam mewakili dan memperjuangkan hak-hak serta isu-isu yang dihadapi oleh masyarakat adat. Organisasi ini memiliki keanggotaan yang terdiri dari 2.304 komunitas adat di seluruh Indonesia, dengan total sekitar 17 juta anggota individu. Komunitas-komunitas ini telah mendiami wilayah adat mereka secara turun-temurun, mempertahankan hak kedaulatan atas tanah dan sumber daya alam di wilayah tersebut. Selain itu, mereka juga memiliki kehidupan sosial dan budaya yang diatur oleh hukum adat serta lembaga-lembaga adat yang berfungsi untuk menjaga kelangsungan hidup mereka sebagai komunitas adat yang mandiri dan berkelanjutan.

Peugah Laot berdiri dengan visi untuk menciptakan sebuah ruang kolaboratif di mana pemerintah dan masyarakat adat dapat bekerja bersama dalam mengelola wilayah laut secara berkelanjutan dan adil. Dalam menjalankan misinya, Peugah Laot tidak hanya menjadi penyalur aspirasi para nelayan yang diwakili oleh Panglima Laot, tetapi juga berperan sebagai fasilitator yang aktif dalam proses dialog antara kedua pihak. Peugah Laot percaya bahwa dengan komunikasi yang terbuka dan kolaboratif, solusi terbaik dapat ditemukan untuk menjawab tantangan yang ada, baik dari segi pelestarian lingkungan maupun pelaksanaan kebijakan.

Salah satu fokus utama Peugah Laot adalah mengedukasi nelayan melalui Panglima Laot mengenai kebijakan maritim yang berlaku karena kurangnya informasi atau kesalahpahaman terhadap kebijakan pemerintah dapat menyebabkan konflik dan ketegangan. Oleh karena itu, Peugah laot secara aktif terlibat dalam program-program pelatihan dan sosialisasi yang bertujuan untuk memperkuat pemahaman nelayan tentang hak-hak mereka serta tanggung jawab yang harus mereka emban dalam pengelolaan sumber daya laut. Dengan pendekatan ini, Peugah laot berupaya untuk memberdayakan nelayan melalui Panglima Laot

¹⁴ Aliansi Masyarakat Adat Nusantara (AMAN), diakses pada 1 September 2024, <https://www.aman.or.id/>

agar dapat terlibat secara penuh dan bermakna dalam proses pengambilan keputusan terkait wilayah mereka.

Namun, Peugah Laot juga menyadari bahwa edukasi saja tidak cukup. Oleh karena itu, Peugah Laot juga aktif dalam melakukan advokasi untuk memastikan bahwa suara panglima Laot didengar dan dipertimbangkan dalam perumusan kebijakan. Organisasi ini akan bekerja sama dengan Panglima Laot, berbagai lembaga pemerintah, LSM, dan akademisi untuk mengembangkan kebijakan yang berbasis data serta memperhatikan aspek kultural yang penting bagi nelayan.

Selain itu, Peugah Laot menginisiasi program riset dan kolaborasi dengan berbagai pihak untuk mendukung kebijakan yang lebih komprehensif. Misalnya, melalui kerja sama dengan universitas dan pusat penelitian, Peugah Laot mendorong studi-studi tentang dampak kebijakan terhadap ekosistem laut dan kehidupan masyarakat adat. Hasil dari penelitian ini kemudian digunakan untuk memperkuat argumen dalam advokasi dan dialog kebijakan.

Menurut Undang-undang nomor 45 tahun 2009¹⁵ tentang Perikanan menyebutkan bahwa pengelolaan perikanan merupakan sebuah kewajiban. Maka, melalui pendekatan ekosistem pengelolaan perikanan (*Ecosystem Approach to Fisheries Management/EAFM*) menjadi penting dalam pelestarian ekosistem laut. Sebagai organisasi yang memahami pentingnya keseimbangan antara keberlanjutan lingkungan dan kesejahteraan masyarakat, Peugah Laot mengembangkan program yang dirancang untuk memberdayakan masyarakat adat dan nelayan dalam upaya pelestarian sambil tetap mendukung kebutuhan ekonomi mereka. Pengelolaan Kawasan Laut Berbasis Masyarakat (*Marine Protected Areas/MPA*)¹⁶ oleh Peugah Laot mendorong pembentukan dan pengelolaan kawasan laut berbasis masyarakat sebagai upaya pelestarian keanekaragaman hayati laut. Dalam program ini, nelayan dan Panglima Laot diberikan kewenangan untuk mengelola dan melindungi wilayah laut mereka dengan dukungan dari pemerintah dan lembaga konservasi. Peugah Laot membantu dalam penyusunan peraturan lokal secara formal yang mengatur pemanfaatan sumber daya laut secara berkelanjutan. Program ini bertujuan untuk melestarikan spesies yang terancam punah, melindungi habitat penting, dan menjaga keseimbangan ekosistem laut.

¹⁵ Undang-undang No. 45 tahun 2009

¹⁶ Christian Bueger, "What Is Maritime Security?" (Murphy 2010): 1–11.

Dengan semua upaya ini, Peugah Laot berharap dapat menciptakan keseimbangan yang harmonis antara pelestarian lingkungan laut dan pengambilan kebijakan. Peugah Laot percaya bahwa perlindungan wilayah laut adat tidak hanya penting untuk keberlanjutan lingkungan, tetapi juga untuk menjaga identitas budaya dan tradisi yang telah diwariskan selama berabad-abad. Di tengah dinamika globalisasi dan perubahan iklim, Peugah Laot terus berkomitmen untuk menjadi garda terdepan dalam memastikan bahwa kebijakan maritim di Aceh tidak hanya berfokus pada pembangunan, tetapi juga menghormati hak-hak dan kesejahteraan masyarakat adat yang hidup dari laut.

3. Penutup

a. Kesimpulan

Peran Panglima Laot sebagai lembaga adat yang berfungsi mengatur dan mengawasi kegiatan kelautan di Aceh memiliki kedudukan hukum yang kuat dan penting dalam melindungi masyarakat pesisir. Meskipun demikian, implementasi kebijakan pemerintah terkait pembatasan wilayah pesisir masih memerlukan peningkatan, terutama dalam memastikan kejelasan batas wilayah dan mencegah potensi konflik antar komunitas nelayan. Sinergi antara Panglima Laot dan pemerintah sangat dibutuhkan untuk menciptakan hubungan yang harmonis dan berkelanjutan dalam pengelolaan sumber daya laut. Untuk mengatasi tantangan ini, keterlibatan organisasi Peugah Laot menjadi sangat relevan. Peugah Laot dapat berperan sebagai jembatan komunikasi antara Panglima Laot, masyarakat pesisir, dan pemerintah. Dengan mendukung advokasi kebijakan berbasis data dan kearifan lokal, organisasi ini mampu memfasilitasi dialog yang lebih inklusif dan memperkuat peran Panglima Laot dalam melindungi hak-hak masyarakat adat. Selain itu, melalui program edukasi dan pelatihan, Peugah Laot juga dapat meningkatkan kesadaran nelayan mengenai kebijakan maritim yang berlaku, sehingga mencegah kesalahpahaman dan potensi konflik. Dengan demikian, kolaborasi antara Peugah Laot, Panglima Laot, dan pemerintah diharapkan dapat menciptakan ekosistem laut yang lebih terjaga dan berkelanjutan, serta memberikan manfaat ekonomi dan sosial bagi masyarakat pesisir Aceh.

b. Rekomendasi

1. **Penguatan Kebijakan Kolaboratif:** Pemerintah Aceh perlu memperkuat sinergi dengan Panglima Laot melalui kebijakan yang lebih inklusif dan kolaboratif, seperti penetapan batas wilayah laut yang jelas dan diakui secara resmi. Hal ini untuk menghindari konflik dan meningkatkan kesejahteraan masyarakat pesisir.
 2. **Optimalisasi Peran Pemuda:** Peran pemuda, khususnya mahasiswa hukum, sangat penting dalam menjembatani komunikasi antara Panglima Laot dan pemerintah. Pembentukan organisasi seperti Peugah Laot dapat menjadi platform untuk advokasi dan edukasi nelayan mengenai kebijakan maritim, serta membantu merancang kebijakan yang mempertimbangkan kearifan lokal.
 3. **Pelatihan dan Edukasi:** Program pelatihan dan sosialisasi yang melibatkan Panglima Laot dan nelayan perlu ditingkatkan untuk memperkuat pemahaman mereka tentang hak dan kewajiban dalam pengelolaan sumber daya laut. Ini akan mendukung implementasi kebijakan yang berkelanjutan dan inklusif.
 4. **Riset dan Advokasi:** Peugah Laot dapat bekerja sama dengan universitas dan lembaga penelitian untuk mengembangkan kebijakan berbasis data yang mendukung perlindungan lingkungan dan kesejahteraan masyarakat adat. Pendekatan ini akan memastikan bahwa kebijakan maritim di Aceh tidak hanya fokus pada pembangunan, tetapi juga menghormati hak-hak adat dan keberlanjutan ekosistem laut.
- Dengan langkah-langkah ini, diharapkan tercipta harmoni antara tradisi adat dan kebijakan modern, sehingga *ecological security* di Aceh dapat tercapai secara optimal.

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Consumer Protection Transformation: Legislative Draft Analysis as a Response to Contemporary Challenges of Change

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Abstract

This study aims to discuss the definitions of consumers and business actors in the Indonesian Consumer Protection Law (UUPK) and compares them with international guidelines. The definition of consumers and business actors in the UUPK is expanded to include legal entities, considering the involvement of businesses and legal institutions in consumer protection. The discussion also covers the differences between end consumers and intermediate consumers, as well as the importance of separating entities operating in the goods and services sectors. There is also an analysis of the development of electronic commerce (e-commerce) and the use of digital contracts, which are not fully regulated in the UUPK. Emphasis is placed on the need for UUPK revision to accommodate the evolution of modern trade, including consumer protection in electronic commerce and the regulation of digital contracts.

Keywords

The Consumer Protection Law, Consumer, Business Actor, Goods, Services, E-commerce, Electronic Contracts



Introduction

The evolution of global consumer protection law originated in the United States and Europe, catalyzed by Upton Sinclair's novel "The Jungle," which exposed the poor conditions in the meatpacking industry. This movement underwent four major phases, starting from the early 20th century to the consolidation of the consumer protection movement post-1965.

The establishment of the International Organization of Consumer Union (IOCU), later known as Consumers International (CI), marked the international recognition and expansion of this movement. In 1985, the United Nations issued the Guidelines for Consumer Protection, setting international standards for consumer protection, strengthening the global consumer position, and encouraging countries to adopt stricter regulations to safeguard consumer rights.

In the United States, the development of consumer protection gained significant momentum through President John F. Kennedy's initiative in 1962. Kennedy established four consumer rights, which became a historical milestone in consumer protection: the right to safety, the right to be informed, the right to choose, and the right to be heard. Key legislations such as the Food, Drug, and Cosmetic Act and the Wool Products Labeling Act demonstrated the U.S. commitment to consumer protection.

From an Islamic perspective, the history of consumer protection refers to principles established by the Prophet Muhammad (PBUH). His honesty and integrity in trade, exemplified by his management of Khadijah bint Khuwailid's goods for a commission, form the moral foundation of Islamic commerce. Islamic trade principles emphasize honesty and justice, with the Prophet setting examples of fair trade and laying down basic principles, including free market mechanisms devoid of interference and price manipulation.

In Medina, the Prophet prohibited trade practices detrimental to consumers, such as talaqai rukban and tathfif, to protect consumer rights both physically and spiritually. In case of market imbalance, the government is mandated to regulate prices to ensure justice between producers and consumers, illustrating that consumer protection in Islam also considers fair intervention by authorities.

The development of consumer protection laws in Indonesia has been influenced by the evolution of the global trading system, particularly within the framework of the World Trade Organization (WTO) and programs from the International Monetary Fund (IMF) and the World Bank. The WTO's role in setting international trade standards has prompted Indonesia to align its consumer protection regulations with global best practices. Additionally, IMF and World Bank programs focusing on economic reform and governance enhancement have provided further impetus.

Article 1, Clause 1 of the Consumer Protection Law states that consumer protection encompasses all efforts to ensure legal certainty to protect consumers. The objective of consumer protection is to enhance consumer awareness, ability, and independence in self-protection and to uphold their dignity by avoiding negative impacts from the use of goods and services.

As explained in Article 2 of the Consumer Protection Law, consumer protection is based on several key principles: benefit, justice, balance, security and safety of consumers, and legal certainty

According to Az. Nasution, consumer protection law encompasses all legal principles and norms that regulate and protect consumers in their relationships and issues with providers of goods and/or services.¹ Consumer law, on the other hand, regulates relationships and issues among various parties concerning consumer goods and services in social interactions.² Both branches of law address consumer rights, though they are often difficult

¹ Az. Nasution, Hukum Perlindungan Konsumen: Suatu Pengantar (Diadat Media 2014).[12].

² *Ibid.*

to separate and delineate.³

Article 4 of the Consumer Protection Law details the rights of consumers, including:

1. The right to comfort, security, and safety in consuming goods and/or services.
2. The right to choose goods and/or services and to obtain those goods and/or services in accordance with the exchange value and conditions and guarantees promised.
3. The right to correct, clear, and honest information about the condition and guarantee of goods and/or services.
4. The right to be heard in opinions and complaints about the goods and/or services used.
5. The right to advocacy, protection, and appropriate dispute resolution efforts in consumer protection.
6. The right to receive consumer education and guidance.
7. The right to be treated or served properly and honestly and non-discriminatively.
8. The right to compensation, restitution, and/or reimbursement if the goods and/or services received are not in accordance with the agreement or not as they should be.
9. Other rights stipulated in other statutory provisions.

Globalization, free trade, and industrialization have expanded the distribution of goods and services, providing consumers with access to various imported products. However, these developments also present challenges, such as weak oversight that can lead to the entry of dangerous or substandard goods. Unfair business competition may drive producers to lower product quality, ultimately harming consumers.

These three factors—globalization, the era of free trade, and industrialization—pose challenges to consumer protection laws in maintaining consumer rights. Although they expand distribution and accelerate mass production, these factors also bring risks related to low-quality goods and oversight challenges, which need to be addressed to better protect consumers

³ Shidarta, Hukum Perlindungan Konsumen Indonesia (Grasindo 2000).[9].

Literature Review

Consumer protection constitutes a fundamental pillar for establishing a robust financial industry in Indonesia. The crucial role of consumer protection in maintaining public trust is indispensable, as this trust is a primary requirement for the development of the financial services industry. However, the current reality indicates that consumers in Indonesia are in a weaker position compared to business operators, necessitating consumer empowerment to ensure that consumers are not perpetually disadvantaged.⁴

Thus, various studies have emerged addressing this issue by proposing several new innovations such as the necessity for legislation that specifically regulates digital transactions⁵ or the amendment of the Consumer Protection Law to ensure its substance encompasses technical aspects with legal force, fairness, and accompanied by clear sanctions that are in line with contemporary developments.⁶

Methods

This paper employs a normative juridical approach, commonly applied in legal analysis. Through library research, this approach examines secondary data, primarily primary legal materials and secondary legal materials, to understand the legal framework governing consumer protection.

The primary legal material focused on includes Law Number 8 of 1999 concerning Consumer Protection. The analysis of this primary legal material aims to understand the rights and obligations of consumers, as well as the enforcement mechanisms in the context of consumer protection.

Secondary legal materials are obtained through the examination of research findings, books, scholarly journals, and other literature discussing the legal substance and institutional

⁴ Holijah, 'Pengintegrasian Urgensi dan Eksistensi Tanggung Jawab Mutlak Produk Barang Cacat Tersembunyi oleh Pelaku Usaha dalam Undang-Undang Perlindungan Konsumen di Era Globalisasi' (2014) 14 Jurnal Dinamika Hukum.[181].

⁵ Jundata Mela Aufani, 'Analisis Perlindungan Hukum Terhadap Konsumen Tiktok Shop di Indonesia' (2024) 20 Jurnal Ilmiah Ilmu Hukum.[9490].

⁶ Anak Agung Mira Cahyani, 'Relevansi Perlindungan Konsumen Melalui Pemulihan Regulasi di Era Transformasi Digital' (2024) 13 E-Journal Ilmu Hukum Kertha Wicara.[155].

aspects of consumer protection. The analysis of these secondary legal materials aids in gaining a deeper understanding of recent developments in consumer protection, legal interpretations, and expert opinions on relevant issues.

Through the normative juridical approach and library research, this literature review aims to provide a comprehensive understanding of the legal framework regulating consumer protection. By examining relevant primary and secondary legal materials, this analysis is expected to identify deficiencies in the existing legal framework and provide recommendations for necessary improvements or enhancements in the Draft Consumer Protection Law

Results

Article 1 Number 2 of the Consumer Protection Law states that a consumer is any person who uses goods and/or services available in society, whether for their own interests, family, others, or other living beings, and not for trading purposes. In this context, the Consumer Protection Law (UUPK) defines consumers as individuals, not legal entities. However, there is an urgent need to expand this definition by including legal entities as legal subjects. This is important considering the involvement of business operators and legal entities in consumer protection is not limited to individuals but also involves business entities and legal institutions.

The United Nations Guidelines for Consumer Protection (UNGCP) define consumers as natural persons acting primarily for personal, family, or household purposes, while recognizing that member states may adopt different definitions to meet their domestic needs. Although the current definition is consistent with the UNGCP guidelines, it is important to note that the UNGCP grants member states the freedom to define consumers according to their national legal requirements.

Expanding the definition of consumers to include legal entities as legal subjects becomes highly important. In practice, business operators and consumers consist not only of individuals but also involve business entities as parties engaged in consumer protection.



The concept of consumers in economic contexts is divided into end consumers and intermediary consumers, where end consumers are end users of products, while intermediary consumers use products as part of the production process of other products. Therefore, this law should clearly specify that the consumers referred to are end consumers.

Furthermore, Article 1 Numbers 3, 4, and 5 provide further definitions. Business operators are any individuals or business entities, whether legal entities or non-legal entities, established and domiciled or conducting activities within the legal jurisdiction of the Republic of Indonesia, either individually or jointly through agreements to carry out business activities in various economic fields. Goods are any tangible or intangible objects, movable or immovable, consumable or non-consumable, which can be traded, used, utilized, or exploited by consumers. Services are any form of work or performance provided to the public for use by consumers.

The separation between business operators operating in the goods sector and service providers is important, considering their fundamentally different characteristics. The merging of the concepts of goods and services often equates treatment towards them, although they actually have different natures. The inability to distinguish between business operators of goods and service providers also makes several professional service providers, such as doctors, lecturers, and notaries, reluctant to comply with the Consumer Protection Law. Additionally, the equality in legal responsibilities between business operators of goods and service providers, although having different types of responsibilities, creates confusion in the application and enforcement of the Consumer Protection Law.

Moreover, concerning consumer protection regulations that continue to evolve along with the development of trading methods through electronic systems (e-commerce), the regulation of contracts in the Consumer Protection Law is still not fully adjusted to the evolution of current contract forms. The known forms of contracts include negotiated contracts, standardized contracts, and digital contracts.

However, the use of digital contracts or electronic agreements (e-contracts) and the rapid development of electronic commerce (e-commerce) are not specifically regulated in the Consumer Protection Law. Nevertheless, the development of e-commerce has been discussed in the United Nations Guidelines for Consumer Protection (UNGCP) 2016. The guidelines state that member states must work towards enhancing consumer trust in e-commerce by developing transparent and effective consumer protection policies, ensuring protection no less than that provided in other forms of trade. Member states are also expected to review existing consumer protection policies to accommodate specific features of e-commerce and ensure that consumers and businesses are informed about their rights and obligations in the digital market. Additionally, member states may consider relevant international guidelines and standards regarding e-commerce and, if necessary, adapt them to their domestic economic, social, and environmental conditions.

This indicates that consumer protection measures taken by the Indonesian Government in electronic trading must be commensurate with the protection provided to consumers in other types of trading, including the development of consumer protection policies in electronic transactions. Therefore, United Nations member states, including Indonesia, need to review existing consumer protection regulations in their respective countries and identify changes needed to accommodate aspects of electronic commerce (e-commerce) and in the context of the industrial revolution 4.0 in the trading sector.

Discussion

According to the Kamus Besar Bahasa Indonesia (KBBI), "perlindungan" is defined as a place of refuge, protective action, or efforts to make something protected. Meanwhile, the process, manner, or action of protecting is known as "pelindungan." Although "perlindungan" and "pelindungan" share the same root word, which is "lindung," their affixes and formation processes differ. The word "perlindungan" originates from "lindung" with the addition of affixes resulting in "berlindung," which then becomes "perlindungan." Conversely, the word "pelindungan" derives from "lindung" with affixes added to become "melindungi," which then becomes "pelindungan." By examining the formation process of these words, it can be concluded that "perlindungan" is more related to the action



of seeking refuge, while "pelindungan" pertains to the action of protecting.

Additionally, in the Kamus Besar Bahasa Indonesia (KBBI), "konsumen" is defined as users of produced goods such as clothing and food, recipients of advertisements, or service users such as customers. In general, it is defined as the ultimate user of products delivered to them by entrepreneurs,⁷ namely anyone who obtains goods for personal use and not for resale or trade.⁸ Philip Kotler, in his book "Principles of Marketing," defines consumers as all individuals and households who purchase or acquire goods or services for personal consumption. Fundamentally, consumers are anyone who uses goods or services available in society with the aim of meeting their living needs or various other requirements without reselling them.

From the various definitions of consumers that have been presented, it can be concluded that the criteria for a consumer include:

1. Users of goods and/or services obtained through purchase or free of charge.
2. Use of goods for personal, family, others, or other living beings' interests.
3. Not intending to resell the goods or services.

From the concept of consumers developed by experts, consumers are then distinguished into end consumers and intermediary consumers. End consumers are any individuals who acquire and use goods and/or services to meet their personal, family, and/or household needs, and not for resale (non-commercial). Conversely, intermediary consumers are any individuals who obtain goods and/or services for use with the purpose of producing other goods/services or for resale (commercial purposes).

Meanwhile, Article 1 number 2 of the Consumer Protection Law defines a Consumer as any person who uses goods and/or services available in society, whether for their own interests, family, others, or other living beings and not for trading purposes. The understanding of

⁷ Mariam Darius, *Perlindungan Terhadap Konsumen Ditinjau dari Segi Standar Kontrak (Baku)* (Binacipta 1980). [59-60].

⁸ Az. Nasution, *Iklan dan Konsumen (Tinjauan dari Sudut Hukum dan Perlindungan Konsumen)* (LPM FE-UI 1994). [23].

'not for trading purposes' includes:

1. The goods or services are not transferred in ownership or benefit to others; or
2. The goods or services are not used as part of the production process of other goods or the provision of other services.

Based on this definition, the Consumer referred to in the Consumer Protection Law is the end consumer.

In addition to issues related to the concept of End Consumers, it is also necessary to explain that the end consumer of goods and/or services is a legal subject in consumer protection. Article 1 number 2 of the Consumer Protection Law defines a consumer as anyone who uses goods and/or services available in society for personal, family, others, or other living beings' interests, and not for trading. This definition only covers individuals as legal subjects. However, consumers as individual legal subjects should be aligned with the legal subject arrangements in Book I of the Civil Code. Therefore, there needs to be additional clarification in the General Provisions of the Draft Consumer Protection Law that defines "Every Person" as a legal subject, namely natural persons and legal entities.

The basis for becoming a legal subject is the ability to have a will. For example, if a limited liability company purchases bottled water, the purchase can be made on behalf of the limited liability company. In this case, the business entity selling bottled water transacts with the limited liability company as a consumer. Based on this, consumers who are legal entities can become legal subjects with rights and obligations and can take legal actions as consumers.

Based on the above description of end consumers and legal entities as legal subjects in consumer protection, the concept of consumers in the Consumer Protection Law includes end consumers, namely individuals or business entities that use goods and/or services with the intention not to resell or not to be elements in the production of other goods and/or services.



Consumer protection encompasses all the principles and legal norms governing the relationships and issues between various parties concerning consumer goods and/or services in societal interactions.⁹ Meanwhile, consumer protection law comprises all regulations and laws governing the rights and obligations of consumers and producers arising in their efforts to meet their needs and regulates efforts to ensure legal protection of consumer interests.¹⁰

The term "consumer protection" is closely related to legal protection. To safeguard consumer interests, these interests are formulated in the form of rights. Generally, there are four fundamental consumer rights recognized internationally: The right to safety, The right to be informed, The right to choose, The right to be heard.¹¹

The separation between entities operating in the goods and services sectors is crucial, considering the fundamental differences in their characteristics. The combination of concepts between goods and services often leads to incorrect assumptions, even though they have fundamentally different natures. Difficulty in distinguishing between "goods businesses" and "service providers" is also a reason some professional service providers are reluctant to comply with regulations in the Consumer Protection Law (UUPK). Moreover, the similarity in legal responsibilities between goods businesses and service providers, although their types of responsibilities differ, creates confusion in the implementation and enforcement of the UUPK.

Here are some key differences between goods and services:

1. Goods refer to commodities or products that can be purchased by customers at a certain price, while services are benefits or facilities provided by another party.
2. Goods are tangible entities, meaning something that can be seen or touched. Conversely, services are intangible products.
3. When customers purchase goods, ownership of the goods transfers from the seller to the buyer. Conversely, ownership of services cannot be transferred.

⁹ Sidharta, op.cit.[9].

¹⁰ Janus Sidabalok, Hukum Perlindungan Konsumen di Indonesia (Citra Aditya Bakti 2014).[39].

¹¹ Az. Nasution, op.cit.[16].



4. Evaluating services is difficult because each service provider has different approaches in delivering their services, making it challenging to assess which is better. Conversely, evaluating goods is relatively easier.
5. Goods can be returned or exchanged if they do not meet expectations. However, services cannot be returned or exchanged after being provided.
6. Goods can be stored for future use, while services are time-bound and cannot be stored as inventory.
7. Goods are produced first, then traded, and finally consumed. Conversely, services are produced and consumed simultaneously.
8. Goods can be separated from their production tools after becoming finished products, while services cannot be separated from their providers.

From the above explanation, it can be concluded that goods and services have significant differences. Goods are tangible products that can be physically sensed, owned, and resold. Conversely, services are products that cannot be owned and are obtained simultaneously when consumers make a purchase. Therefore, the regulatory concepts cannot be unified, and in this revision of the Consumer Protection Law (UUPK), the concepts of goods and services are separated.

A separate understanding of goods and services is important because it forms the basis for normative regulation in the UUPK. For example, in formulating consumer rights, there is a concept that consumers should be allowed to try goods. This concept only applies to goods, while for services, the term cannot be applied because they are generally not trialable by consumers.

Another example is the regulation of warranties, which only applies to goods. Warranty refers to the conformity of goods with their specifications at the time of production, and guarantee refers to the durability of goods for a certain period. In services, warranties or guarantees are not feasible because if the service is not satisfactory, it cannot be returned, for instance, hair cutting services cannot guarantee that if not satisfactory, the hair that has been cut can be restored to its original state.

Based on the above explanation, the understanding of goods and services is separated. In this UUPK, goods are defined as tangible or intangible entities, movable or immovable, consumable or non-consumable, that have been placed in circulation. Meanwhile, services are commercial or professional services in the form of work or performance that have been offered or informed to consumers.

The phrases 'have been placed in circulation' and 'have been offered or informed' need to be included because if goods have not been placed in circulation, it means the goods are still in the manufacturing process. And if services have not been offered or informed, it means the services have not yet been known to exist. Individuals or entities that use goods and/or services that have not been placed in circulation or offered cannot be called 'consumers'. If they suffer losses from the use of goods and/or services that are still in the manufacturing process or have not been offered, they cannot claim compensation, demand administrative sanctions, or criminal sanctions under the UUPK. They can only demand based on Civil Law, Licensing Regulations, or Criminal Law.

The definition of business actors according to the Consumer Protection Law (UUPK) refers to every individual or business entity, which can be a legal entity or non-legal entity, conducting business activities in the territory of Indonesia, either independently or collectively through agreements, in various economic sectors.

The fact shows that there are some service providers who are reluctant to be identified as business actors, such as doctors, notaries, lawyers, and several other service providers. Their main reason is that their work provides services not for financial gain, but as a source of income. After conducting research, it was proven that the type of service they provide is different from general business activities. The lack of separation between "goods business actors" and "service providers" has caused some professional service providers, including doctors, lecturers, and notaries, to be reluctant to comply with the UUPK.

The unification of concepts between goods business actors and service providers has



resulted in the management of legal responsibilities that should be different between the two. This has created confusion in the implementation and enforcement of the UUPK.

Therefore, in the revision of the UUPK, the arrangement of the term business actor has been adjusted to become goods business actors and service providers. The concept of goods business actors and service providers has been separated based on the difference between goods and services. With this difference, the mention of business actors is adjusted.

Business actors for goods are individuals or business entities, whether legal entities or not, operating within the territory of Indonesia, both offline and online, for the purpose of producing, importing, and/or trading goods.

Service providers are individuals or business entities, whether legal entities or not, operating within the territory of Indonesia, both offline and online, to provide services aimed at producing or providing services to consumers.

The concept of goods business actors and service providers should be based on two legal institutions:

1. Responsibilities based on contract, which include:
 - a. Responsibilities of goods business actors
 - b. Responsibilities of professional service providers
 - c. Responsibilities of commercial service providers
2. Responsibilities based on wrongful acts, which include:
 - a. Responsibilities of goods business actors
 - b. Responsibilities of professional service providers

The application of the caveat venditor principle in the Consumer Protection Law (UUPK) aims to create a balance of power between business actors and consumers; however, the caveat emptor principle should also be considered by consumer advocates. The reason presented is that in the advertising industry, especially those related to goods and services for daily needs, the dominant strategy is to sell the image rather than the quality of the

goods or services themselves. The goal is to attract consumers to own the image promoted through advertisements or even to change their image by using the advertised goods or services. As a result, consumers may purchase the goods or services even if they do not really need them, are not in line with their desires, or even exceed their purchasing power.

In the context of contractual responsibilities, consumers have the right to demand goods business actors, professional service providers, or commercial service providers if there is a breach of contract, breach of promise, or non-performance. This principle is based on the Principle of Freedom to Contract from Article 1338 paragraph (1) of the Civil Code, which states that all valid agreements bind the parties who make them.

However, the evolution of the principle of freedom to contract has given birth to standard form contracts, which are rules and conditions unilaterally set by business actors and binding consumers en masse. Standard form contracts, although facilitating business transactions, often contain provisions that transfer obligations or responsibilities from business actors to consumers. This often disadvantages consumers because it results in an imbalance in bargaining power.

Therefore, the UUPK regulates the content of standard form contracts to protect consumers from harmful practices. However, the definition and regulation of standard form clauses in the UUPK still need improvement to avoid varying interpretations in implementation. The difference between standard form contracts and standard form clauses needs to be clearly defined, by regulating the definition of each and its legal consequences.

Article 18 paragraph (1) of the UUPK prohibits eight types of unfair standard form clauses. If there is a standard form clause that violates these provisions in a standard form contract, then that standard form clause is declared null and void.

To provide a more comprehensive overview, standard form contracts can consist of various forms, including signing standard form contracts, standard form contract documents, and the making of standard form contracts by one or more parties. By understanding the



differences between standard form contracts and standard form clauses, it is hoped that consumer protection can be enhanced in business practices.

The advancement of communication technology in networks (the internet) has opened up opportunities for online trading. Purchasing a good does not require physical meetings between buyers and sellers but can be done virtually (faceless), and if an agreement is reached, the goods will be delivered to the buyer through a delivery company. E-commerce in Indonesia is currently growing rapidly, supported by the fact of a very high number of internet users. Internet users in Indonesia have exceeded 80 million people or about 30% of the total population of Indonesia, and are the largest number in Southeast Asia. The number of smartphone users in Indonesia is estimated to reach 71 million people in 2015. This e-commerce activity is projected to generate total transactions of up to US\$ 4 billion (IDR 48 trillion) in 2016.

Online trading is very practical, fast, and efficient, especially for large cities like Jakarta with high traffic congestion rates. Online purchases are not only for durable goods but also for items such as fast food, and even delivery and transportation services can be done online. The phenomenon of "online taxis or motorcycle taxis" that is rampant in big cities is evidence of the use of technology in selling services.

E-Commerce is electronic business transactions, including:

1. Business transactions through electronic data interchange (EDI) in a closed network;
2. Business transactions via the internet conducted:
 - a. Remotely, possibly beyond national borders
 - b. Involving parties who have never met face-to-face (faceless nature), and may never meet.

In E-Commerce, electronic agreements or E-Contracts/Digital Contracts are commonly used, which are agreements that occur through electronic means used in E-Commerce. The characteristics of E-Contracts or Digital Contracts are as follows:

1. Standardized contract (in the form of standard agreements);



2. Digital signatures;
3. Paperless (no longer using paper);
4. Faceless (business actors and consumers do not meet face-to-face);
5. Cashless (payment is made digitally without physical cash);
6. Borderless (agreements can occur across borders);
7. Multiple jurisdictions (the applicable law may encompass laws from multiple countries).

Types of E-Contracts / Digital Contracts:

1. E-Contracts for goods and services, which are agreements that utilize the internet to make agreements, followed by physical delivery;
2. E-Contracts for information and services, which are agreements that utilize the internet to make agreements as well as to perform delivery.

Creation of contracts and delivery of goods/services in E-Contract/Digital Contract. The convenience and advantages of online buying and selling practices do not mean they are without issues. In this transaction model, consumers do not physically see, touch, or smell the goods they intend to purchase but only view them through photos that may have undergone editing processes, as well as previous buyer testimonials, so the received goods may not necessarily match or be as described on the website. On the other hand, online trade does not only occur within one country but can also cross borders (borderless).

The changes or developments in this trade model will bring consequences in the form of the possibility of numerous conflicts between consumers and business actors. On the other hand, because online trade can take place across borders, resolving consumer disputes will become more complex. Not only is there complexity regarding the applicable laws for such transactions, but also in determining the competent forum to settle these disputes.

Key Issues in E-Contract not regulated in the UUPK:

1. Building trust among consumers, thus fostering consumer trust in transactions;
2. A crucial element is the design of legislation on E-Contracts that provides



safeguardsto protect all parties involved;

3. Consumer trust will grow if electronic transaction security can be realized.

Therefore, the important aspects of E-Contracts that need to be regulated in the UUPK are:

1. Offer and acceptance (offer by the business actor and acceptance by the consumer)
2. Contractual capacity (capacity of the parties to enter into an agreement)
3. Incorporation of terms and conditions (including clauses regulating specific matters)

Things to be considered by Business Actors in E-Commerce:

1. Ensure that transaction terms/conditions are truly understood and easily accessible byconsumers;
2. Consumers should be required to read transaction terms/conditions before expressingtheir consent;
3. Provide complete information about the business actor;
4. Specify payment details, such as currency type, shipping costs, customs duties, insurance costs, and payment procedures;
5. Explain the contract formation procedure, such as how to declare offer and acceptance;
6. Inform about the procedure and timing of goods/services delivery.

The changes to the UUPK will include provisions regarding e-commerce or trading through electronic systems. That trading transactions conducted through a series of electronic devices and procedures must also adhere to the norms outlined in the UUPK amendments

Conclusion

The definition of a consumer has been updated to refer to an end consumer, referring to individuals or entities that use goods or services for personal purposes and not for resale or ascomponents in the production of other goods or services. This change expands the scope of consumer legal subjects, allowing legal entities to also be considered consumers as long as they use goods or services as end consumers.



The clear distinction between business actors in goods and service provision provides greater opportunities for consumers of goods or services to seek compensation in case of losses. Currently, professional service providers such as doctors, architects, lawyers, and accountants are reluctant to provide compensation when sued under the UUPK because the term "business actor" is considered profit-oriented, while they pursue their professions to earn a living.

Adaptation to societal and technological developments requires changes in the concept of business actors, including online business actors, so that their behavior can be regulated by the UUPK. Arranging concepts that separate business actors into goods business actors and service providers will create a balance in responsibility, considering that the responsibilities arising from both types of businesses are different.

With clearer regulations regarding the concept of business actors, it is expected that a conducive business climate will be created and quality goods and services will be available to consumers.

In the improvement of the UUPK, the general definitions include:

1. Consumer Protection: Efforts to create legal certainty to protect the rights and obligations of consumers.
2. Consumer: Individuals or entities that use goods/services for personal purposes, not for resale or reproduction.
3. Goods: Tangible or intangible objects, movable or immovable, circulating in the market.
4. Service: Commercial or professional services offered to consumers.
5. Goods Business Actor: Individuals or business entities engaged in the production, import, or trade of goods.
6. Service Provider: Individuals or business entities providing services, whether commercial or professional.
7. Commercial Service Provider: Service providers aimed at making a profit.



8. Professional Service Provider: Service providers aiming to earn a livelihood.
9. Standard Agreement: A written agreement with content, form, and creation determined by the business actor/service provider, offered en masse to consumers.
10. Standard Clause: Articles or statements in standard agreements unilaterally determined by business actors/service providers.

Through the framework of UUPK improvement referring to various principles that serve as the main pillars, including the principles of benefit, justice, balance, security, health, healthy environment, legal certainty, subsidiarity, and restorative justice. The main goal is to ensure the government's responsibility in protecting the rights and obligations of consumers and business actors. This is realized through the creation of a consumer protection system that provides legal certainty and open access to information, as well as increasing consumer awareness and independence. Furthermore, consumer protection aims to enhance the dignity of business actors and improve the quality of goods/services for the safety and security of consumers and the continuity of business or services.

In practice, the implementation of consumer protection involves various parties, such as the central and regional governments, consumers of goods and services, as well as goods business actors and service providers. Goods business actors can be manufacturers, importers, distributors, agents, wholesalers, or retailers, while service providers are divided into commercial and professional service providers. The object of consumer protection implementation is transactions between consumers and goods business actors and/or service providers, covering traded or provided goods and/or services. Thus, consumer protection aims to create a safe and fair environment for all parties involved in consumer transactions.



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VIRGINITY IN MARRIAGE: A MULTIPARADIGM APPROACH TO DIVORCE TALAK FOR VIRGINITY REASONS IN LEGAL REVIEW AND FEMINISM

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ABSTRACT

Divorce as a legal way to end a marriage bond is a phenomenon that is often found in society, including in Indonesia. One of the reasons for divorce which is quite sensitive is the wife's lack of virginity before the first night of marriage. This reflects the complexity of the relationship between religion, culture and law in the context of marriage. Even though there are no provisions that explicitly mention virginity as a reason for divorce, the stigma against virginity is still very strong in society. This paper takes a multiparadigm approach to studying the issue of virginity in the context of marriage law, taking into account the perspective of jurisprudence and the Marriage Law, as well as cultural and gender aspects. By using a normative juridical approach and a multiparadigm approach, this paper identifies normative problems in regulations regarding divorce due to virginity issues and analyzes them in the context of sovereignty and gender equality. Thus, this research aims to provide a deeper understanding of the complexity of virginity issues in the context of marriage in Indonesia, as well as presenting a holistic perspective through a multiparadigm approach.

Keywords: *Divorce, Virginity, Marriage Law, Divorce, Multiparadigm*



INTRODUCTION

The marriage bond can be ended through legal action which can legally dissolve the bond, in accordance with the rules in fiqh and the Marriage Law. Even though marriage is considered a sacred bond, it should not be considered absolute because marriage is a natural phenomenon. A marriage can be a happy one, but it can also end midway for reasons permitted by the Shari'a.¹

Divorce, as a way to end a marriage bond, is an act that is permitted even though it is not liked by Allah. Divorce is seen as the result of a causal relationship, where the disharmonious relationship between husband and wife and various other factors are the causes. The principle of divorce law is to allow couples who continue to experience incompatibility, whether in attitude, character, communication, morals, or other causes, to legally separate. Islam allows divorce so that it can be used appropriately when necessary. Based on this principle, before marriage, it is highly recommended for both parties to get to know each other more deeply. This aims to minimize potential conflicts that could lead to divorce in the future.

Article 1 of Law Number 1 of 1974 concerning Marriage explains that marriage is a spiritual and physical bond between a man and a woman as husband and wife, with the aim of forming a happy and eternal family based on the Almighty God. Because the purpose of marriage is to form a happy and eternal family until Allah separates the two, for example by the death of one of the husband and wife, this Law adheres to the principle of preventing divorce. Therefore, divorce must be based on certain reasons and must be carried out through a court process. In this context, the Law on Marriage emphasizes that the main purpose of marriage is to form a harmonious and lasting family. Divorce is considered the final step and must be taken with serious consideration and a process involving the courts. This shows the importance of maintaining the stability and continuity of marital relations in society.

Virginity is still a sensitive and taboo topic to discuss openly in Indonesia. However, this is often a demand from a man towards his future wife. Men from families with high social status tend to demand that the women they marry must be virgins. There is

¹ Amiur Nuruddin and Azhari Akmal Taringan, *Islamic Civil Law in Indonesia; Critical Study of the Development of Islamic Law from Fiqh, Law no. 1/1974 to KHI*, (Jakarta: Kencana Prenada Media Group, 2012), p. 206.



a disparity in views regarding the background of sexuality between genders, where men tend to demand the virginity of their future wives, while women do not have similar demands for their future husband's virginity.

Divorce cases caused by a wife not being a virgin before the first night often appear on social media. People generally think that virginity is marked by blood spots during the first sexual intercourse after marriage. ICWR (N. 169) notes that "Virginity is the primary characteristic of a 'good' or 'respectable' woman, while sexual experience is often considered the hallmark of a 'real man.'" Not only in the context of marriage, virginity tests are also often applied in the world of work. Some institutions, foundations, or certain companies impose virginity tests on job applicants, with the consequence of rejection for those who do not pass the test.

Emotionally, virginity is considered very valuable, especially when associated with "virgin blood." Virgin blood is blood that comes out due to tearing of the hymen, usually due to intimate relations. In many situations, virgin blood is still highly valued by society, especially during intimate relations on the first night of marriage. The importance of virgin blood is so important that it is not surprising that people, especially men, consider virgin blood to be the main indicator of a woman's virginity.

Virginity is also seen as important when many young men report their future wives to a gynecologist to check their virginity status. In addition, the emergence of expensive technologies for hymen reconstruction aimed at restoring "virginity" also reflects how important virginity is. From these assumptions, the meaning of virginity becomes even more sacred when it is connected to religious aspects. Someone who is no longer a virgin may feel guilty and regretful, feelings that are difficult to forget and persistent from a religious perspective.

Referring to the importance of virginity, what does virginity actually mean? In terms of terminology, in the Big Indonesian Dictionary, virginity or virginity is a woman who has never had sexual intercourse with a man. Some opinions link virginity to the hymen. Therefore, a virgin means a girl whose hymen is still intact, and if it is torn, whether due to sexual intercourse or other reasons, then she is no longer considered a virgin. There are also other definitions that expand this understanding. If virginity is defined as maintaining a hymen, then this is no longer something scary because medical



technology can now repair or replace a torn hymen. However, if virginity is defined as a girl who has never had sexual intercourse, then no matter how many times hymen surgery is performed, if she has had sexual intercourse, she is still no longer considered a virgin. The same applies to male status in men.

Apart from defining and assuming about virginity, researchers are also interested in seeing the impact of virginity on a girl. As mentioned at the beginning of the article, the stigma against virginity in Indonesian society is still considered sacred by many people. Virginity is expected to be maintained until the time of marriage arrives. Losing one's virginity often has a negative psychological impact. Many cases show that a girl who loses her virginity tends to experience changes in attitude, such as becoming low self-esteem, gloomy, feeling worthless, and sad. In fact, in more extreme cases, someone may feel that they no longer need to take care of themselves because the most valuable thing in them has been lost, either due to promiscuity, excessive dating, or other reasons.

The influence of virginity is so strong that the value of virginity is considered worthy of being guarded very closely. For those who have lost their virginity prematurely, this is not a reason to reduce the protection of a woman's dignity, and the same goes for men. The large psychological impact of loss of virginity on a person makes this topic interesting to study more widely from various aspects.

One of these aspects is when faced with the legal aspects of marriage in Indonesia. The most sensitive issue of virginity arises when the rulers record the status of a virgin or widow, as well as the status of a young man or widower in someone who is about to get married. Difficulties arise when they have to record the status of someone who has committed adultery but has never married, or who has been married but divorced before having sex. Dual status like this certainly creates legal problems. On the one hand, there is the status of a virgin because they have never had sexual intercourse even though they have been married, and on the other hand there are those who have had sexual intercourse but have never been married. This kind of dual status is what causes marriage leaders to experience difficulties in the legal mechanism for registering marriages in Indonesia.

From a fiqh perspective, the reason for divorce is not found because of virginity status. Fiqh states that divorce is caused by quarrels (*syiqāq*), namely arguments between husband and wife which can arise from various factors such as communication and



householdeconomic problems.² Apart from that, divorce can also occur if the wife does not return to herhusband's house, as well as other factors.

Wahbah Zuhaili identified several causes of divorce between husband and wife as follows:

- a. If the husband feels that his wife's presence makes him fall into prohibited actions, such as being unable to provide a living or other problems.
- b. If the wife has a habit of speaking harshly, it is feared that the husband will fall into prohibited actions if he continues to be with his wife.
- c. If there are continuous disputes that cause a breakdown in the husband and wiferelationship.³

Sayid Sabiq also stated several other reasons that could cause divorce, namely:

- a. If the wife behaves badly, has a bad relationship with her husband, and the wife'scondition is dangerous, it is impossible to achieve the goal of marriage.
- b. If the wife ignores religious obligations that must be carried out, such as obligatoryprayers and others.
- c. If the wife is unable to maintain her husband's honor.⁴

This view shows that divorce in fiqh is understood as a result of the inability to achieve the goals of marriage due to the behavior or condition of one of the parties. For example, a wife's inability to maintain her husband's honor or ignoring religious obligations. Likewise, ongoing quarrels are considered a valid reason for divorce because they prevent a harmonious domestic life. Fiqh emphasizes the importance of a relationship that respectseach other and fulfills the rights and obligations of each party in marriage. If these conditions are not met, divorce is considered a permissible solution to prevent greater sin or loss.

If seen from the perspective of the law, there is also no reason for divorce that is directly related to virginity. One example is in Government Regulation Number 9 of 1975 concerning the Implementation of Law Number 1 of 1974 concerning Marriage. Article 19

² Mustofa Hasan, Introduction to Family Law, (Bandung: Pustaka Setia, 2011), p. 205-206.

³ Wahbah Zuhaili, Fiqh Islam wa Adillatuhu; Marriage Divorce, Khuluk, Mengila" Isteri, Li"an, Zuhar and Masa Iddah, translated by: Abdul Hayyie al-Kattani, volume 9, (Jakarta: Gema Insani, 2011), p. 323.

⁴ Sayyid Sabiq, Fiqh as-Sunnah, (Jakarta: Al-I'tishom, 2010), p. 422

of the regulation states several reasons for divorce between husband and wife, such as:

- a. One of the parties commits adultery or becomes a drunkard, addict, gambler, or other bad behavior that is difficult to cure.
- b. One of the parties leaves the spouse for two consecutive years without permission or a valid reason.
- c. One of the parties is sentenced to prison for five years or more after the marriage takes place.
- d. One of the parties commits cruelty or persecution that harms the other party.
- e. One of the parties has a physical disability or illness that prevents their obligations as husband or wife.
- f. There are continuous disputes and quarrels between husband and wife without hope of ever living in harmony in the household again.

From this explanation, are there any provisions that explicitly mention virginity status as a reason for divorce between husband and wife? So, based on these problems, the author also has an interest in raising the topic of discussion in this paper regarding *"Virginity in Marriage: A Multiparadigm Approach to Divorce and Divorce on the Reasons of Virginity in Legal Review and Feminism"*.

RESEARCH METHODOLOGY

This paper is qualitative research that uses a normative juridical approach and a multiparadigm approach. A normative juridical approach is used to identify normative problems in regulations regarding divorce due to virginity issues, while a multiparadigm approach is used to analyze problems related to virginity status which cannot be fully understood through normative sciences such as law. The theory applied in this research is the theory of sovereignty and gender equality.

RESULTS and DISCUSSION

Virginity in the Multiparadigm View of Islamic Law

Marriage is a recommendation in the Islamic religion which is emphasized in the Qur'an, as expressed in surah al-Rum verse 21 which discusses the concept of 'sakinah,



mawaddah, wa rahmah'. This concept is reinforced by the hadith of Prophet Muhammad SAW. who stated that "Marriage is a blessing, and children are a mercy. So honor your children, because truly honoring children is worship." Another hadith states that "Marriage is my sunnah, whoever follows my sunnah, then he is not part of my ummah."

In Indonesia, positive law has specifically regulated marriage. Marriage is defined as an inner and outer bond between a man and a woman as husband and wife, with the aim of forming a happy and lasting household based on the belief in the Almighty God. This is also regulated in the Islamic Law Provisions (KHI) which state that marriage according to Islamic law is a marriage, namely a very strong contract and is considered as worship because it aims to obey Allah's commands.

Islamic law experts explain that a marriage contract is considered valid if it meets five elements. First, there must be a husband and wife who are adults (at maturity). Second, the presence of the bride's guardian (further rules may apply). Third, an agreement regarding the bridegroom's dowry. Fourth, two witnesses who are Muslims, adults and of sound mind. Fifth, there is ijab and qabul, where ijab is an offer made by the prospective wife (or her representative) to the prospective husband, and qabul is acceptance expressed by the prospective husband by stating the amount of the dowry given.

If all the pillars and conditions are met, then the marriage is considered valid according to religion and positive law in Indonesia, which is expressed by obtaining authentic evidence of the marriage taking place. This is in accordance with the analogy of Ali-Imran's letter verse 282 which emphasizes the need to register marriages with the Marriage Registrar. Apart from that, these regulations are also in accordance with Law no. 22 of 1946 in conjunction with Law no. 32 of 1954 in conjunction with Law Number 1 of 1974, which provides legal consequences as a logical consequence of the engagement agreement between husband and wife in marriage.

In Islam, a virgin is a woman who has never been involved in haram (zina) or halal (marriage) sexual relations, so she is called a virgin. Although there is no explicit definition regarding the concept of virginity in the Koran, Islam considers the "purity" of a woman to lie in the integrity of her farji (hymen) which has never been blemished or contaminated. Virginity is seen as important, as a symbol of purity and compliance with sharia. Bloody discharge during the first night is not always a sign of a woman's virginity. In the book

I'anah al-Thalibin, it is explained that husbands and wives are allowed to choose a partner based on certain requirements that were established at the time of the marriage contract, such as independence, good heredity, virginity, and being free from physical or moral defects.

Allah emphasizes to women to maintain their dignity and honor by not engaging in harmful and demeaning actions. Islam teaches prevention more than correction of behavior that has occurred, as an effort to maintain personal honor and purity. Thus, Islam really appreciates the value of virginity as an effort to avoid disgraceful and sinful behavior, as well as an important form of self-protection for women.

According to the fiqh view, the status of a virgin or not a virgin is determined based on whether a person has had sexual intercourse with the opposite sex or not. Likewise with the status of being a man or not being a man. So, someone is categorized as a virgin or widow based on whether they have had sexual intercourse or not. When the measure used is intercourse, then even if someone is married but has not had sexual relations, they are still considered a virgin.

According to the Shafi'i view, a woman is considered a widow if she loses her virginity as a result of legal (such as marriage) or illegitimate sexual relations (such as adultery or illicit relations while asleep or awake). According to this view, changes in a person's virginity status are not influenced by other factors such as the entry of objects into the genitals, tearing of the hymen for non-sexual reasons, the flow of menstrual blood, or the length of time being an old maid. Women who lose their virginity due to a fall, heavy menstruation, injury, or due to the aging process are still categorized as genuine virgins. Likewise, women who are legally married but have not had the opportunity to have sexual relations, or who were divorced or abandoned by their husbands before having sexual relations. Women who were separated by judges from their husbands due to impotence or genital defects were also still considered genuine virgins. Thus, virgin is a term for women who have never had sexual relations at all, and they are known as true virgins.

According to Hanafiyyah circles, virgin is a term for women who lose their virginity only because of a legal marriage, and not for other reasons. The marriage referred to by Hanafiyyah scholars is a marriage that allows for halal sexual relations. Therefore, according to the Hanafiyyah view, virgin status is still determined by whether someone has



had sexual relations or not. Women who lose their virginity due to other causes, such as a fall, heavy menstruation, injury, or aging, are still considered virgins both in essence and in law. Meanwhile, the Malikiyyah interpret that a virgin is a woman who has never had sexual relations with a valid or legally broken contract. Some opinions also state that virgin is a term for women who have not lost their virginity at all.

In Arabic, girls are referred to as al-bikr. According to Ibn Mandzur's explanation in the Lisan al-'Arab dictionary, bikr has the root word "bakara-yabkuru" which means working in the morning. Bikr is considered a woman who is still "early", because she has never had sexual relations with a man. Thus, bikr is synonymous with the status of a virgin, which means a woman who has never had sexual intercourse. According to Ibn Mandzur, al-bikr is a general term that can refer to someone, both women and men, who has never had sexual relations. Therefore, al-bikr can also be used for men who have never had sexual relations with women.

In everyday life, the term "widow" is usually used to refer to women who have lost their husbands due to divorce or death. This means, a woman who does not have a husband because the marriage relationship has ended, either because of a divorce filed by the husband (talak divorce or lawsuit divorce) or because of the husband's death. Thus, the term "widow" is closely related to a person's marital status. In Arabic literature, the term "widow" is often referred to as "tsayyib", while "virgin" is referred to as "bikr". According to Ibn Mandzur and Abul Haitsam in the Lisanul 'Arabic dictionary, "tsayyib" comes from the word "tsabayatsuubu", which means "to return". A "tsayyib" (widow) is a woman who was married and had sexual intercourse with her husband before, then her husband died or divorced her. Ibn Atsir believes that "tsayyib" can also be used majaz to refer to women who have just reached puberty.

According to At-Thabary, quoted in the Al-'Arab Oral Book, "tsayyibat" (widows) are women who have had husband and wife relations until their virginity is lost, while "abkar" (virgins) is the opposite. Meanwhile, according to Abu Haitsam, a widow is a woman who is abandoned by her husband due to death or divorced by her husband, and then returns (ruju') to marry.

From these definitions, it can be concluded that a person can be considered a widow if the woman has been previously married, has been divorced, and has had sexual relations.

According to Syafi'iyah scholars, according to Islamic jurisprudence, the boundary between a widow and a virgin is determined by whether a person has had sexual relations or not. Even though she is married, if she has not had sexual relations, the woman is still considered a virgin.

Virginity in the Light of Feminism

Feminist Legal Theory (FLT) or feminist jurisprudence emerged as a form of practical theory about equality. Feminist groups argue that the law plays an important role in reinforcing gender inequality. In Islam, support for the historical gender equality movement is reflected in the verses of the Qur'an and the life of the Prophet, and the Muslim feminist movement uses interpretation to find the value of gender equality in today's context.

The emergence of Feminist Legal Theory (FLT) or also known as Feminist Jurisprudence in the 1970s is a view that emphasizes the importance of law in highlighting women's subordination and seeking changes in legal status and attitudes towards women and gender. FLT exists with the aim of challenging legal structures based on women's experiences. Thus, this school of thought positions itself as an advocate for women to improve laws that are basically considered "neutral". However, often these efforts lead to discrimination and injustice for women, such as in the case of 'virginity'. In the early 1980s, feminist legal theorists introduced three modern feminist trends, namely liberal feminism, cultural/social feminism, and radical feminism.

Liberal Feminism, also known as liberal feminism, focuses on women's legal rights and is often referred to as "symmetrical feminism". This group believes that men and women should be treated equally in the public sphere. The focus of this research is to explore whether women's 'virginity' as a standard for marriage and other administrative requirements should also be applied to men's 'virginity', thereby avoiding gender inequality. Cultural feminism or "Different Voices" emphasizes the basic differences between men and women, with women claiming that they are more caring, compassionate, and responsible for others than men. Meanwhile, radical feminism, a more "dominant" current, argues that gender hierarchy and sexual dominance between men and women are considered equal when there is no resistance. There are also other varying classifications of



feminism, as found in other studies which highlight divorce due to shiqaq due to not being a virgin.

In this paper, the author's focus will be on the views of Islamic law and feminist views on divorce which is common in Indonesian society due to the lack of virginity of women as wives. The aim of choosing these two points of view is to produce research that not only pays attention to personal interests, but also to correct social stigma related to views on virginity. From a feminist perspective, marriage is expected to achieve just and balanced goals between genders, where both men and women have the same rights, duties, roles and positions based on mutual respect and mutual assistance in various aspects of life. This feminist thought aims to place men and women in equal positions, independent, and able to work together, and free to live their lives without discrimination, in accordance with the views of liberal feminism.

Equality in marriage can be achieved by eliminating hierarchies in it, without comparing one with another. Because in the institution of marriage, the gender hierarchy only benefits one party, which can then create conditions and situations where they show their superiority which results in oppression. Feminism highlights that marriage is a form of patriarchy that provides internal and external discrimination against women. In the context of marriage, women are often considered as second parties or subordinates who are under the leadership of men. The feminist movement aims to achieve equality in various aspects of life, including economic, social and cultural. Therefore, in the view of feminism, marriage limits women's movements in obtaining different rights and obligations from men.

Virginity is also considered important in the context of marriage according to a feminist perspective. Feminism considers virginity to be a priceless area of women's privacy. There are three points of view regarding the role of virginity in women's lives. First, virginity is seen as a solution to life's problems and as an expression of a woman's self-worth. Second, virginity is understood as women's subjectivity regarding virginity itself. Third, virginity is considered a woman's authority to protect her privacy. So, in the view of feminism, the concept of virginity is not only limited to physical aspects such as the hymen, but also includes a mental dimension that gives women the right to maintain their own privacy without interference from other parties. It is an attempt to liberate women from the bonds of patriarchy and give them control over their own bodies and identities.



Breaking of Marital Ties Due to Virginity

In married life, there is no guarantee that the relationship will last until the end of life, even though at first everything seems harmonious and full of affection. However, the reality is that if feelings of love are not maintained, they can fade or even disappear, and even turn into feelings of hatred. Marriage breakdown can be caused by three main things: death, divorce, and court decisions. In the teachings of Islam, divorce is considered something that is halal but is highly disliked by Allah SWT. Rasulullah Muhammad SAW stated that "something halal that is very disliked by Allah is talak" or divorce. Etymologically, thalaq comes from the Arabic word "athalaqa", which means releasing or liberating. Thus, divorce can be considered as a process of liberation or separation between a husband and wife who have previously entered into a marriage vow. However, in the context of the Islamic religion, although permitted, divorce is considered a last resort and is viewed seriously.

In Islamic law, talak is divided into several classifications based on aspects of whether reconciliation is permissible and the period in which the talak is imposed. Raj'i talak is a talak that allows for reconciliation, while talak ba'in does not allow for reconciliation. Sunni talaq is talak imposed under normal circumstances, while bid'i talak is talak imposed under unusual or outside the provisions. In filing for divorce at the Religious Court, a husband can have a number of permissible reasons, such as if the wife neglects her obligations, commits acts that violate religious norms, leaves her husband without permission, is sentenced to prison, commits violence, suffers from an illness that prevents her from carrying out her obligations as a wife, or there is an insurmountable dispute between husband and wife.

Apart from the talak mechanism, there are also several other mechanisms that can result in the dissolution of a marriage, such as khulu (divorce with compensation), fasakh (divorce by court), due to syiqaq (divorce due to disputes), and ta'lik talak (divorce by delaying the implementation of talak). In Indonesia, the discourse about virginity is still deeply rooted in society, where virginity is often measured through indicators of virgin blood or hymen. Although not everyone questions the virginity of the wife they marry, many also consider this because they feel cheated by her.

The value attached to virginity often causes many women to experience difficulties



after marriage in a very short time, especially within 1-3 months after marriage, because they are considered not to be virgins and are then divorced by their husbands. This happens unless the wife openly admits disgraceful actions in her past, such as adultery. However, if virginity is lost due to factors outside the woman's control, such as an accident or rape, then it is still considered unfair to cause divorce.

The author's view is that divorce which is triggered by the wife's lack of virginity, is not fair enough because it is only based on an assessment of blood spots on the first night. The World Health Organization noted in 2018 that the concept of virginity is not a scientific or medical term, but rather a social, cultural and religious construct that develops in society. Even though there is a tool called a virginity examination, which is often referred to as a virginity examination, until now there is no accurate way to determine whether someone has had sex or not. On the one hand, such a divorce decision is considered a fair law enforcement effort, but on the other hand, it can also be considered to violate the principles of justice because it affects a woman's reputation and social status in society after the divorce.

In accordance with the Government Regulation of the Republic of Indonesia Number 9 of 1975 concerning the Implementation of Law Number 1 of 1974 concerning Marriage Article 22 paragraph 2, as well as the Civil Code Article 134, a lawsuit for divorce for certain reasons can be accepted by the Court if it has been clearly proven to exist. disputes and quarrels between husband and wife, after hearing the views of the family and individuals closest to the couple. However, judges do not only consider the viewpoints of the disputing parties, because judges have the authority to consider ideal legal principles. Judges also have ex officio rights, which means that judges in certain situations can appoint necessary experts with the agreement of the parties to the trial. In cases like this, the author feels the importance of the presence of an expert witness in the trial, where the expert witness is someone who has special expertise in the medical field, whose aim is to examine and clarify the stigma related to the wife's virginity status in court.

Analysis of Divorce Due to Not Being a Virgin

The case analyzed by the author is the decision of the Padang Religious Court Number 0297/Pdt.G/2017/PA.Pdg which relates to a petition submitted by a man referred to



as A bin Z, 31 years old, Muslim, with a bachelor's degree, working as a Hotel Employee, and lives in Padang City, West Sumatra Province. In this case, A bin Z is the legal husband of a woman referred to as N Binti M, 27 years old, Muslim, has a bachelor's degree, works as an honorary employee, and lives in Padang City. They married on January 13 2017 with Marriage Certificate Number: 0010/010/1/2017.

The applicant submitted a letter of application on February 21 2017, which was registered at the Registrar's Office of the Padang Religious Court on February 22 2017 with case number 0297/Pdt.G/2017/PA.Pdg. In his petition letter, the Petitioner stated several reasons as follows:

- a. The Petitioner and Respondent were married on January 13 2017, in accordance with Marriage Certificate Number: 0010/010/1/2017, which was registered at the Nanggalo District Religious Affairs Office, Padang City, West Sumatra Province.
- b. At the beginning of the marriage, the Petitioner lived at his parents' house while the Respondent lived at his own parents' house, so they had not yet had proper husband and wife relations. Only after a week had passed did they start to get along as husband and wife.
- c. During their marriage, they have been together as husband and wife, but have not had children.
- d. Even though their household ran harmoniously for three weeks, on February 7 2017, disputes and arguments occurred because the Respondent was not honest with the Petitioner. The Respondent stated that she was no longer a virgin before marrying the Petitioner, even though she had previously stated that she was still a virgin. After pressure from the Petitioner, the Respondent finally admitted this, which caused the Petitioner's disappointment.
- e. On February 12 2017, the Petitioner came to the Respondent's parents' house and stated to the Respondent and his family that the Petitioner could not continue living with the Respondent.
- f. The Petitioner and Respondent have been separated for less than a week, until now.

Based on the letter of application submitted by the Petitioner to the Padang Religious Court, the petition proposes that the Petitioner be given permission to pronounce



one raj'i talaq to the Respondent before the Padang Religious Court session. This application is based on the main argument that the wife is not a virgin. The Padang Religious Court then processed the application and summoned both parties to attend the hearing. On the appointed hearing day, both the Petitioner and the Respondent were present at the hearing. Even though the Panel of Judges had attempted to reconcile the two parties, these efforts were unsuccessful. After going through the judicial process, the Padang Religious Court gave permission to the Petitioner to impose one raj'i divorce.



This decision is based on reasons in accordance with Article 19 of Government Regulation Number 9 of 1975 Jo. Article 166 of the Compilation of Islamic Law, which regulates that one *raj'i talaq* can be given if there are continuous disputes and quarrels between husband and wife, and there is no hope of living in harmony again in the household. In addition, in this case, the marriage had only lasted three weeks and the Respondent refused to divorce. The reasons put forward by the Petitioner also refer to Article 116 of the Compilation of Islamic Law, namely that one of the parties is involved in an act of adultery or becomes a drunkard, addict, gambler, and so on which is difficult to cure.

Even though the Respondent has provided an answer to this case, the judicial process still involves examining evidence. The Respondent's confession must be supported by other evidence, including written evidence, witnesses, and the judge's considerations. The first evidence submitted is a photocopy of a marriage certificate excerpt from the North Padang District Religious Affairs Office, Padang City, Number 0010/010 / I / 2017, which is affixed with a 6000 stamp and postmarked, and has been legalized by the Registrar of the Padang Religious Court. This evidence has been compared with the original by the Panel of Judges.

Next, an examination of witnesses is carried out in accordance with the provisions of Article 76 No. 7 of 1989, which requires hearing statements from witnesses from the family or people close to the husband and wife, especially in divorce cases based on *shiqaq* reasons. This examination process is carried out to ensure that the divorce decision is based on strong evidence and in accordance with applicable legal provisions, in this case Article 19 of Government Regulation Number 9 of 1975 Jo. Article 166 Compilation of Islamic Law.

The Padang Religious Court asked the Petitioner to bring two witnesses to the evidentiary process. To strengthen the Petitioner's argument regarding his marriage and domestic problems, the Petitioner called the first witness, namely N bint K, a 63 year old housewife who lives on Rt. 005 RW 003, Kampung Olo sub-district, Nanggalo District, Padang. In his oath, the witness stated the following:

- a. The witness knows the Petitioner and Respondent because the Petitioner is the witness' biological child.
- b. The witness knew that after marriage, the Petitioner and Respondent lived together



at the Respondent's parents' house.

- c. The witness knows that the Petitioner and Respondent do not have children.
- d. The witness knows that the Petitioner and Respondent have been separated from their homes since one week after the wedding until now.
- e. The witness knew that the cause of the separation between the Petitioner and the Respondent was because there was a dispute caused by the Respondent's dishonesty towards the Petitioner.
- f. The Petitioner's family has tried to reconcile the Petitioner and Respondent because the Petitioner does not want to reconcile with the Respondent

The Petitioner also called a second witness, namely RN binti Az, a 43 year old housewife who lives in the city of Padang. In his oath, the witness stated the following:

- a. The witness knows the Petitioner and Respondent well because the witness is the Petitioner's sibling.
- b. The witness also knows the Respondent named Novitri.
- c. The witness knew that after marriage, the Petitioner and Respondent lived together at the Respondent's parents' house.
- d. The witness knows that the Petitioner and Respondent do not have children.
- e. The witness knows that the Petitioner and Respondent have separated from their homes since one week ago until now.
- f. The witness knew that the reason for the separation between the Petitioner and the Respondent was because the Petitioner felt cheated by the Respondent.
- g. The Petitioner's family has tried to reconcile the Petitioner and Respondent, but the Petitioner does not want to reconcile with the Respondent.

The Judge's Consideration Determined Divorce Raj'i due to Shiqaq as a result of not being a virgin

The judge, in determining talak raj'i, first attempted to reconcile the two parties in accordance with the mandate of the Republic of Indonesia Supreme Court Regulation Number 1 of 2008. However, this effort was unsuccessful because the Respondent never appeared. In legal considerations, judges refer to two aspects, namely Islamic law and



positive law. From an Islamic law perspective, the judge saw that the Petitioner and Respondent were no longer able to live a good domestic life together. Therefore, the goal of marriage to form a happy, mutually loving and respectful family cannot be achieved. Apart from that, the judge also considered that the arguments submitted by the Petitioner had been clearly proven. Their household had been destroyed and could no longer be restored.

If you pay attention, even though there is no reason explicitly related to the divorce due to not being a virgin, the judge still considered that the Petitioner and Respondent could no longer achieve the goal of marriage. The implication is that this is caused by the husband's discomfort and objections to his wife's virginity status. The second consideration refers to positive law, where the judge considers several legal provisions both from a material and formal perspective regarding divorce rules and the legal process.

a. Material Requirements Fulfilled

Based on the facts presented, the Panel of Judges concluded that the Petitioner and Respondent as husband and wife were no longer able to live a good domestic life, as mandated by Law Number 1 of 1974 concerning Marriage. The articles used as a basis include Article 1 which states the aim of forming a happy and eternal family, and Article 33 which emphasizes mutual love, respect, loyalty and physical and spiritual assistance between husband and wife.

Apart from that, the judge also referred to the provisions of Article 77 of the Compilation of Islamic Law which emphasizes the obligation of husband and wife to maintain household harmony, love each other, respect each other and take good care of their children. However, the Judge found a discrepancy between the expectations stated in the legal provisions and the reality faced by the Petitioner. Therefore, the Judge referred to Article 39 of Law Number 1 of 1974 concerning Marriage, Article 19 of Government Regulation Number 9 of 1975, and Article 116 of the Compilation of Islamic Law.

Although the judge did not explicitly determine the reason for divorce because he was not a virgin, he emphasized the reason for divorce because there were continuous disputes and quarrels between husband and wife. This shows that even though the official reason for divorce is not directly related to the wife's virginity status, the wife's lies about her virginity status are still the main trigger for disharmony in the household.



b. Formal Requirements Fulfilled

In fulfilling the formal requirements of a civil case, the judge has obtained information from witnesses. Although the statements of the two witnesses are not directly related to the respondent's virginity, they highlight the disputes and quarrels between husband and wife. They testified about the wife's lack of respect for her husband and her husband's parents, as well as leaving the house without permission, which resulted in separation of residence for six months.

The judge considered that the statements of the two witnesses met the material and formal requirements for testimony, in accordance with the provisions of Article 309 R.Bg jo. Article 22 paragraphs (1) and (2) Government Regulation Number 9 of 1975 concerning Implementation of the Marriage Law. Therefore, their testimony is considered as evidence that has probative value. Based on this testimony, the judge concluded that the goal of marriage, which should be to create peace and happiness, could not be realized, especially because of continuous disputes, one of which was caused by the wife's lies about her virginity status. Therefore, the judge decided this case by granting talak raj'i, which allows the husband to refer his wife back.

Divorce is the last option taken by married couples to resolve conflicts in their family. However, when the condition of the household can no longer be repaired, even if it continues to be maintained it will cause greater damage and destruction, then deciding to divorce is a wise step. This is an example of what happened in the case being discussed.



The results of the analysis show that the legal basis and judge's considerations in the decision involve two main conditions. First, the fulfillment of material requirements as regulated in Article 19 letter of Government Regulation Number 9 of 1975 concerning the Implementation of the Marriage Law, and Article 116 letter f of the Compilation of Islamic Law relating to disputes within the family. Second, the fulfillment of formal requirements relating to the correspondence between the facts revealed and witness statements in accordance with the provisions in Article 309 R.Bg jo. Article 22 paragraph (1) and paragraph (2) Government Regulation Number 9 of 1975 concerning Implementation of the Marriage Law.

CONCLUSION

In the multiparadigm view of law, marriage is considered a blessed act of worship and is strictly regulated by Islamic law. The concept of virginity has important value in Islam as a symbol of women's purity and honor. However, assessing virginity cannot always be measured accurately through physical indicators such as the hymen. Despite this, many societies still maintain the value of virginity as an important factor in marriage. On the other hand, the feminist view highlights that emphasis on women's virginity can result in gender discrimination and injustice. Feminism encourages eliminating gender hierarchies in marriage and placing men and women in equal positions, independent and free from discrimination. The concept of virginity in feminism emphasizes women's privacy rights to protect their own bodies and identities without interference from other parties.

In the context of breaking up marital ties due to not being a virgin, divorce often occurs because women are considered not to be virgins based on simple assessments such as blood spots on the first night. This can lead to gender inequality and harm women socially and emotionally. Even though there are legal procedures for filing for divorce, the assessment of virginity needs to be considered more carefully and fairly, taking into account multiparadigm views and women's right to privacy. Thus, it is important to integrate the multiparadigm views of Islamic law and feminism in handling divorce cases due to non-virginity. Protection of women's privacy rights and the elimination of gender discrimination must be the main focus in the legal and social system. This requires collaboration between legal authorities, religious experts, feminist activists, and society to create a fair and equal



environment for all individuals, regardless of gender or social status.

The divorce case that occurred due to the wife's non-virginity illustrates the dynamics of a household that ended with the decision to divorce one raj'i. The legal basis used is Article 19 of Government Regulation Number 9 of 1975 Jo. Article 166 of the Compilation of Islamic Law, which confirms that divorce can be given if there is a dispute that cannot be resolved within the household. Even though it is not explicitly stated that the divorce occurred because of the wife's non-virginity, the dispute that arose after the wife acknowledged her virginity status was the main trigger. The judge ensures that the material and formal requirements of the case are met, by taking witness statements as evidence. The conclusion of this case is that divorce is taken as a last step when efforts to improve the household have failed, taking into account the unattainable goals of marriage and the damage that will arise if the household continues to be maintained in a state of disharmony.



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PENCEMARAN LINGKUNGAN OLEH PT. KIMU SUKSES ABADI DI KAMPUNG RAWA CITRA

Penulis: Adinda Nurlija Sofia

Local Chapter: Universitas Syiah Kuala

A. IDENTIFIKASI FAKTA HUKUM

Kasus ini adalah kasus pencemaran lingkungan yang terjadi di Kampung Rawa Citra, Kelurahan Telaga Asih oleh PT Kimu Sukses Abadi (KSA). Terungkapnya pencemaran ini berawal dari keluhan masyarakat yang mendiami sekitar Kampung Rawa diduga pembuangan saluran limbah tersebut memasuki saluran-saluran drainase masyarakat sekitar hingga mengalir ke sungai, dan menjadi salah satu yang mencemari limbah ke Kali Sadang. Pencemaran ini pada akhirnya meninggalkan beban derita bagi masyarakat yang mendiami kawasan sekitar pemukiman tersebut. Pemerintah akhirnya turun tangan mengusut kasus pencemaran tersebut dengan langsung memberikan penanganan Kasus Pencemaran di kawasan pemukiman Kampung Rawa Citra. Berdasarkan laporan Plt. Dinas Lingkungan Hidup disebutkan:

1. PT Kimu Sukses Abadi (KSA) belum memiliki dokumen lingkungan dan persetujuan lingkungan.
2. PT Kimu Sukses Abadi (KSA) menyimpan limbah B3 berupa kemasan bekas tinta B321-4 di area terbuka di halaman perpustakaan.
3. PT Kimu Sukses Abadi (KSA) belum memiliki tempat penyimpanan limbah B3 sesuai dengan ketentuan teknis
4. PT Kimu Sukses Abadi (KSA) membuang air limbah yang menyatu dengan saluran drainase air hujan menuju ke badan air
5. PT Kimu Sukses Abadi (KSA) belum memiliki persetujuan teknis pemenuhan baku mutu air limbah.
6. Belum memiliki rincian teknis penyimpanan limbah B3.



Pencemaran ini tak pelak menjadi sorotan publik. PT Kimu Sukses Abadi diduga telah mencemari lingkungan sekitarnya. Diantara pencemaran tersebut, seperti dipaparkan sebelumnya, yaitu gangguan terhadap kesehatan manusia berupa penyakit seperti kanker dan penyakit degeneratif non kanker seperti penyakit ginjal. Tidak hanya itu pengaruh dari limbah tersebut dapat menjadi sumber pencemaran dan pengrusakan lingkungan, dikarenakan air limbah yang dibuang setelah kegiatan pabrik kemasan dan aktivitas printing dengan menggunakan bahan tinta. Tinta tersebut dicuci dan menyebabkan limbah yang termasuk ke dalam golongan B3 (bahan berbahaya beracun) ke saluran air tanpa melalui prosedur yang ditetapkan oleh Pemerintah setempat. Air merupakan kebutuhan primer yang kita butuhkan setiap harinya, hal ini tentu saja dapat menimbulkan penderitaan kesehatan serta ancaman keberlangsungan hidup bagi masyarakat yang mendiami sekitar pemukiman Kampung Rawa Citra.

Dengan demikian, pencemaran oleh PT Kimu Sukses Abadi ini diindikasikan telah melanggar hak masyarakat sekitarnya atas jaminan kesehatan dan rasa aman dari dampak negatif aktifitas pabrik. Lebih jauh lagi, pencemaran ini diindikasikan melanggar perturan perundang-undangan Indonesia di lingkungan hidup.

Dalam Legal Opinon ini penulis mencoba untuk mengangkat isi pelanggaran hukum yang terdapat pada kasus pencemaran lingkungan oleh PT Kimu Sukses Abadi di Kampung Rawa Citra ini yaitu:

- a. Apakah PT Kimu Sukses Abadi (KSA) telah melanggar Undang-Undang Nomor 32 Tahun 2009 tentang Pengelolaan dan Perlindungan Lingkungan Hidup?
- b. Apakah PT Kimu Sukses Abadi (KSA) telah melanggar Undang-Undang Nomor 39 Tahun 1999 tentang Hak Asasi Manusia
- c. Apakah PT Kimu Sukses Abadi (KSA) melanggar Peraturan Pemerintah Nomor 22 Tahun 2021 tentang Penyelenggaraan Perlindungan dan Pengelolaan Lingkungan Hidup.

B. DASAR HUKUM DAN PERUNDANG-UNDANGAN YANG TERKAIT

Berdasarkan kasus posisi dan fakta hukum pada bagian sebelumnya Berdasarkan kasus posisi dan fakta hukum pada bagian sebelumnya yang telah memaparkan kronologis kasus dan bentuk pelanggaran yang terjadi di lapangan, kita dapat melihat bahwa begitu banyak fakta yang menyalahi peraturan perundang-undangan. Pelanggaran terhadap peraturan perundang-undangan di bidang lingkungan hidup dapat kita lihat dalam Undang-Undang Republik Indonesia Nomor 32 Tahun 2009 tentang Perlindungan dan Pengelolaan Lingkungan Hidup, yaitu sebagai berikut :

- a. Pasal 1 ayat 14 Undang-Undang Nomor 32 Tahun 2009 tentang Perlindungan dan Pengelolaan Lingkungan Hidup, yang berbunyi :
“Pencemaran lingkungan hidup adalah masuk atau dimasukkannya makhluk hidup, zat , energy dan/atau komponen lain ke dalam lingkungan hidup oleh kegiatan manusia sehingga melampaui baku mutu lingkungan hidup yang telah ditetapkan”.
- b. Pasal 67 Undang-Undang Nomor 32 Tahun 2009 tentang Perlindungan dan Pengelolaan Lingkungan Hidup, yang berbunyi :
“Setiap orang berkewajiban memelihara kelestarian fungsi lingkungan hidup serta mengendalikan pencemaran dan/atau kerusakan lingkungan hidup”.
- c. Pasal 68 huruf (b) dan huruf (c) Undang-Undang Nomor 32 Tahun 2009 tentang Perlindungan dan Pengelolaan Lingkungan Hidup, yang berbunyi :
“Setiap orang yang melakukan usaha dan/atau kegiatan berkewajiban :
(b)menjaga keberlanjutan fungsi lingkungan hidup;
(c)menaati ketentuan tentang baku mutu lingkungan hidup dan/atau Kriteria baku kerusakan lingkungan hidup”.
- d. Pasal 69 ayat 1 huruf (e), dan huruf (f) Undang-Undang Nomor 32 Tahun 2009 tentang Perlindungan dan Pengelolaan Lingkungan Hidup dinyatakan :
“Setiap orang dilarang :
(e) membuang limbah ke media lingkungan hidup
(f) membuang B3 dan limbah B3 ke media lingkungan hidup”.

Pencemaran ini telah menghilangkan hak masyarakat di sekitaran kawasan Kampung Rawa Citra atas lingkungan hidup yang baik dan sehat. Karena mereka adalah korban yang

merasakan dampak langsung pencemaran ini. Ketentuan hak mereka ini dapat kita lihat dalam Pasal 65 ayat 1 Undang-Undang Nomor 32 Tahun 2009 tentang Perlindungan dan Pengelolaan Lingkungan Hidup, yang berbunyi :

“Setiap orang berhak atas lingkungan hidup yang baik dan sehat sebagai bagian dari hak asasi manusia”

Hak masyarakat atas lingkungan hidup yang baik dan sehat ini dapat pula kita lihat dalam Pasal 9 ayat 3 Undang-Undang Nomor 39 Tahun 1999 tentang Hak Asasi Manusia, yang berbunyi :

“Setiap orang berhak atas lingkungan hidup yang baik dan sehat.”

Dalam kasus pencemaran yang dilakukan oleh PT Kimu Sukses Abadi ini banyak fakta konkrit di lapangan yang berhasil ditemukan oleh Dinas Lingkungan Hidup setempat. Fakta-fakta tersebut adalah :

1. PT Kimu Sukses Abadi belum memiliki dokumen Lingkungan dan persetujuan lingkungan yang diperuntukkan untuk lahan.
2. Tinta yang digunakan untuk aktivitas printing mengandung jenis limbah yang berbahaya dan digolongkan jenis B3.
3. Sarana dan prasarana perusahaan tidak memadai baik penyimpanan tetap, penyimpanan sementara, dan pengolahan limbah untuk beroperasi.
4. PT Kimu Sukses Abadi menyimpan limbah B3 berupa kemasan bekas tinta B321-4 di area terbuka di halaman perusahaan.
5. Limbah tinta jenis B3 beresiko bagi kesehatan masyarakat sekitaran Kampung Rawa Citra.
6. Ekosistem sungai menurun akibat pencemaran limbah jenis B3.

Fakta-fakta di atas diduga kuat disebabkan oleh :

1. Pembuangan limbah yang berasal dari aktivitas printing berupa kemasan bekas tinta B321-4 yang menyebabkan pencemaran yang menyatu dengan saluran drainase air hujan yang menuju badan air.
2. Tidak adanya surat ijin dari Kementerian Lingkungan Hidup dalam pembuangan limbah maupun pengolahan limbah.

3. Tidak terpenuhinya sarana prasarana yang memadai, baik dari penyimpanan tetap, penyimpanan sementara.
4. Limbah B3 yang dibuang PT Kimu Sukses Abadi mengalir ke Kali Sadang dan mencemari ekosistem sungai dan lingkungan sekitar.
5. Jarak pabrik dengan sungai cukup jauh menyebabkan limbah tersebut melewati saluran drainase pemukiman penduduk dan kemudian sampai ke Kali Sadang.

Fakta lapangan yang terungkap di atas menunjukkan indikasi kuat bahwa PT Kimu Sukses Abadi telah melakukan pelanggaran hukum dalam operasional.

C. ANALISA HUKUM DAN PENDAPAT

Dari kronologis kasus yang telah dipaparkan pada kasus posisi di atas, pencemaran oleh PT Kimu Sukses Abadi di hilir Kali Sadang ini dapat dikategorikan sebagai kasus hukum. Hal ini dapat dilihat dari adanya indikasi pelanggaran terhadap perizinan berusaha dan hak masyarakat dan pelanggaran terhadap peraturan perundang-undangan yang berlaku di Indonesia dalam bidang lingkungan hidup.

Menyimak fakta hukum dan konsep hukum yang dipaparkan berdasarkan kasus posisi yang diuraikan sebelumnya, jelas bahwa kasus ini adalah sebuah kasus hukum. Fakta-fakta hukum di lapangan sangat berkaitan erat dengan peraturan perundang-undangan yang diindikasikan telah dilanggar.

Fakta lapangan yang menunjukkan bahwa PT Kimu Sukses Abadi memenuhi unsur-unsur pelanggaran terhadap peraturan perundangan-undangan bidang lingkungan hidup yaitu terhadap Undang-Undang Nomor 32 Tahun 2009 tentang Perlindungan dan Pengelolaan Lingkungan Hidup adalah ditemukannya zat tinta hasil printing yang mengandung golongan jenis B3 berupa kemasan bekas tinta B321-4. Pembuangan limbah tersebut menyalahi prosedur dan PT Kimu Sukses Abadi tidak ada perizinan berusaha dan sarana prasarana yang tidak memadai baik dari penyimpanan tetap, penyimpanan sementara dan pengolahan limbahnya. Sehingga dampak dari pembuangan limbah tersebut dapat

mengancam kesehatan bagi masyarakat sekitaran hilir sungai dan masuk ke drainase warga dan berdampak buruk bagi kelestarian lingkungan sekitarnya.

Hal-hal di atas menunjukkan bahwa PT Kimu Sukses Abadi telah menyalahi kewajibannya memelihara kelestarian fungsi lingkungan hidup dan mengendalikan pencemaran lingkungan hidup serta menyalahi ketentuan tentang baku mutu lingkungan hidup dan/atau kriteria baku kerusakan lingkungan hidup.

Fakta lapangan yang menunjukkan bahwa pencemaran oleh PT Kimu Sukses Abadi ini telah merenggut hak masyarakat Kampung Rawa Citra untuk mendapatkan lingkungan yang sehat dan baik yang diatur dalam Pasal 65 ayat 1 Undang-Undang Nomor 32 Tahun 2009 tentang Perlindungan dan Pengelolaan Lingkungan Hidup dan dalam Pasal 9 ayat 3 Undang-Undang Nomor 39 Tahun 1999 tentang Hak Asasi Manusia dapat kita lihat dari hasil penelitian yang menunjukkan bahwa air yang menjadi bagian dari lingkungan sekitar mereka tersebut telah tercemari oleh cairan yang berasal dari aktivitas printing dengan menggunakan bahan tinta. Sehingga air yang tercemar dapat mengganggu dan merusak lingkungan guna kebutuhan sehari-hari warga Kampung Rawa Citra.

Fakta-fakta lapangan di atas merupakan fakta hukum yang terungkap dan tak perlu pembuktian lebih lanjut lagi. Sehingga pihak PT Kimu Sukses Abadi dituntut untuk melakukan tanggung jawab mutlak sebagaimana diatur dalam Pasal 88 Undang-Undang Nomor 32 Tahun 2009 tentang Perlindungan dan Pengelolaan Lingkungan Hidup :

“Setiap orang yang tindakannya menggunakan B3, menghasilkan dan atau mengelola limbah B3, dan/atau yang menimbulkan ancaman serius terhadap lingkungan hidup bertanggung jawab mutlak atas kerugian yang terjadi tanpa perlu pembuktian unsur kesalahan”.

Pada kasus ini, peran aktif masyarakat menuntut proses hukum sangatlah penting. Masyarakat Kampung Rawa Citra dapat menggugat PT Kimu Sukses Abadi secara Perdata, Pidana maupun dengan penyelesaian non litigasi untuk menuntut ganti rugi. Hak gugat masyarakat ini dapat dilakukan dalam bentuk gugatan class action yang telah diatur dalam Pasal 91 Undang-Undang Nomor 32 tahun 2009 Perlindungan dan Pengelolaan Lingkungan Hidup yaitu :



1. Masyarakat berhak mengajukan gugatan perwakilan kelompok untuk kepentingan dirinya sendiri dan/atau untuk kepentingan masyarakat apabila mengalami kerugian akibat pencemaran dan/atau kerusakan lingkungan hidup
2. Gugatan dapat diajukan apabila terdapat kesamaan fakta atau peristiwa, dasar hukum, serta jenis tuntutan diantara wakil kelompok dan anggota kelompoknya.
3. Ketentuan mengenai hak gugat masyarakat dilaksanakan sesuai dengan peraturan perundang – undangan.

Sedangkan untuk mempersiapkan tuntutan secara Perdata diatur dalam Pasal 87 Undang-Undang Nomor 32 tahun 2009 Perlindungan dan Pengelolaan Lingkungan Hidup yaitu :

“Setiap penanggung jawab usaha dan/atau kegiatan yang melanggar hukum berupa pencemaran dan/atau perusakan lingkungan hidup yang menimbulkan kerugian pada orang lain atau lingkungan hidup wajib membayar ganti rugi dan/atau melakukan tindakan tertentu.

Pihak organisasi lingkungan hidup pun dapat melakukan gugatan legal standing yang diatur dalam Pasal 92 Undang-Undang Nomor 32 tahun 2009 Perlindungan dan Pengelolaan Lingkungan Hidup yaitu :

1. Dalam rangka pelaksanaan tanggung jawab perlindungan dan pengelolaan lingkungan hidup, organisasi lingkungan hidup berhak mengajukan gugatan untuk kepentingan pelestarian fungsi lingkungan hidup.
2. Hak mengajukan gugatan terbatas pada tuntutan untuk melakukan tindakan tertentu tanpa adanya tuntutan ganti rugi, kecuali biaya atau pengeluaran riil.

D. KESIMPULAN DAN SARAN

Dari analisa hukum yang ada, dapat disimpulkan bahwa :

1. PT Kimu Sukses Abadi berdasarkan fakta hukum di lapangan telah melanggar Undang-Undang Nomor 32 Tahun 2009 tentang Pengelolaan dan Perlindungan Lingkungan Hidup
2. PT Kimu berdasarkan fakta hukum di lapangan telah melanggar Undang-Undang Nomor 39 Tahun 1999 tentang Hak Asasi Manusia

Saya berpendapat bahwa saran yang bisa menyelesaikannya adalah Masyarakat Kampung Citra Rawa yang menjadi korban pencemaran lingkungan PT Kimu Sukses Abadi disarankan agar menempuh haknya yang telah diatur dalam peraturan perundangan-undangan yaitu hak gugatan kepada PT Kimu Sukses Abadi. Untuk merealisasikan hak ini, dibutuhkan kepedulian dari advokat agar bersedia mendampingi masyarakat Teluk Buyat tersebut memperjuangkan hak-haknya.

Kepada organisasi lingkungan hidup disarankan terus memperjuangkan upaya gugatan Legal Standing terhadap PT Kimu Sukses Abadi agar dapat memberikan pertanggungjawabannya terhadap pencemaran lingkungan berdasarkan peraturan perundangan-undangan yang berlaku.



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**NATIONAL CHAPTER
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