



NATIONAL CHAPTER
INDONESIA

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LOCAL CHAPTER LEGAL WRITINGS

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LEGAL WRITINGS
ALSA LOCAL CHAPTER
UNIVERSITAS PADJADJARAN



ALSA LEGAL ENGLISH DICTIONARY

**by English Development Subdivision
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Phase 1 : Litigation

Introduction

ALSA Legal English Dictionary is made as an introduction for anyone, whoever you are, wherever you are, to enter the world of legal english. This book consists of legal english dictionary, legal materials, and various beginner friendly law related english exercises. This is the first edition of our two parts Legal English Dictionary with a theme of "Litigation".

ALSA Legal English Dictionary provides legal litigation English terms with meaning and examples of application. To hone your legal English proficiency, ALSA Legal English Dictionary offers a number of exercises for you to practise. After finishing the exercise, it is important to keep a record of the new words and expressions you have learned. Remember to keep a record of your progress for you to review on a regular basis so the words and expressions may become an active part of your legal vocabulary.

Learning and developing our legal vocabulary is essential in order for us to better understand legal equations that we are bound to come across. Materials contained within this dictionary will help the reader develop their legal vocabulary, specifically in litigation. Monitoring and testing the knowledge we have just obtained through the contents of ALSA Legal English Dictionary is one of the ways we could learn and develop our legal vocabulary.

We recommend an open mind while going through the contents of this dictionary in order to fully comprehend the materials within it. In legal studies, it can be challenging to find literature to enrich your vocabulary. Our hope for this dictionary is to provide new materials and knowledge regarding legal vocabulary in order to become a more literate legal student.

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Legal Dictionary

The Word

Example of a sentence using the word

The word in Bahasa Indonesia

A

Accusation

Bambang was brought to trial, but acquitted, and Tono withdrew the accusation.

Tuduhan: Hasil menuduh; hal yang dituduhkan; dakwaan

Accountable

the recent tax reforms have made government more accountable for its spending
dapat dimintai pertanggungjawaban

Acquittal

The jury quickly agreed on a verdict of not guilty, and the acquittal was greeted by the populace with shouts of triumph.

Pembebasan: Proses, cara, perbuatan membebaskan.

Adjudication

The case was referred to a higher court for adjudication.

Proses pengadilan

Adjourn

Court is adjourned until 1 p.m. tomorrow

Penundaan Persidangan

Admissible

the judge ruled that new evidence was admissible.

Dapat diterima

Admission

the admission of evidence in a court of law.

Penerimaan

Affidavit

We have a signed affidavit stating that the two men were seen entering the building.

Surat Pernyataan

Agreement

the two sides have reached an agreement

Perjanjian

Allegation

The police are investigating allegations that the mayor has accepted bribes.

Hal yang dituduhkan

Legal Dictionary

Appeal

*My lawyer said the court's decision wasn't correct and that we should file for an **appeal***

Naik Banding

Appellant

*Mr. Foko dismissed the **appellant's** case on all counts*

Pemohon banding

Arbiter

*One manager anticipated that she would be called upon frequently as **arbiter** in disputes between subordinates and customers.*

Arbiter

Arbitrary

*The assumption was **arbitrary**, based on no valid evidence.*

Kemanasukaan;
keabritreran

Arbitration

*Both sides in the dispute have agreed to go to **arbitration***

arbitrasi

Attorney

The prosecuting attorney began with a short opening statement.

pengacara

B

Bail

*He was released on £5000 **bail**.*

Uang pelepasan dari penahanan untuk sementara.

Binding

*the contract was not legally **binding***
mengikat

Breach

*they felt that our discussions with other companies is **breach** of contract*

Pelanggaran

Brief

*The Justice Department's legal **brief** became public after the stock market closed*

Berkas

Legal Dictionary

C

Case

*Four officers are investigating the **case**.*

Perkara

Claimant

*the **claimant** ask the tribunal to proceed the case*

Penuntut

Complaint

*Portugal has lodged a **complaint** with the International Court of Justice regarding their case against Spain.*

Pengaduan

Contract

*they could take legal action against you if you break the **contract***

Kontrak

Convict

*he has been a **convict** of robbery twice*

narapidana

Conviction

*she had a previous **conviction** for a similar offense*

Hukuman

Court

*The case took five years to come to **court**.*

Proses pengadilan

Court Proceeding

*The **Court proceedings** current for the reporting period are set out below.*

Proses pengadilan

D

Deductible

*expenses like office telephone bills are tax **deductible***

dapat dikurangi

Default Judgment

*A **default judgment** was issued against the defendant.*

Putusan Verstek

Legal Dictionary

Defendant

The jury found the defendant guilty on all counts.

Terdakwa

Deposition

Her attorneys took depositions from the witnesses.

Deposisi

Dispute

The cause of the accident was still in dispute

perselisihan

F

Felony

He was indicted on three felony charges of first degree murder

Kejahatan yang serius

Fine

if found guilty, he faces six months in a jail and a heavy fine

denda

G

Guilty

He was not guilty of the crime he's accused for.

Bersalah

I

Indictment

The serial killer was found guilty and given an indictment for his crimes.

Dakwaan

Injunction

Failure to obey a court injunction may result in proceedings for contempt of court.

Perintah

Intangible

she has that intangible quality which you might call charisma

tidak berwujud

J

Judge

The judge sentenced him to five years in prison.

Hakim

Legal Dictionary

Judgment

*The court granted a **judgment** in favor of the plaintiffs.*

Putusan

Jury

*The **jury** has returned a verdict of guilty*

Juri

L

Lawsuit

*He filed a **lawsuit** against his record label.*

Gugatan

Lawyer

*The **lawyer** representing the family said he was very satisfied with the verdict.*

Pengacara

Liability

*he denies any **liability** for the damage caused*
pertanggungjawaban

Litigation

*Tara is recommended in the recent edition of the legal directory for her **litigation** expertise.*

Litigasi; proses pengadilan

M

Mandatory

*the minister is calling for **mandatory** prison sentences for people who assault police officers.*

bersifat perintah; wajib

Mediation

***Mediation** proceedings have not already been conducted in the same matter.*

Mediasi

Motion

*Her **motion** for a trial was denied.*

Mosi

Legal Dictionary

N

Negotiation

the agreement was reached after a series of difficult negotiations

Negosiasi

O

Oblige

the law obliges companies to pay decent wages to their employees

mengharuskan

P

Parties

The judge's decision satisfied most of the parties concerned.

Pihak yang terlibat

Pecuniary

a pecuniary matter yang berkaitan dengan uang

plaintiffs

The court upheld the plaintiff's claim for damages.

Penggugat

Pleading

The judges hear the pleading of the defendant
Permohonan

Precedent

The ruling set a precedent for future libel cases.

Preseden

Prosecute

Police have been informed and once again they will take extra steps to identify and possibly prosecute the individuals responsible.

Menuntut

Prosecution

He threatened to bring a private prosecution against the doctor

Penuntutan

Prosecutor

The prosecutor gave the opening address.

Penuntut

Legal Dictionary

R

Royalty

the royalties paid to writers for recorded music

honor atas hak pateni

S

Sanction

He could face sanctions if a judge concludes he violated the terms of his probation.

Sanksi: Ancaman hukuman

Sentence

The court will impose an appropriate sentence.

Hukuman

Settlement

they reached an out-of-court settlement

penyelesaian

Statute of limitations

There is no statute of limitations forbidding a prosecution to be brought.

Daluwarsa

Subpoena

They have already issued a grand jury subpoena to at least one US airline in respect of the investigation.

Panggilan untuk menghadap sidang

T

Trial

He was facing trial on a murder charge

Proses pengadilan

V

Verdict

The jury reached a guilty verdict.

Dakwaan

Void

the lawyers declared the contract null and void

Batal; tidak berlaku; tidak sah

W

Warrant

They issued a warrant for her arrest.

Dokumen perizinan dari pemerintah

Witness

The defendant called their first witness

Saksi

Litigation 101

Part 1 Pre Trial

Principles of Criminal Procedure

1. Judiciary Fast, simple and low cost
2. Presumption of innocence
3. Treat the same before the law
4. Opportunity
5. Court Open to the public

Competent Authorities

1. Police

Police's Authority based on Article 15(1) UU No. 2 Tahun 2002

- a. Receiving reports and or complaints
- b. Assisting in resolving community disputes that can disrupt public order
- c. Preventing and overcoming the growth of community diseases
- d. Supervising sects that can cause division or threaten national unity and integrity
- e. Issue police regulations within the scope of police administrative authority
- f. Carry out special inspections as part of police action in for prevention
- g. Take the first action at the scene
- h. Taking fingerprints and other identities and taking pictures of someone
- i. Looking for information and evidence
- j. Organizing a National Criminal Information Center
- k. Issuing permits and or certificates needed in the context of community service
- l. Providing security assistance in hearings and implementing court decisions, other agency activities, as well as community activities
- m. Receiving and temporarily storing findings.

In the field of criminal proceedings, the police have the authority to :

- a. Carry out arrests, detentions, searches and confiscations
- b. Prohibit everyone from leaving or entering the scene of a case for the purpose of investigation
- c. Bringing and confronting people to investigators in the context of an investigation
- d. Ordering a suspect to stop and asking and checking personal identification Doing an examination and confiscation of letters
- e. Calling people to be heard and examined as a suspect or a witness
- f. Bring in the necessary experts in connection with the examination of the case Hold a termination of the investigation
- g. Submit case files to the public prosecutor
- h. Submit a request directly to the authorized immigration official at the immigration checkpoint in urgent or sudden circumstances to prevent or ward off people who suspected of committing a crime
- I. Giving instructions and investigative assistance to civil servant investigators and receiving the results of investigations by civil servant investigators to be submitted to prosecutors ut general
- j. Take other legally responsible actions.

2. Attorney

UU no. 16 of 2004 concerning the Attorney General's Office of the Republic of Indonesia. has also regulated the duties and authorities of the Prosecutor's Office as stipulated in Article 30. In the criminal field, the Prosecutor's Office has duties and authorities :

- a. Carry out prosecutions;
- b. Carry out judges' decisions and court decisions that have permanent legal force;
- c. Supervise the implementation of conditional criminal decisions, supervisory criminal decisions, and conditional decisions;
- d. Carry out investigations into certain criminal acts based on the law;
- e. Completing certain case files and for this purpose can carry out additional examinations before being delegated to the court which in its implementation is coordinated with investigators.

3. Court

The District Court has the duty and authority to examine, hear, decide and settle criminal and civil cases at the first level (Article 50 of UU No. 2 of 1986). Courts can provide information, considerations and advice on the law to government agencies in their area if requested (Article 52 of Law No. 2 of 1986). In addition to carrying out its main duties, the court may be assigned other duties and authorities by or based on the law.

4. Prison/Correctional Institue

Pre-prosecution & Prosecution

Definition

According to Article 14 letter B of KUHAP, Pre-prosecution is held if there is a deficiency in the process of investigation as per article 110 paragraph (3) and (4), by giving more clues in order to complete the investigation.

Pre-prosecution is the act that can be done by both parties to give further clue for the investigator if said party thinks that the investigation that's been done previously hasn't been satisfactory enough for them. For example, if the defendant thinks that there has been a misconduct during the arrest by the officials, the defendant has the right to propose an investigation for said misconduct.

Prosecution, according to Article 1 Number 7 of KUHAP, is the act of the prosecutor to delegate a case to the public court with the method that is regulated in this constitution so that it could be examined and decided by the judge in a court session. In short, it's the act of the prosecutor to forward the case along with the evidence found by the investigator for the court session. If the prosecutor wishes to cancel the case itself, maybe they think there isn't enough evidence, they're not obligated to carry on with the case. Although, in practice almost everyone still goes on with what evidence they got.

Legal Basis

Pre-prosecution and prosecution are regulated thoroughly by Kitab Undang-Undang Hukum Acara Pidana (KUHAP) especially in article 77 to article 83 and article 137 to article 144. It is also mentioned in Surat Edaran Mahkamah Agung No. 5 Tahun 1985, Undang-Undang Nomor 16 Tahun 2004, and Peraturan Mahkamah Agung No. 4 Tahun 2016.

Authority & Purpose

Pre-prosecution has the authority to determine the legitimacy of the process of arrest, investigation, and the prosecution. The court also has the authority to give compensation or rehabilitation for the defendant that the case has been ceased. These conducts are surely held to ensure the rights of both parties are maintained.

In accordance with article 137 KUHAP, the prosecutor has the authority to prosecute everyone who is guilty that is related with the presented case by delegating the case to the respected court. Of course, this is done after the prosecutor has received the result from the investigation and they have been studying and researching it and telling the investigator that the result is satisfactory. If, by chance, the result given by the investigator is condemned “not enough”, the prosecutor could tell said problem to the investigator while also giving more clues to better aid their job.

Forced Effort

Definition

Forced effort is one of the powers or a set of actions given by law to law enforcement officers to deprive law enforcement officials of their freedom in the form of arrest, detention, search, confiscation, and search of documents.

Arrest

Arrest temporary restraint of his freedom if there is sufficient evidence for the purposes of investigation, prosecution and trial. The condition for an arrest is a strong suspicion of committing a crime based on sufficient preliminary evidence and there must be an arrest warrant and a letter of assignment.

The arrest of a person can be done when:

- When committing a crime;
- After committing a crime;
- After being called by the public for having committed a crime; and
- When found in him objects / strong evidence that believes the involvement of that person with a crime

Detention

Detention is the placement of a suspect or defendant in a certain place by an investigator or public prosecutor or judge with his determination, in terms of and according to the method stipulated in the law. There are three types of detentions which are Detention Center, Home Detention, and City Detention.

Suspension

At the request of the suspect/defendant, the official who makes the detention has the right to grant a suspension of detention by providing certain conditions. The suspension of detention can be accompanied by a guarantee of people/money.

Boarding

The suspension of the temporary detention of the suspect due to health reasons (intensive outpatient/inpatient care) which is confirmed by a doctor's statement until the person concerned is declared cured

Search

-House Search: House search is the act of an investigator to enter a residential house and other closed places to carry out inspections and or confiscation and or arrest in the case and according to the method regulated by law.

-Clothes Search

-Body Search: Body search is the act of an investigator to carry out an examination of the suspect's body and clothes to look for objects that are strongly suspected to be on his body or that he has brought along for confiscation.

Confiscation

Confiscation is a series of actions done by an investigator to take over and or keep under his control movable or immovable objects, tangible or intangible for the benefit of evidence in investigation, prosecution and trial.

The confiscated goods must be guarded and cared for by the official who made the confiscation. Goods that have been confiscated can be returned to the person from whom the goods were confiscated or the owner or person in charge of the goods. Besides being able to be returned, confiscated objects can also be confiscated for the state or can be destroyed. This is especially the case for confiscated goods that are prohibited (dangerous or prohibited from being circulated)

The confiscated objects will be used as evidence for the purposes of the examination.

Confiscation is also divided into two, namely ordinary confiscation and confiscation in a state of urgency

Search of documents

Investigators have the right to open, examine and confiscate other letters related to criminal acts from post offices, telecommunications companies, and other communication companies with special permission from the KPN.

If it turns out that the letter being examined has no connection with a criminal act, the investigator is obliged to keep the contents of the letter confidential.

In the event that an investigator receives a complaint or there is a strong suspicion that there is a forged or forged letter, the investigator can examine the letter with the help of an expert or compare it with the original letter obtained from the official who kept the original document.

Initial Investigation and Investigation

Initial Investigation

According to article 1 number 5 of the Kitab Undang-Undang Hukum Acara Pidana (KUHAP), Initial investigation is a series of investigators' actions to seek and find an event that is suspected of being a criminal act in order to determine whether or not investigation can be carried out according to the method regulated in this law.

Initial investigation cannot be separated from investigation, because initial investigation is the initial stage of investigation, and of course an initial investigation is part of an investigation. Initial investigation aims to obtain or collect information, evidence, or data used to determine whether an event that occurred is a criminal act or not. Who can be held responsible (criminally) for the crime, in other words collecting preliminary evidence/sufficient evidence.

The person conducting the initial investigation is called the initial police investigator. Based on article 1 point 4 of KUHAP, an initial police investigator is a state police official of the Republic of Indonesia who is authorized by law to conduct an investigation.

Article 5 paragraph 1 of KUHAP states that there are four authorities of initial police investigators in an initial investigation, namely:

1. Receive a report or complaint from a person regarding the existence of a criminal act;
2. seek information and evidence;
3. order to stop a suspect, ask, and check his identification;
4. take other legally responsible actions.

In addition, at the order of the investigator, the initial police investigator may take the following actions:

1. arrest, prohibition from leaving the premises, search and detention;
2. examination and confiscation of letters;
3. take fingerprints and take pictures of the suspect in question;
4. bring a person to the investigator.

Article 1 paragraph 1 of Peraturan Kepala Kepolisian Negara Republik Indonesia (Perkapolri) states that initial investigation activities are carried out by way of processing the crime scene, observing (observation); interview; surveillance; undercover; undercover buy; control delivery; tracking; and/or research and document analysis. The target of the initial investigation is a person, object or item, place, event/occurrence/and/or activity.

After the results of the initial investigation are reported by the initial investigative team, a case title must be carried out to determine whether the incident is suspected to be a criminal act or not. The results of the case title which decides it is a criminal act, proceed to the investigation stage (Article 9 paragraph 1 and paragraph 2 of Perkapolri No. 6/2019).

Investigation

Based on article 1 point 2 of KUHAP, investigation is a series of actions by an investigator in terms of and according to the method regulated by law to seek and collect evidence with which evidence makes clear about the criminal act that occurred and in order to find the suspect.

It is the investigator who conducts the investigation. Based on article 6 paragraph 1 of KUHAP, the investigator is a State Police Officer of the Republic of Indonesia or certain Civil Service Officers who are given special authority by law to carry out investigations.

Article 7 paragraph 1 of KUHAP mentions 10 authorities of investigators in an investigation, namely:

1. Receive a report or complaint from a person regarding the existence of a criminal act;
2. take the first action at the scene;
3. order to stop a suspect and check the suspect's identification;
4. make arrests, detentions, searches and confiscations;
5. carry out inspection and confiscation of letters;
6. take fingerprints and photograph of the suspect in question;
7. summon people to be heard and examined as suspects or witnesses;
8. bring in the necessary experts in connection with the examination of the case;
9. to terminate the investigation;
10. take other legally responsible actions.

As mentioned earlier, the investigation is the next step of the initial investigation. Article 10 paragraph (1) Perkapolri 6/2019 states that there are 10 activities in the investigation process, including consisting of investigations, commencement of investigations, coercive measures, examinations, determination of suspects, filing, submission of case files, submission of suspects and evidence and termination of investigations.

Litigation 101

Part 2 Proceeding

Lawsuit

A lawsuit is a civil legal action by one person or entity (the "plaintiff") against another person or entity (the "defendant"), to be decided in a court. Depending on the remedy sought and the venue where the plaintiff files the lawsuit, the case might be heard by a court of law or a court of equity. Lawsuit can be explained as the prosecutor's conclusion on the examination of a case based on the evidentiary process at trial. In preparing the charges properly, the prosecutor will not be separated from the indictment that was read out on the first day of the trial.

Procedure of a lawsuit:

1. The indictment by the Public Prosecutor;
2. Exception (note of objection) by the Defendant/Legal Counsel (if any);
3. Response to the Exception by the Public Prosecutor (if any);
4. Interim decision (if there is an exception);
5. Proof (examination of evidence)

Lawsuit letter, submitted by the public prosecutor after the examination in court after declared complete (Pasal 182 ayat [1] KUHAP). So, the indictment is read out after the proof process in the criminal trial is complete. This indictment contains a criminal charge. The legal basis of a lawsuit is based on Undang-Undang No. 8 Tahun 1981 KUHAP.

Indictment

The indictment is made by the public prosecutor after he has received the case file and the complete investigation results from the investigator. In the event that he is of the opinion that from the results of the investigation a prosecution can be carried out, the public prosecutor shall immediately prepare an indictment (pasal 140 jo pasal 139 KUHAP). The indictment is then transferred to the court, along with the case. This indictment is read out at the beginning of the trial (pasal 155 ayat [2] KUHAP), at the request of the presiding judge of the trial.

Trial Evidence

In accordance with Article 183 KUHAP, the judge is not allowed to give a decision unless there has been at least two pieces of evidence that is legitimate and the suspect is proven guilty. Said evidence is written in the next article, which is:

- a. Witness testimony
- b. Expert testimony
- c. Legal letter
- d. Clue
- e. Defendant's statement

Witness Testimony

A witness is someone who can give information regarding the investigation based on what they see or experienced.

Expert Testimony

This is given by the expert that has been qualified in their field. Needed for a specified case.

Legal letter

According to article 187, legal letter consists of:

Court minute made by the official, letter by the officials regarding the legislation, letter by an expert, and other letter related to the case.

Clue

According to Article 188, clue is an action, incident, or situation that is one way or another connected to the case and could lead to how the crime happened and who did it.

Defendant's statement

A statement that is presented by the defendant to explain their side of the story.

Court Report

Court report or *Berita Acara Sidang* (BAS) in Indonesian, is a report of how the trial went from beginning to end. Court report itself is made in order to ensure that the trial went well and goes according to the procedure. Although the judge's decision is final and sacred, it is nothing without an adequate court report.

The reports are made by the trial committee who is in charge of assisting the panel of judges to record the outline of the trial examination process clearly and unequivocally.

The reports that have been made by the court committee are always controlled by the judges, because it is their responsibility to ensure the quality of the report.

Court report consists of:

1. Case Number
2. Trial number
3. The day and the date
4. The identity and position of each parties
5. The court order
6. The court is open for public
7. Inviting both parties to enter the court room
8. Attendance of the parties
9. Open or closed trial
10. Postponement of trial
11. Change of court order
12. Closing
13. Signing

Interim Measure

Interim Measure is a decision made before the judge decides the case, which allows or facilitates the continuation of the examination of the case. So, this interim decision was taken by the judge before the judge handed down the final decision. In KUHAP, regarding the Interim Measure can be referred to Article 156.

Legal effort in KUHAP is divided into 2 (two) parts:

a. Ordinary Legal Efforts, which consist of:

1. Examination of the Appellate Court at the High Court;
2. Examination of the cassation level at the Supreme Court.

b. Extraordinary Legal Efforts, consisting of:

1. Examination of the cassation level in the public interest, where the application is submitted by the Attorney General because of his position;
2. Review of court decisions that have obtained permanent legal force.
- 3.

In connection with the matters mentioned above, the position of the interim measure rests with the court of first instance, in this case the District Court.

Defence

Based on article 182 paragraph 1 letter b KUHAP (Kitab Undang-Undang Hukum Acara Pidana), the defense is a summary from the general advisor against the trial to refute the elements in the public prosecutor's indictment. If the form of public prosecutor's indictment is single/cumulative, then the general advisor is sufficient to refute one of the elements in his defense. If the form of the indictment is subsidiary/alternative, then it is better if the general advisor considers all elements of the two/more articles indicted and then refutes all elements of the two/more articles in the defence.

Objection

Objection is a rebuttal to the formal and material defects of the indictment

1. JUDGING AUTHORITY:

2. Absolut the transfer of the case is not carried out to courts with appropriate judicial competence/environment.
3. Relatif based on the legal area/jurisdiction which refers to the place where the crime took place, the existence of the equipment, or the consequences and the place of residence of the Witness and the Defendant.

B. Not Acceptable:

1. Error in Persona confusion about who is responsible for the act.
2. Premature there is a stage that has been skipped, and that stage has been mandated by law.
3. Prejudice The examination of criminal cases depends on the fact that there are still civil disputes
4. Subjudice there is a dispute against the object in a criminal case, so the object must be proven first
5. Nebis in idem a person may not be prosecuted twice because of an act that has received a decision that has permanent legal force

OBJECTION

C. NULL AND VOID if the material requirements of the indictment are not fulfilled.

Article 56 (1) KUHP “In the event that the defendant or legal adviser raises an objection that the court is not authorized to hear his case or the indictment cannot be accepted or the indictment has to be cancelled, then after being given the opportunity for the public prosecutor to express his opinion, the judge considers the objection and then makes a decision.”

FINAL JUDGMENT (Article 191 KUHP) The verdict is pronounced by the judge with the head of the verdict which reads "for the sake of justice based on the one and only God". The head of this decision is intended so that the decision has executive power. If it is not pronounced, the decision will not be enforced. Based on article 270 of the Criminal Procedure Code, the decision is executed by the Prosecutor.

- a. Criminal: if all the elements accused are proven
- b. Free: if the elements accused are not proven
- c. Release: if the elements are met, but it is not a crime.

DISSENTING OPINION

Dissenting Opinion: a different opinion from the majority or a different opinion of the judge in a decision. Starting from legal facts, legal considerations, until the verdict is different. The judge's different opinion must be included in the decision.

Concurring Opinion: Having the same legal facts and considerations, but different rulings.

Implementation of Judge's Decision

A. Implementation of court decisions by prosecutors

First, the clerk shall make and sign a certificate that the decision has obtained permanent legal force. then the prosecutor makes a warrant to carry out the court's decision which is sent to the correctional institution.

DISSENTING OPINION

B. Court Fee

- In article 197 paragraph 1 of the Criminal Procedure Code which regulates what must be contained in a decision in letter i it states: "the provisions on whom court fees are charged, by stating the exact amount, and provisions regarding evidence"
- The second provision, namely Article 257 of the Criminal Procedure Code, states that if more than one person is convicted in one case, the cost of the case and/or compensation is borne by those who are impartial.

C. Supervision And Observation Of The Implementation Of Judge's Decisions

Supervision and observation of judge decisions carried out by these judges is a new institution in criminal procedural law in Indonesia as stated in the Basic Law on Judicial Powers Article 33 paragraph (2)

With the provisions regarding the supervision of judges on the implementation of decisions, the gap between what the judge decides and the reality of the implementation of the crime in the correctional institution and outside the correctional institution if the banker is employed there can be bridged. Judges can also follow the development of the convict as a prisoner and also the treatment of the correctional officers concerned

Litigation 101

Part 3 Post Trial

Judge's Verdict

A. DECISION MAKING EVENT

If the judge sees that the trial examination has been completed, then he invites the public prosecutor to read his demands (requisitoir). After that, it is the turn of the defendant or his legal advisor to read out defense which can be answered by the public prosecutor, provided that: that the defendant or his legal advisor gets the last turn (Article 182 paragraph (1) KUHAP).

If the event is over, the presiding judge of the trial states that examination is declared closed, provided that it can be opened once again, either on the authority of the judge, the chairman of the session because of his position, or at the request of the public prosecutor or defendant or adviser law by giving reasons.

District court decisions can be handed down and announced on the same day or on another day that must be notified in advance to the public prosecutor, defendant, or legal adviser (Article 182 paragraph(8)). One thing that is very important but not mentioned is how long the delay can last. In Ned. Sv. it is clearly determined that the postponement of the judge's decision can last a maximum of fourteen days.

After the examination is declared closed, the judge holds a final deliberation to make a decision and if necessary the deliberation is held after the defendant, witness, legal advisor, public prosecutor and the audience leave the courtroom.

Judge's Verdict

B. CONTENTS OF THE JUDGE'S DECISION

Each judge's decision is one of three possibilities:

1. punishment or imposition of a criminal and/or disciplinary action;
2. acquittal;
3. the decision to escape from the law, lawsuits.

KUHAP provides a definition of a verdict (*vonnis*) as defined below :

"The court's decision is the judge's statement spoken in open court hearings, which can be in the form of sentencing or free, or free from and all legal claims in respect of and according to the method regulated in this law." (Article 1 point 11 KUHAP).

Regarding when a sentencing decision is handed down, answered by Article 193 paragraph (1) KUHAP is as follows: "If the court is of the opinion that that the defendant is guilty of the crime charged him, the court will impose a sentence on him."

Furthermore, the acquittal (*vrijspraak*) is handed down "if the court" is of the opinion that from the results of the examination at the trial, the guilt of the defendant for the actions he was accused of was not legally proven and convincing, then the defendant is acquitted." (Article 191 paragraph (1) KUHAP).

Furthermore, the decision to be released from all legal claims is handed down according to KUHAP "if the court is of the opinion that the charged to the defendant is proven, but the act is not constitutes a criminal act, the defendant/wa is cleared of all lawsuits." (Article 19) paragraph (2) of the KUHAP).

Judge's Verdict

C. FORMALITES THAT MUST BE FULFILL BY JUDGE'S DECISION

Article 197 paragraph (1) of the KUHAP regulates the formalities that must be fulfilled by a judge's decision and according to paragraph (2) of the article if the provisions are not fulfilled, except for those referred to in letter g, the decision is null and void.

Legal Remedies

Explained in KUHAP Chapter XVII, ordinary legal effort consists of appeal and *Pemeriksaan Kasasi*

Appeal

This legal effort is intended to examine the court verdict with its reality and to make a new investigation on the whole case. That's why an appeal is often called a revision.

An appeal is actually a new kind of approach regarding the case (*judicium novum*). So there could be new suspects, experts, and evidence as stated in article 238 and 240 KUHAP.

Kasasi

The reason why kasasi has to be done is if there is negligence in the court process (*vormverzuim*), the regulation is not done as intended, and the trial is not in accordance with the constitution. If there is an uncertainty regarding any reasoning or judgment in the court verdict, then kasasi could be submitted in order to clear any of it (*vormverzuim*).

Extraordinary Legal Remedies

Extraordinary legal remedies are contained in chapter 18 KUHAP, which consists of two parts, the first part as an examination of the cassation level for legal purposes and the second part as a review of court decisions that have permanent legal force.

Examination of the Cassation Level for Legal Interests (Pasal 259 KUHAP)

In the interest of law, all decisions that have obtained permanent legal force from courts other than the Supreme Court may be submitted 1 (one) application by the Attorney General and the cassation decision for legal purposes may not harm the interested parties.

Review of Court Decisions that have Permanent Legal Force

The judicial review (civil request) is an effort so that court decisions at the District Court, High Court, and Supreme Court levels, which have permanent legal force (inracht van gewijsde). The application for judicial review does not suspend or stop the execution of the court's decision (execution). The review according to Prof. Dr. Sudikno Mertokusumo, S.H., is a legal remedy against final decisions and decisions rendered outside the presence of the defendant (verstek), and which is no longer open to the possibility to file a fight.

Extraordinary Legal Remedies

Based on article 67 UU No. 14/1985, jo Per MA No. 1/1982, the request for judicial review of a decision in a civil case that has obtained permanent legal force may only be submitted if it is based on the following reasons:

1. If the decision is based on a lie or trick of the opposing party which is known after the case is decided, or is based on evidence which is later declared false by the criminal judge.
2. If after the case has been decided, decisive documents of evidence are found which at the time the case was examined were not found.
3. If something has been granted that is not demanded or more than what is required.
4. If between the same parties regarding the same matter on the same basis, by the same court or at the same level, a decision that contradicts one another has been given.
5. If it is about something part of the claim has not been decided without considering the reasons.
6. If in a decision there is a judge's error or a real error.

Excercise Section

You can also do the Exercise section on google form for a better experience and to compete for a chance to get a price through bit.ly/QuizLEDALSAUnpad or by scanning the QR Code.*



Task 1 || Fill In the Blank

Use the appropriate word from the choices below to complete each sentence

(Admission) (Adjournment) (Convicted) (Allegations) (Appeal) (Arbiter)
(Lawsuit) (Motion) (Prosecute) (Plea)

1. The defendant has been anxious since the ... has begun.
2. Everyone in the courtroom is paying close attention to the ... of evidence.
3. The attorney of the defendant is going over the ... made by the prosecutor.
4. An ... has been made by the defendant's attorney and sent to the judge regarding the decision that has been made by the courtroom.
5. Both parties in court have agreed that the school principal is fit to be the ... in their case.
6. Customer's at the local bank have filed a ... Against the bank after several fatal mishaps made by the bank.
7. The defendant's attorney made a ... To the judge after being unsatisfied by a decision made by the judge.
8. Standard operating procedures of arrests is made to ensure that the individuals being arrested know their rights and for the convenience of the police to ... Them.
9. Her attorney would have gone for a ... bargain.
10. The High Court later had him ... for murder.

Task 1 || Fill In the Blank

Use the appropriate word from the choices below to complete each sentence

(defendant) (Accusation) (verdict) (Judge) (Trial) (attorney) (subpoena) (court) (dispute) (proceeding)

11. He made a false ... against the Djokos
12. A lawsuit is a civil legal action by one person or entity also known as the plaintiff against another person or entity also known as the ...
13. Jimi was served with a ... to answer the charges in court.
14. The jury returned to announce their ...
15. If the case can't be solved peacefully, they will take this case to ...
16. His ... gave an advice to remain silent
17. The court ... is underway, currently they're still presenting the evidence
18. The union is in ... with the company's management over working hours
19. The ... ruled that the evidence was inadmissible
20. She is awaiting ... on corruption charges

Task 2 || Multiple Choice Questions

Pick the correct answer from the multiple choice questions below.

1. After receiving the case file and the complete investigation results from the investigator, the indictment will be made by the ...
A. Judge
B. Attorney
C. Public Prosecutor
D. Plaintiff
2. Forced effort is one of the powers or a set of actions given by law to law enforcement officers to deprive law enforcement officials of their freedom. How many forms of forced effort are there?
A. Five
B. Six
C. Three
D. Four
3. Examination of the cassation level for legal purposes and review of court decisions that have permanent legal force are a part of ...
A. Legal Effort
B. Extraordinary Legal Remedies
C. Judge's Verdict
D. Judge's Decision
4. A ... is a civil legal action by one person or entity (the "plaintiff") against another person or entity (the "defendant")
A. Subpoena
B. Lawsuit
C. Meditation
D. Litigation
5. Placement of a suspect or defendant in a certain place by an investigator or public prosecutor or judge with his determination in terms of and according to the method stipulated in the law. What kind of forced effort is this?
A. Arrest
B. Search
C. Confiscation
D. Detention

Task 2 | Multiple Choice Questions

Pick the correct answer from the multiple choice questions below.

6. Initial investigation is a series of investigators' actions to seek and find an event that is suspected of being a criminal act in order to determine whether or not investigation can be carried out according to the method regulated in this law. The definition above is validated according to

- A. Perkapolri
- B. KUHPer
- C. KUHAP
- D. KUHP

7. Legal effort in KUHAP is divided into 2 (two) parts which are..?

- A. Ordinary and Extraordinary Legal efforts
- B. Comprehensive and Detailed Legal efforts
- C. Significant and Nonsignificant Legal efforts
- D. Essential and Nonessential Legal efforts

8. If the judge sees that the trial examination has been completed, then he invites the public prosecutor to read his demands (requisitoir). After that, who reads out the defense which can be answered by the public prosecutor?

- A. Judge
- B. Defendant or his legal advisor
- C. Jury
- D. Plaintiff or his legal advisor

9. According to Article 193 paragraph (1) KUHAP, When will the court impose a sentence upon the defendant?

- A. If the court is of the opinion that the defendant is guilty of the crime charged against him.
- B. When the court hearing has been completed
- C. After the lawsuit has been made against the defendant
- D. Once all the legal claims have been discussed

10. The court's decision is the judge's statement spoken in open court hearings, which can be in the form of sentencing or free, or free from and all legal claims in respect of and according to the method regulated in this law." the definition of verdict that is mentioned above can be referred to?

- A. KUHAP
- B. Perkapolri
- C. KUHper
- D. KUHP

Task 2 || Multiple Choice Questions

Pick the correct answer from the multiple choice questions below.

11. Pre-prosecution is an act that can be done by...

- A. The defendant B. The prosecutor
C. Both parties D. The judge

12. Prosecution is the act of the prosecutor to delegate a case to the public court with the method that is regulated in this constitution so that it could be examined and decided by the judge in a court session, this statement is in accordance with....

- A. KUHAP Article 14 Letter B
B. KUHAP Article 1 Number 7 (X)
C. KUHAP Article 7
D. Undang-Undang nomor 16 tahun 2004 Article 2 Paragraph 1

13. A statement regarding an evidence for trial given by a specified person from a certain field is called...

- A. Witness testimony B. Expert testimony
C. Legal letter D. Defendant's statement

14. According to Article 183 KUHAP, there should be at least ... piece of evidences that is legitimate to sentenced someone

- A. 4 B. 5
C. 1 D. 2

15. Court report or Berita Acara Sidang is a report regarding how the trial is actually conducted. The report itself is the responsibility of and controlled by....

- A. Trial committee B. The parties
C. The judges D. Special committee

Task 2 || Multiple Choice Questions

Pick the correct answer from the multiple choice questions below.

16. Which of the following is not a Principle of Criminal Procedure...
- A. Presumption of innocence
 - B. Judiciary Fast, simple and low cost
 - C. Court Open to the public
 - D. Oppotunity cost
17. Regulations regarding the Indonesian Attorney General's Office is...
- A. UU no. 16 of 2004
 - B. Article 50 of UU No. 2 of 1986
 - C. Article 14 letter B of KUHAP
 - D. UU no. 5 of 1985
18. What does objection error in persona mean?
- A. a stage that has been skipped, and that stage has been mandated by law
 - B. a dispute against the object in a criminal case, so the object must be proven first
 - C. a person may not be prosecuted twice because of an act that has received a decision that has permanent legal force
 - D. confusion about who is responsible for the act
19. where can we find regulation about null and void ?
- A. Article 14 letter B of KUHAP
 - B. Article 56 (1) KUHAP
 - C. UU no. 5 of 1985
 - D. Article 50 of UU No. 2 of 1986
20. Which of the following is the judging authority objection..
- A. Premature and prejudice
 - B. Subjudice and absolut
 - C. Absolute and relative
 - D. Relative and nebis in idem



**LOCAL CHAPTER
UNIVERSITAS PADJADJARAN**



ALSA LEGAL ENGLISH DICTIONARY

**by English Development Subdivision
ALSA LC Unpad**

Phase 2: Corporation

Introduction

ALSA Legal English Dictionary is made as an introduction for anyone, whoever you are, wherever you are, to enter the world of legal english. This book consists of a legal english dictionary, legal materials, and various beginner friendly law related english exercises. This is the second edition of our two parts Legal English Dictionary with a theme of "Corporation".

ALSA Legal English Dictionary provides legal litigation English terms with meaning and examples of application. To hone your legal English proficiency, ALSA Legal English Dictionary offers a number of exercises for you to practise. After finishing the exercise, it is important to keep a record of the new words and expressions you have learned. Remember to keep a record of your progress for you to review on a regular basis so the words and expressions may become an active part of your legal vocabulary.

Learning and developing our legal vocabulary is essential in order for us to better understand legal equations that we are bound to come across. Materials contained within this dictionary will help the reader develop their legal vocabulary, specifically in the theme of corporation. Monitoring and testing the knowledge we have just obtained through the contents of ALSA Legal English Dictionary is one of the ways we could learn and develop our legal vocabulary.

We recommend an open mind while going through the contents of this dictionary in order to fully comprehend the materials within it. In legal studies, it can be challenging to find literature to enrich your vocabulary. Our hope for this dictionary is to provide new materials and knowledge regarding legal vocabulary in order to become a more literate legal student.

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Legal Dictionary

The Word in English

The word in Bahasa Indonesia

Example of a sentence using

the word

A

Acceptance

penerimaan/persetujuan

The idea rapidly gained **acceptance** in political.

Acquisition

Tambahan

The **acquisition** of huge amounts of data has helped our research enormously.

Adhesion contract

Kontrak adhesi

Arbitration clauses began appearing in many **adhesion contracts** offered for employment and consumer services such as credit.

Agent

Agen/perwakilan

Please contact our **agent** in Spain for further information.

Agreement

Persetujuan

The documents are covered by a confidentiality **agreement**.

Arbitration

Arbitrase

Both sides in the dispute have agreed to go to **arbitration**.

B

Bankruptcy

Kepailitan

The company filed for **bankruptcy** in 2010.

Bilateral contract

Kontrak Bilateral

This **bilateral contract** was established in January 1999.

Board of commissioners

Dewan Komisaris

Jack was one of the twelve **commissioners** who went to Charles at Breda to invite him to return.

Legal Dictionary

Breach of contract

Pelanggaran kontrak

The seller sued a buyer for **breach of contract**.

C

Capital

Modal

He had various ideas on how to raise **capital** for the project.

Capital Assets

Aset Modal

The business disposed of all its **capital assets**.

Cause of action

Penyebab tindakan

Claimant has established her malicious prosecution **cause of action**.

Penyebab tindakan

Charter

Piagam

The **charter** allows for unrestricted trading.

Check

Cek

He was awarded a **check** for \$1,000.

Civil Law

Hukum Perdata

He used to studied **civil law** at Universitas Padjadjaran.

Class action

Gugatan Perwakilan Kelompok

As a result, a **class action** lawsuit has been initiated against Smiley Miley Inc. and Interactive Media Marketing.

Company

Perusahaan

He works at the largest National Mining **Company**.

Compensation

Kompensasi

Their boss paid them extra as **compensation** for them working extra hours.

Legal Dictionary

Confidentiality agreement

Perjanjian Kerahasiaan

The company required that candidates for high-level positions agree to sign a **confidentiality agreement** before being hired.

Consign

Konsinyasi

Siti **consigned** her car to an auction house.

Contract

Kontrak

She is working with a three year **contract** with that company.

Consideration

Pertimbangan

An employer is legally bound to give due **consideration** to the request.

Corporation

Perusahaan

She didn't want to work for a big **corporation** where everything was so impersonal.

Corporate

Tanggung jawab

perusahaan

PT Djarum often held a generous amount of donation to the youth sports program in regard to fulfilling their **corporate social responsibility**.

Social

Creditor

Kreditur

Their assets will be sold to pay off their **creditors**.

D

Damages

Kerusakan

It could take years to repair the **damage**.

Debt

Hutang

The company had incurred **debts** of over \$1 million.

Legal Dictionary

Debenture

surat hutang

We therefore accept that any such **debenture** will also be a security for taper purposes.

Debtor

Debitur

The **debtors** must negotiate with each creditor separately.

Deficit

Defisit

You are running a **deficit** if you spend more money than you make.

Directors

Direksi

He is the executive **director** of the ABC Association.

Dispute

Sengketa

The union is in **dispute** with management over pay raise.

Dividend

Deviden

Shareholders will receive an interim **dividend** payment of \$1 a share.

E

Entity

Entittas

She didn't have to ask which **entity** that was.

Escrow

Rekening Escrow

he ripped off \$28,000 from the **escrow** account.

F

Firm

Firma

He works for a **firm** of management consultants based in Jakarta.

Foreseeability

Yang dapat diduga

You're only responsible for the **foreseeable** consequences.

Legal Dictionary

I

Incorporated

Menyatukan

The company is **incorporated** in the state of Delaware.

Injunction

Perintah

The court granted an **injunction** against the defendants.

Interest

Bunga

He has to pay the monthly rate of **interest** of \$100.

J

Joint venture

Usaha patungan

The company has set up a **joint venture** with a company in Austria.

Jurisdiction

Yurisdiksi

The court has no **jurisdiction** over cases of this kind.

L

legal advice

Masukan hukum

The union should advise any dissatisfied member who asks the union for legal assistance to seek independent **legal advice**.

Liability

Pertanggungjawaban

He denies any **liability** for the damage caused.

Limited company

Persekutuan terbatas

Zurich Insurance company is a **limited company** based in Switzerland.

Limited liability

Tanggung jawab terbatas

Court documents show Doyle was operating under a **limited liability** company in his name.

Legal Dictionary

Liquidation

Likuidasi

After three years of heavy losses the company went into **liquidation** with debts totalling £100 million.

Loss

Kerugian

The company has announced net **losses** of \$100 thousand.

M

Misrepresentation

Penyajian yang keliru

a deliberate **misrepresentation** of the facts.

N

Notary public

Notaris

They need the help of a **notary** to take care of their land certificates.

O

Omission

Kelalaian

There are a few **omissions** in the list.

P

Profit

Laba

The company may turn a **profit** by the end of this year.

S

Share

Saham

The company purchased 10 thousand **shares** of the stock this week.

Shareholder

Pemegang saham

He's one of the **shareholder** of Jaya Company.

Legal Dictionary

Stockholder

Pemegang saham

Over the years they have developed into the UK 's largest specialist **stockholder** of Steel Hollow Sections.

Stock

Saham

The company's **stock** hit an all-time high of \$100.

T

Tax

Pajak

They were charged with conspiracy to evade **taxes**.

V

Void

Tidak diterima

The lawyers declared the contract (null and) **void**.

W

Warranties

Garansi atau jaminan

The **warranty** covers the car mechanically for a year, with unlimited mileage.

Corporate Legality 101

Part 1 Definition

Firm

A Firm or Firm Association is a company that is based on **partnership of a shared name**, for instance “KUSUMANEGARA & PARTNERS LAW FIRM”. Firm is an organisation of two or more people that is usually made and run by people with the same set of skills or occupation. This also means that each member has the same amount of responsibility and shares the same amount of loss and profit of the company. Firm itself is usually **these characteristics**:

- The member has already known and trusted each other before they made the company
- The contract could be signed publicly with a public notary or not
- Using the name of the partners as the company name
- Has a limitless responsibility and risk of bankruptcy

A firm association has the **benefit** of having good management since there is an equal amount of distribution between the members, easy to establish, and a low capital requirement. That said, firms also have a **weakness** of having joint responsibility, a loss that needs to be shared by the members, and uncertain sustainability.

Limited Liability Company (PT)

A limited liability company (PT) is a form of business entity or company that is most widely used as a forum for business activities in Indonesia. PT is a **refinement** of the CV form which still contains some weaknesses, mainly because there is still no responsibility limited to liability to third parties. That responsibility involves personal wealth. Business people prefer limited liability, namely the separation of personal assets from company responsibilities against third parties. Therefore, a form of business was created which, regarding the owner's responsibility, is only limited to the capital they deposit. This form of business is called a limited liability company (PT).

With the separation of assets, the PT is classified as a legal entity, this is not the case with a trading company, civil partnerships, firm partnerships, and CVs that cannot be classified as a legal entity. The legal development of PT is **very dynamic**. At first, the source of the law is the KUHD which also regulates firms and CVs. However, because of the rapid development of PT, a separate law was made, Namely Law Number 1 of 1995 concerning Limited Liability Companies. This was later updated with Law Number 40 of 2007 span of a Limited Liability Company.

Limited Partnership

Commanditaire vennootschap or limited partnership is an alternative business entity with limited capital which is established because there is a **collaboration** between two or more people. Limited partnership partners only provide money, goods or labour as income in a limited partnership. Limited partnership only lends capital to officers, does not interfere in the management and internal control. The legal basis is found in **Articles 19-35 of the KUHD**.

Corporate Legality 101

Part 2 Establishment of Corporation

Firm

Article 22 of KUHD stated that a firm **must be established** with an authentic certificate. That said, the lack of the certificate can't be presented as a detriment for the third party. Furthermore, in accordance with **article 23 and 28 of KUHD** after the certificate is made, it has to be registered to the local district court and announced in the news.

Company

Regarding the establishment of the Company, it is regulated in **Chapter II, Part One UUPT 2007**, which consists of Articles 7-14.

There are several conditions that must be met in order for the establishment

The company is legal as a legal entity **consisting of:**

- a. Must be founded by 2 (two) or more people,
- b. Establishment in the form of a Notary Deed,
- c. Made in Indonesia,
- d. Each founder is required to take shares,
- c. Received approval from MENHUK & HAM (Minister).

These are the conditions that must be met so that the establishment can obtain legal approval and legality as a legal entity (rechtspersoon, legal entity). These conditions are "cumulative". Not "facultative" or "alternative". Even one of these conditions is defective or not fulfilled, resulting in an invalid establishment as a legal entity.

Limited Partnership

The legal status of a limited partnership partner can be likened to a person who lends or invests capital in a company. After the investment, it is expected that there will be a profit from the invested capital. Limited partnerships are not involved in interfering with the management and management of the partnership. Limited partnership can **consist of two kinds of partners**:

1. Management partners or complementary partners who act as management partners in limited partnerships.
2. Limited partners or partners do not work, whose status is only as a provider of capital or lender.

According to **Article 20 of the KUHD**, they are only known as limited partnerships with investments, where their status and responsibilities are:

- Do not interfere and do not work with company affairs
- Only providing capital or money so that it is called a limited investment partner
- Limited partnership losses borne by limited partnership partners are only limited to the amount of capital invested
- The names of limited partners cannot be known and are usually referred to as silent partners

Members or partners of limited liability companies acting out are members who carry out the management. If a member of the board of directors interferes in the management of the company, he or she will bear the legal consequences, which is considered to be voluntary to bind themselves to all actions of the management.

Corporate Legality 101

*Part 3 Closing Of
Corporation*

Firm

A firm association may end because:

- **The time** has ended since the partnership was established
- Destruction of the **main goods or the completion of the business** which is the subject of the partnership of the firm being established with
- **The will** of one or more people from the partnership
- One of the partners **dies** or is declared **bankrupt**.

Company

The dissolution of a company is required to carry out liquidation. Liquidation is a clearing process to settle the assets and liabilities of the company. This process is carried out by the liquidator. Later, the liquidator's role is to make debt payments from debtors to creditors. The selected liquidators can come from the board of directors, professionals, to consultants who are experts in their fields. The appointment of a liquidator needs to be approved by the court or the GMS. Based on Law number 40 of 2007, the **steps for the liquidation process** include the following.

1. Announcement of dissolution by the liquidator through newspapers and the State Gazette of the Republic of Indonesia. This announcement contains information regarding the dissolution of the limited liability company and the legal basis, the name of the liquidator, the address, as well as the procedures for filing invoices, and the period for submitting collections.
2. Registering the dissolution with the Ministry of Law and Human Rights within 30 days after the dissolution is effectively carried out.
3. The liquidator registers the company's assets and settlement obligations with creditors.
4. Report the final result of the liquidation to the GMS or the court for approval.
5. The liquidation report is ratified to the Ministry of Law and Human Rights and continued by issuing announcements through newspapers/media within 30 days from the date of ratification.
6. The Ministry of Law and Human Rights noted the expiration of the company's legal status and deleted the company's name

In accordance with **BKPM Regulation number 3 of 2012**, PMA is required to complete obligations so that BKPM can revoke the business licence. The company records and has official documents related to the dissolution of PT. This includes the final results of the GMS, notes on the deed of establishment and amendments, termination notes from the Ministry of Law and Human Rights (for limited liability companies), records of tax identification numbers, the latest LKPM, and the appointed liquidator's power of attorney.

Limited Partnership

Based on **articles 31–35 of the Criminal Code**, the dissolution of limited partnership is explained as follows:

1. Changes must be stated with a deed
2. Amendments to the deed must be registered with the Registrar of the District Court;
3. Amendments to the deed must be announced in the State Gazette;
4. Unpublished deed changes will be binding on third parties;
5. Settlement by the company is another party agreed or appointed by the Court.

In addition, based on **Permenkumham No. 17 of 2018** concerning Registration of Limited Partnerships, Firm Partnerships, and Civil Partnerships, dissolution of CV and partnerships can be carried out in the event that:

1. expiration of the term of the agreement;
2. the destruction of the goods used for the purposes of the Firm, and the Civil Partnership or CV purposes, and the Civil Partnership have been achieved;
3. by the will of the allies; or
4. other reasons in accordance with the provisions of the legislation.

Then in submitting the application for registration as intended, it **must be accompanied** by:

1. deed of dissolution;
2. a court decision declaring the dissolution; or
3. other documents stating the dissolution.

Applications for registration of dissolution of CV and Civil Partnerships must be registered with the Minister by the Applicant represented by a Notary through the Business Entity Administration System.

The next step after the dissolution of the CV and the civil partnership is **settlement or liquidation**. The selection of liquidators can be seen from **Article 32 of the KUHD**, namely:

1. First of all, it must be seen from the provisions in the partnership establishment agreement;
2. If it is not in accordance with the provisions in point 1, the management partners are obliged to make settlements;
3. In the establishment agreement, one or several persons who are not partners can act as liquidators;
4. The partners together with the majority of votes may appoint partners who are not allies of the management to carry out the settlement; and
5. If the majority of votes are not obtained, the partners may ask the court for assistance to determine the liquidator.

Excercise Section

***The answers will be added
in a later date**

Task 1 | Fill In the Blank

Use the appropriate word from the choices below to complete each sentence

(Jurisdiction) (Liability) (Incorporated) (Director) (Arbitration)
(Shareholder) (Dispute) (Bankruptcy)

1. The ... may be settled by arbitrators acceptable to both parties.
2. They are desperately trying to avoid ... by only spending necessary expenses.
3. In 1988, the privately owned Dutch company, SHV, became a significant ..., acquiring 40% of Calor's equity.
4. He was appointed as the ... Of the company in 1998 because of his service for the company for the last 10 years.
5. Both sides in the dispute have agreed to go to ...
6. All of the meetings were public and ...ways for people to offer input
7. The company cannot accept for any ... damage caused by natural disasters
8. The English court had no ...over the defendants.

Task 2 | Multiple Choice Questions

Pick the correct answer from the multiple choice questions below.

1. Regulation regarding the establishment of a firm with an authentic certificate is stated in...
A. Article 14 of KUHPer
B. Article 22 of KUHD
C. Article 2 of UU No. 40 year 2007
D. Article 28 of KUHPer
2. An alternative business entity with limited capital which is established because there is a collaboration between two or more people is a definition of...
A. Firm
B. Corporate
C. Limited Partnership
D. Government corporate
3. Which of the following conditions that must be met in order for the establishment is incorrect...
A. Must be founded by 2 (two) or more people
B. Establishment in the form of a Notary Deed
C. Received approval from Kementrian Perdagangan
D. Each founder is required to take shares
4. A type of corporation that usually uses the name of the partners for the name of the company is...
A. Limited Company
B. CV
C. Maatschap
D. Firm
5. Where can the legal basis for Commanditaire vennootschap be found?
A. Articles 19-35 of the KUHD / commercial law book
B. Article 2 of UU No. 40 year 2007
C. Article 22 of KUHD
D. Law Number 40 of 2007 span of a Limited Liability Company

Task 2 | Multiple Choice Questions

Pick the correct answer from the multiple choice questions below.

6. The conditions that must be met so that the establishment can obtain legal approval and legality as a legal entity must be
- A. Facultative
 - B. Cumulative
 - C. Alternative
 - D. Individual
7. A Is usually made by people with the same passion regarding a certain field
- A. Firm
 - B. Maatschap
 - C. CV
 - D. Limited company
8. What are the two kinds of Commanditaire vennootschap?
- A. The active shareholders and passive shareholders
 - B. Complementary and limited partnership
 - C. The chairman and directors
 - D. Salesman and worker
9. The dissolution of a company is required to carry out liquidation, this process is carried out by the liquidator. What is the liquidator's role?
- A. To make debt payments from debtors to creditors
 - B. To make notary deed
 - C. To take shares from the company
 - D. To receive approval from KEMENKUMHAM
10. A firm may end because of the following reason, except...
- A. The main subject of the partnership of the firm is finished
 - B. The will of one people in the partnership
 - C. One of the partners is declared bankrupt
 - D. The government stated that they're no longer in business

Task 2 || Multiple Choice Questions

Pick the correct answer from the multiple choice questions below.

11. The dissolution of CV and partnerships can be carried out in the event that is regulated in...
 - A. Article 55 of KUHD
 - B. Law Number 40 of 2007 span of a Limited Liability Company
 - C. Article 28 of KUHPer
 - D. Permenkumham No. 17 of 2018 concerning Registration of Limited Partnerships

12. In accordance with BKPM Regulation ... , PMA is required to complete obligations so that BKPM can revoke the business license
 - A. number 4 of 2014
 - B. number 4 of 2012
 - C. number 5 of 2012
 - D. number 3 of 2012



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The Legality of Cannabis for The Medical Purposes in Indonesia and Other Countries: A Comparison

Nicholas Tandrew

ABSTRACT

Many countries have decriminalized and/or legalized the use of cannabis for medical and recreational purposes. However, in Indonesia, cannabis is considered as class I narcotics under the Law Number 35 of 2009 regarding the Narcotics as amended by Law Number 11 of 2020 regarding the Job Creation Law which means cannabis is prohibited even for medical purposes. The class I narcotics under Indonesian Narcotics Law may only be used for scientific purposes at the request of the National Food and Drug Agency (BPOM) and the said request must be approved by the Minister of Health. This paper compares the considerations of countries which have legalized the use of cannabis for the medical purpose with Indonesia's considerations on the prohibition of cannabis at all cost and how the considerations of other countries would be relevant towards Indonesian legal framework on cannabis usage. The research method used in drafting this paper is a normal juridical approach, resulting in the conclusion that the government of Indonesia could have changed the classification of cannabis to class II narcotics to serve its medical purposes.

Key Words: cannabis, comparison, Indonesian law

INTRODUCTION

Cannabis or marijuana is a type of drug that comes with psychoactive effects.¹ The original term for cannabis was “Indian Hemp” used by earlier narcotics regulations and treaties, limited only to the dried or fruiting tops of the female plant.² The drafters of the Single Convention on Narcotic Drugs of 1961 (“**Single Convention**”) replaced the term “Indian Hemp” with “Cannabis” to cover the male plants in order to facilitate the enforcement of Cannabis at all costs.³ The fruiting tops of the unfertilized female plants are particularly rich in the pharmacological strong active resin compared to the male plants. The term “Indian Hemp”

¹ Wayne Hall, *et.al*, *The health and social effects of nonmedical cannabis use*, (World Health Organization: 2016), p.2

² Article 4, 1925 International Opium Convention and 1948 International Opium Convention (with Protocol)

³ UN Secretary General, *Commentary on the Single Convention on Narcotic Drugs 1961*, (United Nations: 1973), p.2

that covers only the female plants created confusion for the law enforcer since it is mostly impossible to distinguish material obtained from female plants from that derived from male plants.⁴

Unlike the consumption of heroin and cocaine, the consumption of cannabis globally consistently increased since the 1990s.⁵ Cannabis also is considered as the most widely used drug worldwide as in 2020 more than 4 percent of the global population aged between 15-64 (209 million people) used cannabis in the past year. For comparison, 170 million people had used cannabis in 2010.⁶ In 2021, more than 110.000 hectares of cannabis' planting area and 130.000 tons of cannabis were destroyed in Indonesia.⁷

As the concerns over cannabis or back then, Indian Hemp, were raised in 1912 through International Opium Conference in The Hague and its' output through the 1912 Opium Convention, it was written "*the Conference considers it desirable to study the question of Indian hemp from the statistical and scientific point of view, with the object of regulating its abuses, should the necessity thereof be felt, by international legislation or by an international agreement.*"⁸ The government of Dutch East Indies thus appointed Willem G. Boorsma the Head of Pharmacological Laboratory of the Department of Agriculture, Industry, and Trade to examine the cannabis' situation in the Dutch East Indies.⁹ The examination conducted by Boorsma leads to the conclusion that there were no major problems in the use of cannabis in Indonesia, except the large consumption in Aceh, East Sumatra and West Sumatra including small cultivation of Bengalese and Clingalese in those areas.¹⁰ Even so, the government had set the preconditions that the cultivation of all plant-based psychoactive substances including cannabis needed an authorisation from the colonial government.¹¹ In 1927, the government of Dutch East Indies setted restrictions on cannabis through the narcotics decree (*Verdovende Middelen Ordonnantie*) 1927 following international developments on cannabis restrictions.

The new Indonesian government maintained the colonial laws when the country gained independence, despite the uncertainty of cannabis' negative effects towards Indonesia. Sets of

⁴ *Ibid*, p.2

⁵ The Office for Drug Control and Crime Prevention, *2004 World Drug Report*, Vol.1, (United Nations: 2004)

⁶ The Office for Drug Control and Crime Prevention, *2022 World Drug Report*, Booklet 3, (United Nations: 2022), p.16

⁷ Puslitdatin Badan Narkotika Nasional, *Indonesia Drugs Report 2021*, (Badan Narkotika Nasional: 2021), p.24

⁸ Dania Putri and Tom Blickman, *Cannabis in Indonesia: Patterns in Consumption, Production, and Policies*, (Transnational Institute: 2016), p.4

⁹ *Ibid*, p.4

¹⁰ *Ibid*, p.5

¹¹ *Ibid*, p.5

regulations concerning the use of psychoactive chemicals, including cannabis, were passed by the Indonesian government fifteen years after the 1961 UN Single Convention on Narcotic Drugs. However, the anti-narcotics law passed in 1976 did not include any classification of substances. Thus, cannabis is classified as a sort of narcotic that may be used with restrictions for medical and research purposes.¹²

Following the war on drugs declared by President Megawati and President Joko Widodo, the establishment of the National Narcotics Board (Badan Narkotika Nasional) in March 2002 led to counter-narcotics programmes by various government institutions to eradicate narcotics up to village level. Moreover, under Law number 35 of 2009 concerning Narcotics (“**Narcotics Law 2009**”), cannabis was classified as class 1 narcotics alongside heroin, cocaine, and methamphetamine. With that being said, cannabis usage is restricted merely for scientific purposes, which leads to a lack of discourse and tolerance towards cannabis as it is considered and generalized as a very harmful and addictive substance similar to other class 1 narcotics substances.¹³

One of the earliest cases which stole people's attention regarding the legality of cannabis for medical purposes is the Fidelis Arie Sudewarto Case in 2017. Fidelis’ wife, Yeni, suffered from *Syringomyelia*, a rare disease that even surgery fails to cure. Fidelis then gathered information that his wife may be cured using cannabis. He then started doing his own cannabis extraction and mixed it into Yeni’s foods and drinks. After the cannabis treatment, Yeni showed some improvements. However, the National Narcotics Board arrested Fidelis for possession of cannabis which nonetheless, is still a breach of law. 32 days after the arrest, Yeni died.¹⁴

Dwi Pertiwi, mother of Musa IBN Hassan Perseden, a 16 years old boy who suffered from cerebral palsy, has also voiced efforts to legalize cannabis for medical purposes. Together with two other mothers, Dwi Pertiwi filed a judicial review towards the Narcotics Law to the Constitutional Court (Mahkamah Konstitusi) in November 2020. Unfortunately, one month after the judicial review was filed, on 26 December 2020, Musa IBN Hassan Perseden died.¹⁵

¹² *Ibid*, p.12

¹³ *Ibid*, pp.12-13

¹⁴ Oscar Ferry, *Kisah Fidelis: Antara Cinta, Ganja, dan Ancaman Penjara*, (CNN: 2017), <https://www.cnnindonesia.com/nasional/20170731142646-12-231457/kisah-fidelis-antara-cinta-ganja-dan-ancaman-penjara>

¹⁵ Fitra Chusna Farisa, *Sulitnya Legalisasi Ganja untuk Medis di Indonesia yang terganjal UU Narkotika*, (Kompas: 2022) <https://nasional.kompas.com/read/2022/07/21/14072901/sulitnya-legalisasi-ganja-untuk-medis-di-indonesia-yang-terganjal-uu>

The Constitutional Court remained silent until the two mothers who filed the judicial review alongside Dwi Pertiwi, Nafiah Muharyanti and Santi Warastuti, carried a poster written “Please, my son needs medical cannabis” at the HI Roundabouts Car Free Day event stole public’s attention on 26 June 2022. One month after Santi's action, on July 20 2022, the Constitutional Court finally decided on the case that the mothers had filed. The Constitutional Court refused to conduct the judicial review not only because the Court held that it has no competence to review the Narcotics Law since the review falls within the competence of the House of Representatives (Dewan Perwakilan Rakyat) and the government¹⁶, but also the Court determined that it is important to maintain current in forced narcotics classification to prevent any narcotics misuse.¹⁷

RESEARCH METHODS

A. Approach of the Method and Research Specification

The approach method being used to draft this paper is a normal juridical research method. This research method studies the secondary data as its source. The scope of this research comprise upon:

- a. Comparative law
- b. Research on the legal principles
- c. Research on the system of law
- d. Research on law synchronization both vertically and horizontally
- e. Historical approach towards the law or travaux préparatoires

This paper was drafted using in-depth research towards the law principles, the system of law, comparative law, and historical approach towards the law, which also covers both written laws and widely accepted norms and practices.

B. Technique of Data Collection

The technique of data collection being used to draft this paper is a study known as study of documents or study of authorities, which studies mainly on the secondary data sources. The secondary data covers legal theories, legal principles, legal doctrines, regulations, sets of rules, official documents, books, reports, and authorities.

¹⁶ Ibid

¹⁷ Putusan MK Nomor 106/PUU-XVIII/2020, para.3.13.1

The secondary data consists of primary legal materials, secondary legal materials, and tertiary legal materials. In this paper, the secondary data is comprised of:

- a. Primary legal materials, which covers regulations, legislations, official records, or travaux préparatoires. Such as, Single Convention on Narcotic Drugs of 1961 and Law number 35 of 2009 concerning Narcotics
- b. Secondary legal materials, which covers books, journals, reports, commentaries, and internet based sources.

C. Analysis Method

This paper used a qualitative analysis method instead of a quantitative analysis method. The qualitative analysis method is often applied in many different academic disciplines. This analysis method is a subjective form of research that relies on the analysis of the researcher's observation. The analysis method that is not numerical permits the researcher to conduct the analysis based on tapes or written materials such as laws, regulations, court decisions, arbitral awards, books, journals, *et cetera*.

The Legal Framework of Countries which have Legalized Cannabis for Medical Purpose

While Indonesia remains conservative enough to not see the bigger picture of Cannabis legalization, [A] Canada and [B] Brazil are two of many countries which have legalized Cannabis for medical purposes.

A. Canada

A Canadian named Terrance Parker suffered from frequent and life threatening epilepsy for nearly 40 years. Surgery and conventional medical measures had failed to reduce the seizures' symptoms. He once found out that by smoking cannabis, his epilepsy gradually got better. He then grew his own cannabis which led to charges under the Narcotic Control Act, possession and cultivation cannabis provisions to be exact. Parker argued that the prohibition on the cultivation and possession of cannabis was unconstitutional. He argued that the provisions infringed his rights as he faced the risk of imprisonment to be healthy.¹⁸

¹⁸ R. v. Parker (T.), 2000 135 OAC 1 (CA), [2000]

The Ontario Court held that Parker required cannabis to control his epilepsy symptoms and the prohibition against cannabis indeed infringed Parker's rights. Furthermore, the Court read into the provisions an exemption for persons possessing or cultivating marijuana for their “personal medically approved use.” With that being said, the Court amended the Narcotics Control.¹⁹

Her Majesty the Queen (The Crown) as the Appellant appealed by arguing that the Ontario Court made an error in judging that Parker required cannabis for his health condition and the amendment, in fact, falls within the parliament’s scope of work. The Crown also argued that Parker should have obtained the exemption to consume cannabis by applying to the Minister of Health. However, in July 2000, the Ontario Court of Appeal held that the Ontario Court was right in judging that Parker needed cannabis to reduce epilepsy severity. The Court of Appeal also held that the prohibitions were unconstitutional as Parker was forced to choose between his health and imprisonment. The exemption which required the Ministry of Health’s approval is also not in accordance with the principles of fundamental justice. The Court of Appeal however disagreed with the reading in medical use exemption by the Ontario Court. Instead, the Court of Appeal declared the Narcotic Control Act to be of no force. The declaration was suspended for a year and since the Narcotic Control Act had been repealed by the Parliament, it is unnecessary to hold it unconstitutional.²⁰

The Marihuana Medical Access Regulations (“**MMAR**”), which were put into effect by the federal government of Canada in 2001, allowed those who had a doctor's recommendation to receive an authorization to possess (“**ATP**”) cannabis for medical purposes. According to the MMAR, those with ATP licenses might access cannabis by growing it themselves, buying it from a certain producer, or getting it from Health Canada, a department of the Government of Canada responsible for national health policy. In 2013, the federal government of Canada repealed the MMAR and replaced it with the Marihuana for Medical Purpose Regulation (“**MMPR**”). According to the MMPR, only licensed producers who can adhere to stringent security standards that are imposed on the manufacture of other types of medicines are allowed to cultivate and

¹⁹ *Ibid*

²⁰ *Ibid*

distribute medical cannabis. In other words, only authorized producers may mail orders to patients for medical cannabis.²¹

In February 2016, the Federal Court of Canada held the MMPR to be unconstitutional as the MMPR was challenged by Neil Allard, Tanya Beemish, David Hebert And Shawn Davey (“**Allard Case**”), argued that the restrictions imposed by the MMPR violated their rights to liberty and security of person under section 7 of the Canadian Charter of Rights and Freedoms.²² The federal government stated the necessity for a new medical cannabis regime at the time the MMPR was passed, citing, among other things, the detrimental effects on public health, safety, and security caused by the expansion of medical cannabis in residential residences. Local governments and police forces warned the federal government in the years before the MMPR was passed that the use of medical cannabis in residential homes was linked to a number of problems, including unsafe building modifications, the use of hazardous materials in excess of what is allowed by fire codes, the development of mold and fungus, the release of unwelcome odors, and the diversion of cannabis to the black market. In the Allard Case, the federal government claimed that the MMPR's adoption was necessary for the public's health, safety, and security. However, the Federal Court determined that the evidence did not support this position. The Federal Court held that the adverse effects on public health, safety, and security claimed by the federal government either did not exist or could be remedied, and that they ultimately did not warrant the imposition of a new medical cannabis regime that restricts patients' access to medical cannabis by outlawing both personal production and specific methods of consumption.²³

In reaction to the Federal Court of Canada's ruling in the Allard Case from February 2016, Canada released the Access to Cannabis for Medical Purposes Regulations (“**ACMPR**”) in August 2016. The ACMPR replaced MMPR as the new regulation regarding medical cannabis accessibility. The ACMPR are made to offer a quick fix necessary to answer the court ruling. Health Canada is in charge of assessing

²¹ Kathleen Higgins and Erika Lambert, *Federal Court Finds that the Marihuana for Medical Purposes Regulations are Unconstitutional*, (Norton Rose Fulbright: 2016) <https://www.nortonrosefulbright.com/en/knowledge/publications/271808e6/federal-court-finds-that-the-marihuana-for-medical-purposes-regulations-are-unconstitutional>

²² Allard v. Canada, 2016 FC 236, T-2030-13

²³ Kathleen Higgins and Erika Lambert, *OpCit.*

how the Government's promise to legalize, severely regulate, and restrict access to cannabis should coexist with a system of medical access to cannabis. Under the ACMPR, Health Canada has to examine registration requests from those who wish to gain cannabis for their own personal needs with the authorization from a health care practitioner. This will entail checking supplied data for compliance with rules and responding to inquiries from law enforcement regarding the legitimacy of registration certificates. Individuals who wish to gain cannabis for their own personal needs with the authorization from a health care practitioner have three accesses to cannabis, which are access quality-controlled cannabis by registering with licensed producers, register with Health Canada to produce a limited amount for their own medical purposes, or they can appoint someone else to produce it for them. Under the ACMPR, it does not matter how individuals obtain the cannabis as long as the possession is no more than 30 days supply (150 grams of dried cannabis or the equal amount in other form).²⁴

An application to register with Health Canada is required if someone wishes to grow a small amount of cannabis for personal medical use. The application must include details including the location of the cannabis grow and storage facility, as well as an official medical certificate from the physician. An application to register with Health Canada must be made (much like if the person were to produce it themselves, but with information from the designated person) if they choose to designate another person to grow a certain amount of cannabis for them. A declaration made by the designated individual together with an official medical record from the treating professional that includes details like where cannabis will be grown and stored must be submitted. A document from a Canadian law enforcement agency demonstrating that the designated person hasn't been convicted or sentenced for a specified drug offense in the past 10 years must be included with the designation. A designated person is only permitted to produce for a total of two people, including themselves.²⁵

B. Brazil

²⁴ Health Canada, *Understanding the New Access to Cannabis for Medical Purposes Regulations*, (Government of Canada: 2016)

²⁵ *Ibid*

The Brazilian Superior Court of Justice recently ruled that growing and moving cannabis sativa with the intention of extracting oil for medical purposes is not illegal.²⁶ The Superior Court of Justice ruling is, arguably, a good example of a decision based on the 1988 Constitution, the statutory law referred to in the case, and several other authorities contributions, which all helped to construct the court's arguments, in contrast to the recent accusations of judicial activism made by President Jair Bolsonaro against the Brazilian judiciary. The Superior Court of Justice rendered a decision in a significant case involving an appeal on a writ of habeas corpus in which the claimant sought to avoid being charged with a crime for growing and transporting cannabis sativa in order to extract oil for medical use. After a federal court granted his petition after initially having it dismissed by a foot judge, prosecutors decided to appeal to the Superior Court of Justice. When it comes to criminal cases, one must keep in mind that a decision from the Superior Court of Justice can have persuasive effects. Although it won't be binding outside of the legal process, it will undoubtedly inspire other judges to rule consistently until a potential final appeal can be made by the Federal Supreme Court. In addition, it's critical to distinguish between the Superior Court of Justice's mandate to uniformly interpret federal law across the nation and the Federal Supreme Court's duty, which is typically linked with upholding the 1988 Constitution.²⁷

In light of the case, although recreational use of cannabis is still fully prohibited and illegal in Brazil, medical use of cannabis is legal with a high threshold.²⁸ Cannabis-based medicines are now legal to produce and sell. The Brazilian National Agency for Sanitary Surveillance (“ANVISA”) requires that producers obtain a Certificate of Good Manufacturing Practice before they can produce and sell. Along with other ANVISA-imposed prerequisites, the manufacturer must additionally acquire an operating permit, a special authorization, and technical documentation on the product's quality. Manufacturers are able to sell to pharmacies across the nation thanks to the ANVISA authorization.²⁹ Only individuals with a valid prescription from a doctor may purchase

²⁶ Emilio Peluso Neder Meyer, Thomas Bustamante, Davi Tangerino, *Courts and Cannabis Sativa for Medical Purposes in Brazil*, (Verfassungsblog: 2022)

²⁷ *Ibid*

²⁸ Decreto 9761/19 | Decreto n° 9.761, de 11 de abril de 2019

²⁹ Ted Rhodes and Carolina Uribe, *Cannabis Law and Legalization in Brazil*, (CMS: 2022), <https://cms.law/en/int/expert-guides/cms-expert-guide-to-a-legal-roadmap-to-cannabis/brazil>

the medication.³⁰ Products containing Cannabidiol (“**CBD**”) and Tetrahydrocannabinol (“**THC**”) will be sold at pharmacies. Products with CBD and those with less than 0.2% THC can both be prescribed normally. Only terminal patients or patients who have failed to respond to conventional treatment are permitted to be prescribed products with 0.2% THC or higher.³¹ Thus, the medical Cannabis in Brazil may only be used as the last resort for acute ill patients.

The Relevance of the Considerations of Countries which have Legalized Cannabis for Medical Purpose towards Indonesian Law

Commodities of abundant availability of the drug that are most in demand by people in the world, but due to the criminalization, cannabis commodities must be marketed secretly on a large scale by the mafia or cartel, where in (black market) the mafia or cartel, it provides not only cannabis but other very dangerous substances.³² The phenomenon of the global drug black market illustrates how cannabis seems to always be a bridge for ordinary people to be able to recognize other substances from drugs that have more dangerous effects.

Therefore, it is not surprising that nowadays, developed countries are no longer fighting drugs, especially cannabis. Because the war on drugs so far has proven to be a failure, misdirected and never won. Besides that the war on drugs has drained the state budget in nominal terms which is not small, so drug policy reform is the solution. Discrimination and legalization of cannabis commodities will be very beneficial for economy and social welfare, reducing the crime rate means that prison financing is no longer excessive, increasing income for the resulting tax costs, reducing drug trafficking because the market is getting narrow on the legality of cannabis, and many others

There are several countries that fully legalize the use of cannabis consumption, for example, Canada through its Cannabis Act. This country officially allowed its citizens to consume cannabis for recreational purposes in 2018. Long before that, the Canadian Federal government had even long provided access to medical cannabis to its citizens through the MMAR in 2001. This happened after an Ontario state court ruled that the prohibition of medical

³⁰ Natan Ponieman, *Brazil Regulates Sale of Medical Marijuana Products*, (Bezinga: 2022) <https://www.bezinga.com/markets/cannabis/19/12/14924387/brazil-regulates-sale-of-medical-marijuana-products>

³¹ *Ibid*

³² Tassos Crommys, *Drug-Based Policies Based on Scientific Data*, http://www.ecogreensgr.org/cms/index.php?option=com_content&view=article&id=2183:2011-05-30-07-12-43&catid=104:articles &Itemid=99

cannabis was a violation of the Canadian constitution.³³ Contrary to this, many countries strictly prohibit the use of cannabis consumption, either for recreational or medical purposes. One of these countries is Indonesia through its Narcotics Law, namely Law Number 35 of 2009 which clearly prohibits the use of cannabis for both medical and recreational purposes. Possession of small amounts of cannabis can even be punishable by imprisonment.

The legalization of medical cannabis in Canada in 2001 was not enough to reduce illegal users (outside of medical) to at least reduce the number of crime in Canada, the prohibition and the attitude of the State to fight cannabis became irrelevant considering data from the Canadian Department of Justice that between 2008-2011 Canada has spent about \$311 million but drug use is still not decreasing. After analyzing the recommendations of the 2002 Canadian Senate Special Committee on Drugs and looking at examples of strategies used by several European countries, the Canadian Green Party³⁴ concluded that the legalization of cannabis for adults is necessary in Canada. Legalization can increase tax revenue through taxes imposed on cannabis products such as tobacco and alcohol, then the Government can also save budget funds that are currently used for law enforcement against cannabis plants. In addition, the legalization of cannabis can also reduce crime that comes from the black market of drug trafficking in Canada.

The ineffectiveness of the prohibition system in Canada regarding the issue of legalization and decriminalization of cannabis has attracted significant political and media attention, the results of public opinion polls that have been carried out showing that the majority of Canadians are increasingly in favor of decriminalizing or legalizing cannabis. For example, a 2015 poll conducted by the Research Forum showed that 68% of Canadians supported cannabis regulation in Canada.³⁵

This puts pressure on the legislature and the Government to amend outdated laws regarding drug use. Given the sizable public and media support, it is not surprising to see that much of the Liberal election campaign has centered on the issue of legalizing cannabis. As a result, the newly elected Liberal Government officially announced that Canada would

³³ Canadian Medical Association, *Medical Marijuana*, 2011, <https://www.cma.ca/sites/default/files/2018-12/PD11-02-e.pdf>

³⁴ The existence of the Canadian Green Party has basically received public attention since gaining the stage of political debate in 2008 which later culminated in his success winning the vote and joining as a member of the House Of Common(Canadian parliament) as Green Member of Parliament in 2011.

³⁵ 7Hajizadeh M., *Legalizing And Regulating Marijuana In Canada: Review Of Potential Economic, Social, and Health Impacts*. Int J Health Policy Manag. 2016;5(8):453– 456.doi:10.15171/ijhpm.2016.63.; <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4968247/>

introduce legislation in the spring of 2017 to begin legalizing and regulating cannabis³⁶ which only took effect in mid-October.

The Liberal Party's stance has basically been supported by a group with similar tendencies since 2012,³⁷ namely the Canadian Green Party. The closeness of the two parties began to be seen in 2008.⁶⁰ Elizabeth May as chairman of the Green Party at that time was surprised by the platform owned by the Liberal Party because of the many similarities in the vision carried by the Liberal Party. Relations between the two parties continued to improve until finally Elizabeth May joined the seat of Parliament Justin Trudeau in 2015.

The existence of inequality in the legalization of states against cannabis further creates differences in legal practices related to cannabis in several countries. This difference, of course, creates different impacts and challenges. For example, the state may provide alternative treatment that is more efficient and profitable for its citizens. But on the other hand, the state also has to make many changes in its legal field and even has to be prepared to face the possibility of the emergence of new criminal organizations. Differences in views on the legalization of cannabis are basically due to differences in substantive laws in each country. This substantive legal difference is influenced by different legal infrastructures, such as legal history, legal culture, and others.

Although it is strictly limited in the applicable Indonesian Narcotics Law, it is undeniable that the article on its use and cultivation is especially carried out in traditional areas. Even records from the National Narcotics Agency (BNN) reported that there were at least 2 million cannabis users in Indonesia as of 2014.³⁸ Prior to that, between 2009 and 2012 there were around 37,923 Indonesian people imprisoned for using cannabis. Although the urge of this case was escalating every year, there are some debatable pros and cons on why Indonesia should legalize the use of cannabis for medical purposes.

A number of studies have tested the use of oil from cannabis extract called Cannabidiol (CBD) for the treatment of lung disease. In addition, CBD has also been tested to treat asthma and herpes.³⁹ An example of a case that can be seen regarding the use of cannabis is Fidelis

³⁶ *Ibid.*

³⁷ Rebecca Harrison, *Greens Welcome New Liberal Marijuana Policy*, <https://www.greenparty.ca/en/media-release/2012-01-17/greens-welcome-new-liberalcannabis-policy>

³⁸ BNN. *Laporan akhir: Survei nasional perkembangan penyalahgunaan narkoba tahun anggaran 2014*. Retrieved from <http://bnn.go.id/portal/index.php/konten/detail/humas/pressrelease/12691/laporan-akhir-surveinasional-perkembangan-penyalahgunaan-narkoba-tahunanggaran-2014>

³⁹ Nata Kesuma, <https://www.industry.co.id/read/62978/profesormusri-musman-ganja-sebagai-obat-corona-bukan-dengancara-dihisap>

Arie who was forced to grow cannabis at his home to take cannabis extract which is believed to be able to provide healing for his wife, Yeni, who suffers from Syringomyelia disease. During the consumption of cannabis, the wife experienced a positive development of the illness. However, before his wife recovered, Fidelis Arie was arrested by the police and Yeni died. Fidelis Aries' and his wife's story was a real example of how cannabis leaves are still a dilemma for medical or medical needs. Yeni's case can be a momentum that cannabis is not only seen from one side. Cannabis also has other benefits, such as alternative medicine in Indonesia. People like Inang Winarso have tried to find loopholes to legalize cannabis for medical purposes. The decision is in the hands of the government, and now is the momentum.⁴⁰ Looking at the provisions in Article 6 paragraph (1) of the Narcotics Law, narcotics are classified into:

- Class I narcotics are narcotics that can only be used for the purpose of developing science and are not used in therapy, and have a very high potential to cause dependence;
- Narcotics class II, are narcotics with medicinal properties used as a last resort and can be used in therapy and/or for the purpose of developing science and have a high potential to cause dependence; and
- Class III narcotics are narcotics with medicinal properties and are widely used in therapy and/or for scientific development purposes and have mild potential to cause dependence.⁴¹

However, considering the level of dependence on narcotics class 1 is very high and dangerous for health, then in accordance with the provisions in force to date, narcotics group 1 is prohibited from being used for the benefit of health services. The provision of safe and quality health services to the community is the responsibility of the state as stipulated in the provisions of Article 54 paragraph (1) and paragraph (2) of the Health Law. Therefore, the state is obliged to control the use of narcotics so that they are not misused. On the other hand, the state is also obliged to guarantee the fulfillment of the right to obtain safe and quality health services as mandated by Article 28H paragraph (1) of the 1945 Constitution of the Republic of Indonesia. forbidden, forbidden, and forbidden to use. Not infrequently if someone uses this object, it will be considered a sinner, a criminal, and a disease in society. Simply put, there will be a stamp or stigma for people who use drugs. Mudzakir, a criminal law teacher at the Indonesian Islamic University (UII) Yogyakarta, admitted that narcotics were used for medical

⁴⁰ Aditya Widya Putri, “*Momentum Legalisasi Ganja untuk Medis*”, <https://tirto.id/cl8Z>

⁴¹ Abi Jam'an Kurni, S.H. <https://www.hukumonline.com/klinik/a/iniaturan-tentang-penggolongan-narkotika-diindonesia-lt5bed2f4b63659>

purposes. What is criminalized is the abuse. But he emphatically rejects the idea of legalizing cannabis. There should be no tolerance.⁴² To this day, courts still impose relatively heavy sentences on people who carry, ship, or transport cannabis. That is, to anyone who meets the qualifications of the Narcotics Law, there is almost no mercy. Because in positive law, cannabis is still considered an illegal item.

As stated above, the government, including the legislators and law enforcers, are still rejecting the idea of cannabis legalization or decriminalization for medical purposes as they are afraid of the impact that might happen if cannabis is no longer a class I narcotics. However, such impact can be prevented by classifying cannabis as class II narcotics, where class II narcotics may be used as medical treatment in case other treatment has exhausted and failed, similar to Brazil's provision towards medical cannabis.

Therefore, legal steps that can be taken to legalize the use of cannabis for medical purposes in Indonesia are by revising the Narcotics Law and removing cannabis from narcotics class I, due to the fact that the enforcement of the narcotics law is no longer relevant to the current reality where cannabis is urgently needed as an alternative medicine and cannabis itself has been proven to have tremendous benefits in the medical world as well as the fact that is happening now where the United Nations and the drug commission have removed cannabis and cannabis resin from schedule IV of the single narcotics convention. Thus, it is hoped that the government can immediately revise the narcotics law because, as proposed in the progressive legal theory that the law in this case the law must be seen in the process of becoming (law as a process, law in the making) it is not absolute but must move to follow the dynamics of life. human beings continue to change for the better, because when we accept the law as a final scheme, the law no longer appears as a solution to human problems.

CONCLUSION

Cannabis is considered as the most widely used drug worldwide as in 2020 more than 4 percent of the global population aged between 15-64 (209 million people) used cannabis in the past year, a significant increase from 170 million people in 2010. In Indonesia, cannabis is classified as class I narcotics which means cannabis is prohibited for medical purposes and cannabis usage is restricted merely for scientific purposes. Despite the protests by the society

⁴² Rofiq Hidayat, <https://www.hukumonline.com/berita/a/kontroversi-gagasan-legalisasi-ganja-dan-judi-diindonesia-lt4dca010297bc6>

and judicial review submitted by parents of cerebral palsy patients, the government still has not changed the class of cannabis as the government is afraid of the impact that might occur.

The effort that the government could have taken is to change the classification of cannabis from class I narcotics into class II narcotics where class II narcotics may be used for medical purposes if the other efforts have exhausted, similar to Brazil's approach on medical cannabis. The government also can reflect on the application of medical cannabis from Canada in which the patient must be granted a prescription from authorized health care practitioners and approved by the ministry of health.

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Examining Education System for Youth Offenders: A Comparative Study Between Indonesia and Missouri

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ABSTRACT

Universally, education is one important thing which boosts the development of the country. Every child deserves an equal education, without exception. This paper will provide a legal analysis of (1) the status quo of schooling and education inside Indonesia Youth Prison (LPKA), Missouri's Approach to Education for Youth Offenders inside Division of Youth Services' Facilities, and (2) the comparison of Missouri's approach to education youth offenders. The research methods employed in this study are normative legal research, which involves looking at theories, conceptions, legal rules, and legislation. The findings of this study revealed that LPKA teachers do not possess a special certification to teach ABH in contrast to Missouri's system. On the other hand, Missouri requires those who taught the youth offenders to have a special certification. Moreover, non-academic activities at LPKA do not adapt to the times, especially in the field of technology. There are also discrepancies between law concerning the national education system and those made by the Directorate of Community Development and Child Empowerment under the Ministry of Law and Human Rights of the Republic of Indonesia.

Keywords: *education, quality, youth offender*

A. INTRODUCTION

1. Background

According to the Committee on Education and The Workforce, Washington, US “Criminal offender” means any individual who is charged with or convicted of any criminal offense.¹ Criminal offenders are not only committed by adults, but also by children. A young offender or youth offender is a person convicted of committing a crime during late adolescence or early adulthood but before reaching the legal age of

¹ Goodling, 1997, “Employment, Training, and Literacy Enhancement Act of 1997”, the Committee on Education and The Workforce House Representatives Retrieved from <https://www.govinfo.gov/content/pkg/CRPT-105hrpt93/pdf/CRPT-105hrpt93.pdf> on November 18, 2022.

majority.² In 2019, The National Criminal Information Centre (Pusat Informasi Kriminal Nasional, Bareskrim Polri) stated that there were 12.350 Elementary School students, 13.739 Junior High School Students, 25.784 High School students, 2.065 students, and 10.762 unknown to become suspects.³ From the data *a quo*, most criminal offenders are dominated by children who are still in school who are before reaching the legal age of majority.

In Indonesia, youth offenders are regulated in Law Number 11/2012 Concerning Child Criminal Justice System which emphasizes the diversion process (like a mediation) where the judicial process is very concerned about the interests of children and their welfare. This youth offender not only prioritizes criminalization, but also protection for the future of children from the psychology by providing protectors, guidance, and education. The final result of the child's judiciary can be outlined in the diversion agreement, one of the choices in the form of participation in education or training at the Lembaga Pembinaan Khusus Anak or called LPKA. LPKA is obliged to carry out education, skill training, and fulfillment of other rights in accordance with statutory provisions.

Article 85 paragraph (2) of Act Number 11 Year 2012 stated that youth offenders have the right to education inside the youth prison, but at present, education for Youth Offenders at LPKA is not evenly distributed because not all LPKA can hold it. This happened because of several factors such as low children's interests, minimal facilities and infrastructure, as well as low support from previous children's schools. Eventually, this can affect their quality of education.

In other state such as Missouri State, regulations for youth offenders are emphasize in taking a deeper look to the root causes of youth delinquency in hope for a long-lasting positive change and also preparing them to return and contribute positively to their home, school, and community in an institution which called Division of Youth Services' (DYS).⁴ As for the DHS itself have been regarded several times as

² Wex Definitions Team, 2021, "Offender", Legal Information Institute. Retrieved from <https://www.law.cornell.edu/wex/offender#:~:text=Offender%20is%20a%20legal%20term,the%20legal%20age%20of%20majority>. On November 18, 2022.

³ Bareskrim Polri, 2019, "Kriminal dan Lalu Lintas Dalam Angka Tahun 2018 dan Semester 1 2019", hlm. 17. Retrieved from https://pusiknas.polri.go.id/web_pusiknas/laporan/JURNALDATAPUSIKNASTAHUN2019.pdf on November 18, 2022.

⁴ "Missouri Approach", The Missouri Approach, <http://missouriapproach.org/>, (retrieved on 30th May 2022).

one of the leading examples for its educational approach to rehabilitate youth offenders inside its facilities.⁵ Based on this issue, this article will analyze the implementation of Indonesia's education system for youth offenders and also provide comparative study with Missouri's approach.

2. Research Question

- a. How does Missouri's implementation of the education system for youth offenders compare to Indonesia's?
- b. How to optimize the education system for youth offenders in Indonesia based on the comparison?

3. Methods

The type of research used is normative legal research, namely research by examining theories, concepts, legal principles, and legislation. Data collection techniques are carried out by literature study from secondary data presented in two legal materials, namely primary legal materials such as legislation and secondary legal materials such as literature that contains the opinions of experts, research results, books, and journals. The specifications of this research use descriptive analytical with statute approach and comparative approach (microcomparative approach) that examine regulations and compare them with policies in other countries. In this case, the legislation approach related to the 1945 Constitution of the Republic of Indonesia, Law Number 11/2012 Concerning the Criminal Justice System of Children, and Law Number 35/2014 Concerning Amendments to Law Number 23/2002 Concerning Child Protection. Whereas the comparative study will compare the education system for youth offenders from Indonesia and Missouri's approach.

⁵ In 2013, Missouri's Division of Youth Services has been regarded internationally as one of the leading example for its educational approaches to rehabilitate the youth offenders by the United Kingdom CfBT Education Trust. (Elwick, Alex et al., 2013, *Improving outcomes for young offenders: an international perspective*, CfBT Education Trust, p. 21-22). Catherine Neville from Australia's Jesuit Social Services who had toured the youth detention facilities in Missouri is also "delighted" by what she found and stated that the innovative approach of Missouri's small, home-like, and based in local communities youth detention facilities was the main contributor for the low recidivism rate in the state of Missouri – three years after discharge, 70 per cent of the former youth offenders have avoided further involvement with the justice system – in contrast of Australia who has 74 per cent recidivism rate in the course of 12 months ("Justice Solutution Tour Blog – Missouri", 2017, Jesuit Social Services. Retrieved from <https://jss.org.au/justice-solutions-tour-blog-missouri/> on 3th June 2022).

B. DISCUSSION AND ANALYSIS

1. A Comparison between Missouri's and Indonesia's on The Education System for Youth Offenders

a. Status Quo: Schooling and Education in Indonesia Youth Prison (LPKA)⁶

Education is part of human rights, meaning that education should be accessible to all people. One of Indonesia's goals in the Preamble of Constitution is "to educate the life of the nation" where the government is obliged to finance and every citizen is obliged to attend basic education. Specifically, the right to pursue education is constituted in Article 31 section (1) Indonesia's Constitution that "Every citizen has the right to receive education", including the children. Children's education is very important for the nation's development in the future. Article 9 section (1) of Law Number 35/2014 Concerning Amendments to Law Number 23/2002 Concerning Child Protection further stated that children are entitled to education according to their interests and talents.

On the contrary, many children in conflict with the law (youth offenders) in Indonesia are often restricted from accessing education. Eko Bekti, Head of the Klaten Class II Correctional Institution said that while waiting for the court's judgment, youth who became suspects of a criminal case were asked to resign from their school and some were even expelled unilaterally by the school in order to maintain the school's reputation.⁷ These actions are making it harder for them to pursue education and can even cut-off their access to education. Referring to Article 31 section (1) of the Indonesian Constitution means that education in Indonesia should not and can not exclude youth offenders. Those who are obliged to custody will be handed to a youth prison (*Lembaga Pembinaan Khusus Anak* or LPKA). Article 82 section (1) point e of Law Number 11/2012 is also emphasized the right to education for youth offenders by adding the obligation to attend formal education

⁶Article 1 number 3 of Law Number 11 year 2012 Concerning Criminal Justice System for Children (Law Number 11/2012) implied that youth under the jurisdiction of the Child Courts are those whose 12 (twelve) years old, but not yet 18 (eighteen) years old who is suspected of committing a crime.

⁷Solo Metta News, "65 Anak Putus Sekolah Karena Kasus Pidana", Retrieved from <https://mettamedia.co.id/mettanews-detail.php?ID=2763> on 4th June 2022.

and/or training held by the government or private agency as one of seven actions that can be taken to deal with youth offenders under 14 (fourteen) years old.⁸

Based on Article 85 paragraph (3) of Law Number 11/2012, this institution is also obliged to perform and organize education, training, development, and fulfill other rights of the youth offenders. LPKA will work together with the nearest local school supported by the Ministry of Education, Research, Culture, and Technology (“**MERCT**”) to perform and organize education for the youth offenders. The chosen local school are obliged to provide teaching staffs who are competent to fulfill the educational needs of the youth offenders in LKPA and child detention center (“**LPKS**”), providing supervisors, psychologists, and social workers to assist the youth offenders.⁹ Lastly, they also help LPKA to seek support for the education costs for the youth offenders whether it comes through the regional or national revenues and expenditures budget.¹⁰

Currently, there are several LPKA that provide formal education services such as LPKA Class I Tangerang since 2016 with the establishment of elementary, junior high, and vocational high schools.¹¹ They also provide non-formal education through skill training activities such as carpentry, agriculture, and other activities. On the other hand, LPKA Class II Bandung had established a school called Taruna Wiyata Mandiri within the LPKA.¹² The school consisted of: Open Junior High School (*SMP Terbuka*); Special Service School (*Sekolah Layanan Khusus*); and a Special Education School (*Sekolah Pendidikan Khusus*) whose implementation is in accordance with the Special Service Education (*Pendidikan Layanan Khusus*)

⁸Based on Article 69 section (2) of Law Number 11 year 2012 Concerning Criminal Justice System for Children, child offenders under 14 (fourteen) years old can only be sanctioned with “action” (*tindakan*). As for the ‘action’ that can be taken for youth offenders under 14 (fourteen) years old are stated in Article 81 section (1) of Law Number 11/2012.

⁹LPKS is the acronym for *Lembaga Penyelenggaraan Kesejahteraan Sosial*, the official name for youth detention centers in Indonesia.

¹⁰Brayen, Hizkia, 2017, “Hak Pendidikan Bagi Narapidana Anak Ditinjau Dari Undang-Undang Nomor 35 Tahun 2014 Tentang Perlindungan Anak”, *Jurnal Lex Privatum*, Vol. 5, No. 1, hlm. 140-141. Retrieved from <https://media.neliti.com/media/publications/147769-ID-hak-pendidikan-bagi-narapidana-anak-diti.pdf> on 4th June 2022.

¹¹ Ahmad, Gunaldi, 2018, “Hakikat Pendidikan di Lembaga Pembinaan Khusus Anak”, *Jurnal Stit Islamic*, Vol. 1(21), p. 54-55. Retrieved from <https://e-journal.stit-islamic-village.ac.id/index.php/istighna/article/view/17> on 4th June 2022.

¹² “Profil Lembaga Pembinaan Khusus Anak Kelas II Bandung”, 2017, Retrieved from <https://lpkabandung.kemenkumham.go.id/profil/profil-lpka-bandung> on 4th of June 2022.

standards where the time, place, students, educators, and other concerning education are more flexible following the conditions of students.

The first one is the Open Junior High School, a formal educational service provided for youth offenders who's currently on junior highschool level. The second one is the Special Service School, an educational institution intended for youths in the senior highschool education level. In order to provide education in this special service school, LPKA Class II Bandung cooperate with Langlang Buana High School (for non-vocational education), SMK Negeri Pekerjaan Umum Bandung (for automotive engineering) and SMK Negeri Pertanian Lembang (for agriculture and fisheries), this was carried out with the help of the West Java Provincial Government Education Office. The third one is, the Special Education School, a non-formal educational service intended for youth offenders who's not yet finished their elementary school education but too old to be in an elementary school. In this school they will take the 'Package A' program so they can have a certificate to pursue higher education (junior highschool).¹³

Generally, the formal education curriculum for youth offenders in LPKA follows the national curriculum made by the MERCT, however oftentime the implementation of this curriculum will be adjusted to the abilities and needs of each youth offender. Even so, there is a difference in the curriculum components for the youth offenders inside LPKA and the national curriculum. In which, the national curriculum consists of 3 (three) components namely knowledge, skills, and attitudes (*pengetahuan, keterampilan, dan sikap*), while LPKA's curriculum made by the Ministry of Law and Human Rights (MLHR) only uses 2 components, namely academics and skills.¹⁴ Learning activities inside LPKA are carried out every day from 09.00 to 12.00 A.M., except Wednesday and Sunday.¹⁵ The youths are allowed

¹³Package or "*Paket A*" is a program that aims to provide opportunities for citizens to attend quality primary and secondary education and is relevant to the needs of students who do not have learning opportunities in formal education. The Package A program has the same eligibility rights as the holders of the elementary school (SD/MI) diploma.

¹⁴ Irianto, Tri, 2019, "Implementasi Kurikulum 2013 dalam Pembelajaran Pendidikan Jasmani Olahraga dan Kesehatan di Sekolah Dasar." *Multilateral: Jurnal Pendidikan Jasmani dan Olahraga* 13(1): 58-61, p. 59. See also, Directorate of Community Guidance and Child Alleviations of Indonesia (2016), *Standar Penyelenggaraan Pendidikan Layanan Khusus* (2016), Ministry of Law and Human Rights of Indonesia, p. 26.

¹⁵ Ahmad, Gunaldi, 2018, "Hakikat Pendidikan di Lembaga Pembinaan Khusus Anak", *Jurnal Stit Islamic* Vol. 1, No. 21 p. 54-55.

to wear the national student uniform on Monday to Thursday and sport uniform for Friday and Saturday. However, facilities to support education activities inside LPKA across the country vary in each province.

It can be concluded that there are disparities in curriculum and teaching staff provided for child offenders inside LPKA in comparison to the regular students. This will eventually lead to ineffectiveness of education for the child offenders. LPKA's control and observation in post-care after releasing the child offenders to society are also limited, thus will eventually led to high recidivism level.

b. Missouri's Approach to Education for Youth Offenders inside Division of Youth Services' Facilities¹⁶

Missouri has a special division under the Department of Social Services, namely Division of Youth Services (“DYS”), that is responsible for the prevention, control, and rehabilitation of youth delinquency.¹⁷ DYS has a widely-known system called “The Missouri Approach” which emphasizes in determining the root causes of youth delinquency in hope for a long-lasting positive change and also preparing them to return and contribute positively to their home, school, and community.¹⁸ Missouri assigns the youth who require confinement into smaller facilities located near their homes and families, rather than incarcerating them in a large, prisonlike youth training school that is far-away from their homes. This way, it's easier to build one-on-one relationships between the youth offenders, their peers, and staffs that are important for their rehabilitation process.

Each youth spends most of their time with their treatment team. The team typically consists of 10-12 youth that sleep in the same dorm room, eat, study, exercise, do chores, and attend daily therapy sessions together under the supervision of DYS youth specialists. In cases where there is a youth offender with acute mental

¹⁶ Section 211.021 point 2 of Revised Statutes of Missouri (RSMo), “child” under the jurisdiction of the juvenile court are those under seventeen years old and in addition are those over seventeen but not yet eighteen years old that have committed a status of offense.

¹⁷ *Revised Statutes of Missouri, RSMo Section Section 219.016* (1965), Revisor.mo.gov. Retrieved from <https://revisor.mo.gov/main/OneSection.aspx?section=211.021> on 30th May 2022.

¹⁸ *Missouri Approach, Op. Cit.*

health problems, DYS can purchase a private residential psychiatric treatment center and assess them there.¹⁹

DYS takes an unorthodox approach to education by teaching the youths together in their treatment group regardless of aptitude and prior academic achievement. Every weekday throughout their confinement time, each group studies in its own dedicated classroom with a teacher certified by the Department of Elementary and Secondary Education, plus another DYS youth specialist, for six hours of learning time based upon the Instructional Standards developed by the Missouri Department of Elementary and Secondary Education.²⁰ Youth offenders are thoroughly evaluated to determine individual education needs and because there might be a difference between each person's abilities, oftentimes the teacher assigned different lessons and homeworks based on each individual academic needs.²¹

The core subjects that are being taught are science, social studies, math and communication arts.²² They may also receive credit in health, fine arts, physical education, personal finance and career/vocational education, and a wide variety of electives.²³ Youth offenders are also enrolled in a career education class and they may be employed and receive minimum wage compensation while learning important job skills.²⁴ These programs are made so the youth offenders can receive instruction in vocational skills and career awareness. They may also achieve WorkKeys certificates for potential job placement.²⁵

The youth offenders can also earn credits needed for graduation based upon performance and attendance. DYS may also issue high school diplomas to students who meet the Missouri requirements for graduation. In addition, students transferring from the DYS to another high school in Missouri, accredited by the

¹⁹ *The Missouri Model: Reinventing the Practice of Rehabilitating Youthful Offenders*, The Annie E. Casey Foundation, p. 20.

²⁰ *Ibid.*, p. 32. See also: "Educational Services - DYS Frequently Asked Questions", Missouri Department of Social Services. Retrieved from <https://dss.mo.gov/dys/faq/edserv.htm> on 29th June 2022).

²¹ *The Missouri Model: Reinventing the Practice of Rehabilitating Youthful Offenders*, *Op. Cit.*

²² *Educational Services - DYS Frequently Asked Questions*, *Ibid.*

²³ *Ibid.*

²⁴ *Ibid.*

²⁵ WorkKeys is a system of assessments and curriculum that build and measure essential workplace skills. There is three WorkKeys assessments needed for having a National Career Readiness Certificate (NCRC), which is Applied Math, Workplace Documents, and Graphic Literacy ("National Career Readiness Certificate (NCRC)", [Jobs.mo.gov/](https://jobs.mo.gov/ncrc) Retrieved from <https://jobs.mo.gov/ncrc> on 29th June 2022).

State Board of Education, should have their grade placement and credits accepted as stated on the transcript.²⁶ The youth offenders inside the facilities may also elect to study for and take the HiSET as a high school equivalency secondary completion.²⁷

On the aftercare, Missouri reaches out to family members and involves them in the aftercare transition and also provides support and supervision for youth transitioning from youth detention facility to their own respective home. In the first crucial weeks following release, they monitor the youth and help them to enroll in a school, place them for a job, and/or sign them up for extracurricular activities in their own respective communities.²⁸

Table 1
Comparison Between Child Offender Education inside LPKA in Indonesia and DYS
Facilities in Missouri

Aspect	Indonesia	Missouri
Institution/Education Provider	LPKA in collaboration with MERCT, Ministry of Law and Human Rights, the local government, and the local school nearby the LPKA.	Generally provided by DYS.
Education/Materials Provided	Elementary school, junior high school, and vocational studies. Also provide non-formal education through skill training activities such as carpentry, agriculture, and other activities.	The core subjects that are being taught are science, social studies, math and communication arts. They may also receive credit in health, fine arts, physical education, personal finance and career/vocational education, and a wide variety of electives. Youth offenders are also enrolled in a career education class.

²⁶*Educational Services - DYS Frequently Asked Questions, Op. Cit.*

²⁷High School Equivalency Test (HiSET) is Missouri's current high school equivalency test that was developed by the Educational Testing Services. The test consists of five subtests that encompasses Math, Science, Social Studies, Reading, and Writing ("High School Equivalency", Missouri Department of Elementary & Secondary Education. Retrieved from [https://dese.mo.gov/college-career-readiness/high-school-equivalency#:~:text=Missouri's%20current%20high%20school%20equivalency%20\(HSE\)%20testing](https://dese.mo.gov/college-career-readiness/high-school-equivalency#:~:text=Missouri's%20current%20high%20school%20equivalency%20(HSE)%20testing) on 29th June 2022).

²⁸ *Ibid.*, p. 14-15.

Curriculum	Generally, it follows the national curriculum made by the MERCT, but oftentime the implementation of this curriculum will be adjusted to the abilities and needs of each youth offender.	Made by DYS in collaboration with the State Board of Education and Missouri Department of Elementary and Secondary Education.
Teaching Staffs	LPKA staffs and teachers in the nearby local school that collaborated with LPKA in order to provide education for the youth offenders.	Teacher certified by the Department of Elementary and Secondary Education, plus another DYS youth specialist.
Duration of Schooling	Learning activities inside LPKA are carried out every day from 09.00 to 12.00 A.M., except Wednesday and Sunday.	Every weekday for six hours of learning time each day.

2. Optimization on the Education System for Youth Offenders in Indonesia

According to the Special Service Education Implementation Standards, teachers presented (at LPKS) may be certified and also uncertified teachers. In contrast, DYS requires those who taught the youth offenders to have teachers certification issued by the Missouri Department of Elementary and Secondary Education. It is important for teachers who teach youth offenders at LPKA to be certified in order to ensure that the teaching staff presented at LPKA are professional teaching staff that are not inferior to mainstream schools.

In Indonesia, educational standards for youth offenders are compiled by the MLHR based on the national education curriculum made by MERCT, while in Missouri the standardization of education for youth offenders is set by the Missouri Department of Elementary and Secondary Education. The role of the MERCT in youth offenders' education is still considered suboptimal, considering that the teaching materials and curriculum that exist in the standardization made by the MLHR are not fully congruent with the objectives of the Indonesian education system, one of which is as stated in Article 3 of the National Education System Act which stated that national education also aims to shape the character of children. This comes from the fact that nationally there are 3 (three) components that are used as teaching materials and curriculum, namely knowledge, skills, and attitudes, while LPKA only uses 2 components, namely

academics and skills.²⁹ The current curriculum component in LPKA does not accommodate the development and change of attitudes, as can be seen from the curriculum component which only consists of knowledge and skills. The differences in the national curriculum components and curriculum for the youth offenders shows disparity of education for youth offenders in LPKA and “regular” students.

The non-formal education for youth offenders in LPKA usually consisted of farming, carpentry, sewing, and other activities. One of the purposes of non-formal education at ABH is to prepare youth offenders to become skilled workers, but these programs and materials are not aligned with the trending job opportunities in Indonesia. The Minister of Communication and Informatics of Indonesia, Johnny G. Plate said that there are at least 10 job trends that have emerged in industry 4.0 and all of these jobs are in the technology sector.³⁰ That means, the youth offenders have an even smaller chance to compete with “regular” students in the professional field. On the other hand, DYS can assist the youth offenders to obtain a certificate that can be used to help them compete in the workplace. This should be implemented so that non-formal education inside LPKA can be accounted for and can be useful for youth offenders in the future.

C. CLOSING

1. Conclusion

This article reviewed policies related to education inside youth justice facilities, especially for youth offenders inside youth prison (LPKA) in Indonesia and compared them to policies related to education for youth offenders inside Division of Youth Services’ (DYS) facilities in Missouri. This article noted several challenges to achieve quality of education for youth offenders inside LPKA and also differences between policies related to education inside youth justice facilities in Indonesia and Missouri.

²⁹ Directorate of Community Guidance and Child Alleviations of Indonesia, *Op. Cit.*

³⁰Restu, “Daftar 10 Tren Lapangan Pekerjaan Baru Menurut Kominfo”, *Bisnis*. Retrieved from <https://m.bisnis.com/amp/read/20211209/79/1475563/daftar-10-tren-lapangan-kerja-baru-menurut-kominfo> 29th June 2022.

One of the challenges to achieve quality of education for youth offenders inside LPKA comes from the fact that it is possible for the youth offenders to be taught by both licensed and unlicensed teachers. On the other hand, Missouri requires those who taught the youth offenders to have a teacher license. There is also incongruity between policies regarding curriculum in the National Education System Act and the Special Service Education Operational Standard made by Ministry of Law and Human Rights of Indonesia that can affect the quality of education for youth offenders inside LPKA in a negative way. Lastly, the non-formal education programmes for youth offenders such as carpentry, sewing, farming, etc., are also disorientated from nowadays career trends which predominantly in the technology sector. On the other hand, DYS in Missouri helps the youth offenders to take the WorkKeys certification that can help them to have a National Career Readiness Certificate that can act as a credential that certifies skills necessary for workplace success.

2. Recommendation

The researcher makes the following recommendation to improve quality education for youth offenders inside LPKA:

- a. To promote higher quality of education, Indonesia needs to consider requiring teachers who work with the youth offenders to pass the national teacher certification program. Such certification is important in order to measure and promote teachers' abilities to integrate knowledge of content, students, and context in planning instruction, analyzing student work, and reflecting on practice. The current curricula in LPKA (academic and skills) needs to be congruent with the national curriculum which consists of knowledge, skills, and attitudes components in order to achieve the national education goals, especially in order to accommodate the development of attitudes and moral value of the youth offenders.
- b. On the aftercare, just like Missouri, strategies such as helping the youth offenders to pursue education after their incarceration and to have a relevant certification that can help them to enter the professional field should be implemented in order to help them reintegrate to society.

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