

UiTM i-CLaS 2023

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CONFERENCE ON LAW & SOCIETY 2023

Legal Reform as Pillars to the Sustainable Development Goals

4 - 5 July 2023,
Virtual Conference

E-BOOK OF EXTENDED ABSTRACTS

11 SUSTAINABLE CITIES
AND COMMUNITIES



16 PEACE, JUSTICE
AND STRONG
INSTITUTIONS



17 PARTNERSHIPS
FOR THE GOALS



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Editor

Noraiza Abdul Rahman

Anida Mahmood

Nurul Shuhada Suhaimi

Ibtisam@Ilyana Illias

Fazlin Mohamed Zain

Su'aida Safei

Siti Sarah Sulaiman

Norazlina Abdul Aziz

Nor Akhmal Hasmin

Graphic Designer

Hariz Sufi Zahari

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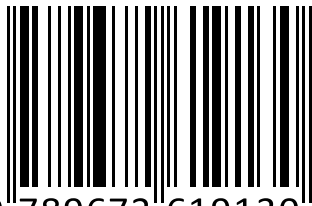
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UiTM i-CLaS 2023 PREFACE



All praise be to Allah for His generosity and blessings through the organising of the 3rd UiTM International Conference on Law and Society. This is the third series of the UiTM i-CLaS conference. The last two conferences were held successfully, resulting from the tremendous collaborative effort of the committee members, collaborators, presenters, keynote and plenary speakers, lecturers, and faculty students. The unwavering support of the dean and the faculty management team patronised the collaborative effort.

As academicians and professionals, attending academic events will aid in the advancement of our careers and expand our understanding of contemporary issues from a comprehensive standpoint. This is the foundation of our effort in organising the conference that aims to sustain and ensure many academicians' continued relevancy. We also hope that this conference serves as a mechanism to foster collaboration of national and international partnerships and to assist our legal education system in integrating with the development within society.

On behalf of the committee for UiTM i-CLaS 2023, we felt honoured to be entrusted with organising the international conference that provides an international forum for all to share experiences, knowledge, and innovation. May it encourage the flourishing of intellectual development and provide opportunities for networking and collaboration on a multi-disciplinary platform. The core of all research papers presented at this conference is "Legal Reforms as Pillars for Sustainable Development Goals." We hope that the conference serves as a platform to consolidate valuable insights on how law contributes to achieving the sustainable development goals at the national and international levels.

The success of this year's conference will not be possible without the devoted commitment of the UiTM i-CLaS 2023 committee members, Associate Professor Dr Hartini Saripan, the Dean of the Faculty of Law, UiTM, the management team, lecturers, and students of the faculty. We are fortunate to have on another wing the collaborators that have assisted us in flying high. Thank you to the Inns of Court Malaysia, Bradford University, United Kingdom, Universitas Islam Bandung, Universitas Brawijaya, Universitas Halu Oleo, Universitas Bengkulu, Universitas Sumatera Utara and Universitas Padjajaran, Indonesia, for your support.

We are honoured to have the Honourable Justice Dato' Mary Lim Thiam Suan, the Federal Court Judge and Deputy President of Inns of Court Malaysia, as the keynote speaker and the highlight of our event. The commitment showcased by our esteemed keynote speaker has undoubtedly added credence to our conference, and for that, I thank you.

Finally, I would like to warmly greet all presenters, participants, industry, and guests at the UiTM International Conference on Law and Society 2023 (i-CLaS 2023). I hope our hybrid meeting at this conference will be a pleasant and enriching experience for all of us. Thank you once again.

Dr. Norazlina Abdul Aziz
Director, UiTM i-CLaS 2023

UiTM i-CLaS 2023 FOREWORD



On behalf of the Faculty of Law, Universiti Teknologi MARA, I extend a warm greeting to all esteemed speakers, presenters, and attendees of the 3rd International Conference on Law and Society 2023 (UiTM i-CLaS 2023). It is a privilege for us to have the opportunity to host this prestigious conference for three consecutive years, gathering professionals from around the world.

The overarching theme of this conference, "Legal Reforms as Pillars of Sustainable Development Goals," is both relevant and significant. As the sustainable development agenda influences nearly every aspect of human life, including the legal system, this conference serves as an essential platform for the international community to collectively advance the legal profession. It is my sincere hope that every participant will derive valuable insights and contribute to their respective areas of research, bringing forth new perspectives that can positively impact the pursuit of sustainable development goals.

I extend my deepest appreciation and gratitude to the Honourable Justice Dato' Mary Lim Thiam Suan for her graciousness in delivering the anticipated keynote address for this conference. It will, without a doubt, greatly magnify the prestige of this conference.

We are deeply honoured by the unwavering support and invaluable collaboration provided by our esteemed partners: the Inns of Court Malaysia, University of Bradford (United Kingdom), Universitas Islam Bandung, Universitas Brawijaya, Universitas Halu Oleo, Universitas Bengkulu, Universitas Sumatera Utara, and Universitas Padjajaran (Indonesia). This collaboration has been instrumental in the success of this conference, and we look forward to continued partnerships and cooperative endeavours in the future. I extend my heartfelt appreciation to all participants for their active engagement and attendance. May your participation in this conference enrich your knowledge and experience, providing tangible benefits in your professional journeys.

I would also like to express my sincere gratitude to the dedicated committee members led by Assoc. Prof. Dr Siti Hafsyah Idris and Dr Norazlina Abdul Aziz, whose tireless efforts and unwavering dedication have played a pivotal role in ensuring the success of this international conference.

Once again, I wish you all a pleasant and fruitful experience throughout the conference. May the knowledge shared and connections forged during this event contribute significantly to the advancement of legal reforms and the realization of sustainable development goals. Thank you, and let us embrace this unique opportunity to foster meaningful discussions and collaborations in pursuit of a just and sustainable future.

Associate Professor Dr Hartini Saripan

Dean

Faculty of Law, Universiti Teknologi MARA

Table of Contents

PREFACE	i
FOREWORD	ii
EMPOWERING TOMORROW'S ADVOCATES: BREAKING BARRIERS IN LEGAL AID TO PROVIDE EXPERIENTIAL LEARNING FOR LAW STUDENTS	6
<i>Mastika Nasrun^{1*}, Syazni Nadzirah Ya'cob², Noraziah Abu Bakar³ & Ain-Maryam Binti Zolkipli @ Zulkifli⁴, Nor Akhmal Binti Hasmin⁵, Anwar Najib Bin A'zmi^{6*}</i>	6
ANALYTICAL THINKING IN MAKING A WILL IN MALAYSIA THAT ALIGNS WITH THE SUSTAINABLE DEVELOPMENT GOALS	10
<i>Faridah Binti Hussain^{1*}, Rohazar Wati Zuallcoble² & Rohani Mohd Shah³</i>	10
USING VIDEO SURVEILLANCE IN THE COURTROOM: LEGAL ANALYSIS OF RULES OF DIGITAL EVIDENCE	13
<i>Fathimath Waheeda¹</i>	13
ANALYSING PATIENT'S RIGHT TO INFORM CONSENT IN THE TRADITIONAL & COMPLEMENTARY MEDICINE SERVICES IN MALAYSIA	15
<i>Norazlina Abdul Aziz¹, Nurulhuda Ahmad², Izuan Izzaidi Azmi^{3*}, Che Natheera Abd Aziz⁴</i>	15
LEGAL CHALLENGES AND SHARIAH ISSUES OF CRYPTOCURRENCIES IN MALAYSIA	19
<i>Arissa Azreen Binti Ismawi¹ Muhamad Aryn Bin Rozali² Aneesa Azaria Binti Shariful Azman³ Shahira Shasha Binti Redzuan⁴ Muhammad Aliyaizzuddin bin Mohd Shukri⁵ & Dr. Syuhaeda Aeni Binti Mat Ali^{6*}</i>	19
A REVIEW ON THE MALAYSIAN SPACE BOARD ACT 2022	23
<i>Associate Professor Dr. Tunku Intan Mainura Tunku Makmar Nizamuddin^{1*}, Wan Sharina Ramlah Wan Ahmad Amin Jaffri², Azni Mohd Dian³</i>	23
TREATMENT AND REHABILITATION FOR DRUG DEPENDANTS/ADDICTS SERVING IMPRISONMENT SENTENCE .	27
<i>Che Audah Hassan^{1*}, Nor Hayati Saad², Rafizah Abu Hassan³, Murni A Abdul Latif⁴ & Chepi Ali Firman Z.SH., MH.⁵</i>	27
CRIMINOLOGICAL ANALYSIS OF INCREASING CYBER CRIME DURING THE COVID-19 PANDEMIC IN INDONESIA	30
<i>Dian Alan Setiawan¹, Widya Ismi Anjani²</i>	30
COMPARISON OF THE DEATH PENALTY'S PRESENCE IN ISLAMIC LAW AND INDONESIAN CRIMINAL LAW	33
<i>Fariz Farrah Izadi^{1*}</i>	33
SDGS FOR A SUSTAINABLE FUTURE FROM THE PERSPECTIVE OF ANTI-MONEY LAUNDERING IN INDONESIA	36
<i>Hanifah Azizah^{1*}, Topo Santoso² Yunus Husein³ Mahmud Mulyadi⁴</i>	36
WHEN CHILDREN ARE SEXUALISED: RECENT LEGAL DEVELOPMENT IN REGULATING CHILD SEXUAL CRIME IN MALAYSIA	39
<i>Zaiton Hamin¹, Ahmad Ridhwan Abd Rani², Saslina Kamaruddin³, Ani Munirah Mohammed⁴, Wan Rosalili Wan Rosli⁵</i>	39
CRIMINALIZING VOYEURISM IN MALAYSIA: A COMPARATIVE STUDY	43
<i>Siti Halijah Binti Tuah^{1*}, Muhammad Asyraf Fitri bin Mohd Afindi², Qashilla S Dohny Baharin³, Sasha Nameera</i>	

<i>binti Sabtu⁴ & Sheela A/P Jayabala Krishnan@Jayabalan⁵</i>	43
JUSTICE COLLABORATOR: A PROGRESSIVE LEGAL PERSPECTIVE ON CRIMINAL CASE (CASE STUDY: COURT DECISION NO.798/PID.B/2022/PN.JKT.SEL)	46
<i>Ramlan Damanik^{1*}, Mahmud Mulyadi², Rosmalinda³</i>	46
UTILISING BLOCKCHAIN FOR ANTI-CORRUPTION AND TRANSPARENT PUBLIC ADMINISTRATION IN DEVELOPING NATIONS	49
<i>Tami Koroye*</i>	49
IMPLEMENTATION OF SULH IN MUTAAH CLAIM CASES IN THE KELANTAN SYARIAH COURT THROUGH THE I-MUTAAH INNOVATION APPROACH	53
<i>Wan Azimin bin Wan Adnan^{1*}, Zubaidi bin Sulaiman², & Wan Khuzaifah binti Wan Jusoh³ & Muhammad Afif Asyraf bin Ibrahim⁴</i>	53
THE APPLICATION OF FINANCIAL OMBUDSMAN SCHEME FOR THE MANAGEMENT OF FINANCIAL DISPUTES IN MALAYSIA	55
<i>Nur Ezan Rahmat^{1*}, Muhamad Ikhwan Mohd Zain², Ibtisam @ Ilyana Ilias³, Su'aida Safei⁴, Daleleer Kaur Randawar⁵& Irwin Ooi Ui Joo⁶</i>	55
ELECTRONIC TRIAL: A SOLUTION FOR CHILDREN IN CONFLICT WITH LAW TO ACCESS THE EQUALITY BEFORE THE LAW?	59
<i>Dizza Siti Soraya^{1*}, Mahmud Mulyadi², Rosmalinda^{3*} & M. Ekaputra⁴</i>	59
NON-STATE ACTORS OBLIGATIONS IN INDONESIA HUMAN RIGHTS LAW	62
<i>Syahrul Fauzul Kabir^{1*}, Wicaksana Dramanda²</i>	62
REGULATORY CHALLENGES: COOPERATIVE AND MONEY LAUNDERING-RISKS	65
<i>Liza Hafidzah Yusuf Rangkuti^{1*}, Mahmud Mulyadi^{2*}, & Rosmalinda³</i>	65
REIMAGINING SDG 6: HUMAN RIGHTS INDICATORS FOR MEASURING PROGRESS WITH WATER AND SANITATION	69
<i>Pedi Obani^{1*}</i>	69
HARMONIZING THE CHALLENGES ON HERITAGE SITES CONSERVATION AND PLANNING LAWS IN MALAYSIA ..	72
<i>Azni binti Mohd Dian^{1*}, Tunku Intan Mainura Tunku Makmar Nizamuddin², Noraziah bt Abu Bakar³</i>	72
THE LEGAL CHALLENGES IN TENURE SECURITY OF LAND REGISTRATION SYSTEM IN WEST MALAYSIA AGAINST LAND FRAUD ACTIVITIES	75
<i>Noraziah Abu Bakar^{1*}, Azhani Arshad², Ismah Ismail³, Hartini Saripan⁴, Syuhaeda Aeni Mat Ali⁵ & Che Audah Hassan⁶</i>	75
AN ASSESSMENT OF PROCESS, PROCEDURE, AND MONITORING SYSTEM IN HILLY AND SLOPE AREAS	78
<i>Yusnaim Abdul Rani^{1*}, Muhammad Adam Che Yusof²</i>	78
PRELIMINARY STUDY OF DISPUTE SETTLEMENT OF INCOMPATIBILITY OF LAND RIGHTS WITH SPATIAL PLANS IN INDONESIA	85
<i>Arif Firmansyah^{1*} & Sri Poejiastuti²</i>	85
LEGAL OWNERSHIP OF “LOT LIDI”: AT THE PURCHASER’S OWN RISK	89
<i>Norliza Abdul Hamid^{1*}, Noraziah Abu Bakar², Anwar Najib A’zmi³, Mazlifah Mansoor⁴, Rozlinda Abdullah⁵ & Hariati Mansor⁶</i>	89

THE PRACTICE AND APPLICATION OF JUDICIAL MANAGEMENT ON INSOLVENT RESIDENTIAL DEVELOPER COMPANIES IN MALAYSIA AND SINGAPORE: A COMPARATIVE ANALYSIS..... 92
Aneesa Azaria Binti Shariful Azman¹, Mohd Affifuddin Bin Rusnan², Nur Afiqah Husna Binti MohdAdnan³, Shahira Shasha Binti Redzuan⁴ & Syuhaeda Aeni binti Mat Ali^{5} 92*

LEGAL FRAMEWORK FOR CHILD PROTECTION THROUGH FAMILY BASED CARE IN MALAYSIA: TOWARDS SUSTAINABLE DEVELOPMENT..... 95
Nadhilah A.Kadir^{1}, Siti Mahanisayu Marhaban² 95*

REALISING SDGs ON ENDING CHILD POVERTY AND FOOD INSECURITY IN NIGERIA THROUGH AN EFFECTIVE CHILD-CENTRIC SUSTAINABLE SOCIAL PROTECTION SYSTEM..... 98
Hadiza O. Okunrobo^{1} & Juliet Aimienrovbiye^{2**} 98*

THE ROLE OF LEGAL AND REGULATORY REFORMS IN ESTABLISHMENT OF CLINICAL ETHICS SUPPORT IN MALAYSIA 101
Hazdalila Yais Haji Razali^{1} 101*

CRIMINAL PROVISIONS OF MEDICAL MALPRACTICE PERFORMED BY DOCTORS (CASE STUDY NUMBER: 79/PID.SUS/2011/PN.KD.MN JO 1110K/PID.SUS/2012 JO 210PK/PID.SUS/2014) 104
Nabila Afifah Salwa^{1}, Alvi Syahrin², Mahmud Siregar³ & Mahmud Mulyadi^{4*} 104*

ASSESSING THE UTILIZATION OF OMBUDSMAN IN MEDICAL DISPUTE RESOLUTION IN INDONESIA: OPPORTUNITIES AND CHALLENGES..... 107
Rimba Supriatna S.H, M.H^{1}, Dr. Sri Ratna Suminar S.H, M.H²..... 107*

AN ANALYSIS OF THE CASE JRI RESOURCES SDN. BHD V KUWAIT FINANCE HOUSE (MALAYSIA) BERHAD (PRESIDENT OF ASSOCIATION OF ISLAMIC BANKING INSTITUTION MALAYSIA & ANOR, INTERVENERS) 110
Mohamad Farid bin Abdul Rahim¹, Hasnatulsyima binti Abdullah Hadi², Nur Syahirah binti Mohd Sani³, Nur Izwanie binti Mohd Rizan⁴, Wan Nurfarah Izzah binti Wan Arifin⁵, & Dr. Syuhaeda Aeni Binti Mat Ali^{6} 110*

LEGAL ANALYSIS ON THE ROLE OF OMBUDSMAN IN ISLAMIC FINANCE DISPUTE 113
Muzairi Bin Shaikh Osman¹, Muhammad Salihin Bin Muhammad Shukri Wong², Shahnaz Aina Binti Mohd Nor Shah³, Ilyani Binti Noor Khuszairy⁴, Nurr Fazreen Binti Mohd Zamili⁵, Syuhaeda Aeni Binti Mat Ali^{6} 113*

SYNERGY OF CASH WAQF AND LAND WAQF IN THE DEVELOPMENT OF HOUSING FOR LOW INCOME COMMUNITIES 117
Helza Nova Lita^{1}, Yusuf Saeful Zamil² & Betty Rubiaty³ 117*

SYSTEMATIC LITERATURE REVIEW OF THE ROLE OF ISLAMIC FINANCIAL INSTITUTIONS TOWARDS THE GROWTH OF ISLAMIC PUBLIC FINANCE 121
Afidah Nur Aslamah¹, Muhammad Irwin Muslimin², Yusi Gumansari³, Muhammad Zilal Hamzah⁴ 121

ISLAMIC HOME FINANCING: TACKLING THE CHALLENGES OF MODERN REAL ESTATE MARKETS 125
Khairul Aiman Samsudin¹, Fatin Syafiqah Muhsin², Nur Ameera Suhaimi³, Wan Nor Ramizah Amani Wan Remali⁴, Zubatrisyia Zulkiffli⁵ & Syuhaeda Aeni Mat Ali^{6} 125*

REFORMULATION OF REGULATIONS ON ENVIRONMENTAL INSURANCE TO GUARANTEE COMPENSATION AND RECOVERY OF THE ENVIRONMENT IN INDONESIA DUE TO POLLUTION AND/OR DESTRUCTION 129
Freny Siska^{1} 129*

REGULATING DISASTER MANAGEMENT PLAN IN MALAYSIAN ZOOS 132
Ain-Maryam Binti Zolkipli@Zulkifli^{1}, Nurul Izza Binti Shamsul Kamal² & Khairul Bariyyah Binti Muhamad³... 132*

FOOD SECURITY: SAVING OUR FISH	136
<i>Rohani Binti Md Shah^{1*}</i>	<i>136</i>
REDEFINING THE CONCEPT OF “PUBLIC DOMAIN” FOR THE EQUITABLE PROTECTION OF TRADITIONAL KNOWLEDGE AND TRADITIONAL CULTURAL EXPRESSIONS	139
<i>Lim Heng Gee^{1*}</i>	<i>139</i>
SMART CITIES, SUSTAINABLE DEVELOPMENT AND INTELLECTUAL PROPERTY LAWS IN MALAYSIA.....	142
<i>Diyana Sulaiman^{1*}.....</i>	<i>142</i>
THE COMMERCIAL VALUE OF PROMINENT FIGURES IN THE CONTEXT OF CLIENT INFORMATION.....	145
<i>Valeria Gabriella, Henry Soelistyo Budi</i>	<i>145</i>
THE ROLE OF INTELLECTUAL PROPERTY IN RETURN OF INVESTMENT FOR GASTRONOMIC TOURISM.....	148
<i>Rohazar Wati Zualcobley^{1*}, Mohd Zawawi Awang Nik², Rohani Mohd Shah³, Faridah Hussain⁴ & Diyana Sulaiman⁵</i>	<i>148</i>
LINKAGE BETWEEN BEHAVIOURAL FACTORS AND INVESTMENT INTENTION AMONG YOUTH IN MALAYSIA... 	152
<i>Au Yong Hui Nee¹, Chia Wan Thing^{2*}, Koh Kah Fong³, Ng Wee Kit⁴ & Yap Zheng Hee⁵</i>	<i>152</i>
A COMPARATIVE STUDY OF THE FOOD DONORS PROTECTION ACT 2020 IN MALAYSIA AND SELECTED FOREIGN JURISDICTIONS	156
<i>Auni Izzati Mohammad¹, Lazarus Chendang Anak Isa², Muhd Yusri Yahya³, Nur Aimi Athirah Ramlee⁴ & Su’aida Safei^{5*}</i>	<i>156</i>
FOOD INSECURITY AND ITS LEGAL & POLICY RESCUE IN MALAYSIA	159
<i>Norazlina Abdul Aziz¹, Anwar Najib A’zmi², Siti Sarah Sulaiman³, Anida Mahmood⁴.....</i>	<i>159</i>
A LEGAL STUDY ON THE CORPORATE RESCUE MECHANISM CULTURE IN MALAYSIA.....	162
<i>Muhamad Syah Azlan bin Abdullah¹, Mariam binti Ramli², Aina Shafika binti Rosli³, Fitrah Ain binti Idris⁴ & Syuhaeda Aeni binti Mat Ali^{5*}</i>	<i>162</i>
THE BUY-NOW-PAY-LATER SCHEME: A CRITICAL ANALYSIS OF LEGAL FRAMEWORK, ISSUES AND APPLICATION IN MALAYSIA	165
<i>Norazlina Abd Aziz¹, Ilyana @ Ibtisam Ilias² & Hariz Sufi Zahari^{3*}</i>	<i>165</i>
A LEGAL STUDY ON SCHEME OF ARRANGEMENT WITH SPECIAL REFERENCE TO AIRASIA X BERHAD	169
<i>Azurah Nor Binti Sarif¹, Fairuz Fazeera Binti Nordin², Khairiyah Binti Haron³, Nur Syafiqah Binti Baharudin⁴, and Dr. Syuhaeda Aeni Binti Mat Ali^{5*}</i>	<i>169</i>
A COMPARATIVE STUDY ON CORPORATE RESCUE MECHANISMS FOR PRIVATE LIMITED COMPANIES IN MALAYSIA AND THE UNITED KINGDOM	173
<i>Aimi Fadhilah Hazwani Binti Ahmad Zaini^{1*}, Muhamad Aryn Bin Rozali², Muhammad Salihin Bin Muhammad Shukri Wong³, Nur Ain Farzana Binti Baharuddin⁴ & Syuhaeda Aeni Binti Mat Ali⁵</i>	<i>173</i>
BUYING AND SELLING ACTIVITY OF ONLINE GAME ACCOUNTS CONTAINING VIRTUAL GOODS THAT ARE SOLD ON AN ONLINE MARKETPLACE	177
<i>Muhammad Ilman Abidin^{1*}, Ahmad Faizal Adha², Salma Suroyya Yuniyanti³ & Chicha Chairunnisa⁴.....</i>	<i>177</i>
COMPARATIVE STUDY OF THE REQUIREMENTS FOR A JUDICIAL MANAGEMENT APPLICATION BETWEEN MALAYSIA AND SINGAPORE	180

Wan Sumaya binti Wan Shaari¹, Yasmin Nadhirah binti Zainal², Zaharah binti Marawan³, Syuhaeda Aeni binti Mat Ali^{4} 180*

SCHEME OF ARRANGEMENT AS CORPORATE RESCUE MECHANISM FOR 'TROUBLED' COMPANIES: A LEGAL REVIEW 184

Khairul Aiman Samsudin¹, Fatin Syafiqah Muhsin², Muzairi Shaikh Osman³, Nur Ameera Suhaimi⁴, Wan Nor Ramizah Amani Wan Remali⁵ & Syuhaeda Aeni Mat Ali^{6} 184*

A LEGAL STUDY ON THE CORPORATE RESCUE MECHANISM CULTURE IN MALAYSIA..... 188

Muhamad Syah Azlan bin Abdullah¹, Mariam binti Ramli², Aina Shafika binti Rosli³, Fitrah Ain binti Idris⁴ & Syuhaeda Aeni binti Mat Ali^{5} 188*

SUSTAINABLE DEVELOPMENT GOALS AND INCLUSION OF WOMAN DIRECTORS ON CORPORATE BOARD 191

Neeti Shikha^{1} 191*

LAW ENFORCEMENT OF FOREIGN AIRCRAFT OF THE RIGHT ARCHIPELAGIC SEA LANES PASSAGE AT ALKI 195

Irawati¹ 195

ENFORCEMENT OF TRADITIONAL FISHING RIGHTS FOR TRADITIONAL FISHERMAN UNDER INDONESIAN LAW AND UNCLOS (STUDY IN PANTAI CERMIN VILLAGE, TANJUNG PURA) 199

Vita Cita Emia Tarigan^{1}, Siti Khairunnissa² & Akmal Handi Ansari Nasution³ 199*

THE MALAY MUSLIMS AND THE PRACTICES OF TRADITIONAL PERFORMANCES RITUALS FROM THE MALAYSIAN LEGAL PERSPECTIVES 202

Nurulhuda Adabiah Mustafa, Nurulhasni Shaari² & Nuraisyah Chua Abdullah³ 202*

COMPLEMENTARITY: A NECESSITY FOR THE ACTUALISATION OF PEACE, JUSTICE AND STRONG INSTITUTIONS, SUSTAINABLE DEVELOPMENT GOAL 16 (SDG16) IN SUDAN AFRICA..... 206

Ovo Imoedemhe^{1} 206*

GLOBALIZATION AND INEQUALITY: EVIDENCE FROM ASEAN 211

Chew Chen Keat^{1}, Au Yong Hui Nee² 211*

TRACK 1: LEGAL EDUCATION

EMPOWERING TOMORROW'S ADVOCATES: BREAKING BARRIERS IN LEGAL AID TO PROVIDE EXPERIENTIAL LEARNING FOR LAW STUDENTS

Mastika Nasrun^{1*}, Syazni Nadzirah Ya'cob², Noraziah Abu Bakar³ & Ain-Maryam Binti Zolkipli @ Zulkifli⁴, Nor Akhmal Binti Hasmin⁵, Anwar Najib Bin A'zmi^{6*}
^{1,2,3,4,5,6}
Faculty of Law, Universiti Teknologi MARA, Malaysia

Email: ¹mastika@uitm.edu.my ; ²syazni@uitm.edu.my ; ³noraziah@uitm.edu.my; ⁴ain-maryam@uitm.edu.my; ⁵norakhmal5559@uitm.edu.my; ⁶anwarnajib@uitm.edu.my

**Corresponding author*

ABSTRACT

Legal education has long recognized the importance of practical experience to complement theoretical knowledge. Experiential learning opportunities, such as legal aid clinics, offer law students a chance to apply their classroom learning in real-world scenarios. However, numerous challenges and obstacles exist in providing effective legal aid and experiential learning opportunities to aspiring advocates. This study justifies the importance of bridging the gap between legal education and professional practice, emphasizing the need to equip law students with practical skills and real-world experience for their future roles as advocates. The research explores the challenges involved in empowering law students through experiential learning opportunities in the field of legal aid. This research adopts a mixed-methods approach, combining doctrinal legal research and qualitative methods. It involves a doctrinal analysis and literature review on legal aid centers as experiential learning tools, followed by interviews with stakeholders for data collection and analysis. One significant barrier is the limited availability of resources, both financial and human. Another obstacle is the need for diverse and meaningful cases for students to engage with. Moreover, managing the workload, commitment and expectations of students while ensuring the quality of legal aid services is crucial. By examining the various obstacles faced in providing legal aid, such as limited resources, ethical considerations, and the need for supervision, it uncovers strategies to overcome these challenges. In conclusion, breaking barriers in legal aid to provide experiential learning for law students necessitates collaborative efforts from legal institutions, practitioners, and the wider community.

Keywords: *Legal Aid, Experiential Learning, Clinical Legal Education, Employability Skills*

INTRODUCTION

In recent times, there has been a surge in complaints regarding the inadequate preparedness of law graduates for the practical demands of their respective fields (Thomson, 2015). Unquestionably, the government and higher education institutions must address the issue of inexperienced law graduates lacking appropriate employability skills for the job market, commonly known as the graduate skills gap (Turner et al., 2019). In response to this issue, the higher education sector has been pushed to employ innovative methods of fostering experiential learning through the development of the Experiential Learning and Competency-Based Education Landscape (EXCEL) playbook (Department of Higher Education, 2021). Despite the efforts being made, there is a lack of consistency in how higher education institutions address the issue of providing appropriate experiential legal learning to address the graduate skills gap (Turner et al., 2019). There is a lack of integration between skills and practice at many universities, making it difficult for law students to comprehend the requirements of employers and clients' and prepare themselves to fulfil those requirements. (Turner et al., 2019). Consequently, Clinical Legal Education (CLE), such as exposure through the Legal Aid Centre, is a valuable and essential component of legal education (Thomson, 2015). CLE is an important teaching and learning method widely practised and implemented in the United States, the United Kingdom, and other countries, but it is still relatively new in Malaysia (Imam Supaat, n.d.). As a point of comparison, countries such as the United States and Canada were among the first to implement clinical legal education, whereas India is currently making

efforts to catch up to these countries. Overall, the importance of CLE in developing skilled and effective lawyers with a societal perspective is critical (Mammen, 2021).

It is submitted that adopting the Legal Aid Centre as part of experiential legal learning is imperative. Undoubtedly, these pose challenges for the law faculty to implement the Legal Aid Centre. Among the constraints in introducing the Legal Aid Centre are the skills of the lecturers, student's workload, resources, and big classes (Maidin, 2011). Cost and the academician's commitment is another challenge as the implementation of legal aid will demand more time and involvement (Imam Supaat, n.d.). In view of the abovementioned problems, it is vital to conduct research to investigate issues and challenges faced by the law faculty in implementing legal aid centres as experiential legal learning. This will drive the growth of future-ready graduates who possess content knowledge and competencies (Department of Higher Education, 2021) and improve employability (Turner et al., 2019).

LITERATURE REVIEW

Experiential Learning refers to instructional methods that primarily place students in the role of attorneys, whether through simulations, clinics, or externships (Thomson, 2015). Learning through experience brings together theory and practise by giving students numerous opportunities to learn and practise lawyering skills in the same manner that they are employed in actual legal work (Thomson, 2015). There are four thrusts of experiential learning which are industry-based, community-based, research-based and personalised learning (Department of Higher Education, 2021). Implementing Legal Aid Centre is one of the methods that can be used to acquire experiential learning within the context of a legal education (CLE). The implementation of CLE in academic settings can take many different forms; for example, it can be incorporated into the curriculum, leading to the awarding of credits, or it can simply take the form of pro bono activities, in which students participate on their own volition (Imam Supaat, n.d.). One of the examples of CLE and learning space that is typically available at Malaysian universities is the Legal Aid Centre (Turner et al., 2019). Continuing legal education, also known as CLE, refers to the process by which students gain practical experience in the legal field by working directly with actual clients at a legal centre, an on-campus clinic, or by participating in an internship or placement programme. In the present discussion, the term refers to "any law school course or programme in which law students participate in the representation of actual clients under the supervision of a lawyer/teacher." (Cantatore, 2015).

The proposed legal education reforms aim to achieve a balance between theory, doctrine, and practise in the legal profession by encouraging law schools to incorporate clinical methods and experiential learning into the law degree (Kemp et al., 2016). Maidin (2011) emphasised the importance of addressing flaws in law teaching methods and incorporating clinical legal education into the law-teaching curriculum in his article. One of the undeniable benefits of the Legal Aid Centre as part of Clinical Legal Education is that it fosters learning and the practical application of knowledge, with some learning spaces performing better than others in this regard. Higher education institutions introduced experiential learning as a process of accumulating knowledge through transforming experience in order to create high impact and meaningful learning experiences for law students (Ali Mohamed et al., 2021). Students of law are given the opportunity to develop a critical understanding of legal doctrine, rules, and procedure, legal theory, the planning and execution of legal representation of clients, ethical considerations, and the social, economic, and political implications of legal advocacy through clinical legal education, which serves as a training ground for law students. (McFaul, 2020). Undeniably, it is incontestable that law students can develop and expand their network with their classmates, academic team, and community members (Ali Mohamed et al., 2021).

METHODOLOGY

The research will employ a mixed-methods approach, combining both doctrinal legal research methodology and qualitative methodology. In the first phase, a doctrinal analysis will be conducted, examining legal propositions and instrumentalizations from primary and secondary sources. A literature review will be undertaken to explore the existing practice of legal aid centers as experiential learning in legal education, along with an examination of relevant guidelines and international standards. In the second phase, primary data collection will take place. A preliminary study will be conducted to ensure the reliability of interview protocols and checklists. Semi-structured interviews will be conducted with various stakeholders, including academics, legal aid clinic officers and managers, and practicing lawyers, to gather

insights on the challenges faced in implementing legal aid centers as experiential learning tools. The findings from the interviews will be triangulated with expert views from practicing lawyers and academics.

FINDINGS AND DISCUSSION

Experiential learning through legal aid faces several challenges and limitations. One significant barrier is the limited availability of resources, both financial and human. Legal aid center often struggle to secure adequate funding and attract qualified staff to supervise and mentor students. To overcome this challenge, creative approaches such as forging partnerships with legal organizations and seeking pro bono support from practitioners can be employed. Ethical considerations and the maintenance of client confidentiality pose additional hurdles. It is essential to ensure that experiential learning opportunities do not compromise the rights and well-being of clients. This requires implementing robust ethical guidelines and establishing strict confidentiality protocols. Careful supervision and periodic evaluations of student performance can help maintain high ethical standards. Another obstacle is the need for diverse and meaningful cases for students to engage with. Collaborations with community organizations, government agencies, and non-profit entities can provide a broader range of legal issues for students to tackle. Engaging with marginalized communities can deepen their understanding of the unique challenges faced by these individuals and offer invaluable experiential learning opportunities. Moreover, managing the workload and expectations of students while ensuring the quality of legal aid services is crucial. Striking the right balance requires effective supervision, clear communication, and well-structured support mechanisms. Regular feedback loops, performance assessments, and peer learning platforms can enhance student development and maintain service quality. By addressing the challenges of resource availability, ethical considerations, case diversity, and workload management, legal education can empower aspiring advocates to become competent and compassionate professionals. Through collaborative approaches and a steadfast commitment to social justice, tomorrow's advocates can be equipped to make a lasting impact in their communities and beyond.

CONCLUSION AND RECOMMENDATIONS

In conclusion, the challenges, and limitations in providing experiential learning through legal aid are significant but not insurmountable. By recognizing and addressing the barriers of resource availability, ethical considerations, case diversity, and workload management, legal education can empower law students to become competent and compassionate advocates. Undeniably, by collectively addressing these challenges, legal education can equip aspiring advocates with the skills, knowledge, and empathy necessary to make a lasting impact in their communities and the legal field as a whole.

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TRACK 1: LEGAL EDUCATION

ANALYTICAL THINKING IN MAKING A WILL IN MALAYSIA THAT ALIGNS WITH THE SUSTAINABLE DEVELOPMENT GOALS

Faridah Binti Hussain^{1*}, Rohazar Wati Zuallcobley² & Rohani Mohd Shah³^{1,2,3} Faculty of Law, Universiti Teknologi MARA, 40450 Shah Alam, Selangor, Malaysia.Email: ¹faridah355@uitm.edu.my; ²rohaz814@uitm.edu.my; ³rohanimohdshah@uitm.edu.my

*Corresponding Author

ABSTRACT

Making a will is one method of managing assets before death. A person can specify how his assets will be distributed after his death via a will. Given the foregoing context, this paper aims to examine whether there is a need to educate the public on what is meant by analytical thinking for making a will that is consistent with the Sustainable Development Goals (SDGs). Aside from making a will, analytical thinking can help ensure that the estate strategy contributes to these goals in a meaningful way such as to promote long-term development in poverty eradication. This paper adopts a qualitative research methodology, employing a doctrinal content analysis that would provide a subterranean understanding of the tension between the wishes of the testator and the beneficiaries' rights in Malaysia. The findings revealed that analytical thinking in making a will for sustainable development goals entails identifying relevant goals, assessing assets, measuring effects, seeking collaborations, and building monitoring methods. Making a will is good for the sustainability of Muslim, non-Muslim, and Orang Asli's livelihood in Malaysia. Analytical thinking when making will help improve understanding of the law and adapt it to modern social needs.

Keywords: *Analytical Thinking, Will, Sustainable Development Goals, Muslim, Non-Muslim, Orang Asli*

INTRODUCTION

In this competitive world, many people get so involved with pursuing material assets that they overlook their opportunities to bequeath their riches. This unhealthy behaviour may force individuals to miss out on the opportunity to leave their property to a loved one. This paper is addressing the issue of whether analytical thinking is important consideration in making a will. This article seeks to educate the testator on what it means to think analytically in making a will for their beneficiaries and at the same time their will are consistent with the Sustainable Development Goals (SDGs). This paper adopts a qualitative research methodology, employing a doctrinal content analysis that would provide a subterranean understanding of the tension between the wishes of the testator and the beneficiaries' rights in Malaysia. This paper has been divided into sections. The paper's first section discusses analytical thinking and the law in relation to will in Malaysia. The second section of this paper discusses the reasonableness and justification for analytical thinking in making a will. The third part is the methodology. The fourth part is the findings and the discussion. The final section is conclusion and recommendations.

LITERATURE REVIEW**Analytical thinking and the law in relation to will in Malaysia.**

Few authors observed that analytical thinking is important in data processing tasks such as (1) processing data, (2) forecasting, visualising, and designing data, (3) extracting information from accumulated data, and (4) developing effective and efficient solutions (K. Rasheva-Yordanova, 2018). As such, it can be contended that analytical thinking is an important aspect of mental activity that allows people to solve problems quickly and effectively. It employs a thorough grading technique that divides difficult situations into simpler and more manageable components. As regards property, it is observed property continues to shift from tangible to intangible property (Hughes, 1988). On the issue of making a will, in Malaysia, Muslims, non-Muslims, and Orang Asli are entitled to make a will. Due to the difference in their religion,

the law applicable is different for them if they want to make a will. For non-Muslims, the Wills Act 1959 is the applicable law for making a will. However, the Wills Act 1959 does not mention specifically whether it applies to Orang Asli.

Analytical thinking and the legal requisites of testamentary capacity were enunciated by the English Court of Appeal in the case of *Banks v Goodfellow* (1870) LR 5 QB 549. The testator understands the nature of the act and what its consequences are. He knows the extent of the property in which he is disposing. He knows who his beneficiaries are and can appreciate their claims to his property. He is free from an abnormal state of mind that might distort feelings or judgments relevant to making the will. In addition, to answer the issue of whether the testator has testamentary capacity at the time of making his will, a finding of fact by applying the law to the evidence, in a matter involving specialised knowledge, such as schizophrenia, the court has to rely on the opinion of medical experts (See *Vadakathu v Goorge* [2009] SGHC 79). As such, Where a will is impeached on the ground of unsoundness of mind, the court must be satisfied on a review of the whole evidence that the testator was of sound mind, memory, and understanding at the time of its execution (See *In the Matter of the Estate of Eusoff Mohamed Salleh Angullia, Deceased; Ahmad Mohamed Salleh Angullia & 2 Others v Rahimaboo Binte Mohamed Salleh Angullia & Another* [1939] 1 MLJ 100). As such, analytical thinking on the function of the court in assessing expert evidence is another important issue.

Another point to be included as the analytical thinking in making a will is considering appointing an advocate and solicitor as a witness and attending doctor. An advocate and solicitor may take instructions to prepare a will. The advocate and solicitor may help the testator to get his thumbprint or signature over the will. However, an advocate and solicitor is bound to the provisions of the Legal Profession Act 1976 imposed by the Malaysian Bar (Othman et al., 2020). Few authors observed that the responsibilities of an advocate and solicitor include duties towards the client and he is subject to disciplinary action if he fails to protect his client's interest (Hussain & Abu Bakar, 2023). The advocate and solicitor must follow the probate rules under the Probate and Administration Act 1959 and the procedure under the Rules of Court 2012. He should not commit misconduct. Meanwhile, the doctor who examined the testator before he signed the will may become the witness in a contested probate matter. The doctor may testify that the testator had no problem communicating with the doctor and had no reason to suspect that the testator is suffering from a mental disorder (See *Randolph Yap Pow Kong & Anor v Yvonne Yap Yoke Sum (f) & Ors* [2011] 3 MLJ 556).

The reasonableness and justification for analytical thinking in making a will.

It is observed that within the legal profession, the American Bar Association, as well as many state and local bar associations, have adopted several sustainability policies and practices, and a growing number of law firms and other law organizations are doing the same (Dernbach, 2009). It is argued that analytical thinking plays an essential role in making a will that is in line with the Sustainable Development Goals (SDGs). The Sustainable Development Goals (SDGs) are a set of global objectives established by the United Nations to promote long-term development in areas such as poverty eradication, education, health, gender equality, environmental protection, and others. Analytical thinking can help assure that your estate plan contributes to these goals in a meaningful way besides writing a will. Analytical thinking enables a person to identify specific SDGs that match the principles and priorities held by him. A person can select which areas of sustainable development are most important to him by thoroughly investigating the goals and their implications. Besides that, it also enables him to evaluate his assets and their prospective impact. It involves examining his financial resources, his real estate investments, and other important possessions. This paper is to fill in the gaps that exist in making a will with analytical thinking.

METHODOLOGY

This paper adopts a qualitative research methodology, employing a doctrinal content analysis that would provide a subterranean understanding of the tension between the wishes of the testator and the beneficiaries' rights in Malaysia. The primary sources of this paper are the Wills Act 1959, Probate and Administration Act 1959, Rules of Court 2012, Legal Profession Act 1976, and Sabah Wills Ordinance (Sabah Cap. 158). The secondary sources include journal articles, cases, and online sources. The doctrinal approach is adopted for data analysis, and a literature review on analytical thinking and the law of will is used.

FINDINGS AND DISCUSSION

The Wills Act 1959 clearly states that the Act shall not apply to the Wills of persons professing the religion of Islam. The Act is silent as to whether Orang Asli in Peninsular Malaysia may use the Wills Act 1959 in making a will. As a comparison, in Sabah, the law provides that nothing in the Sabah Wills Ordinance shall affect the validity of any will made by any native or Muslim (section 1(2) of the State of Sabah Wills Ordinance (Sabah Cap. 158).

Understanding the value and type of assets allows a person to determine how to use them and contribute to the SDGs. Consider contributing a percentage of a person's financial resources, for example, to organizations or projects that promote sustainable development. Not only that, analytical thinking may assist a person to analyse the possible impact of his bequests and philanthropic contributions. It entails conducting research and analysis on various organisations, initiatives, and projects that are aligned with the SDGs. A person may make sound decisions about where to direct his resources for maximum impact by examining the efficacy, transparency, and track record of all the entities. In addition, analytical thinking may additionally help a person to find possible colleagues and partners that have similar goals and beliefs by critically analysing their work. Collaboration with established institutions with a track record of sustainable development can increase the impact of his bequests and ensure that his wishes are carried out efficiently. As such, analytical thinking entails creating tools to track the effectiveness of a person's contributions in making a valid will.

CONCLUSION AND RECOMMENDATIONS

In conclusion, educating the public in making a will is a serious issue that needs immediate action before a person died. The government needs to organise campaigns to make more people aware of the effects of the testator's rights over his or her property. A person can develop a will that contributes to a sustainable future in a focused and meaningful way by using critical thinking skills. The findings demonstrated that forming a will for sustainable development goals requires analytical thinking, which includes identifying relevant goals, assessing assets, quantifying effects, seeking collaborations, and developing monitoring mechanisms. Making a will is beneficial to the long-term viability of Muslim, non-Muslim, and Orang Asli livelihoods in Malaysia. When making decisions, analytical thinking will aid in improving comprehension of the law and adapting it to present social demands.

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TRACK 2: LAW, SCIENCE AND TECHNOLOGY

USING VIDEO SURVEILLANCE IN THE COURTROOM: LEGAL ANALYSIS OF RULES OF DIGITAL EVIDENCE

Fathimath Waheeda¹

¹Department of Law
Faculty of Shariah and Law, The Maldives National University,
Maldives.

Email: fathimath.waheedha@mnu.edu.mv

*Corresponding author

ABSTRACT

The past decade has seen exceptional growth in the utilization of video surveillance as a tool for crime prevention and security monitoring. Utilizing closed-circuit television (CCTV) footage in law enforcement has become increasingly common in the 21st century, but most research is concentrated on crime deterrence effects of the CCTV rather than the investigative usage of CCTV evidence. The purpose of this research was to explore the value of employing CCTV recordings in criminal prosecutions in Male'. In particular, the study concentrates on the use of surveillance footage and the likelihood of a conviction, and whether the rate of success of conviction varies for distinct categories of offences. The method utilized for the research was the qualitative approach through purposive sampling of seven semi-structured interviews of criminal investigators, prosecutors, lawyers and judges. The data collected was coded, analyzed and the results extracted. The findings confirm that utilizing video surveillance was more effective to show probable cause as it is accurate and irrefutable evidence. In addition, the results show that the conviction for the crime increases where the footage was available, and the rules of digital evidence were strictly followed. To conclude, video surveillance has brought immense advantages to investigation and prosecution of criminals, however it is difficult to say that it leads to all successful conviction, because other factors need to be considered prior to conclusive determination.

Keywords: *CCTV, Law Enforcement, Investigation, Video surveillance, Evidence*

INTRODUCTION

Advances in technology has revolutionized policing – increased audiovisual quality, provided greater mobility and reduced costs (Willis, M, et.al, 2017). It has seen a significant increase in the range and sophistication of technologies being deployed in policing and crime prevention (Lee & McGown 2014). Electronic evidence widely accepted in the Maldives, including CCTV recordings - utilized where available. Experts highlight positive properties - the exact, complete, clear, precise, true, objective, and neutral (Insa, 2007)

LITERATURE REVIEW

Generally, CCTV may be defined as a surveillance system composed of “a network of cameras and components for monitoring, recording and transmitting video images” (La Vigne et.al. 2011:3). The basic elements are captured by the definition of La Vigne, the surveillance systems may widely vary in terms of “complexity, interconnectivity and capability” (Willis, et.al. 2017:2). As reiterated by Taylor and Gill (2014:705):

complex integrated networks that feature automatic zoon, night vision, facial recognition, thermal imaging, automatic number plate recognition, tracking devices, ‘talking’ cameras and so on that are monitored continuously.

CCTV technology has been utilized as early as 1960, in London as crime prevention tool, to manage crowds (Norris, McCahill and Wood 2004). Advances in technology has seen the expansion of the scope and sophistication of surveillance using CCTV. Hence, as highlighted by Wells, Allard & Wilson (2006), the wide-ranging functions associated with CCTV includes: (1) prevention; (2) detecting and identifying

incidents; (3) increasing actual and perceived public safety, so reducing fear of crime; (4) gathering evidence for arrest and prosecution; and (5) acting as a general site management tool.

Experts highlight positive properties about electronic evidence: exact, complete, clear, precise, true, objective, and neutral (Insa, 2007). In the United Kingdom, studies have found pickpocketing (Sharp 2016) and metal theft cases on the railway network (Robb, Coupe & Ariel 2015) were significantly more likely to be solved when they occurred in locations monitored by CCTV cameras. Similarly, research into the use of rail network CCTV footage in New South Wales revealed that - requesting footage was associated with an increased likelihood of a matter being solved (cleared by way of legal action; Morgan & Dowling 2019). When footage was available and provided to police, matters were even more likely to be solved. Results varied by principal offence type, with significantly larger increases in clearance rates observed for property damage, theft and burglary than for assault.

METHODOLOGY

The method utilized for the research was the qualitative approach through purposive sampling of seven semi-structured interviews of criminal investigators, prosecutors, lawyers and judges.

FINDINGS AND DISCUSSION

The findings confirm that utilizing video surveillance was more effective to show probable cause as it is accurate and irrefutable evidence. In addition, the results show that the conviction for the crime increases where the footage was available, and the rules of digital evidence were strictly followed.

CONCLUSION AND RECOMMENDATIONS

To conclude, video surveillance has brought immense advantages to investigation and prosecution of criminals, however it is difficult to say that it leads to all successful conviction, because other factors need to be considered prior to conclusive determination.

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TRACK 2: LAW, SCIENCE AND TECHNOLOGY

ANALYSING PATIENT'S RIGHT TO INFORM CONSENT IN THE TRADITIONAL & COMPLEMENTARY MEDICINE SERVICES IN MALAYSIA

Norazlina Abdul Aziz¹, Nurrulhuda Ahmad², Izuan Izzaidi Azmi^{3*}, Che Natheera Abd Aziz⁴

^{1,2,3}*Faculty of Law, Universiti Teknologi MARA, 40450 Shah Alam, Selangor, Malaysia.*

⁴*Faculty of Business and Finance, Universiti Tunku Abdul Rahman, Kampar, Perak, Malaysia.*

Email:¹ noraz397@uitm.edu.my; ²nhuda432@uitm.edu.my; ³izuan124@uitm.edu.my; ⁴natheera@utar.edu.my

*Corresponding author

ABSTRACT

Traditional and complementary medicine (TCM) has gained popularity in recent years as an alternative or complementary treatment to conventional medicine. However, the use of TCM raises concerns about the potential risks and benefits, as well as the patient's right to informed consent. Informed consent is the process of obtaining a patient's permission to undergo a medical treatment or procedure after fully disclosing the potential risks, benefits, and alternatives. In the case of TCM, there is often limited scientific evidence to support its efficacy and safety. Moreover, many TCM practices involve the use of herbs, which can interact with prescription drugs, leading to adverse reactions. Therefore, it is essential to ensure that patients are adequately informed about the potential risks and benefits of TCM and that they have the right to choose between TCM and conventional medicine based on the available information. Thus, this study has engaged in examining these significant issues to suggest appropriate legal reforms. The study adopts an in-depth qualitative research analysis of the primary and secondary sources. The "black letter" laws methodology is used as the key component in the research study to provide a thorough descriptive analysis of legal norms, based on the collected sources. Data acquired from both works were analysed using specific gleaning themes and coding in supplementing the analytical discourse of this area.

Keywords: Healthcare, Rights to Informed Consent, Traditional and Complimentary Medicine, Law

INTRODUCTION

The acknowledgment of Traditional and Complimentary Medicine (TCM) as part of the healthcare system has gained popularity even among people who practice modern or conventional medicine (Hei, 2015). With the increase in popularity, it invites many players to join the healthcare industry, thus, exposing them to a higher risk. The existence of traditional treatment practices and medicines that are deeply rooted in the culture of the local community. Even though modern medicine has evolved a long time ago, empirical investigations reveal that TCM is beneficial in healing specific and chronic diseases. Therefore, their usage is inevitable. Just like conventional medicine, usage of TCM carries its own risk. TCM is attached to issues like the limited scientific evidence to support its efficacy and safety. Many TCM practices involve the use of herbs, which can interact with prescription drugs, leading to adverse reactions. This involves two universal rights of consumers namely, the right to information and the right to make an informed choice. Most arguments concerning the right to information, raise the questions of "What is the scope of rights to information", "How much information should be supplied?" and "Who should supply the information?". In order to engage in the discourse concerning the right to information and its relation to the TCM industry, one must first understand the meaning of this right. Ensuring the right to information will assist in securing the right to make an informed choice. This right is clearly framed on the need for adequate information that will allow the consumer to enjoy the freedom to make an informed choice.

LITERATURE REVIEW

There are series of study within the area of medical and social perspective. Some studies highlighted that most Malaysian resorted to TCM to treat chronic illness diseases (Mohd Tahir, 2015; Yusoff, 2019; Park, 2022; Mohiudin, 2021) and there is a need to research further to create a TCM product that may

ensure safety, quality, and efficacy. To this issue, a few studies (Yusoff, 2019; Basri,2022) provided an overview of the perceptions of the consumer on the effectiveness of TCM in curing chronic diseases. This study forwarded the idea that having knowledge of reasons why some people resort to TCM may avoid future conflict revolving around the sensitivity of certain cultures and traditions. On the qualification of TCM practitioner Kim (2017) agree that the government under the influence of China's administration of TCM has progressed well in introducing TCM-related courses at the tertiary level. Another report by Park (2022) mentioned that homeopathy services may co-exist with modern medicine in combatting rising health issues within society. The preceding works of literature have not delved into the rights to health in relation to TCM in Malaysia. The main focus of the previous study was on consumer perception, the history of TCM, and the general discussion on laws and regulations.

METHODOLOGY

This research is designed based on the doctrinal study comprising the primary and secondary data and investigation on the legal framework governing Traditional and Complementary Medicine in Malaysia and how the current legal system addresses issues of informed consent, which are essential in providing consolidated analytical findings for the proposal of reformation. Data acquired through literature reviews & doctrinal study were analysed using thematic and content analysis.

FINDINGS AND DISCUSSION

The rights to informed consent are fundamental to the principles of medical ethics, and healthcare providers have a duty to provide patients with accurate and complete information about their treatment options. Patients also have the right to refuse any treatment or procedure that they do not wish to undergo. While TCM can offer alternative treatments to conventional medicine, patients have the right to informed consent regarding the potential risks and benefits of these treatments. It is essential for healthcare providers to communicate effectively with patients and provide them with accurate and complete information to make informed decisions. According to Goldring (1993), consumers who are secure in the knowledge and enjoyment of rights are more likely to utilise healthcare services. As such, it can be said that in an era where TCM healthcare services have become an important healthcare component, an invincible consumer protection system will ensure the sustainability of this industry. Most modern consumer laws protect consumers from being misled and ensure positively informed so that they can make informed choices (Hoggs, 2007). Many countries have formulated policies and legislation on two important areas relating to this right (Rogene, 1988). The first is on the displays of prices and claims regarding sales, and the second relates to the packaging and labelling (Larsen,2001) of products. The modern economy approved that the main problem of the modern consumer market lies in information asymmetry or as explained by Griggs (2005), the situation where information cannot be easily transferred or gained by the consumer or in such a situation whereby an ordinary consumer is not able to understand the variation of the transaction. This has become the reason for the introduction of consumer legislation. Todt (2009), mentioned that there is an increase in consumer demand for the authorities to facilitate informed purchasing decisions and stresses that labelling of consumable products and services is imperative to uphold their rights to information. Consumers are not able to exercise their rights to dictate when they lack information about the product. In response to this view, consumer protectionists explain that the trend in consumerism requires consumers to participate in marketplace decision-making (Swagler, 1994). On the question of who should supply the information, Harker (2007) stressed that in the healthcare system, doctors are highly credible sources of information for modern healthcare services. For the TCM services the credible person will be the TCM practitioner themselves. Each TCM practice is unique to its particular TCM hub. For example, the practitioner within the Malay traditional healthcare service would have no expert knowledge of Chinese traditional healthcare. Harker (2007) has also contended that many countries deny the consumer's right to information regarding prescribed medicines believing that healthcare is primarily the province of healthcare professionals. On this point, Marc (1994) stated that medical professionals interpreted the ethical injunction to work in the interest of patients to mean that they should make decisions for patients. Physicians generally assume that medicine was primarily a science, that doctors were experts who would know better than patients in the interest of the patient, and that patients had neither the interest in becoming involved in medical decision-making nor the ability to do so. Doctors promoted this idea of Marc (1994) as benign paternalism. However, the appropriate resolution to this contention is to educate the consumer rather than deny them the right to information. The following table is the summarise finding on issue rights to information and its relation to TCM in Malaysia.

TCM IN MALAYSIA	ISSUES WITH TCM IN MALAYSIA	GOVERNMENT’S INITIATIVES
Knowledge of the TCM Practitioner on Right of Information	A substantial percentage of Malaysia’s TCM practitioners have not gone through systematic education or training. The lack of knowledge on the part of the TCM practitioner on the scope of risk that they need to inform.	1. The government has strengthened quality control by introducing various regulations on educational requirements, the design of a standard curriculum, and mandatory certification at the minimum level. 2. The aim of the 2016 Act is to raise the quality and status of TCM practitioners, who will be recognized as independent professionals above a certain level.
Multiple Models of TCM with Different Risk	Different types of TCM carry different risk.	Traditional preparations, which are directly prescribed and dispensed as raw and/or dried medicinal herbs by TCM practitioners: exempted from the registration obligation

CONCLUSION AND RECOMMENDATIONS

In conclusion, the importance of the right to informed consent in the context of traditional and complementary medicine cannot be overstated. Similar to conventional medicine, TCM comes with potential risks and benefits that patients must understand before undergoing any treatment. The use of TCM requires healthcare providers to communicate effectively with patients and provide them with accurate and complete information, enabling them to make informed decisions about their health. The principles of medical ethics emphasize the importance of the right to informed consent. Healthcare providers have a duty to provide patients with complete information about their treatment options, including the potential risks and benefits of TCM. Patients have the right to make their own choices about their healthcare, and this includes the right to refuse any treatment that they do not wish to undergo. In summary, the right to informed consent is critical when considering TCM as an alternative or complementary treatment. Ensuring that patients have access to accurate and complete information about the potential risks and benefits of TCM is essential for them to make informed decisions about their health. By upholding these principles, healthcare providers can ensure that patients receive the best possible care while respecting their autonomy and right to self-determination.

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TRACK 2: LAW, SCIENCE AND TECHNOLOGY

LEGAL CHALLENGES AND SHARIAH ISSUES OF
CRYPTOCURRENCIES IN MALAYSIA

Arisa Azreen Binti Ismawi¹ Muhamad Aryn Bin Rozali² Aneesa Azaria Binti Shariful Azman³ Shahira Shasha Binti Redzuan⁴ Muhammad Aliyaizzuddin bin Mohd Shukri⁵ & Dr. Syuhaeda Aeni Binti Mat Ali^{6*}

^{1,2,3,4,5,6} Faculty of Law, University Teknologi MARA, Malaysia.

Email: ¹arissaazrn96@gmail.com, ²arynrozali@gmail.com; ³aneesaazaria97@gmail.com; ⁴shxhira@gmail.com; ⁵aizzuddin.my@gmail.com; ⁶syuha497@uitm.edu.my

*Corresponding Author

ABSTRACT

There is no doubt that the financial technology ('Fintech') industry has been growing significantly in recent years, including cryptocurrencies. Cryptocurrencies such as Bitcoin, Ethereum and Litecoin are one of the most promising digital assets, which function as a means of exchange with decentralised control and a highly secure financial system. In Malaysia, the guideline framework for the Shariah Advisory Council (SAC) members to monitor the Islamic Fintech industry is the Islamic Financial Service Act (IFSA) 2013. Although IFSA 2013 is comprehensive enough to regulate traditional banking and finance activities in general, it does not cover modern financial activities like cryptocurrencies and artificial intelligence. In addition, the Central Bank of Malaysia (BNM) has issued a statement clarifying that cryptocurrency is not a recognised legal tender in Malaysia and there has been no intention of recognising cryptocurrencies as a legal tender which has supported the decision by several scholars on cryptocurrency being impermissible in Islam. Hence, this research will examine whether the use of cryptocurrencies meet the principles of Maqasid Shariah outlined in Islamic Law and addresses the concerns surrounding the potential use of cryptocurrency for illegal activities in Malaysia by analysing existing laws on national currency and digital currency in other countries. Therefore, the purpose of this research is to propose recommendations to the current existing law and enforcement on the issue of cryptocurrencies in Malaysia.

Keywords: *Fintech, Cryptocurrency, Bitcoin, shariah-compliance, Islamic finance*

INTRODUCTION

Cryptocurrency as the biggest hit of FinTech innovation is a new kind of money that has changed the way of financial transactions being done across the globe. The first cryptocurrency in history was Bitcoin, and it was discovered by Mr. Satoshi Nakamoto as a peer-to-peer (P2P) electronic cash system during the Global Financial Crisis in 1998 (Nawang et al., 2021). Since its emergence, cryptocurrency has gained popularity among investors and traders worldwide, including Malaysia. However, BNM later in 2014 stated that digital currency and digital tokens is not a recognized legal tender in the country of Malaysia thus it is not subject to regulation under current laws and regulations (Ramlee, N.S., 2022). Notwithstanding the aforesaid official statement, BNM appeared to have taken a different approach in regulating cryptocurrency exchanges in Malaysia at the end of 2017 when there were more cryptocurrencies transactions taking place. In a different perspective, a shariah compliance islamic finance requires that all its financial transactions must adhere to the principles of Maqasid Shariah outlined in Islamic law in order for it to be accepted. Significantly, these principles of Maqasid Shariah are meant to preserve the public benefits by bringing good and preventing evil. According to the principles of Maqasid Shariah, there are five foundational goals, which are the preservatives of faith (Deen), life (Nafs), lineage (nasab), intellect ('aql) and wealth (mal). As for cryptocurrencies, the Maqasid Shariah principle being discussed falls within the ambit of the preservation of wealth (Abdul Rahaman, N., 2018). However, most Islamic scholars are of the opinion that the use of cryptocurrency should be prohibited as cryptocurrency was viewed as payment instruments which do not meet the characteristics of currency in Islam hence opening the door for the potential use of illegal activities activities such as money laundering, financing of terrorism and many others (Nawang et al., 2021).

LITERATURE REVIEW

Usmani (2010) expressed money as something that has three attributes including medium of exchange, unit of account and store of value. Meanwhile, the evaluation of cryptocurrency by some scholars based on the aforementioned attributes suggest that cryptocurrency is shariah-compliant but requires some modification in order to reduce the risk involved in terms of its operation. The related risk in the cryptocurrency includes uncertainty and volatility which are due to lack of monitoring authority and tangible assets backing the cryptocurrency. The high price volatility makes it unsuitable to work as it is virtual, not absolute and is similar to multi-level marketing schemes. There is also ambiguity attached to cryptocurrency with regards to the transactions being asset-backed so as to ensure that the investment is based on real economic activity and helps to reduce risk (Ahmed Aliyu, et al., 2020).

The development of sharia-compliant cryptocurrencies involves creating a digital currency backed by tangible assets, such as gold or real estate, which are considered halal (permissible) in Islamic law. The currency must also operate on a transparent and secure blockchain, with transactions being recorded and verified by a network of nodes (Clarke, A., 2023). Cryptocurrency is not inherently asset-backed but can be used in asset-backed financing arrangements. For example, some companies have issued cryptocurrency backed by gold or other tangible assets. Therefore, cryptocurrency can align with the principle of asset-backed financing in Islamic finance if used in asset-backed financing arrangements. With the recent development, there are blockchain networks that are being built with sharia compliance in mind. For example, the Haqq blockchain uses Islamic Coin (ISLM), which was built to address some of the main principles within Islamic Finance. One of those principles is Zakat, which mandates that people should donate a portion of their wealth to people to people who are in need (Clarke, A., 2023).

In February 2018, BNM issued the latest cryptocurrency regulations in Malaysia under "Anti-Money Laundering and Counter Financing of Terrorism Policy for Digital Currencies (Sector 6)". Simultaneously, digital currency exchanges under Sector 6 must comply with Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001 (AMLA). According to Durgha Moorthy, this legislation was drafted based on the feedback received from the public in December 2017 where its purpose was to impose an obligation on the cryptocurrency exchangers mainly on the business which involved cryptocurrency transactions (Moorthy. D., 2018). Later in 2019, a subsidiary legislation was enacted by the Securities Commission (SC) namely the Capital Market and Services (Prescription of Securities) (Digital Currency and Digital Token) Order 2019. Pursuant to this Order, digital currencies and tokens are recognised as securities (Nawang et al., 2021). The important key is that the issuers of such currencies or tokens are required to register as a recognized market operator (RMO) under the Capital Markets and Services Act 2007(CMSA). Currently, three Recognized Market Operators (RMOs) were established namely Luno Malaysia Sdn Bhd, SINEGY Technologies (M) Sdn Bhd and Tokenize Technology (M) Sdn Bhd (Nawang et al., 2021). Bitcoin and other crypto assets are still not considered to be legal tender in Malaysia. Nonetheless, the High Court in the case of *Robert Ong Thien Cheng v Luno Pte Ltd & Anor [2020] 1 LNS 2194* recognised that Bitcoin was a 'thing' or commodity. Therefore, pursuant to section 73 of the Contracts Act 1950, as such a 'thing' is capable of being returned. Meanwhile, it was established by the Central Bank Act of Malaysia (CBMA) 2009 that the apex body for determining Islamic financial problems is the Shariah Advisory Council (SAC). Under the Islamic Financial Services Act of 2013 (IFSA), SAC main goals were to ensure any operations, undertakings, businesses, affairs, and activities of the islamic finance are conducted in accordance with shariah compliance requirements. Although IFSA is comprehensive enough to regulate traditional banking and finance activities in general, it does not cover modern financial activities like cryptocurrencies and artificial intelligence (Che Pa et al., 2021). The aforementioned related works have reviewed the existing views of Islamic scholars regarding the acceptability of cryptocurrency. However, extensive legal issues and challenges of shariah-compliant cryptocurrencies with regards to asset-backing have not been critically explored. Hence, this paper seeks to explore the most current legal issues and challenges with regards to shariah-compliant cryptocurrencies, with a special view to asset-backed financing.

METHODOLOGY

The research methodology that will be adopted is doctrinal research, a library based research (Yaqin, 2007) where it employs a descriptive method of qualitative research methodology that depends on the

primary sources of Islamic Law namely Al Quran and Hadith and statutes namely Financial Services Act, 2013, Islamic Financial Services Act 2013, the Capital Markets and Services (Prescription of Securities) (Digital Currency and Digital Token) Order 2019 (Prescription Order 2019) and the Anti-Money Laundering and Counter Financing of Terrorism Policy for Digital Currencies (Sector 6) (AMLA). The secondary sources of law such as journals, textbooks, and related articles which are retrieved from the online databases (Lexis Advance Law, CLJ, Hein Online, Scopus) and websites.

FINDINGS AND DISCUSSION

In 2018, the Mufti of Federal Territories published a fatwa which informed that cryptocurrencies were viewed as payment instruments which do not meet the characteristics of currency in Islam. In 2019 however, the Central Bank of Malaysia issued a statement which stated that cryptocurrencies are not viewed as a legal tender as they do not exhibit universal characteristics of money and face limitations due to its price volatility and vulnerability to cyber threats. In 2021, the Security Commission of Malaysia's Shariah Advisory Council concluded that the exchange of cryptocurrencies is permissible. The SAC viewed digital currency as '*mal*' as digital currency is based on technology and thus form as '*urudh*' and it is not a currency from Shariah perspective and not categorised as '*ribawi*' items. As such, the trade of digital currency is not subject to the '*bai' al-sarf*'. As long as the digital assets fulfil the requirement that it is backed by gold, silver and currency and traded on SC's registered DAX, such trade is permissible.

It is however the challenges in implementing the shariah-compliant cryptocurrency that has made the introduction of such digital currency put into a halt. There are companies who have attempted to back cryptocurrencies with specific assets such as gold. However, these assets-backed cryptocurrency has turned into a marketing mechanism. In addition, the Central Bank of Malaysia has issued a statement clarifying that cryptocurrency is not a recognised legal tender in Malaysia and there has been no intention of recognising cryptocurrencies as a legal tender which has supported the decision by several scholars on cryptocurrency being impermissible in Islam. In having a shariah compliance cryptocurrencies, it could decentralise the financial products in Malaysia where there is a high demand for financial products that adhere to Islamic law. Cryptocurrencies that adhere to shariah requirements and instill confidence would be digital currencies that have blockchain networks that are built with compliance in shariah in mind. There is also a need for a decentralised autonomous organisation to comply with the principles of Islam including the prohibition of '*gharar*' and '*usury*' as well as the obligation of '*zakat*'. The shariah compliant cryptocurrency also requires it to be a digital currency backed by tangible assets such as gold or real estate that is considered as permissible in Islamic law.

CONCLUSION AND RECOMMENDATION

To conclude this research, the use of cryptocurrencies is arguably not fully in compliance with the principles of Maqasid Shariah outlined in Islam considering the different fatwas of the Islamic scholars with regards to the digital currency. Up to this date, the legality and permissibility of cryptocurrencies in Islam is still one of the major issues that has been debated by the muslim scholars. However, in Malaysia, the legal status of cryptocurrencies has now been settled, as digital currency has been statutorily recognised as a type of digital asset as per the decision in the case *Luno Pte Ltd & Anor v Robert Ong Thien Cheng*. Consequently, the different views of cryptocurrencies by muslim scholars make it difficult to resolve the issue of the potential use of cryptocurrency for illegal activities. Although the Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001 (AMLA) has included cryptocurrencies transactions, it is not comprehensive enough to regulate the use of cryptocurrencies thoroughly. Additionally, the issues of data safety and security, personal privacy, and transparency were also lacking. Hence, we propose Bank Negara Malaysia (BNM) to initiate a policy to expand anti-money-laundering rules that force cryptocurrency exchange traders to disclose their identities and report suspicious activity to authorities such as in the United Kingdom. We also recommend that policymakers impose new laws on the unlawful activities of cryptocurrencies to the extent of cryptocurrency related crimes. We also believe that there is a need to impose a new law on taxation as to this date, the Inland Revenue Board has not issued any specific guidelines on e-commerce tax.

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TRACK 2: LAW, SCIENCE AND TECHNOLOGY

A REVIEW ON THE MALAYSIAN SPACE BOARD ACT 2022

Associate Professor Dr. Tunku Intan Mainura Tunku Makmar Nizamuddin ^{1*}, Wan Sharina Ramlah Wan Ahmad Amin Jaffri², Azni Mohd Dian³

¹Faculty of Law, Universiti Teknologi MARA, Malaysia.

²Faculty of Arts & Social Sciences, University Malaya, Malaysia.

³Faculty of Law, Universiti Teknologi MARA, Malaysia.

Email: tunku_intan@uitm.edu.my, wanshana@um.edu.my
Azni378@uitm.edu.my

*Corresponding author

ABSTRACT

The objective of this article is to examine whether the Malaysian Space Board Act 2022 is an ideal regulatory framework for a country like Malaysia which has an ambitious and expanding space programme. For the purpose of this article, it will be proposed that, an ideal legislative framework is one that has these following three attributes. Firstly, it should conform to the key obligations and requirements under international law as prescribed by the international outer space treaties; secondly, whilst conforming to the obligations and requirements under international law as prescribed by the international outer space treaties, a legal framework should also contain all provisions and characteristics that have been identified by space law experts as compulsory and desirable; and thirdly, whilst conforming to the obligations and requirements under international law as prescribed by the international outer space treaties, it should also be compatible with the economic status of Malaysia as a developing country, while containing all the best features of the legal framework of developed states which are active in space-related activities. The methodology used for this article is a comparative analytical approach where information is gathered through analysing written materials and literatures which include international treaties and resolutions, national legislations, case law, books, journals, outcomes of symposiums, conferences, governmental publications and reports from newspapers and internet sources. The findings of this analysis conclude that the Malaysian Space Board Act 2022 is sufficient to meet Malaysia's key obligations under international space law.

Keywords: *Malaysia, International Law, Outer Space, Legislation, Ideal Framework*

INTRODUCTION

The outer space is familiar territory to states at large and Malaysia is one of the players in this arena (Tunku, I. M., 2018). Malaysia has built space infrastructures, which include the national observatory and remote sensing centres and has to date, launched ten satellites into orbit (Malaysia Space Agency, 2023). Due to these rapid expansions of Malaysia's space activities, it requires a set of regulations to ensure that they are undertaken lawfully with proper legal procedures and rules. As such, on 25 January 2022, Malaysia had gazetted the Malaysian Space Board Act 2022, which aims to set up a Space Board to regulate space-related activities of its subjects (Malaysia Space Agency, 2023). Thus, this article intends to examine whether the Act is an ideal legal framework to regulate Malaysia's space-related activities. To answer the primary research question, the authors further divide it into three sub-research questions. Firstly, whether the Act conforms to the obligations and requirements under international law as prescribed by the United Nations outer space treaties. Secondly, whether, whilst conforming to the obligations and requirements under international law as prescribed by the United Nations outer space treaties, the Act contains all the provisions and characteristics that have been identified by space law experts as compulsory and desirable. Thirdly, whether whilst conforming to the obligations and requirements under international law as prescribed by the United Nations outer space treaties, the Act is also compatible with the economic status of Malaysia as a developing country, while containing all the best features of the legal framework of developed states which are active in space-related activities.

LITERATURE REVIEW

There is an abundance of literatures that have been published about space law, and the primary author had provided a comprehensive review and concluded that most scholars focus their writings on general issues of space law, which include the historical perspective of the evolution of space law and the international policy and law governing space-related activities (Tunku, I.M., 2018). Ferreira-Snyman (2021) discusses the challenges relating to the traditional understanding of prohibition against claiming territorial sovereignty in outer space by looking at scholarly works and listed three factors which support the re-evaluation of this blanket prohibition, namely, the lack of universally accepted limitation of the outer space boundary, the principle of the common heritage of mankind and property rights in outer space. The author links these factors to the involvement of private entities in space activities, and how this was not envisaged at the time of the drafting and conclusion of the outer space treaties. Ferreira-Snyman (2021) also briefly discusses the legal framework of outer space law adopted by the United States of America and Luxembourg which essentially govern exploration and use of space resources. Such legal framework may not be applicable to Malaysia as yet. The primary author, Tunku Intan Mainura (2010) offers an insight of a feasible draft Act of Malaysian Outer Space Law in anticipation of Malaysia joining the bandwagon following the diverse space activities which Malaysia was involved in back in the year 2010. The author examined whether the legal framework of the then Draft Malaysian Outer Space Act 2005 was ‘ideal’ in the sense that whether it included the compulsory elements as per the relevant international outer space law treaties. The author also analyses legal frameworks of several states which included, the United Kingdom, Australia, the U.S, and Japan. The author also discusses some of the states’ allocation of budget to space application sectors. Tunku Intan Mainura also concluded that from her review of scholarly works that even though one of the key international obligations for states is for them to cooperate internationally with others when participating in their space-related activities, without giving any reason the experts in space law did not make a recommendation as to the incorporation of the provision on the encouragement of international cooperation. This is reflected in the Malaysian Space Board Act 2022. Her work provides a model which is ideal for Malaysia’s Outer Space Law as perceived by her in 2010, when the Malaysian Space Board Act was still being drafted. It may serve as a referral point in analysing the extent to which the 2022 Act fulfills her proposed legal framework. To date, there has not been any literature analysing the actual Malaysian Space Board Act 2022, per se.

METHODOLOGY

The methodology used for this research is to give primacy to international law and to use relevant literature and the experience of the case study states to illustrate how international obligations are implemented. Hence, this article will analyse relevant and applicable international treaties. Whilst giving international law paramount consideration, the writers will also look at international law through the analytical framework derived from the work of commentators. These commentaries may be regarded as valuable indicators of how any rules of international law might be applied to space activities and whether analogies with other bodies of law, such as liability for other kinds of hazardous activity, might be fruitful. As such, due reference will be made to the recommendations that have been made by experts in space law regarding the provisions that should be incorporated into a legal framework of space law. This ideal refined framework will later be compared against the Malaysian Space Board Act 2022 to test whether the Malaysian legal framework is ideally posited within it.

FINDINGS AND DISCUSSION

Table 1: An Ideal Framework on Provisions Recommended by Experts

IDEAL FRAMEWORK	MALAYSIAN SPACE BOARD ACT 2022
<p>A legal framework that contains all three provisions that reflect the key obligations that States must fulfil under international law and compulsory provisions recommended by experts in space law</p> <p>Provisions that allow States to authorise and supervise space activities that those under States’ jurisdictions wish to undertake and to</p>	<p>Yes – Parts IV, IX</p>

continue supervising the space activities that have been undertaken until they end (Authorisation and Supervision).	
Provisions that require State entities to be responsible towards the consequences of their activities (Responsibility and Liability).	Yes – Parts VI, X
Provisions that require States to register space objects within their national registry (Registration of Space Objects).	Yes – Part V

CONCLUSION AND RECOMMENDATIONS

As a conclusion as to whether the Malaysian Space Board Act 2022 conforms to the key obligations under international law as prescribed by the United Nations outer space treaties, the answer to this is affirmative. The Act contains all the provisions that are obligated upon Malaysia through the operation of international customary law that the 1967 Outer Space Treaty is now taken to represent. Those key international obligations require States to control the type of activity that those under the States’ jurisdiction wish to undertake and to continue supervising the space activities that have been undertaken until they end. It also requires States to be internationally responsible and liable for all space activities carried out both by their governmental agencies and non-governmental entities. In addition, there is also the requirement for States to register its space objects within its national registry when State entities participate in space-related activities. Be that as it may, the Malaysian government should consider the Act with a view to ensuring proper implementation of the powers available to it. Having the legislation is one thing, while implementing it is another. There is no point in having the legislation if it cannot be properly implemented. Thus, for any space-related activities to be effectively conducted, it is recommended that Malaysia should ensure that it is equipped with suitable manpower and human resources who are knowledgeable in the area of outer space law. In this regard, the government of Malaysia should encourage more nationals to pursue studies and research and development in this field.

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TRACK 3: CRIMINAL LAW AND CRIMINOLOGY

TREATMENT AND REHABILITATION FOR DRUG DEPENDANTS/ADDICTS SERVING IMPRISONMENT SENTENCE

Che Audah Hassan^{1*}, Nor Hayati Saad², Rafizah Abu Hassan³, Murni A Abdul Latif⁴ & Chepi Ali
Firman Z.SH., MH.⁵

^{1,3}*Faculty of Law, Universiti Teknologi MARA, Malaysia.*

³*Faculty of Mechanical Engineering, Universiti Teknologi MARA,
Malaysia, Royal Malaysian Police, Melaka, Malaysia*⁴. *Faculty of Law,
Universitas Islam Bandun, Indonesia*⁵

Email: *audah@uitm.edu.my; ²norhayatisaad@uitm.edu.my; ³fiza@uitm.edu.my; murnimutalif3422@gmail.com;
chepialifirmanzakaria@gmail.com

*Corresponding author

ABSTRACT

According to National Anti-Drugs Agency (NADA), the number of drug cases is still inclining every year despite the severe punishment imposed under the Dangerous Drugs Act 1952 (DDA). Drug dependant with addiction problem is among those relapse cases contributing to the statistic. In controlling the drug addict, they are obliged to undergo treatment under the Drug Dependant (Treatment & Rehabilitation) Act 1983 (DDTR). Nevertheless, not all drug dependants are imposed to receive treatment for addiction such as prisoners who are incarcerated in the prison guilty of an offence under section 15 of the Dangerous Drugs Act 1952 for administering drug, although they made up a large number of those in prison. Applying qualitative study, this article will examine the laws and policies relating to the rehabilitation of drug dependants in Malaysia and its compliance with international standards. It is found that the current legal framework is not enough to support the rehabilitation of drug dependants detained in the prison. The finding of this research will enable the authority to review the issue of rehabilitation in the prison of Malaysia and recommend appropriate measures or laws to enhance rehabilitative element of drug dependant who are guilty for drug abuse.

Keywords: *Rehabilitation, Drug, Addiction, Prison, Punishment*

INTRODUCTION

Malaysia ranks fifth among Southeast Asian countries in terms of drug addicts, with around 1.2 million addicts according to the United Nations Drug Control Programme. As of December 2021, statistics show the majority of inmates in prisons are drug offenders which is about 75%. The arrest of drug addict under section 15(1)(a) of the DDA 1952 contributed the largest percent. Section 15(1)(a) of the Act penalizes any person who consumes, administer to himself, or suffers any other person contrary any dangerous drug shall be guilty of an offence punishable with fine or imprisonment. In addition to section 15, the punishment imposed must also refer to section 38A or 38B of the same Act as well as section 6 of DDTR. In an article reported online on the 13 Nov 2020, entitled, ‘Suhakam: Address crowded prisons’, the Human Rights Commission of Malaysia, urged the government to consider releasing those remanded for petty and non-violent crimes to reduce overpopulation in prison. The Suhakam Commissioner, Jerald Joseph, also hoped that government would take a rehabilitative approach when dealing with drug users, as they make up a large number of those in prisons. In line with the recommendation by the Suhakam to take rehabilitative approach for drug abusers, this paper will examine the legal framework of criminal justice system relating to punishment and rehabilitation on drug abusers detained in the prison and the compliance with the international standards of the World Health Organization and the United Nations Office on Drugs and Crime. This paper aims to recommend a policy on rehabilitation or alternative punishment in dealing with the drug dependants above 18 years of age convicted for an offence under section 15 of the DDA.

LITERATURE REVIEW

In 2017, Noor & Kumar conducted a study on Rehabilitated Drug Addicts and Society Acceptance towards a Rehabilitated Life. The study found that the society plays an important part in relapse cases and fresh

drug addicts to be rehabilitated. The research, however, does not examine the laws on the application of treatment and rehabilitation on the drug dependants. In 2021, Rashid, Othman and Mohamad had conducted a survey on 123 drug addicts in the rehabilitation centre, focusing on the treatment provided by the Cure & Care Rehabilitation Centre (CCRC) at Besut. This research did not target the drug dependants who are detained in the prison. Similarly, Ismail, Rashid, Wahab and Ishak 2019 only confined their study on female drug users at Cure and Care Rehabilitation Centre focusing on the issue of depression symptoms that may lead to dual diagnosis. Latib, Abudiah, Rani & Hassan (2019) studied on the Constraints of former drug users to maintain self-recovery on 13 parolees at the Kuala Terengganu District Parole Center. The study however, does not cover the treatment for drug prisoners detained in the prison. In 2018, Hashim, Chiang & Rajamanickam conducted qualitative research on prison rehabilitation programme for criminal offenders in the Malaysian prison department and found that the development of the rehabilitation module for criminal offenders serving their imprisonment terms is well-balanced, taking into consideration of various aspects which include physical rehabilitation, mental, attitude, behavior and spiritual. This research finding was made generally to all types of offenders. The only programme which is specific to rehabilitation of drug dependant is the Therapeutic Community Programme introduced in 1992. Nevertheless, it is not compulsory for the inmates to undergo the module since its implementation may depend on the prison manpower and facilities available.

METHODOLOGY

The study applies qualitative method using a content analysis method. The data from the primary sources of government gazettes, Acts, journal articles and online data relating to government policies will be analyzed.

FINDINGS AND DISCUSSION

A voluntary treatment is available when the drug dependant applies for rehabilitation under section 8 of the DDTR to the National Drug Agency (NADA), an agency specializes in the rehabilitation of drug dependants. Any person who is drug dependant may apply to a Rehabilitation Officer to be provided with treatment and rehabilitation in respect of his drug dependency. Upon receiving an application, the officer shall as soon as possible, make arrangement for the applicant to undergo tests. If certified to be drug dependent, the Rehabilitation Officer shall decide whether such person undergo treatment at the Rehabilitation Centre for a period of two years and thereafter undergo supervision for two years or be placed under the supervision of a Rehabilitation officer for a period not less than two years and not more than three years. Meanwhile the compulsory order for drug treatment is applicable when the drug dependant had been found to be a drug addict by the police or enforcement officer. An officer may take into custody any person whom he reasonably suspects to be a drug dependant, in order to undergo tests procedures. Upon tested to be drug positive, the punishment impose will depend on whether he is below or above 18 years old. If the person below the age of eighteen years is found guilty of an offence against this Act other than an offence under section 6B or 39B or 39A, according to section 38A, the court may if it is satisfied that such person is a drug dependant, deal with such person under section 6 of the DDTR. According to section 6 (1) (a) of DDTR the drug dependant (below 18 years) could be ordered to undergo treatment and rehabilitation at a rehabilitation centre for a period of two years and thereafter to undergo supervision by an officer at the place specified in the order for a period of two years. If detention at the rehabilitation centre is not necessary, he may be required to undergo supervision by an officer at the place specified in the order for a period of not less than two and not more than three years.

The drug dependant aged 18 years and above if found guilty under section 15 of DDA and sentenced to imprisonment, he is not bound to undergo rehabilitation at the centre under section 38B of the DDA. This is because, he has to serve the imprisonment punishment provided under section 15 DDA unless he is fined and able to pay the fine. Therefore, the rehabilitation of the drug offender when incarcerated in prison would only depend on the prison authority.

CONCLUSION AND RECOMMENDATIONS

Prison originally served as the punishment body. After Malaysian independence, many programs were introduced to inculcate corrective element among the inmates. Beginning with Ibrahim system, it extends to Consultative Programmes and followed by Therapeutic Community, introduced in 1992 as an alternative module specifically for inmates of drug abuse. The international standards of the World Health

Organization and the United Nations Office on Drugs and Crime for the treatment of drug use disorders promotes treatment for drug use disorders through effective coordination between the criminal justice system and health and social services. If imprisonment is warranted, treatment should also be offered to prisoners with drug use disorders during their stay in jail and after their release as effective treatment will lower the risk of relapse, overdose and reoffending. The current legal framework seems lacking on the drug rehabilitation element for drug dependant in the prison. However, the prison fits this gap by introducing the Therapeutic Community in 1992 as an alternative module and the exercise of the module is under the prison authority. Considering the number of prison and its inmates and the manpower and facilities provided, the application of the module in the prison is still not certain. This is so when the use of the module is not compulsory thus compromising the effort to reduce the drug use disorder among the inmates. Therefore, it is recommended that a policy on rehabilitation be implemented or a non-custodial alternative punishment which facilitate their treatment under NADA is imposed when dealing with the drug dependants above 18 years of age. In future, a research may be conducted on the application of the rehabilitative module to the drug abusers in the prison,

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TRACK 3: CRIMINAL LAW AND CRIMINOLOGY

CRIMINOLOGICAL ANALYSIS OF INCREASING CYBER CRIME DURING THE COVID-19 PANDEMIC IN INDONESIA

Dian Alan Setiawan¹, Widya Ismi Anjani²

^{1,2}*Faculty Of Law, Universitas Islam Bandung, Indonesia*

Email :¹ dianalan@unisba.ac.id

ABSTRACT

The Covid-19 pandemic has occurred in various parts of the world, especially Indonesia as one of the countries affected by the outbreak. Several countries have recorded a decrease in crime, but there has been a significant increase in crime, namely Cyber Crime. Based on this phenomenon, the problems in this study are formulated as follows: (1) What are the factors that have caused an increase in cyber crime during the Covid-19 pandemic? (2) What are the preventive steps that must be taken to reduce cybercrime in Indonesia? The researcher uses a normative juridical approach, namely an approach based on the main legal material by examining the theories, concepts, legal principles and laws and regulations related to this research. The approach used is a literature study which includes Primary Legal Materials, secondary legal materials, and tertiary legal materials. To support secondary material, data from the BSSN (State Crypto and Cyber Agency) and the Ministry of Communication and Informatics on the increase in cybercrime during the pandemic were used to complete the research data. The data analysis used is qualitative data analysis. The results of this study are: that cybercrime in terms of criminological aspects occurs due to economic and social factors during a pandemic, steps to overcome and prevent it use two means, namely penal and non-penal.

Keywords: *Pandemic; Cyber Crime; Criminology*

INTRODUCTION

Cybercrimes can be divided into two categories, namely crimes against computer systems and crimes that use computer networks (Widodo, 2009). Crime in the computer field is the dark side of technological progress which has a very broad impact on all aspects of modern life (Maskun, 2013). The large-scale social restriction policy is an effort to prevent the spread of the Covid-19 case which causes people to stay at home to worship, study, work, and others. Therefore, they rely more and more on the internet to access life services that are usually obtained offline. During the Covid-19 Pandemic, cybercrime experienced a very significant increase, this was triggered by the percentage of the population connected to the internet and the time spent online, combined with the feeling of anxiety and fear caused by the pandemic which has provided more opportunities for perpetrators crime to take advantage of this situation and make more money or create massive disturbances.

Based on data from the BSSN (State Crypto and Cyber Agency), during January-August 2020, there were nearly 190 million cyber-attack attempts in Indonesia, up four times compared to the same period last year, only 39 million were recorded (Dini Dewi Heniarti et al., 2015). According to POLRI data, in April 2020 at least 937 cases were reported. There are three cases with the highest number, namely provocative cases, hate content and hate speech with 473 cases, online fraud with 259 cases, and pornographic content with 82 cases. The scope of cybercrime is very important in order to provide boundaries. It should be realized that the rapid development of the internet is directly proportional to the modes of crime that appear. There are several scopes of cybercrime, namely: piracy, fraud, theft, pornography, harassment, slander, and forgery. (Bestari, 2019). Efforts to prevent and deal with the increase in cyber crime need to be carried out. The government, society and all existing stake holders must jointly fight this cybercrime, because the nature of cybercrime itself is dangerous. In cyber crime cases, both victims and perpetrators do not face each other in one crime scene (Petrus Reinhard Golose, 2007). In some cases, both victims and perpetrators may be in different countries. This illustrates that cyber crime is a form of transnational crime, borderless, non-violent, no physical contact and anonymous. Based on the background that has

been described, the formulation of the problem in this study is as follows: "What are the factors that have caused an increase in cyber crime during the COVID-19 pandemic?" and "what are the preventive measures taken to reduce cybercrime in Indonesia?".

LITERATURE REVIEW

From previous research, it can be conveyed the difference with research conducted by the researchers themselves, namely analyzing legal strategies for tackling telematics crime in the field of electronic transactions in the era of global trade and discussing legal policies (penal policies) against violations/criminality in electronic transaction activities in various sources of positive criminal law in Indonesia, while in this study the researchers analyzed the problem of business crime in order to overcome crime in electronic transaction activities, namely efforts to tackle technology-based crime in the era of the global economy, implemented in various aspects.

METHODOLOGY

Researchers used the normative legal method, namely an approach based on the main material of law by examining the theories of concepts, legal principles and laws and regulations related to this research. The approach used is a literature study which includes Primary Legal Materials, secondary legal materials, and tertiary legal materials. The data collection techniques used in this study were observation and literature study (Marzuki, 2010).

FINDING DISCUSSION

Data and Facts on Cyber Crime Cases in Indonesia During the Covid-19 Pandemic

According to a survey by the Association of Indonesian Internet Service Providers (APJII) from 2019 to the second quarter of 2020, the number of internet users in Indonesia is 196.7 million people, equivalent to 73.7% of the population in Indonesia. This figure is a reflection that cyberspace, now no longer only belongs to groups of people who are "internet literate", but also a new space for those who are encouraged to use it because of the pandemic. On the one hand, this is good news for the increasing capability of society in adapting to technological developments. On the other hand, security threats are also increasing due to the increasing number of users who are unfamiliar with cybersecurity. The Covid-19 pandemic is a major topic in cybersecurity trends. Indonesia was even further tested by the case of a data leak of 91 million users of the online shopping site Tokopedia, which was soon followed by a data leak of 1.2 million users of the Bhinneka site. Apart from this case, in mid-2020 during the general election period, there was an account that admitted that they had penetrated the data of 2.3 million Indonesian citizens from the General Election Commission (KPU). This data leak will certainly have a long-term impact if public awareness of cyber security is very low. The following is data on the increase in cybercrime cases during the COVID-19 pandemic and before the COVID-19 pandemic:

Table 1. Data on the Increase in Cybercrime Cases During the Covid-19 Pandemic

NO	CRIME TYPE	2018 – 2019	2020 - 2021
1	Hate Speech	473	575
2	Online Fraud	259	390
3	Pornography	82	126
4	Illegal Acces	53	85
Total Crime		867	1176

Factors Causing an Increase in Cyber Crime During the Covid-19 Pandemic Based on Criminological Aspects

Some of the main factors that lead to the emergence of cybercrime itself are as follows: (a) Lack of good socialization or direction from general academics such as schools or education from parents regarding the benefits of the internet, so that a lot of abuse occurs; (b) The more advanced a country is, but the welfare of its people is not balanced, the greater the social inequality will be; (c) The rise of social media, electronic media, and virtual storage media (cloud), thus making people more and more addicted to internet access

in their lives; (d) Lifestyle; (e) Negligence of the man himself; (f) There is a desire for recognition from other people; (g) The advancement of technology and the ease of accessing the internet network anytime anywhere without any time limits (Agus Rahardjo, 2002). Cybercrime motives can generally be grouped into two (2) categories, namely as follows: (a) Intellectual Motives, crimes committed only for personal satisfaction and showing that one is capable of engineering and implementing information technology. Crimes with this motive are generally committed by a person individually. (b) Economic, political and criminal motives, namely crimes committed for personal gain or for certain groups which have an impact on economic and political losses to other parties. Because it has a purpose that can have a big impact, crimes with this motive are generally committed by a corporation (Dian Alan Setiawan, 2019).

Preventive Steps Taken as an Effort to Reduce Cyber Crime in Indonesia

The law in principle must anticipate the speed of development of information technology and the internet. When referring to the preventive theory put forward in criminology, there are several ways that can be done in preventing and overcoming cybercrime, namely as follows: securing the system, making special laws for cybercrime, increasing human resources (HR), and increasing cooperation. between countries. Efforts to deal with cyber crime require the seriousness of all parties considering that information technology, especially the internet, is used as a means to build an information-cultured society. The existence of a law that regulates cyber crime is necessary, but what is the meaning of the law if the executor of the law does not have the ability or expertise in that field and the people who are the target of the law do not support the achievement of the goals of establishing the law (Yurizal, 2018). Prevention of crime by using criminal law is part of criminal policy. Policies with penal means are efforts to overcome crime by using criminal means. In this case, there has been a kind of criminal formulation and punishment that has been legalized through legislation. Thus, there is legal certainty in carrying out countermeasures and solutions to violations or crimes committed by cybercrime perpetrators. While non-penal means efforts to overcome crime by not carrying out criminal law or can also be interpreted as a preventive measure against crime (Rasso, 2014).

CONCLUSION AND RECOMMENDATIONS

Increasing activity of using the internet during the Covid-19 pandemic has the potential for crime to increase very significantly. Viewed from the criminological aspect, in the theory of Social Control, cybercrime arises because of weak social control. In some cases, cybercriminals are not physically visible and their identities are difficult to ask for help, so controlling their behavior is very difficult. the stronger these social bonds, the less likely delinquency will occur, the bonds and social relations of individuals and communities become factors for the emergence of crime, one of which is cybercrime. Then the differential association theory, crime can arise from the process being studied. Prevention and control of cybercrime requires an integrated and integrated penal and non-penal approach. Policies with penal means are efforts to overcome crime by using criminal law facilities. Meanwhile, non-penal means can be interpreted as a preventive effort against cyber crime

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TRACK 3: CRIMINAL LAW AND CRIMINOLOGY

COMPARISON OF THE DEATH PENALTY'S PRESENCE IN ISLAMIC LAW AND INDONESIAN CRIMINAL LAW

Fariz Farrih Izadi^{1*}¹*Faculty of Law, Universitas Islam Bandung, Indonesia.*Email¹: farizizadii@gmail.com**Corresponding author***ABSTRACT**

Criminal experts, criminologists, and victimologists are now concerned about the use of the death penalty, particularly in light of the philosophy of sentencing that punishment should take victims' needs into account as well as the offender's, leading to the development of the restorative justice theory. This study will examine how the death penalty functions under Islamic and Indonesian criminal law. What is the relationship between the existence of the death penalty in Islamic and Indonesian criminal law? The goal of this study is to compare whether the death penalty is permitted under Islamic and Indonesian criminal law and to determine what the death penalty's significance is from the perspectives of these two systems of law. The death penalty has changed from being the primary punishment to becoming an optional punishment under Indonesian criminal law. Islamic law still imposes the death sentence in order to safeguard human life, even if it is exceedingly cautious when doing so in terms of the weight of the evidence.

Keywords: *Death Penalty, Islamic Law, Criminal Law, Human Rights.*

INTRODUCTION

The Constitution's third paragraph in Article 1 confirms that Indonesia is a constitutional state. One aspect of a state's existence that must be taken into account is social justice. This isn't only because people agree to the idea of the rule of law; instead, it's important to take a critical look at how often people rely on the law to establish order in society. The Indonesian legal system is a pluralistic legal system since different legal systems, including customary, Islamic, and western (continental), are in use in our country. Given that the majority of Indonesians are Muslims, the country's chosen religious values cannot in any way be disregarded, and the law instead needs to be adjusted to reflect these norms. Because the Islamic community is aware of it and believes that Islamic law is the actual law and because Islamic leaders and scholars hold this belief, Islamic law (in the sense of fiqh law) is not punished or sanctioned by the government.

Human rights are protected by Islamic law, which is an aspect of the Islamic faith. This is evident in the goals of Islamic law, which will be covered in more detail below. The differences between Islamic law and Western (legal) perspectives or ideas on human rights are obvious. This distinction arises from the fact that Islamic law is theocentric—God-centered—while Western ideology only sees human rights as anthropocentric. The death penalty, as defined in Article 10 of the Criminal Code, is a criminal punishment that ends the life of the offender. Crimes that are subject to the death sentence include terrorism, murder, and drug trafficking. Criminal experts, criminologists, and victimologists are now concerned about the use of the death penalty, particularly in light of the philosophy of sentencing that punishment should take victims' needs into account as well as the offender's, leading to the development of the restorative justice theory.

The existence of the death penalty is a topic of debate among academics; capital punishment is regarded as being inconsistent with the modernization of criminal law thinking. Whereas the original intent of the crime was to exact revenge on the perpetrators, it has since evolved to focus on improving the perpetrators and preparing them to reintegrate into society in better circumstances.

This study will examine how the death penalty functions under Islamic and Indonesian criminal law. What

is the relationship between the existence of the death penalty in Islamic and Indonesian criminal law? The goal of this study is to compare whether the death penalty is permitted under Islamic and Indonesian criminal law and to determine what the death penalty's significance is from the perspectives of these two systems of law.

LITERATURE RIVIEW

Titin Nurfatlah, Amiruddin Amiruddin & Ufran Ufran (2020) study aim to determine the concept of the death penalty in the future Indonesian criminal law. The provisions of the death penalty in the Draft Penal Code is particular and as an alternative punishment. The purpose of this death penalty provision includes giving broader consideration for judges in giving decisions as not arbitrary towards the convicted; give more attention to the objectives of the punishment. Eddy Rifai (2017) research uses normative juridical approach to study on the analysis of the death penalty executions and the legal policy of death executions in Indonesia. There are delays on death executions for the convicted person since they entitled to using rights namely filing a judicial review. Abdul Jalil Salam in 2021 with the assumption that the death sentence breaches human rights, the death penalty rhetoric in Indonesia rejects the humane approach. This study sought to revisit such language. The three steps of the data analysis included unitization, comparison, and conclusion. This study demonstrated that, despite a protracted campaign to abolish it, the death sentence is still applicable in Indonesia. It came to the conclusion that Indonesia's application of the death sentence, with precise and selective applications, is considered as being worth defending.

METHODOLOGY

This study employs a normative juridical method to investigate legal norms, structures, and procedures. A comparative legal strategy backs up this approach. The normative juridical strategy is one that is employed when conducting research using secondary data from library sources. The research specification uses analytical descriptive language, which means that the researcher will summarize or explain the subject and goal of the study in light of his own research's findings. Once the main and secondary sources of information had been thoroughly gathered, they were analyzed utilizing qualitative analysis techniques, which led to the production of descriptive analytical data.

FINDINGS AND DISCUSSION

The public's main concern with the death penalty is that it cannot be overturned if it is subsequently determined that the judge made a mistake or made claims that turned out to be false in making the decision to execute the defendant. Because the death penalty is still necessary in Indonesia's criminal justice system to deter criminal activity, even though many parties believe that the death penalty is out of step with Indonesian society for a variety of reasons, it is still legal and is still written into the Criminal Code. serious offense. Murder, adultery, robbery, revolt, and apostasy are just a few of the heinous offenses that can result in the death penalty under Islamic law. The crime is an assault on one's soul, honor, lineage, religion, and property (syari'ah al-khomsah). According to Al-Syatibi, this philosophy (maqashid syari'ah) is a development and continuation of the maslahah concept as it was introduced before to the Syatibi era. He ultimately came to the conclusion that the unity of Islamic law refers to unity in its historical context, particularly in terms of its legal purpose. He presented his teachings on maqasid shari'ah with the justification that there is only one goal of law, namely the good and welfare of mankind, in order to sustain the intention behind this law.

In his book "A Reorientation in Criminal Law," Roeslan Saleh makes the following two claims: a. In terms of prevention, namely that criminal law is a law of sanctions, an effort to be able to be able to be able to be able to be able to maintain the sustainability of life together by preventing crime. b. Retaliation is a reaction to anything that is illegal and a correction of it, which is why criminal law is also a legal discovery.

In essence, punishment is therefore retribution for breaking the law and protection for society. In addition, Roeslan Saleh asserted that punishment entails other elements, including the expectation that it will promote harmony and its use as a tool for rehabilitating individuals into society.

CONCLUSION AND ROCOMENDATION

The death penalty has changed from being the primary punishment to becoming an optional punishment under Indonesian criminal law. Islamic law still imposes the death sentence in order to safeguard human

life, even if it is exceedingly cautious when doing so in terms of the weight of the evidence.

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TRACK 3: CRIMINAL LAW AND CRIMINOLOGY

SDGS FOR A SUSTAINABLE FUTURE FROM THE PERSPECTIVE OF ANTI-MONEY LAUNDERING IN INDONESIA

Hanifah Azizah^{1*}, Topo Santoso² Yunus Husein³ Mahmud Mulyadi⁴¹ Faculty of Law, Universitas Sumatera Utara, Indonesia.Faculty of Law Universitas Indonesia, Indonesia²Faculty of Law Universitas Indonesia, Indonesia³Faculty of Law Universitas Sumatera Utara, Indonesia.⁴Email: ^{1*}hanifahazizah108@gmail.com²santosox@ui.ac.id³yunus.husein@gmail.com⁴mahmud_mulyadi@usu.ac.id**ABSTRACT**

Money laundering is one of the most significant financial crimes, often used to support terrorist activities, drug trafficking, and other forms of illegal activities that threaten the safety and stability of society. The United Nations Sustainable Development Goals (SDGs) are a set of 17 goals that aim to improve the well-being of people and the planet. While the two concepts may seem unrelated, there is a significant correlation between money laundering and the SDGs. The SDGs aim to eradicate poverty, promote gender equality, reduce inequality, foster peace and justice, and combat climate change, among other things. Those who perpetrate money laundering offenses aim to perpetuate criminal enterprises, launder the proceeds of crime, often evade tax, and finance their activities, ultimately resulting in the continuance of ill-gotten gains. Through the descriptive analysis process, this paper aims to reveal facts, circumstances, phenomena, variables, and circumstances about the topic being analyzed. The descriptive analysis also aims to describe or analyze a research result but is not used to make broader conclusions. It searches for facts with the right interpretation. In conclusion, money laundering is detrimental to both the financial system and the sustainability of the global community, which is why it poses a threat to the SDGs. Governments and policymakers must recognize this link between money laundering and the SDGs, develop policies that promote transparency, accountability, and inclusiveness, and enhance financial regulations and practices.

Keywords: *SDG, Money Laundering, Corruption, Asset Recovery, Indonesia*

INTRODUCTION

The United Nations Sustainable Development Goals (SDGs) are a set of 17 goals that aim to improve the well-being of people and the planet. While the two concepts may seem unrelated, there is a significant correlation between money laundering and the SDGs. The SDGs aim to eradicate poverty, promote gender equality, reduce inequality, foster peace and justice, and combat climate change, among other things. Financial crimes such as money laundering undermine these goals by hindering economic growth and increasing poverty, and inequality. Institutions that facilitate or turn a blind eye to money laundering allow dirty money to enter the financial system and wider economy, damaging the integrity of the financial system, and creating risk that can undermine financial stability. This hinders the achievement of several of the SDGs like inclusive economic growth, reducing poverty, and maintaining peace and justice. Those who perpetrate money laundering offenses aim to perpetuate criminal enterprises, launder the proceeds of crime, often evade tax, and finance their activities, ultimately resulting in the continuance of ill-gotten gains. (Mardiasmo, 2002; Guritno et al, 2018)

LITERATURE REVIEW

Some previous studies discuss the correlation between money laundering and SGD'S. first, Sustainable Development Goals (SDGs) and Challenges of Policy Reform on Asset Recovery in Indonesia (Ahmad,2020), and the second is Implementing a Sustainable Model for Anti-Money Laundering in the United Nations Development Goals (Zbyslaw, Lukasz, 2019). Both of those studies show how much important SDGs. However, previous studies did not review the strengthening of cooperative supervision

through the latest regulations issued by the authorities.

METHODOLOGY

The research is structured with a normative legal research method. It reviewed and analyze the Laws regarding Cooperative and Anti-Money Laundering as follows: 1) Law Number 8 of 2010 concerning Prevention and Eradication of Money Laundering Crimes, 2) Law Number 25 of 1992 concerning Cooperatives, 3) Law Number 4 of 2023 concerning Development and Strengthening of the Financial Sector (PPSK Law), 4) Government Regulation Number 61 of 2021 concerning Amendments on Government Regulation Number 43 of 2015 concerning Reporting Parties in the Prevention and Eradication of Money Laundering Crimes, and 5) Presidential Regulation Number 13 of 2018 concerning Application of the Principle of Recognizing Beneficial Owners of Corporations in the Context of Prevention and Eradication of Money Laundering and Terrorism Financing Crimes. Meanwhile, the secondary legal material in this study used all related literature.

FINDINGS AND DISCUSSION

There is no single and standard definition of money laundering. Understanding money laundering is an attempt to conceal the source, ownership, and/or control of the acquisition of proceeds of crime. This aims to maintain control by making it difficult for law enforcement officials to track down, as well as so that perpetrators can enjoy the acquisition and benefits of criminal practices that appear legitimate after money laundering (Paku, 2013). Money Laundering practices that involve policymakers show the weakness of the legal system and the absence of justice and strong institutions, so the goal of the 16 SDGs which emphasizes strengthening good governance in the Law and Governance Development Pillar will be hampered and will certainly have an impact on achieving the goals in SDGs roadmap for 2030. Therefore, eradicating Money Laundering which is come from corruption is an important condition for realizing inclusive sustainable development. Even though there is economic growth, when the practice of corruption is still massive, the development will not have an impact on people's welfare. Indonesia's Law Number 1/2006 on Mutual Legal Assistance in Criminal Matters has not been able to overcome barriers in asset recovery due to potential differences in legal systems (Datuan, et al., 2017) The role of investigators, public prosecutors, and other support units such as digital forensic units largely determine the success of the asset recovery process. SIGAP's review demonstrates the need to increase the capacity of the authorities, particularly about: (1) Understanding and expertise in finance and financial crime; (2) Investigation of corporations; (3) Understanding of laws and legal instruments at home and abroad; and (4) Knowledge of the location of the asset location information and the potential for overseas cooperation (Ahmad, 2020).

CONCLUSION AND RECOMMENDATIONS

In conclusion, Indonesia has a very low success rate in repatriating stolen assets, partly due to the complexity of the asset recovery process. The process can be time-consuming, resource-intensive, and requires expertise and political will. Each measure of asset recovery such as tracing, freezing, confiscation, and repatriation presents its unique challenges. As such, even though a Long-Term National Strategy on the Prevention and Eradication of Corruption has been formulated back in 2012 that aims to recover 96% of stolen assets from corruption cases handled by Indonesian law enforcement agencies by 2025, Indonesian authorities still face huge challenges in asset recovery processes, both domestic and international. For instance, they need to overcome the challenge of capacity to launch and conduct legal proceedings in domestic and foreign courts, and to be able to provide the authorities in another jurisdiction with evidence or intelligence for investigation. (Kemitraan, 2017). Only by addressing these financial crimes will it be possible to achieve the SDGs, particularly those aimed at building peaceful and resilient societies, revitalizing global partnerships, and globalizing finance for sustainable development

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TRACK 3: CRIMINAL LAW AND CRIMINOLOGY

WHEN CHILDREN ARE SEXUALISED: RECENT LEGAL DEVELOPMENT IN REGULATING CHILD SEXUAL CRIME IN MALAYSIA

Zaiton Hamin¹, Ahmad Ridhwan Abd Rani², Saslina Kamaruddin³, Ani Munirah Mohammed⁴, Wan Rosalili Wan Rosli⁵

^{1,2}*Faculty of Law, Universiti Teknologi MARA, Malaysia*

³*Faculty of Management and Economics, Universiti Pendidikan Sultan Idris, Perak, Malaysia*

²*College of Law, Government and International Studies, Universiti Utara Malaysia, Malaysia*

Faculty of Management, Law and Social Science, University of Bradford, United Kingdom

Email: ¹*zaiton303@uitm.edu.my*, ²*ridhwanrani@uitm.edu.my*, ³*saslina@fpe.upsi.edu.my*,
⁴*animunirah@uum.edu.my*, ⁵*w.r.wanrosli@bradford.ac.uk*

*Corresponding author

ABSTRACT

Before 2017, there was no specific legislation against child sexual abuse, child pornography or child sexual grooming in Malaysia. However, after the Richard Huckle debacle, where about two hundred children were groomed and sexually abused in Malaysia between 2006 to 2014, the Sexual Offences Against Children Act 2017 was created. Unfortunately, despite the 2017 Act, there was inadequate legal protection for child sexual victims, and such abuse continues to rise unabatedly. However, in late March 2023, the 2017 Act was amended to include two new sexual offences and a new compensation order for child sexual victims. Given the novelty and absence of academic research on the newly amended 2023 Act, this paper examines its provisions, improvement, coverage, and broader implications for child sexual abuse victims. The paper employs a qualitative research methodology, adopting a doctrinal approach supported by a comparative and content analysis of the primary source, the 2023 Act mentioned above, that would provide a deeper understanding of the legislation. The authors contend that the amendment is timely to keep up with changing times and current technological development while providing the necessary protection for children against sexual exploitation and abuse. However, legislation alone would not protect children. Therefore, resources must be available to support its implementation. In addition, other initiatives from the investigation, prosecution, legal aid services, and judiciary must be in place to complement the law to ensure that children remain safe from sexual predators online and offline.

Keywords: *Child Victim, Child Sexual Abuse, Child Sexual Performance, Child Sexual Extortion, Compensation Order*

INTRODUCTION

Of late, sexual offences against children In May 2023, in Selangor alone, the police figures indicate that sexual crime cases involving underage children had alarmingly increased in the last four months. The Selangor Police Report indicates that 155 cases were investigated, out of which 33 suspects were schoolchildren (The Star, 2023). However, when more children are connected to the Internet and social media platforms in the current IT scenario, they are inevitably vulnerable to new forms of abuse and threat (UNICEF, 2017). As a result, one in three children in Malaysia under 18 also became victims of online sexual predators (Utusan Malaysia, 2023). Bukit Aman Police statistics show that in 2022, 1,464 online sexual harassment cases involving minors were reported, compared to 1,272 cases in 2021. A total of 5,519 cases were charged under the Sexual Offences Against Children Act 2017 (Act 972) from 2018 to January this year. It was reported that from the said amount, 4,713 cases (85.4 per cent) had been resolved, while 3,060 (55.4 per cent) were going through the courts (The Star, 2023).

The most recent reported case of child sexual abuse in May this year involved a Singaporean male who set up a religious school (tahfiz) in Melaka. He was charged with sexual assault under SOACA 2017, unnatural sex against a male student, and three counts of sexually assaulting the same student under the

Penal Code (NST, 2023). In another case, on May 15, 2023, a male swimming instructor was sentenced to 263 years in prison and 20 lashes after pleading guilty at the Ayer Keroh Sessions Court to 32 charges of committing sexual crimes under the 2017 Act and the Penal Code, against his now 16-year-old stepdaughter over the past three years (The Star, 2023). In a more bizarre case in May this year, a 33-year-old mother in Puncak Alam, Selangor, was charged with four counts of sexual, physical abuse against two of her male children, aged 12 and 14, under sections 14 and 16 of the 2017 Act. She was also charged with making and producing child pornography involving her 14-year-old son at a hotel in Sungai Buloh, Selangor (NST, 2023).

On March 29, 2023, Dewan Rakyat passed a bill to amend several provisions of the Sexual Offences Against Children Act 2017, which will provide additional protection for children who are victims of sexual abuse. The Bill was earlier tabled for second and third reading by the Minister in the Prime Minister's Department (Law and Institutional Reform), Datuk Seri Azalina Othman Said. Finally, it was passed via voice vote after ten lawmakers debated it. However, despite being a positive step towards protecting children from sexual crimes by creating new offences of child grooming, child pornography, and physical and non-physical sexual assault and focusing on the role of the person in the trust of children, such as teachers and wardens at school, the 2017 Act was silent on the legal protection or court order available to such victims.

Hence, this paper seeks to answer the pertinent questions on how adequate is the current SOACA 2017 in regulating sexual crime affecting children and protecting such vulnerable victims. In light of such questions, the paper examines the most recent amendment to the 2017 Act. Furthermore, the paper will also examine the new law's shortcomings and suggest several improvements. However, as the Amendment Act 2023 has just been enacted this year, no academic research has been conducted on their instrumental provisions or effectiveness. Therefore, it is submitted that the legal explanation and analysis in this paper could contribute to a better understanding of the scope and the coverage of new legislation on child sexual offences in Malaysia.

LITERATURE REVIEW

The extant literature on child sexual abuse shows that there is no one definition of child sexual abuse. Adnan Ali Hyder (2007) explains that children all over the world face different types of violence or abuse (physical, sexual, neglect, emotional and psychological) at several stages (individual, household, institutional, and societal). However, WHO defines such offence as a child's involvement in sexual activity that they do not fully understand or are unable to give informed consent, for which the child was not developmentally prepared or one that violates the law or social taboo (WHO, 2006). The advances in ICT resulted in the ease of photographing and making videos of children and young people being sexually abused with minimum cost and effort (Shah, 2020; Broughton, 2009). Such materials are then shared and distributed online to other perpetrators. The literature indicates the various types of sexual abuse and offenders (Shah, 2020; Quadara et al., 2015). For example, the perpetrator may be an adult offender outside the family relationship, such as a friend of the child victim's parents (Shah, 2020; Quadara, 2015). In addition, child sexual abuse may occur when any sexual behaviour or relationship is forced on a child by an adult in a position of power or authority over the child, for example, a teacher (Shah, 2020; Qudara et al., 2015). However, the literature notes that the most prevalent type of child sexual abuse is intra-familial (Shah, 2020; Quadara et al., 2015), where the perpetrators may include fathers, mothers, step-fathers, step-brothers, uncles, cousins and grandparents. Child sexual abuse may also be committed by children and young people (Shah, 2020; El-Murr, 2017).

The literature on child sexual crime shows that such abuse may overlap with other forms of abuse and neglect (Shah, 2020; Price-Robertson et al., 2013). For instance, White et al. (2015) show that neglect is a powerful indicator of other types of abuse. Several commentators suggest a high overlap rate between intimate partner violence and child physical and sexual abuse (Shah, 2020; Goddard & Bedi, 2010; Vachon et al., 2015). Most child sexual abuse is hidden and is not reported by the victims for various reasons (Jamhirah, 2017), yet the effect of child sexual abuse, be it in the real world or cyberspace, can be psychologically traumatic for the victims (Nasimah & Hanifah, 2021; Shah, 2020). However, the literature also suggests that such crime can cause additional harm to children and young people beyond the abuse itself (Shah, 2020; Quayle, 2013).

The legal literature before 2017 suggests the concerns and calls for a specific law protecting children against sexual abuse. For instance, Mohamed (2008) raises concerns about the lack of law to protect children from sexual crime and children as court witnesses. Similarly, Abidah (2011) was concerned about the lack of legal protection for child sexual victims during the trial. In addition, Tengku Fatimah & Engku Ahmad Zaki evaluated the extent of the protection and care given under the Child Act 2001 to safeguard the children in the social justice system in Malaysia. However, after 2017 legal literature focused on the relationship between legal literacy and reporting child sexual abuse to the authorities (Mazlifah et al., 2022). While Mooi & Nor Aziah (2017) examined the impact of the 2017 Act on the police investigation and prosecution of child sexual offence, Abu Bakar Munir et al. (2018) criticized the 2017 Act as creating a diverse evidence law on child witnesses in a criminal trial from the conventional evidence regime. In light of this gap in the local literature, where the detailed provisions of the 2017 Act, let alone the 2023 Act, from the criminological perspective, has never been thoroughly examined by local commentators, this paper seeks to examine the new 2023 Act to evaluate the reforms made to the 2017 Act and its implications for child sexual victims.

METHODOLOGY

This paper adopts a qualitative research methodology, which provides a deeper understanding of the newly created legislation on sexual harassment in Malaysia (Silverman, 2013). Secondary data is employed, in which the primary source of this paper is the 2023 SOAC (Amendment) Act mentioned above. The secondary sources include textbooks, journal articles, newspaper articles and online databases or sources. In addition, the doctrinal approach is adopted for data analysis, employing a literature review on the broad concept of child sexual abuse. Furthermore, a legal doctrinal approach and a comparative approach with content analysis are also conducted on the new legislative instruments, with the relevant legal positions in the UK.

FINDINGS AND DISCUSSION

The new amendment paves the way to replace child pornography offences with broader child sexual abuse material and sexual extortion. Such substitution of "child pornography" for the phrase "child sexual abuse material" applies to sections 4 to 13 of the 2017 Act, which would allow a broader range of offences to be covered. The word 'material' refers to the materials used to mistreat a child. In addition, the new law creates a new offence of sexual performance by a child (section 15A) and sexual extortion of a child (section 15B). Hence, this section criminalises live stream sex and will make it a crime to threaten and extort a child by using sexual photos. The amendments would also include new Section 26A and Section 26B, which empower the court to order a convicted perpetrator to compensate the victim. These new sections create a new remedy of compensation order for child sexual abuse victims, which is to be awarded as it deems just and reasonable. Such an approach differs from the usual situation where the prosecutors would propose the amount. In addition, the 2023 Act provides that those convicted of child-related sexual offences be financially liable for their victim's physical or emotional duress and related treatment and rehabilitation costs, amongst others.

CONCLUSION AND RECOMMENDATIONS

The 2017 Act represents an essential landmark in protecting children from sexual predators, which received the unequivocal support of Malaysians from all sectors. However, the said Act needs to be amended to keep up with changing times and current technological development while providing the necessary protection for children against all forms of sexual exploitation and abuse. In addition, the legislation and the 2023 Act bring Malaysia closer to alignment with existing international legal

frameworks such as the United Nations Convention on the Rights of the Child. However, despite this new 2023 Act, legislation alone would not protect children. Therefore, it is crucial to ensure that resources are made available to support its implementation and other measures are in place to ensure that children remain safe online and offline. In light of the experiences in other jurisdictions, mainly the UK, this paper will also identify some areas for further improvement and reforms of the 2023 Act.

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TRACK 3: CRIMINAL LAW AND CRIMINOLOGY

CRIMINALIZING VOYEURISM IN MALAYSIA: A COMPARATIVE STUDY

Siti Halijah Binti Tuah ^{1*}, Muhammad Asyraf Fitri bin Mohd Afindi², Qashilla S Dohny Baharin³, Sasha Nameera binti Sabtu⁴ & Sheela A/P Jayabala Krishnan@Jayabalan⁵

¹*Faculty of Management and Entrepreneurship, University College Sabah Foundation, Malaysia.*

^{2,3,4,5}*Faculty of Law, Universiti Teknologi MARA, Malaysia.*

Email: ¹sitihalijahtuah@gmail.com; ²asyraffitri10.af.af@gmail; ³qashillas.dohny@yahoo.com;

⁴sashasabtu@gmail.com; ⁵sheela880@uitm.edu.my

**Corresponding author: Siti Halijah Binti Tuah*

ABSTRACT

Despite living in a time when cameras are as small as a dot and youngsters have mobile phones, laptops, and other high-tech equipment, Malaysia has no law against voyeurism. The law hasn't caught up with technology to make voyeurism illegal. As of now, voyeurism is covered under Section 509 of the Penal Code, which is imprecise, weak, and insufficient to discourage future offenders. When they wrote the law controlling spy cameras, lawmakers of that era couldn't have predicted their growth. This rule would not protect people whose privacy was not breached but was covertly filmed, as everyone is entitled to privacy and should be able to preserve his dignity and livelihood from a third party. The government should defend and provide this right to all citizens. This country has no privacy laws. Malaysia's Personal Data Protection Act (PDPA) 2010 only protects commercial transactions of personal data. The purpose of this article is to analyse how we are urgently in need of a provision to criminalize voyeurism. This article will also examine how other countries develop their law by considering voyeurism as one of a criminal offence.

Keywords: *Voyeurism, Right to Privacy, Penal Code (Act 574), Personal Data Protection Act (PDPA) 2010, Criminal offence*

INTRODUCTION

This paper provides an overview of voyeurism as a form of covert misconduct. Section 509 is being examined to assess its adequacy in addressing the conduct of voyeurism. In addition, this paper will elucidate how the United Kingdom and Canada have adapted their laws to align with the current technological advancements which assist the voyeur. Finally, conclusion is made by highlighting the urgency to review the current law and come out with new law with regards to voyeurism.

LITERATURE REVIEW

Voyeurism refers to an intense, recurrent, sexually arousing fantasies, sexual urges, or behaviors involving the act of observing an unsuspecting person who is naked (Sidi & Midin, 2014). Voyeurism is normally a furtive act in other words a passive act. Few, if any, voyeurs want their victims to be aware of their being subjected to scrutiny (Green, 2018). Green (2018) further portray the harm that suffered by the victims after aware of themselves being a victim of voyeurism that they will suffer depression, sleeplessness, loss of self-esteem, damage to their reputations, and impaired relationships with romantic partners, neighbours, and colleagues. Voyeurism is a non-crime act in Malaysia as the Penal Code was drafted in a time where there is no advancement in technology (Lim 2017). The advanced evolution of smartphones and technologies has assisted voyeurs with an easy path to conduct their abhorrent crime of voyeurism (Mohamed Yusoff, 2014). Privacy is also described as the state of being free from being watched or disturbed by other people. It also refers to the state of being alone or free from public attention (Singh, 2011)

RESEARCH METHODOLOGY

Various online articles, journals, websites, and statutes are used in analyzing the findings on the urgency

to have a law that deals with voyeurism. Observations and critical thinking are also carried out in comparing sexual assault, sexual harassment, voyeurism and right of privacy. In addition, analysis also conducted in identifying the differences between the jurisdictions practiced in two selected foreign jurisdictions.

FINDINGS AND DISCUSSION

This paper found that technology had become the huge instrument in aided voyeur. Furthermore, there is limitation of the law with regards to voyeurism where the common law does not regard voyeurism as an offence, it is however unacceptable since it implies an immoral act which invades the right to privacy of a person. Limitation of the law extended to the existing laws where there is no clear statement on private rights, however criminal law, tort law, contract law, and data protection laws have been introduced to preserve privacy rights in Malaysia yet none with regards voyeuristic act (Mohamed Yusoff, 2014). In the year 2014, a total of 29 cases involving voyeurism were recorded in which 10 was brought to the court under section 509 of the Penal Code where the offence of “word or gesture intended to insult the modesty of a person” (Meikeng, 2015). Thus, the Penal Code is not compatible to prosecute an individual for the offence voyeurism as it only governs on the collection, use, disclosure and care of personal data. Section 509 of the Penal Code limited in prosecuting where it involves such furtive recording made.

Under the existing provision of Section 509 of the Malaysian Penal Code, it is difficult for the victim to succeed because of the strict requirement of corroborative evidence. Therefore, in light of the rapid advancements in technology and the evolving landscape of the modern world, it is imperative for the law to promptly establish a comprehensive definition of voyeurism. Such a definition would enable judges to accurately interpret the act, (Newell, 2017) facilitating the necessary changes in the legal framework to keep pace with societal transformations. The United Kingdom and Canada are taken as points of reference to compare the limitations of existing laws pertaining to voyeurism. The United Kingdom has an example of what a specific voyeurism law as in Section 67 of the Sexual Offences Act 2019 (c. 42) provides voyeurism as a particular offence and sets down extreme penalties for it. The Act really expounds on what constitutes the crime of voyeurism (Gillespie, 2008). Section 67(3) of the Sexual Offences Act, provides that it is a crime to record another person doing a private act with the intent of obtaining sexual gratification and without the person's consent. Even though the women consented to the sexual intercourse with him, however, they never consented to video recording even though for his personal collection and considered by the court to have infringed their privacy (Green, 2018). Newell (2017) in his writing discussed that Canada is a country that specifically defines voyeurism in their law as in the Criminal Code of Canada where voyeurism is an illegal conduct.

CONCLUSION AND RECOMMENDATIONS

It is contended that there is no specific protection against voyeurism and that Section 509 of the Penal Code is no longer sufficient to address this offence likewise no law that suited well in prosecuting voyeurism despite the advancement of today's technology, the law as well need to be developed to suit the modern world.

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TRACK 3: CRIMINAL LAW AND CRIMINOLOGY

JUSTICE COLLABORATOR: A PROGRESSIVE LEGAL PERSPECTIVE ON CRIMINAL CASE (CASE STUDY: COURT DECISION NO.798/PID.B/2022/PN.JKT.SEL)

Ramlan Damanik^{1*}, Mahmud Mulyadi², Rosmalinda³

^{1,2,3}*Master of Law Study Program, Faculty of Law, Universitas Sumatera Utara, Indonesia*

Email: ¹*ramlandamanik.rd@gmail.com*; ²*mahmud_mulyadi@usu.ac.id* ³*rosmalinda@usu.ac.id*

* *Corresponding author*

ABSTRACT

Justice Collaborators (JC-Performing Witnesses) are suspects, defendants, or convicts who cooperate with law enforcement to uncover a crime in the same case. Recently, the existence of JC become a new phenomenon in the criminal justice system in Indonesia. JC has a major contribution to reveal certain criminal acts. This study discusses; 1) Are there norms in Indonesia Laws to determine JC? 2) What are the elements to define the category of JC on murder as a crime? A normative legal research method by examining statutory regulations and court decisions No: 798/Pid.B/2022/PN. Jkt. sel? This study found that; 1) Determination of JC is regulated in Law No. 13/2014 concerning Amendments to Law No. 13/2006 concerning the Protection of Witnesses and Victims. As well as Supreme Court Letter (*Surat Edaran Mahkamah Agung-SEMA*) No. 04/2011 concerning the Treatment of Whistleblowers and Collaborating Witnesses or well-known as JC in Certain Crime Cases; 2) JC in the Crime of Premeditated Murder is not explicitly stated in the Law on Witness and Victim Protection and SEMA No. 04/2011 but in decision No: 798/Pid.B/2022/PN. Jkt. sel the judge's consideration section stated that the Witness Perpetrator at This crime of premeditated murder fulfills the qualifications of "certain cases" with indicators (a) of other crimes that result in the position of witnesses and victims being faced with situations that are very life-threatening; (b) the fulfillment of the requirement that JC in this decision is not the main actor.

Keywords: *Justice Collaborator, Crime, Premeditated Murder*

INTRODUCTION

Justice Collaborators (JC) or Perpetrator Witnesses are suspects, defendants, or convicts who cooperate with law enforcement to uncover a crime in the same case. The term JC in world law was first introduced in the United States in the 1970s. This facility is none other than to deal with the mafia, which has long implemented omerta (the oath of silence is also the oldest law in the Sicilian Mafioso). For terrorism crimes, the use of JC was practiced in Italy (1979), Portugal (1980), Northern Ireland, Spain (1981), France (1986), and Germany (1989) while for drug crimes it was applied in Greece (1970), France, Luxemburg, and German. JC terminology is used differently in these countries such as "supergrasses" (Ireland), "pentiti" or "pentito" (Italy) which means "they have converted" or are called "collaborator della guistizaa"(Lilik Mulyadi, 2014).

The JC's role is recognized as important in uncovering Transnational Organized Crime crimes, one of which is corruption cases (Abdul Haris Semendawai, 2016). However, recently there was a decision by the South Jakarta District Court that determined a murder defendant with the initials RE as JC. RE is the executor of the premeditated murder of the victim a policeman with the initial J which occurred at the official residence of the Head of the Propam Division at the National Police Headquarters, Inspector General of Police. FS at the Duren III Complex, South Jakarta, which occurred on July 8, 2022. The initial chronology that FS conveyed when making a Police Report at the South Jakarta Police was that there was a shooting incident between J and RE. Since the spread of the news of this incident, it has attracted the attention of the Indonesian people, but there has been a change in the chronology of events that were conveyed by the Police institution. This happened because of case engineering carried out by FS. But in the end, the fabricated case designed by FS was uncovered, and it was finally revealed that J didn't actually

die due to the gun battle, but was killed without any resistance. No facts were found of the shooting incident as reported, the real fact is the shooting incident of J to death which was carried out by RE on the orders of FS, as stated by the Head of the Republic of Indonesia Police (CNN Indonesia, 2022).

The disclosure of the premeditated murder case against J was inseparable from the role of RE, who volunteered as a witness for the collaborating actor/ Justice Collaborator (JC), thereby revealing the facts of what actually happened. In case of Number: 798/Pid.B/2022/PN, at the South Jakarta District Court trial. Jkt. sel, RE as the Defendant submitted an application to be designated as JC accompanied by a recommendation from the Witness and Victim Protection Agency (LPSK) dated January 11, 2023, regarding Recommendations for the Granting of Rights and Handling Cases as witness Collaborators. Because the state through the Witness and Victim Protection Agency (LPSK) is obliged to provide protection if needed (Muhammad Iqbal Lubis et al., 2019). Then in the decision of the South Jakarta District Court Number: 798/Pid. B/2022/PN. Jkt. the Panel of Judges who examined and tried the case determined Defendant RE as JC (Court Decision No. 798/Pid.B/2022/PN. Jkt. sel).

RE's role in uncovering the facts that actually won is very helpful in law enforcement but is the crime of premeditated murder and RE's status as an executor fulfilling the legal requirements to be designated as JC. Thus, this research will conduct a legal study on Justice Collaborators: a progressive legal perspective on criminal cases (Case Study: Court Decision Number: 798/Pid.B/2022/PN. Jkt. sel). The problem in this research is how is the legal arrangement regarding the determination of JC? and how is the determination of JC on the crime of premeditated murder? by conducting a review of the South Jakarta District Court Decision Number: 798/Pid. B/2022/PN. Jkt. sel. The intent and purpose of this research is to find out what laws and regulations contain provisions regarding JC and find the application of the JC determination to the crime of premeditated murder in the South Jakarta District Court decision Number: 798/Pid. B/2022/PN. Jkt. sel is in accordance with applicable legal provisions or not.

LITERATURE REVIEW

In previous research it was mentioned, the use of Justice Collaborators in criminal justice is a form of extraordinary effort that can be used to eradicate crimes classified as extraordinary crimes which involve the perpetrators of the crime themselves who want to cooperate with law enforcement officials (Farhan Fauzie Achmad et. al., 2022). Furthermore, Justice Collaborators play an important role in disclosing criminal acts of corruption in Indonesia, hence the need for an appropriate model of legal protection for justice collaborators in order to create legal protection for justice collaborators (Dwi Oktafia Ariyanti et. al., 2019). However, this research will no longer examine justice collaborators in criminal acts that are explicitly regulated by law, for example, acts of corruption and other crimes classified as transnational crimes/extraordinary crimes, but will instead focus on establishing justice collaborators in criminal acts. premeditated murder which is explicitly not regulated in existing legal provisions.

METHODOLOGY

This study uses a normative legal research method by examining statutory regulations and court decisions No: 798/Pid.B/2022/PN. Jkt. cell. The type of data in this study is to use secondary data types, namely data obtained from related literature, regulations, and norms. Secondary data is in the form of primary, secondary, and tertiary legal materials. The technique for collecting legal materials is carried out by means of library research, namely by studying books, journals, magazines, newspapers, and related laws and regulations (Zhulfiana Pratiwi Hafid, 2019).

FINDINGS AND DISCUSSION

Laws and regulations that contain provisions regarding Justice Collaborators (JC), among others: 1. Law Number 31 of 2014 concerning Amendments to Law Number 13 of 2006 concerning Protection of Witnesses and Victims; and 2. Circular Letter of the Supreme Court of the Republic of Indonesia (SEMA RI) Number 4 of 2011 concerning the treatment of criminal acts reporters (Whistleblower) and witnesses for collaborating perpetrators (Justice Collaborators) in certain criminal cases; (Rusli Muhammad, 2015). Determination of JC for the crime of premeditated murder, JC for the crime of premeditated murder is not explicitly stated in the Law on Witness and Victim Protection and SEMA No. 04/2011, but in decision No: 798/Pid.B/2022/PN. Jkt. sel consideration section the judge stated that the witness in the crime of premeditated murder met the qualifications of a "certain case" with indicators (a) of another crime that

resulted in the position of the witness and the victim being faced with a situation that was very life-threatening; (b) the fulfillment of the requirement that JC in this decision is not the main actor (Court Decision No.798/Pid.B/2022/PN. Jkt. sel).

CONCLUSION AND RECOMMENDATIONS

Legal regulations in Indonesia have accommodated the establishment of a Justice Collaborator (JC) as stated in Law No. 31/2014 and SEMA No. 04/2011. In the crime of Premeditated Murder, a Defendant can be designated as JC with the consideration that the situation is very life-threatening and is not the main actor. In designating a suspect, defendant or convict as JC, statutory regulations are still needed which clearly and explicitly regulate what crimes can be determined by JC, as well as the need for an explanation of who is meant by the main actor in a crime.

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TRACK 3: CRIMINAL LAW AND CRIMINOLOGY

UTILISING BLOCKCHAIN FOR ANTI-CORRUPTION AND TRANSPARENT PUBLIC ADMINISTRATION IN DEVELOPING NATIONS

Tami Koroye*

Faculty of Management, Law, and Social Sciences

Email: Tkoroye@bradford.ac.uk

**Corresponding author*

ABSTRACT

Corruption impedes sustainable development in developing countries, undermining progress towards the SDGs and other overarching plans for development.¹ It erodes trust, weakens institutions, perpetuates poverty, and hampers progress in various sectors. In recent years, however, the blockchain technology and its use has emerged as a promising tool for combating corruption and promoting transparency in public administration. Blockchain has emerged as a promising tool to combat corruption and promote transparency in public administration. Utilising smart contracts and distributed consensus mechanisms, blockchain ensures secure and tamper-proof record-keeping, reducing opportunities for corruption. How then can the Global South leverage on this nascent technology and enable accountability? This paper explores how corruption is a major barrier to development, and highlights the intersection of blockchain and transparency, and the necessity of addressing corruption through blockchain-based solutions. Employing qualitative research methodology, this paper conducts a comprehensive analysis of existing literature, legal frameworks, and case studies of application of the use of blockchain applications, this paper provides valuable insights for developing countries seeking to establish their own public blockchain infrastructure. The findings indicate that the successful implementation of blockchain solutions requires the establishment of robust legal frameworks, adequate infrastructure, capacity-building initiatives, and inclusive stakeholder engagement. These factors play a crucial role in ensuring the effectiveness and sustainability of blockchain-based anti-corruption measures. In conclusion, embracing blockchain technology and implementing appropriate legal frameworks can empower developing countries to combat corruption, enhance transparency, and foster sustainable development.

Keywords: *Blockchain, Corruption, Developing Countries, Sustainable Development.*

INTRODUCTION

Corruption remains a pervasive issue in developing countries, impeding sustainable development, and hindering progress towards the United Nations' Sustainable Development Goals (SDGs). It erodes public trust, weakens institutions, perpetuates poverty, and hampers progress across various sectors. Consequently, there is an urgent need for effective anti-corruption measures. In recent years, blockchain technology has emerged as a promising tool to combat corruption and promote transparency in public administration. By leveraging its features such as immutability, decentralisation, and smart contracts, blockchain offers enhanced transparency, accountability, and security in recording and verifying transactions.

While the potential of blockchain technology in addressing corruption is increasingly acknowledged, there remains a gap in research regarding its practical applications and implications, particularly in developing countries. This study aims to address this gap by exploring the use of blockchain for combating corruption and fostering accountable governance in the Global South. Through a comprehensive analysis of existing literature, legal frameworks, and relevant case studies, this research seeks to provide valuable insights into the intersection of blockchain, transparency, and corruption. It will identify the specific challenges and opportunities associated with implementing blockchain-based solutions in public administration systems of developing countries. Additionally, the study aims to examine the potential synergies between

blockchain technology and existing legal frameworks to facilitate effective anti-corruption strategies. By conducting an in-depth examination of practical experiences, lessons learned, and emerging best practices, this research intends to shed light on the practical steps that developing countries can take to leverage blockchain technology for combating corruption and promoting transparency. By addressing the gaps in research, this study aims to contribute to the existing body of knowledge and provide policymakers, practitioners, and scholars with actionable insights to design and implement effective anti-corruption strategies in the Global South.

In conclusion, the potential of blockchain technology to combat corruption and promote transparency in public administration holds significant promise. By bridging the gap in research and understanding the specific challenges and opportunities faced by developing countries, this study seeks to contribute to the broader discourse on utilizing blockchain for sustainable development. Ultimately, the findings of this research have the potential to guide policymakers and practitioners in harnessing the transformative power of blockchain technology to combat corruption and foster accountable governance in the Global South.

LITERATURE REVIEW

This comprehensive literature review delves into the potential of blockchain technology as a powerful tool to address corruption and promote transparency in public administration, particularly in developing nations. By examining a range of scholarly works, including "Corruption in Developing Countries" by Wraith and Simpkins, the review provides a deep understanding of the opportunities and challenges associated with integrating blockchain in the fight against corruption (Wraith & Simpkin, 2010). To set the foundation, Wraith and Simpkin's study explores the causes and consequences of corruption in developing countries, shedding light on its economic and social ramifications. This understanding of the underlying factors contributing to corruption becomes crucial in identifying effective anti-corruption measures. Building upon this, Olken and Pande's (2012) research delves into the institutional constraints that perpetuate corruption, highlighting the need for strategic and long-term approaches to blockchain adoption in public administration.

Furthermore, the review incorporates studies such as "Corruption and the Environment" by Leitão (2016), which examine the link between corruption and environmental degradation. It underscores the potential of blockchain technology to enhance transparency and accountability in natural resource management, mitigating corruption risks and promoting sustainable development. Narrowing the focus to Nigeria, Okeniyi and Offoha's (2021) work emphasises the adverse economic effects of corruption in the country.⁷ The study underscores the potential benefits that blockchain technology can bring in combating corruption and fostering economic development. Additionally, Carr and Jago's (2014) study on "Petty Corruption, Development, and Information Technology as an Antidote" highlights the role of information technology in countering petty corruption, stressing the transformative potential of technology in promoting transparent public administration.

Expanding the geographical context to Africa, Kouladoum's (2022) research on "Technology and Control of Corruption in Africa" explores the relationship between technology, corruption control, and development. The study provides insights into the specific challenges and opportunities for implementing blockchain solutions in the African context, emphasizing the importance of tailored approaches aligned with local needs and capacities. Lastly, Aggarwal and Floridi's (2018) work on "The opportunities and challenges of blockchain in the fight against government corruption" and Kewell, Adams and Parry's (2017) "Blockchain for Good?" explores various blockchain applications and their alignment with the United Nations' Sustainable Development Goals (SDGs). The study highlights the significance of blockchain in promoting transparency and combating corruption in the pursuit of sustainable development.

In conclusion, this literature review underscores the significance of utilizing blockchain technology as an anti-corruption and transparency tool in developing nations. By drawing insights from a range of scholarly works, it highlights the potential of blockchain to combat corruption and promote accountable governance in public administration. The review contributes to the existing knowledge by emphasizing the need for tailored approaches, the importance of long-term strategies, and the potential of blockchain to align with sustainable development goals.

METHODOLOGY

The methodology adopted for this study is a doctrinal and qualitative research approach, involving a comprehensive analysis of existing literature and legal frameworks for adoption of technologies in the public space. A systematic review of scholarly articles, reports, and relevant documents was conducted to explore the intersection of blockchain, transparency, and corruption. Additionally, a critical analysis of legal frameworks and case studies pertaining to technology adoption in combating corruption was undertaken to gain insights into the implementation process. This rigorous methodology ensures a robust examination of the subject matter while adhering to scholarly research standards.

FINDINGS AND DISCUSSIONS

Developing countries face the challenge of addressing public corruption and promoting transparent governance and leveraging the booming Web3/blockchain ecosystem can be a valuable tool in this endeavour. The findings and discussions from the literature review emphasise the importance of public and private partnerships in harnessing the potential of blockchain technology to combat corruption effectively. To maximise the benefits of the blockchain technology, States should actively engage with the technology and collaborate with private sector entities, including emerging tech companies, which are eager to work with states and can provide the necessary expertise and resources to develop and implement blockchain solutions. Such partnerships can accelerate the adoption of blockchain technology and overcome potential barriers in combating corruption. However, a significant challenge lies in raising awareness and understanding among policymakers about the relevance and potential of blockchain. Developing countries may have other pressing priorities, but it is crucial to recognize that corruption serves as a harbinger of larger problems, hindering sustainable development and exacerbating socio-economic inequalities. Therefore, blockchain-based anti-corruption measures should not be overlooked, as they are fundamental to long-term development.

Active legal frameworks play a crucial role in recognizing and accommodating emerging technologies like blockchain. However, the literature review highlights the common issue of the law lagging behind technological advancements, especially in developing countries. Governments need to proactively update their legal frameworks to address the unique challenges and opportunities presented by blockchain technology. By providing clear regulations and guidelines, governments can foster innovation, attract investments, and create an enabling environment for blockchain-based anti-corruption initiatives. It is important for developing countries to recognize that addressing corruption is an integral part of sustainable development. While they may have competing priorities, neglecting the fight against corruption perpetuates a cycle of underdevelopment and hampers progress across various sectors. By embracing blockchain technology and promoting transparent governance, developing countries can create an environment conducive to accountable governance, enhance public service delivery, and foster sustainable development.

In conclusion, developing countries can benefit from the strategic integration of the blockchain to combat public corruption and promote transparency in governance. Public and private partnerships, active legal frameworks, and recognising the importance of anti-corruption measures are key elements in leveraging blockchain technology effectively. By prioritising the fight against corruption and embracing blockchain-based solutions, developing countries can address larger development challenges and pave the way for sustainable progress.

CONCLUSION AND RECOMMENDATIONS

Conclusively, this research highlights the significant potential of blockchain technology in combating public corruption and promoting transparency in developing countries' public administration systems. It emphasizes the necessity of public and private partnerships to effectively harness the benefits of blockchain technology in addressing corruption. By actively engaging with the booming blockchain ecosystem and collaborating with emerging tech companies, developing countries can leverage their expertise and resources to maximize the impact of blockchain solutions. One approach is the establishment of regulatory sandboxes, which provide a controlled environment for experimenting with blockchain applications. By creating these sandboxes, governments can assess the feasibility and applicability of blockchain solutions in their anti-corruption efforts, allowing for iterative testing and refinement.

To foster interoperability and collaboration within the blooming tech ecosystem, governments can issue a

call for proposals and invite tech companies to design and develop interoperable blockchain infrastructures. This approach encourages innovation and the development of standardized solutions that can be adopted across different sectors and jurisdictions, maximizing the impact of blockchain technology in combatting corruption. In recognising the need for flexible and adaptive regulations, governments can consider issuing soft laws or regulations that provide guidance and principles for the use of blockchain technology in combating corruption. Soft laws offer a more flexible framework that can adapt to the rapidly evolving nature of blockchain, while still ensuring accountability and transparency. Such an approach acknowledges that corruption is a complex problem requiring innovative and dynamic solutions. Furthermore, governments should prioritise collaboration and knowledge-sharing with international organisations, donor agencies, and other countries to learn from their experiences and best practices in utilizing blockchain for anti-corruption efforts. This collaboration can facilitate the exchange of ideas, resources, and technical assistance to effectively implement blockchain-based solutions. Overall, governments in developing countries should recognise corruption as a formidable adversary and employ a multi-faceted approach to combat it. By incorporating regulatory sandboxes, fostering interoperability, issuing soft laws, and engaging in international collaboration, governments can harness the transformative power of blockchain technology in the fight against corruption. It is through these proactive measures that corruption can be confronted, paving the way for transparent, accountable, and sustainable governance.

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TRACK 4: ALTERNATIVE DISPUTE RESOLUTION

IMPLEMENTATION OF SULH IN MUTAAH CLAIM CASES IN THE KELANTAN SYARIAH COURT THROUGH THE I-MUTAAH INNOVATION APPROACH

Wan Azimin bin Wan Adnan^{1*}, Zubaidi bin Sulaiman², & Wan Khuzafah binti Wan Jusoh³ & Muhammad Afif Asyraf bin Ibrahim⁴

^{1,2,3,4} *Jabatan Kehakiman Syariah Kelantan, Malaysia*

Email: ¹wanazimin@esyariah.gov.my; ²hakimmrsgm@gmail.com ; ³khuzafah@gmail.com; ⁴afifasyraf@esyariah.gov.my

**Corresponding author*

ABSTRACT

Mutaah claim cases are among the most complicated cases to resolve and are required to go through the mediation process in the Syariah Court. The settlement of mutaah cases can be achieved through the agreement of the parties on the amount of the mutaah rate that is mutually agreed upon. However, in the context of calculating the rate of mutaah, there is no single method determined by Shariah law for the settlement of cases. This article examines the appropriateness of setting a mutaah calculation formula that can help the parties and sulh officers find a solution to the mutaah rate that can be used as a basis for negotiation between the disputing parties. This study uses a qualitative approach with data collection methods through library and interview methods as well as descriptive data analysis. The findings of this study found that the cases of mutaah claims become complicated because the claims are extreme and there is no back-up basis that is used uniformly to determine the appropriate mutaah rate. The difficulty in resolving cases of Mutaah claims also stems from the absence of a specific formula to determine the rate of Mutaah that can be used as a basis for negotiation between the parties in the Sulh Session. Research on the cases that were decided found that the practice of determining the rate of mutaah through the trial process is up to the judge's discretion because no fixed rate has been determined by syariah law. This study found the need for the court to use an innovative approach and formulate a specific formula to standardize and facilitate all parties. The development of a special formula known as i-Mutaah is an ICT-based innovation approach that takes into account the principles of determining the rate of mutaah outlined by Islamic law and celebrates local customs. The innovative approach is able to empower the implementation of sulh in the Syariah Court for the benefit of the Muslim community as a whole in accordance with the principles inherent with the idea of Malaysia Madani.

Keywords: *Sulh, Syariah Court, Mutaah Claims, Sulh Officer, Innovation*

INTRODUCTION

Mutaah claim cases are among the most complicated cases to resolve and are required to go through the mediation process in the Syariah Court. The settlement of mutaah cases can be achieved through the agreement of the parties on the amount of the mutaah rate that is mutually agreed upon. However, in the context of calculating the rate of mutaah, there is no single method determined by Shariah law for the settlement of cases. This article examines the appropriateness of setting a mutaah calculation formula that can help the parties and sulh officers find a solution to the mutaah rate that can be used as a basis for negotiation between the disputing parties.

LITERATURE REVIEW

The findings of this study found that the cases of mutaah claims become complicated because the claims are extreme and there is no back-up basis that is used uniformly to determine the appropriate mutaah rate. The difficulty in resolving cases of Mutaah claims also stems from the absence of a specific formula to determine the rate of Mutaah that can be used as a basis for negotiation between the parties in the Sulh Session. Research on the cases that were decided found that the practice of determining the rate of mutaah through the trial process is up to the judge's discretion because no fixed rate has been determined by

syariah law.

METHODOLOGY

This study used a qualitative approach with data collection methods through library and interview methods as well as descriptive data analysis.

FINDINGS AND DISCUSSION

This study found the need for the court to use an innovative approach and formulate a specific formula to standardize and facilitate all parties.

CONCLUSION AND RECOMMENDATIONS

The development of a special formula known as i-Mutaah is an ICT-based innovation approach that takes into account the principles of determining the rate of mutaah outlined by Islamic law and celebrates local customs. The innovative approach is able to empower the implementation of sulh in the Syariah Court for the benefit of the Muslim community as a whole in accordance with the principles inherent with the idea of Malaysia Madani.

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TRACK 4: ALTERNATIVE DISPUTE RESOLUTION

THE APPLICATION OF FINANCIAL OMBUDSMAN SCHEME FOR THE MANAGEMENT OF FINANCIAL DISPUTES IN MALAYSIA

Nur Ezan Rahmat^{1*}, Muhamad Ikhwan Mohd Zain², Ibtisam @ Ilyana Ilias³, Su'aida Safei⁴, Daleleer Kaur Randawar⁵ & Irwin Ooi Ui Joo⁶

^{1,3,4,5,6} Faculty of Law, Universiti Teknologi MARA, Malaysia

² Department of Law, Universiti Teknologi MARA, Perak Branch, Tapah Campus, Malaysia.

Email: ¹nurezan@uitm.edu.my; ²mikhwanzain@uitm.edu.my; ³ilyanailias@uitm.edu.my; ⁴suaida@uitm.edu.my; ⁵dolly@uitm.edu.my; ⁶uijoo310@uitm.edu.my

*Corresponding author

ABSTRACT

A standardized, effective and inexpensive redress mechanism is one of the crucial rights of consumer. Since the introduction of the Ombudsman for financial services in 2016, ombudsman has been needed to cater for the dynamics of modern business and the emergence of various kinds of financial disputes between financial service providers (FSPs) and financial consumers. The Financial Services Act 2013 (FSA) and the Islamic Financial Services Act 2013 (IFSA) have been introduced to provide for the establishment of a Financial Ombudsman Scheme (FOS) to ensure effective and fair handling of complaints and to resolve disputes in connection with financial services or products. It provides for alternative avenue for dispute resolution and it has been formulated based on six underlying principles namely; independence, fairness and impartiality, accessibility, accountability, transparency and effectiveness. This research adopts a library-based approach by highlighting the legal framework and principles of financial ombudsman, at the same time looking at the challenges and limitations faced by the FOS Malaysia. It is hoped that the recommendations given can be referred by the stakeholders and government for the enhancement and promotion of the financial ombudsman scheme.

Keywords: *Financial Ombudsman, Financial Dispute, Alternative Dispute Resolution, Financial Consumers, Financial Service Providers*

INTRODUCTION

Establishing financial dispute resolution institutions is vital to strengthening financial consumer protection in many countries including Malaysia. Malami and Yusoff (2017) postulate that responding to consumer complaints is one of the most important parts of consumer protection agenda. It can be materialised through the financial dispute resolution institutions that uphold transparency, accountability, and consumer trust, which fix their problems, protect them, encourage fair competition, and improve the market. The Ombudsman for Financial Services (OFS) is set up to primarily handle financial services complaints in Malaysia and plays a crucial role in implementing the financial services regulations and rules to ensure that consumers have a reliable platform to voice out their concerns and seek redress. It is crucial to have a system to efficiently manage and resolve these disputes to avoid financial losses and maintain healthy business relationships. Financial disputes, or "financial conflicts," as some authors use them, are unavoidable since transactions occur constantly. These disputes can arise due to various reasons, such as miscommunication, errors, fraud, or differences of opinion. Besides the court proceedings, the Alternative Dispute Resolution (ADR) institutions can provide a platform for consumers to seek redress for their grievances against financial service providers, thereby promoting transparency and accountability in the financial sector. Concerning the functioning of ADR systems—specifically, financial ombudsman services as the most common financial ADR in Western Europe (World Bank Documents, 2012), it may also increase consumer confidence in the financial system, leading to greater participation and growth in the sector. This research aims to examine the legal framework related to financial ombudsman in Malaysia and highlight the limitations and challenges faced by the system.

LITERATURE REVIEW

Under Part VIII, Section 121 of the Financial Service Act 2013, a "financial consumer" is defined as anyone who uses, has used, or intends to use a financial service or product for personal, domestic, or household purposes in connection with a small business. Financial consumers have rights and protections under this classification, including access to complaint mechanisms and compensation for financial service or product harm. The OECD (2021) report emphasised the importance of financial regulators and authorities throughout Asia in protecting and educating consumers. The financial consumer frequently lacks knowledge and awareness of the financial transaction, leading to disputes. A financial dispute is a complaint filed against a financial service provider (FSP) including fraud cases involving credit cards, online banking, automated teller machines, investment advice, and illegal fundraising, all of which occur regularly and cause financial consumers to incur losses and damages (Shen et al., 2016). These disagreements can significantly impact consumers' financial well-being, causing additional stress and financial hardship. The resolution must be sought through the proper channels to protect consumer rights and ensure fair treatment (Abraham, 2000).

The establishment of FOS is significant with the current and fast-growing financial service business in Malaysia. The FOS provides an alternative avenue for settlement of disputes, whereby the parties to the dispute can opt for ADR mechanisms, instead of litigation, in arriving at a resolution. The advantage of ADR is that the parties could maintain a good relationship for potential future dealing as it provides an equal opportunity to meet the needs and demands of the disputing parties (Mohd Zain & Engku Ali, 2016). The FOS will further strengthen consumer confidence and market discipline in the financial sector. It will provide consumers with a user-friendly and efficient redress mechanism to resolve disputes. It is the consumers' right to be treated with fairness, dignity and respect. This mechanism will continue to benefit both consumers and financial service providers (FSPs) (Mohd Zain & Engku Ali, 2016). It is a move to enhance jurisdiction on a wider scope for banking and insurance industries.

RESEARCH METHODOLOGY

The researchers conducted a doctrinal or library-based research methodology for this study. The doctrinal or library-based research is "an enquiry into legal concepts, principles, and existing legal texts such as statutes, case laws, etc." (Kharel, 2018). This method allows the researchers to identify the issues and points regarding the management of financial dispute in Malaysia and provides a more profound understanding to the researchers on doctrinal content, especially laws and regulations, enforcement and administration. Under doctrinal or library-based research, the researchers analysed the relevant Malaysian statutes and other foreign legislations, textbooks, and journal articles.

FINDINGS AND DISCUSSION

Among all the types of ADR mechanisms in this world, as far as the study is concerned, the concept of the ombudsman is highlighted as an alternative way to deal with financial disputes in Malaysia. The financial ombudsman is an independent body that helps resolve disputes between consumers and financial institutions. In other countries, financial ombudsman does not replace judicial procedures but rather serve as an alternative to justice, to which an appeal is possible but not required (Knyazev, D. V., 2019). They are impartial and independent and provide a convenient and cost-effective method of resolving disputes between consumers and financial service providers. Their decisions bind the financial service provider but not the customer.

Historically, the Insurance Mediation Bureau, founded in 1992, had limited jurisdiction over personal insurance policies up to RM50,000. In 2004, Malaysia established the Financial Mediation Bureau, which began operations on 20 January 2005. To increase public access, the jurisdictional level was raised from RM25,000.00 to RM100,000.00 for banking disputes and RM100,000.00 to RM200,000.00 for motor and fire insurance disputes. In 2016, the government started implementing the Financial Ombudsman Scheme (FOS), which is expected to revolutionise dispute resolution between financial service providers (FSPs) and their clients, including Islamic FSPs. The Governor of the Central Bank of Malaysia appointed the Ombudsman for Financial Service (OFS) as the FOS scheme operator and the first financial ombudsman service in Malaysia.

While the laws aim to ensure fair treatment of consumers, transparency in financial products and services, and effective resolution of disputes, in Malaysia, OFS serves as a proper and equitable treatment for complaints and dispute resolution with FSP regarding financial services or goods (Raja Abdul Aziz & Abdul Hamid, 2017). OFS is an important consumer protection mechanism that contributes to the integrity of Malaysia's financial system and is a cost-effective solution for both the consumer and the financial service provider. Furthermore, implementing OFS can help boost consumer trust in financial services and promote Malaysia's more transparent and accountable financial sector. Financial Services Act 2013 and Islamic Financial Services Act 2013 have strengthened business conduct and consumer protection requirements, increasing consumer confidence in financial services and products. However, some drawbacks need to be addressed. Some of the drawbacks of ombudsman services in Malaysia include limited jurisdiction, lack of enforcement power, and inadequate resources. These issues can hinder the effectiveness of ombudsman services in resolving disputes (Oseni & Faruq Ahmad (2016).

CONCLUSION AND RECOMMENDATIONS

It is pertinent to highlight that the FOS had suggested for the periodic review of monetary limit applied to eligible disputes to reflect changes in the value of financial services or products. However, it is obvious that the process of determining the change in value of property and amendment of the laws from time to time are time consuming and may delay the review process. Therefore the monetary limit as stated in the regulations should be substituted to unlimited monetary amount for referral to approved FOS in Third Schedule Regulation 18 of Islamic FOS 2015. The reason is that it is more practical and the jurisdiction of FOS would be far-reaching as it is no longer subjected to monetary limit or all parties agree to refer to FOS to determine its jurisdiction. The suggested improvement has the ability to ensure avenue for ADR which is wide and readily available. Accordingly, both customer and the financial institution could benefit the advantages of FOS.

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TRACK 5: CONSTITUTIONAL LAW/HUMAN RIGHTS/ETHICS AND LAW

ELECTRONIC TRIAL: A SOLUTION FOR CHILDREN IN CONFLICT WITH LAW TO ACCESS THE EQUALITY BEFORE THE LAW?Dizza Siti Soraya^{1*}, Mahmud Mulyadi², Rosmalinda^{3*} & M. Ekaputra⁴*Faculty of Law, Universitas Sumatera Utara, Indonesia.**Email: ¹dizzasitorisoraya19@gmail.com; ²mahmud_mulyadi@usu.ac.id; ³rosmalinda@usu.ac.id; ⁴moh.ekaputra@gmail.com***Corresponding author***ABSTRACT**

In the Covid-19 pandemic era, the electronic court has been a choice to process cases that involved Children in conflict with the law (*Anak Berkonflik dengan Hukum/AKH*). Currently, the government has controlled the Covid-19 pandemic. As consequence, it is possible that the electronic court would not be used in the future. This study raised two questions namely; (1) is the electronic trial for children in conflict with the law still being carried out? (2) How the electronic trials would accomplish child rights? This research related to sustainable development Goals namely peace, justice, and strong institutions. A legal study has been conducted which used primary and secondary data. In-depth interviews involving children in conflict with the law, law enforcers, and staff of correctional Central in North Sumatera Province. As a result, (1) the electronic trials for *AKH* have been used based on Supreme Court Regulation No. 8/2022 concerning amendments to Supreme Court Regulation No 4/2020 concerning the Administration and Trial of Criminal Cases in Court electronically. (2) Facts of the electronic trial process; (a) *AKH* does not have an assistant who stands by physically; (b) room for *AKH* is not available. In conclusion, electronic trials could be a solution for *AKH* not only in covid-19 pandemic era but also in the future. *AKH* would have their rights namely equality before the law based on Supreme Court Regulation No. 8/ 2022 which is in line with Law No. 11/2012 concerning the Juvenile Criminal Justice System.

Keywords: *Fulfilment, Child rights, Trials, Electronics, Children in Conflict with the Law***INTRODUCTION**

The government has officially revoked the Community Activity Implementation (PPKM) policy regarding the Coronavirus Diseases 2019 (COVID-19) pandemic. This was revoked after the President announced it through a press conference at the State Palace, Jakarta, Indonesia on Friday, 30 December 2022 (Kementerian Sekretariat Negara, 2022). However, at the level of legal practice, especially in the judicial environment, a digitization process has been carried out (Masyhudi et. al., 2021). This step is an effort by the Supreme Court, in the interests of justice seekers in resolving cases and the process of examining criminal cases in court can be carried out electronically (Razaq, 2020). Conducting online criminal trials via teleconference during the COVID-19 Pandemic is an innovation and the right breakthrough. In connection with the number of *AKH* cases in the Medan District Court, there were 70 (seventy) juvenile criminal cases (the report on the implementation of the activities of the Special Class IA Medan District Court, 2021). Furthermore, the total number of cases in the Lubuk Pakam District Court was 61 (sixty-one) child criminal cases (report on the implementation of the activities of the Class I-A Lubuk Pakam District Court, 2021). Therefore, the Special Class IA Medan District Court is the most likely to try (Judicial Power) juvenile criminal cases. Then, based on data from a Child Observation Agency, namely the Center for Child Protection and Studies (PKPA) during 2020-2022 as many as 17 (Seventeen) cases of *AKH* were carried out by an electronic trial process for the Medan City and Deli Serdang Regency areas.

The online trial mechanism is indeed not regulated in the Criminal Procedure Code (KUHP), but it is understandable that the current trial implementation can provide 2 (two) alternatives for conducting trials in criminal cases, namely offline and online (Hanafi, et.al., 2021). The research questions are (1). are electronic trials of cases of children in conflict with the law still being carried out? (2). How would the

electronic trials accomplish the child's rights? This question is expected to explain the electronic trial of the AKH case to access equality before the law.

LITERATURE REVIEW

There have been several previous studies on electronic trials and AKH. First, the research entitled Criminal Law Policy Against Children as a Crime is reviewed from Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (Simanjuntak, et., al., 2018). Another study entitled legal analysis of online criminal trial trials in Relation to Evidentiary Law (study at the Poso District Court). The two studies show the juvenile justice system and electronic courts (Donovan, 2021). So it is necessary to find out more about the fulfillment of rights in the electronic trial process for children in conflict with the law which is currently being implemented.

METHODOLOGY

The research is structured with a normative legal research method (Peter Mahmud Marzuki, 2019). It reviewed and analyzed the Law concerning electric trials and Children in conflict of law

FINDINGS AND DISCUSSION

The handling of the AKH case certainly refers to Law No. 11 of 2012 concerning the Juvenile Criminal Justice System (UU SPPA). In accordance with the provisions of the SPPA Law that the implementation of the AKH case trial process is carried out in the children's courtroom directly in the juvenile justice system is the juvenile criminal justice law enforcement system which consists of the juvenile investigation subsystem, the juvenile prosecution subsystem, the judge examination subsystem, and the juvenile law enforcement subsystem. which is based on material criminal law for children and formal criminal law for children and the law for implementing juvenile criminal law sanctions (Wahyudi, 2011). However, in 2020, child trials will be conducted electronically at the District Court. The implementation of electronic trials in the AKH case was previously carried out due to the Covid-19 Pandemic outbreak. The development of the Covid 19 situation is under control and the Indonesian government has revoked the PPKM. As well as WHO also officially announced the end of the Covid-19 global health emergency in May 2023. However, the government has not immediately revoked Presidential Decree Number 12 of 2020 concerning the Designation of Non-Natural Disasters of the Spread of Covid-19 as a National Disaster. Therefore, the implementation of electronic trials is based on Supreme Court Regulation (PERMA) No. 8 of 2022 concerning amendments to supreme court regulation number 4 of 2020 concerning the Administration and Trial of Criminal Cases in Courts electronically. During an interview conducted on April 4, 2023, Daulay Purba stated that AKH could already be deposited at LPKA Class I Medan, while it was still in the legal process stage. This is as stipulated in the Decree of the Director General of Corrections, Ministry of Law and Human Rights of the Republic of Indonesia Number: PAS-04.OT.02.02 of 2023 concerning Adjustment of Correctional Services during the transition period towards endemic. There are 4 (four) points in the Decree of the Director General of Corrections, including 1. Acceptance of Detainees/ Prisoners/ Children, 2. Expenditure of Detainees/ Convicts/ Children, Online Trial Services at UPT Corrections; and 4. Visiting Services involving external parties. (Kementerian Pendayagunaan Aparatur Negara dan Reformasi Birokrasi, 2023). This shows that the government is preparing to transition from pandemic to endemic. Therefore, AKH took part in the electronic trial at LPKA Class I Medan. During the electronic trial, AKH was only accompanied by a prison guard (walta) from the District Attorney's Office. Based on the findings of field research, AKH took part in the electronic trial in the registration and classification room at LPKA Class I Medan.

AKH is provided with 1 (one) table and chair to participate in the electronic trial at LPKA Class I Medan, Head of Section, Registration and Classification, LPKA Class I Medan was confirmed during an interview (Daulay Purba, personal communication, April 4, 2023). While the room is an employee room in the registration and classification section of Class I LPKA Medan. So that when AKH took part in the electronic trial there were also LPKA employees in the room. Then Judge, Medan District Court Class IA Special AKH did not receive direct physical assistance from PK Bapas or parents or child advocates at LPKA Class I Medan. The number of AKH cases is 28 (twenty-eight) AKH cases at Class I Medan LPKA Class I Medan was confirmed during an interview (Daulay Purba, personal communication, April 4, 2023) and 256 (two hundred fifty-six) AKH cases in 2020-2023 at Special Class IA Medan District Court was confirmed during an interview (Saurma Siregar, personal communication, April 5, 2023)

CONCLUSION AND RECOMMENDATIONS

In conclusion, the government has revoked PPKM and WHO has declared the end of the Covid-19 global health emergency. However, the implementation of electronic trials in the AKH case is still being carried out and refers to PERMA No. 8 of 2022 concerning amendments to PERMA No. 4 of 2020 concerning the Administration and Trial of Criminal Cases in Courts electronically which is applied to AKH. (2). That the electronic trial process cannot fulfill AKH's rights. For example, there is no special electronic courtroom for AKH in Class I LPKA Medan, and AKH does not receive direct physical assistance from PK Bapas or parents or child advocates at LPKA Class I Medan. As a suggestion, (1) the trial of the AKH case should be held face-to-face because it is not in accordance with the SPPA Law and the Covid-19 situation is under control. (2) The government should immediately prepare facilities and infrastructure by adjusting the needs of AKH so that AKH's rights are fulfilled in the electronic trial process.

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TRACK 5: CONSTITUTIONAL LAW/HUMAN RIGHTS/ETHICS AND LAW

NON-STATE ACTORS OBLIGATIONS IN INDONESIA HUMAN RIGHTS LAW

Syahrul Fauzul Kabir^{1*}, Wicaksana Dramanda²^{1,2}*Faculty of Law, Universitas Islam Bandung (UNISBA), Indonesia**Email: ¹syahrul.fauzul@unisba.ac.id; ²wicaksana.dramanda@unisba.ac.id***Corresponding author***ABSTRACT**

This article examines the concept of human rights violations regulated in Law No. 39 of 1999 concerning Human Rights. It links it to the current discourse regarding which actors must be charged with international human rights law obligations. Apart from entering into the debate about whether the concept of non-traditional human rights violations that impose obligations on non-state actors is necessary, this paper aims to place it in the Indonesian context. Moving away from the traditional view of human rights that imposes obligations only on the state—as it is considered the sovereign, current situations require or has moved into forming human rights violations that can impose obligations on non-state actors. However, as consistently argued by Andrew Clapham, regarding the extent to which non-state actors can be liable, this depends on the subject's capacity, context and commitment. Interestingly, Law No. 39/1999 not only imposes obligations on non-state actors but also without using any clear framework so that non-state actors are regarded the same. By reviewing state of the art, and historically examining the rationale of such formulation in Law 39, the authors depart from a hypothesis that the state should only hold human rights obligations in the context of Indonesian national law.

Keywords: *human rights violations, non-state actors, state responsibility, duty bearers*

INTRODUCTION

Do non-state actors have obligations to human rights? Furthermore, should they directly be imposed with human rights obligations? In international law regimes, some (who may represent the majority views) respond negatively, while others respond affirmatively. This difference is motivated by differences in paradigms in responding to human rights problems, which I will explain in the next section. However, when the question is placed in the context of a national (or regional) legal regime, the answer to the first question is certainly positive. We know that some national legal systems impose human rights obligations on states and non-state actors.

It is evident, for instance, in Indonesia's national human rights law regime. Rejecting traditional dogma placing the state as the sole party of human rights violators (statism) burdened with obligations and responsibilities in vertical relations with its citizens, the formulation of the Human Rights Law in Indonesia places "a person or group of people" without prerequisites so that human rights violations can be horizontal (Law No. 39/1999 on Human Rights, 1999). Theoretically, modifications to such traditional views have been proposed based on certain conditions: that is, by analogizing non-state actors like a state—insofar as it has effective power or unconditional, as proposed by Andrew Clapham (Clapham, 2006). However, even the United Nations Guiding Principles on Human Rights (UNGPR), which is considered an attack on statism, can only impose one obligation on one other party: multinational corporations with the obligation to respect (Ruggie, 2013). This article examines the formulation of human rights violations regulated in Law No. 39 of 1999 concerning Human Rights. It links it to the current discourse related to the above debate: who are the actors/subjects who must and have been imposed with international human rights obligations, and why?

LITERATURE REVIEW

There are two categories of research related to this topic, namely (1) opinions that explain why traditional

ideas of human rights need to be defended and (2) opinions that criticize these ideas. This state-of-the-art will be used as a point of departure in this study. Included in the first category is the research of Sir Nigel Rodley and Markus Krajewski. They argue that expanding human rights obligations to non-state actors will obscure the pattern or paradigm peculiar to human rights regimes: public-private relations (obligations and rights) between states and citizens. In addition, Rodley considers that non-traditional human rights ideas have no added value and are practically difficult to implement (Rodley, 2014), while Krajewski argues that these views will also cause legal uncertainty (Krajewski, 2023).

In contrast to that is Andrew Clapham's opinion. In general, Clapham's opinion is reinforced by Nicolas Carrillo-Santarelli (Carrillo-Santarelli, 2017). Having presented several arguments about why obligations in human rights should be extended to non-state actors, Clapham and Santarelli have consistently argued that the current international human rights law regime has even applied such (non-traditional) patterns. However, regarding the extent to which these non-state actors are subject to human rights obligations, Clapham proposes the following analytical framework: capacity, context, and commitment (Clapham, 2017).

METHODOLOGY

This paper uses descriptive-analytical legal research to identify the obligation of the nonstate actor regarding human rights and whether the nonstate actor could be a party that violates human rights based on the Indonesian legal system.

FINDINGS AND DISCUSSION

In international human rights law, several norms also impose obligations on non-state actors. It can be seen in Article 2, paragraph 2 of the Convention on the Rights of the Child, which, although ultimately only states can be held accountable for human rights violations: "States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible...". In general, the concept of human rights violations can be drawn through deriving the concept of state human rights obligations in a tripartite form: the obligation to respect, protect, and fulfil. Through the first obligation, the state is commanded to be passive by not interfering in one's actions. Through the second and third obligations, States are instructed to protect the rights of such persons from interference by third parties and to take the necessary steps to support their fulfilment, including restoring such rights in the event of human rights violations.

In Indonesia, Article 1 Paragraph 6 of Law Number 39 of 1999 concerning Human Rights (from now on Human Rights Law) regulates: "Human rights violation is any act of a person or group of people including state officials, whether intentional or unintentional or negligence, restricting, and/or depriving a person or group of people of human rights guaranteed by this Law, and not obtaining, or fearing that they will not obtain a fair and correct legal solution, based on the applicable legal mechanism". This formulation is problematic because of the following word. First, there have been no national or regional laws in other countries that provide definitions of human rights violations. It is not due to the absence of an agreed definition. On the contrary, understanding the concept of human rights violations is based on traditional assumptions that have been accepted together. However, due to the traditional assumptions explained earlier, any human rights violation will only imply state responsibility, even if, factually, those who abuse human rights are non-state actors. In that context, the state is categorized as violating human rights, while non-state actors are only considered to violate the law. Second, a grammatical reading of the definition would imply a high threshold. The phrase "... and not obtain, or fear that there will be no fair and correct legal remedy, based on the legal mechanisms in force" other than vague and layered—what is meant by "feared"? for example—also presupposes that human rights violations do not occur simply because of another party "... restrict, and/or deprive a person or group of human rights...". In other words, if consistent with the use of the hyphen "and" above, human rights violations occur if the two elements are fulfilled cumulatively.

On the one hand, the high threshold for formulating human rights violations above will impact impunity for violators. Apart from the fact that Indonesia's national human rights law regime can only prosecute serious human rights violators, on the other hand, the above formulation also obscures the concept of human rights violations with other legal violations, such as criminal law. Sir Nigel Rodley and Markus

Krajewski echoed this concern. From the description above, regional and national human rights legal regimes are not as strict as international legal regimes that only impose human rights obligations on state actors.

CONCLUSION AND RECOMMENDATIONS

In international human rights law, it is found that the concept of obligation is imposed not only on states but only states that are ultimately held accountable for human rights violations. It is because international human rights law still relies on Draft Articles on Responsibility of States for Internationally Wrongful Acts 2001 with a state-centrist pattern. In Indonesia, although its national legal system can only prosecute serious human rights violators, human rights obligations of non-state actors are recognized. However, the formulation contained in the Human Rights Law blurs the distinction between the characteristics of human rights violations and other legal violations. In addition, the formulation is also ambiguous and has a high threshold, so there is the potential for impunity for human rights violators. Therefore, the concept of obligations and human rights violations in Indonesia must be reformulated to provide legal certainty. Regarding the threshold concept of human rights violations, the framework of obligations to respect, protect, ensure, to promote is adequate to measure the existence of human rights violations.

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TRACK 5: CONSTITUTIONAL LAW/HUMAN RIGHTS/ETHICS AND LAW

REGULATORY CHALLENGES: COOPERATIVE AND MONEY LAUNDERING-RISKS

Liza Hafidzah Yusuf Rangkuti^{1*}, Mahmud Mulyadi^{2*}, & Rosmalinda³

^{1,2,3,4} *Faculty of Law, Universitas Sumatera Utara, Indonesia.*

Email: ¹lizahafidzahyusuf@gmail.com; ²mahmud_mulyadi@usu.ac.id; ³rosmalinda@usu.ac.id

**Corresponding author*

ABSTRACT

Cooperatives is important in society to encourage the community's economy. It aims to improve the quality of people's lives. Nowadays there are many shadow banking and money laundering practices carried out by cooperatives. Regulatory challenges in supervising cooperative business entities have resulted in cooperatives being vulnerable to shadow banking practices and money laundering crimes. The research question is how is the development of regulations related to supervision of cooperatives and their relation to the prevention of money laundering crimes? The research is structured with a normative legal research method. It reviewed and analyze the Law Number 25 of 1992 concerning Cooperatives and the Law Number 8 of 2010 concerning Prevention and Eradication of Money Laundering. This study highlighted that cooperatives can be considered extremely risky as an ideal medium for money laundering. The conclusion of this study is that the expansion of the supervisory system for cooperatives by Financial Services Authority (OJK) which previously only involved the Ministry of Cooperatives and SMEs as well as Provincial and Regency/City Governments can maximize the eradication of shadow banking in cooperatives and the prevention of money laundering in cooperatives in the financial services sector. This study targeted on SGD's 16 which centres on Peace, Justice and Strong Institutions.

Keywords: *Cooperative, Money Laundering, Supervision, Challenges*

INTRODUCTION

According to Law Number 25 of 1992 concerning Cooperatives, Article 1 paragraph (1) states that cooperatives is a business entity whose members are individuals or a cooperative legal entity by basing its activities on the principles of cooperatives as people's economic movement based on the principle of kinship. In carrying out its activities, cooperatives can be differentiated into several types based on the similarity of activities and the economic interests of the members. Based on business activities, one type of cooperatives is a saving and loan cooperatives. Saving and Loans Cooperatives (KSP) are like bank for their members. However, there are significant differences between the Cooperative and the Bank. The difference is that in cooperatives, the interest earned from loans can also be enjoyed by members who apply for credit and members who save their funds in the cooperative (Amal et al., 2021). However, currently there are many shadow banking practices carried out by savings and loan cooperatives. Based on the records of the Ministry of Cooperatives and SMEs, there are currently 8 cases of problematic cooperatives with a total value of members' savings of Rp. 26 trillion. It was revealed that one of them was the Indosurya Savings and Loans Cooperative (KSP Indosurnya), which was suspected of having carried out shadow banking (Fithri et. al., 2022). According to the Minister of Cooperatives and SMEs Teten Masduki, this is inseparable from the weakness of the supervisory system for cooperatives. Because Law Number 25 of 1992 concerning Cooperatives mandates that supervision of cooperatives be carried out by the cooperative itself according to Articles 38 and 39 of the Cooperative Law. Regulatory challenges in supervising cooperative business entities have resulted in cooperatives being vulnerable to shadow banking practices and money laundering crimes. The research question is how is the development of regulations related to supervision of cooperatives and their relation to the prevention of money laundering crimes? This question is expected to explain the development of cooperative supervision in mitigating the risk of cooperatives being used as a medium for money laundering. The research is structured with a normative legal research method. It reviewed and analyze the Law concerning

Cooperative and Anti-Money Laundering.

LITERATURE REVIEW

There are some previous studies on cooperative and money laundering. First, the research entitled Beneficial Ownership Arrangements in Saving Loan Cooperative as A Preventive Attempt to The Crime of Money Laundering (Amal et al., 2021). Another study titled Possibility of Share Ownership by Cooperatives as a Means of Money Laundering Crime (Kristian, 2022). Both of those study shows that cooperatives can be considered extremely risky as an ideal medium for money laundering. However, previous studies did not review the strengthening of cooperative supervision through the latest regulations issued by the authorities.

METHODOLOGY

The research is structured with a normative legal research method. It reviewed and analyze the Law regarding Cooperative and Anti-Money Laundering are as follows: 1) Law Number 8 of 2010 concerning Prevention and Eradication of Money Laundering Crimes, 2) Law Number 25 of 1992 concerning Cooperatives, 3) Law Number 4 of 2023 concerning Development and Strengthening of the Financial Sector (PPSK Law), 4) Government Regulation Number 61 of 2021 concerning Amendments on Government Regulation Number 43 of 2015 concerning Reporting Parties in the Prevention and Eradication of Money Laundering Crimes, and 5) Presidential Regulation Number 13 of 2018 concerning Application of the Principle of Recognizing Beneficial Owners of Corporations in the Context of Prevention and Eradication of Money Laundering and Terrorism Financing Crimes. Meanwhile, the secondary legal material in this study used all related literature.

FINDINGS AND DISCUSSION

Based on the results of the analysis of Money Laundering (ML) risk factors, according to the perpetrators, it is known that Corporations or Business Entities are high risk categories of Domestic ML (PPATK, 2021). Cooperatives as a business entity are also included of types of Corporations or Business Entities that have a high risk. Cooperatives are included in the money laundering regulatory regime by mentioning Cooperatives as Reporting Parties as contained in Article 17 paragraph 1 of Law Number 8 of 2010 concerning Prevention and Eradication of Money Laundering juncto Article 2 paragraph 1 of Government Regulation Number 61 of 2021 concerning Amendments on Government Regulation Number 43 of 2015 concerning Reporting Parties in the Prevention and Eradication of Money Laundering Crimes. In addition, Presidential Regulation Number 13 of 2018 concerning Application of the Principle of Recognizing Beneficial Owners of Corporations in the Context of Prevention and Eradication of Money Laundering and Terrorism Financing Crimes regulates the criteria for beneficial owners. The regulation aims to prevent potential money laundering with the use of nominee mode which can be used by money laundering actors with the aim of making it impossible to trace the beneficiary who is the owner of the proceeds of crime (beneficiary). Therefore, with Presidential Regulation Number 13 of 2018, it is hoped that the Beneficial Owners of a corporation can be identified. The types of corporations that are targeted by Beneficial Owner regulation, including: limited liability companies (PT), foundations, associations, cooperatives, limited partnerships (CV), firm partnerships (FA), and other corporations. It is concluded that cooperatives are one of the targets in this regulation (Dewi, 2019).

The entire regulation reflects that cooperatives have the potential to be used as a medium for money laundering. Maximum supervision is expected to prevent money laundering practices in cooperative business activities. The development of supervision of cooperatives must follow the development of cooperative business activities. This development can be seen from the involvement of the Financial Services Authority (OJK) in supervising cooperatives in the financial services sector as a response to the rise of shadow banking and money laundering practices in cooperative business activities. Law Number 4 of 2023 concerning Development and Strengthening of the Financial Sector (PPSK) regulates financial ecosystems, one of which is cooperative activities in the financial services sector. This new regulation will accommodate regulatory needs for cooperatives operating in the financial services sector. However the previous cooperative law did not regulate it (Alfiani et. al., 2023). The interesting thing about the PPSK Law is that there is a new supervisory system for cooperatives. According to article 202 of the PPSK Law, which principally inserts Article 44B between Article 44A and Article 45 of the Cooperative Law, it states that cooperatives can carry out activities in the financial services sector. The licensing, regulation and

supervision of Cooperatives operating in the financial services sector are implemented by the Financial Services Authority (OJK) in accordance with the law. Previously, supervision of cooperatives was only carried out by the Ministry of Cooperatives and SMEs and Provincial and Regency/City Governments as states in the Regulation of the Minister of Cooperatives, Small and Medium Enterprises Number 9 of 2020 Concerning Cooperative Supervision. After the PPSK Law was issued, cooperatives were also supervised by the Financial Services Authority (OJK). The development of this supervisory system is based on the distribution of cooperative business activities. As described in the PPSK Law, cooperatives that will be under Financial Services Authority (OJK) supervision have the following criteria: a) collect funds from parties other than members of the cooperative concerned; b) collect funds from members of other cooperatives; c) disbursing loans to parties other than the members of the Cooperative concerned and/or disbursing loans to other Cooperative members; d) receive sources of funding from banks and/or other financial institutions that exceed the maximum limit set by the minister administering government affairs in the field of cooperatives; and/or e) providing financial services outside of the savings and loan business, such as banking, insurance, pension program, fashion market, financing institution business, and other business activities stipulated in the law regarding the financial services sector.

The role of the Financial Services Authority (OJK) as a supervisor can maximize the prevention of money laundering practices in the financial services sector by strengthening supervision of cooperative business activities.

CONCLUSION AND RECOMMENDATIONS

As a conclusion, there is an expansion of the supervisory system for cooperatives which previously only involved the Ministry of Cooperatives and SMEs as well as Provincial and Regency/City Governments, now also involving the Financial Services Authority (OJK). This can maximize the eradication of shadow banking in cooperatives and the prevention of money laundering in cooperatives in the financial services sector. As a suggestion, collaboration is needed between the Ministry of Cooperatives and SMEs, the Financial Services Authority (OJK), and the Financial Transaction Reports and Analysis Center (PPATK) to strengthen supervision of cooperative business entities to prevent money laundering crimes.

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TRACK 5: CONSTITUTIONAL LAW/HUMAN RIGHTS/ETHICS AND LAW

REIMAGINING SDG 6: HUMAN RIGHTS INDICATORS FOR MEASURING PROGRESS WITH WATER AND SANITATIONPedi Obani^{1*}¹*School of Law, Faculty of Management, Law, and Social Science, University of Bradford, United Kingdom.**Email: p.obani@bradford.ac.uk***Corresponding author***ABSTRACT**

Indicators are an important instrument for measuring progress and promoting accountability for development goals at various levels of governance. The UN Sustainable Development Goals (SDG) has over 230 indicators which reflect the status of realisation (or not) of the 17 global development goals within the SDG framework. Using SDG 6 on water and sanitation as a basis for analysis, this presentation explores the potential to strengthen monitoring through human rights indicators. The analysis shows that the SDG indicators are limited and do not cover critical aspects of the universal access target; this gap could potentially be addressed through using human rights indicators (structural, process, threshold, and outcome) for monitoring the universal access to water and sanitation goal. Structural human rights indicators could be used to monitor state commitment, threshold indicators would signal the status of realisation within the reporting period, while process and outcome indicators would promote accountability by providing insights into the efforts of states ongoing to achieve the targets and the ultimate impacts on rightsholders, particularly people living in vulnerable situations.

Keywords: *SDG 6, Human Right Indicators, Right to Water, Right to Sanitation, Monitoring*

INTRODUCTION

There are many areas of convergence between international development goals and human rights standards. Since the 1990s, the focus of global development has been expanding beyond economic growth measured through the Gross National Product (GNP) per capita to include social, environmental and institutional or governance objectives with related indicators or indexes for evaluating their realization. Hence, development is no longer a simple matter of a country's economic performance. Rather it is broadly understood as a multidimensional concept that comprises economic, social, environmental and governance. At the same time, the pursuit of related human rights remains a priority for the UN and other multilateral institutions. It is against this background that the most recent UN development agenda and international development framework have been formulated. However, the differences in the various indicators and measuring standards complicates the comparison of progress along similar development goals and human rights standards, which continue to exist in parallel. In September 2020, world leaders signed the UN Millennium Declaration, in which they committed to achieving 8 Millennium Development Goals (MDGs) according to 2015 targets set against a 1990 baseline. The MDGs included targets on eradicating extreme poverty and hunger, achieving universal primary education, promoting gender equality and empowerment of women, reducing child mortality, improving maternal health, combatting diseases, achieving environmental sustainability, and developing global partnerships. The monitoring of the MDGs shed light on the progress achieved with the targets but also created the impetus for targeted interventions at the sub-national level to close the gaps revealed by the data (UN, 2015). Building on the MDGs, the Sustainable Development Goals consists of 17 goals, 179 targets and 247 indicators. Using SDG 6 on water and sanitation as a basis for analysis, this paper advocates for strengthening SDGs monitoring through human rights indicators.

LITERATURE REVIEW

The reports and scholarly literature on progress with access to water and sanitation are fragmented, "often either focused on normative human rights contents and progressive realisation implementation or progress with the implementation of SDG 6" (Obani, 2020, p. 1). SDG 6 reflects closer similarity to the human

rights to water and sanitation than the MDG Target 7c, which focused on halving the number of people without sustainable access to safe drinking water and sanitation by 2015, compared to 2009. The SDG framework is, however, still a political commitment lacking the binding legal status of human rights. Describing the evolution of the UN development agenda *vis-à-vis* human rights, Morgan and Bach (2018, p. 16) observed that: “[T]he historical shifts over the decades have seen economic needs become reconceptualised as social and human needs, and thence (almost) as ‘human rights’ in development terms, but this does not necessarily include the formal (political or legal rights) as found in the UN commitment to human rights.”

The human rights to water and sanitation have evolved closely at the international level, with the primary legal basis being the International Covenant on Economic, Social and Cultural Rights 1966 (Obani and Gupta, 2015). The rights require universal access to sufficient, safe, acceptable, physically accessible, and affordable water and sanitation services. The cross-cutting human rights principles of non-discrimination, access to information, participation, empowerment, sustainability and accountability also provide procedural safeguards to the rightsholders beyond the legal duty to ensure that the water and sanitation services meet the normative human rights standards. While the SDG targets on water and sanitation contain similar norms as the human rights to water and sanitation, the SDG indicators do not reflect most human rights norms and mainly reflect technological progress measured by safely managed services. Hence, the current figures on SDG 6 are most likely conservative at best and do not provide an understanding of progress on the other aspects of the targets.

The OHCHR (2018, p. 2) describes human rights indicators as: “specific information on the state or condition of an object, event, activity or outcome that can be related to human rights norms and standards; that addresses and reflects human rights principles and concerns; and that can be used to assess and monitor the promotion and implementation of human rights”. Human rights indicators could include subjective or objective structural, process, threshold, and outcome indicators for monitoring the universal access to water and sanitation goal. Structural human rights indicators could be used to monitor state commitment, and threshold indicators would signal the realisation status within the reporting period. In contrast, process and outcome indicators would promote accountability by providing insights into the efforts of states ongoing to achieve the targets and the ultimate impacts on rightsholders, particularly people living in vulnerable situations. Indicators could also be quantitative or qualitative (Figure 1).



Figure 1: Human rights indicators provide information about the status, progress and impacts of human rights.

Source: Obani, 2023

METHODOLOGY

The research is doctrinal and based on a thematic analysis of scholarly and grey literature.

FINDINGS AND DISCUSSION

On the one hand, SDG Target 6.1, “[B]y 2030, achieve universal and equitable access to safe and affordable drinking water for all,” is measured through Indicator 6.1.1: Proportion of population using safely managed drinking water services. On the other hand, SDG Target 6.2: “[B]y 2030, achieve access to adequate and equitable sanitation and hygiene for all and end open defecation, paying special attention to the needs of women and girls and those in vulnerable situations” is measured through Indicator 6.2.1: Proportion of population using (a) safely managed sanitation services and (b) a hand-washing facility with soap and water. By these standards, 2.2 billion people lack safely managed drinking water services, 3.4 billion lack safely managed sanitation services, and 1.9 billion lack basic hygiene services as of 2022. The 2030 universal coverage goal will require accelerated progress of 5 to 8 times over the current rate. This estimate is, at best, conservative, considering that the SDG indicators for water and sanitation

services focus on safety and private facilities. Still, these are not proxies for equity, affordability, acceptability, and availability. Also, a vital critique of the use of sanitation ladders (Figure 2) as a measure of success, which was also the case under the MDG, applies to the SDG as private facilities are not always free from contamination (Exley, Liseka, Cumming and Ensink, 2015) nor account for the cultural and social dimensions (Obani 2018).

SERVICE LEVEL	DEFINITION
SAFELY MANAGED	Use of improved facilities that are not shared with other households and where excreta are safely disposed of in situ or transported and treated offsite
BASIC	Use of improved facilities that are not shared with other households
LIMITED	Use of improved facilities shared between two or more households
UNIMPROVED	Use of pit latrines without a slab or platform, hanging latrines or bucket latrines
OPEN DEFECACTION	Disposal of human faeces in fields, forests, bushes, open bodies of water, beaches or other open spaces, or with solid waste

Figure 2. Sanitation ladder indicating service levels.

Source: UN, 2023

As a political commitment, the SDG framework does not impose binding legal obligations on the state. Consequently, there is limited opportunity for enforcing the SDG or seeking redress against non-compliance. On the other hand, human rights are legally binding and provide an avenue for the rightsholders to seek redress against the state for non-compliance. The binding legal obligations create a positive outcome on accountability and empowerment of the rightsholders. In countries where the human rights to water or sanitation have been recognized in the domestic legal framework either expressly or impliedly (structural indicators), communities have been empowered to take legal action against the state and non-state actors for non-compliance (either based on failure to take action or establish processes for the progressive realization of the rights – process indicators; or based on the adverse outcomes from their actions or inactions – outcome indicators) (Waterlex, 2014).

CONCLUSION AND RECOMMENDATIONS

While it is understood that current efforts must be accelerated exponentially to achieve the 2030 water and sanitation targets, the related SDG indicators do not support monitoring of the multidimensional aspects of SDG 6. It is therefore recommended that countries and non-state actors should explore monitoring SDG 6 by integrating human rights indicators offering insights into state commitment (structural), signaling the status of realisation within the reporting period (threshold), highlighting ongoing efforts for improving coverage (process), and showcase the impacts on rightsholders, particularly people living in vulnerable situations (outcome).

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TRACK 6: LAND USE AND PLANNING LAW

HARMONIZING THE CHALLENGES ON HERITAGE SITES CONSERVATION AND PLANNING LAWS IN MALAYSIA

Azni binti Mohd Dian^{1*}, Tunku Intan Mainura Tunku Makmar Nizamuddin², Noraziah bt Abu Bakar³

^{1,2,3}*Faculty of Law, Universiti Teknologi MARA, Malaysia*

Email: ¹azni378@uitm.edu.my; ²tunku_intan@uitm.edu.my; ³noraziah@uitm.edu.my*

**Corresponding author*

ABSTRACT

The protection of heritage sites is essential for preserving cultural, historical, and architectural treasures. However, reconciling planning law, which focuses on urban development, with heritage law, aimed at safeguarding the integrity of heritage sites, presents significant challenges. This research paper examines the key challenges involved in harmonizing these legal frameworks to strike a balance between development and heritage sites conservation. The paper explores the competing objectives between planning law and heritage law, the lack of coordination and communication among relevant authorities, legal and regulatory inconsistencies, the difficulty of balancing development pressures, financial considerations, stakeholder engagement and public perception, as well as the impact of rapid urbanization and infrastructure development. By understanding these challenges, it is possible to identify potential solutions and strategies for effective reconciliation between both planning and heritage laws to ensure heritage sustainable development and promotion of its rich cultural and historical sites for future generations.

Keywords: *Heritage Sites Conservation, Planning Law, Sustainable Development, Challenges*

INTRODUCTION

The preservation of heritage sites is crucial in safeguarding cultural heritage and fostering a sense of identity, pride, and social cohesion within communities. However, rapid urbanization and modernization have led to the encroachment of development projects on heritage conservation efforts, resulting in the destruction or alteration of valuable historical sites. This research aims to investigate the legal and regulatory frameworks at the national, state, and local levels, related to heritage sites preservation and planning development. Applying a qualitative approach to provide a robust understanding and insights of the topic, the international legal instruments will also be analyzed to provide a comprehensive understanding of the global legal context surrounding local heritage protection. The research reveals the importance of balancing planning development with heritage preservation, strengthening legal and regulatory frameworks, fostering stakeholders and community involvement, and governmental coordination initiatives. The findings and recommendations serve as a valuable resource for policymakers, heritage site managers, conservation organizations, and other stakeholders involved in the preservation and sustainable development of Malaysia's cultural and historical heritage.

LITERATURE REVIEW

The harmonization of legal frameworks in striking a balance between development and heritage site conservation is a complex endeavor. Scholars emphasize that competing objectives between the heritage law and planning law are glaring. While planning law often prioritizes economic growth, infrastructure development, and urban expansion, heritage law conversely emphasizes on the protection of cultural significance and authenticity. This inherent tension makes it difficult to strike a balance and integrate the two frameworks effectively (Dian et.al 2013; Ana P.R, 2019; Fatemeh et.al 2022). Fragmented governance structures and the lack of coordination among various governmental bodies involved in development and heritage conservation need to be resolved. The shattering of responsibilities among planning authorities, heritage agencies, and other relevant bodies often leads to overlapping jurisdictions, inconsistent decision-making, and inadequate coordination of intergovernmental powers (Siân, 2017; Sheila et.al, 2013). As a

result, conflicts may arise, leading to suboptimal outcomes in preserving heritage sites (Marta 2013; Ministry of Housing, Communities & Local Government, 2014). In Malaysia, there were various notable cases where historical buildings were demolished such as Pudu Jail, Kuala Lumpur, a historic prison built in 1891, despite protests from heritage conservationists; Bok House, many conservationists opposed to its demolition, calling the Bok House an important heritage treasure which authorities held that the mansion had no historic or aesthetic value; Acheen Street Mosque, Penang built in the 18th century and considered one of the oldest mosques in Penang, was partially demolished to make way for an expansion project (Dian et.al, 2013). Further, scholars have explored differences in criteria for assessing heritage significance, conflicting preservation standards, and varying procedures for granting approvals, all of which contribute to confusion and conflicts in decision-making processes (Dian, 2022; Timothy, 2009). Effective stakeholder engagement and public perception also play a vital role in harmonizing legal frameworks. Researchers emphasize the importance of involving local communities, property owners, developers, heritage experts, and the public in decision-making processes (Pereira, 2014; Ashworth, G. J., 2011). Thus, it is significant to reconcile the legal frameworks to ensure a clear and consistent approach to heritage conservation within the broader planning development context. However, in Malaysia there is a lack of studies in harmonizing the legal frameworks to strike a balance between planning development and heritage site conservation.

METHODOLOGY

Applying a qualitative method, this paper will explore the relevant legal frameworks and case studies, in identifying challenges in harmonizing both planning and heritage laws. A comparative analysis of the research findings with relevant international case studies or best practices in heritage conservation and planning development will also be conducted to identify transferable lessons and approaches.

FINDINGS AND DISCUSSION

This research reveals several challenges in harmonizing the laws on heritage sites protection and planning development. One of the primary challenges is competing objectives between planning law's emphasis on economic development, urban growth, and infrastructure needs, and heritage law's goal of preserving the authenticity and cultural value of heritage sites. Lack of coordination between planning authorities and heritage agencies is another issue that can cause inconsistent or conflicting approaches to heritage protection, leading to potential damage or loss of cultural significance. In the context of legal and regulatory frameworks, the differences in legal definitions, conflicting procedures for granting approvals between planning law and heritage law, have led to inconsistencies and ambiguity in the protection of heritage sites. In addition, achieving a balance between development pressures and heritage conservation which often requires restrictions on development activities is another factor that causes a complex challenge, especially in rapidly expanding urban areas. It is also discovered that in reconciling planning law and heritage law requires active engagement with stakeholders, including local communities, property owners, developers, and heritage experts. Differing perspectives, competing interests, and lack of public awareness or support can complicate decision-making processes and implementation of heritage protection initiatives.

CONCLUSION AND RECOMMENDATIONS

Addressing heritage sites development and planning issues in Malaysia requires a multi-faceted approach that encompasses legal protection, community engagement, sustainable tourism planning, and public education. By safeguarding and responsibly developing these valuable cultural assets, Malaysia can ensure the preservation of its heritage for future generations while reaping the social, cultural, and economic benefits that come with it. The challenges faced in reconciling planning law and heritage law in protecting heritage sites are complex and multifaceted. Overcoming these challenges requires improved coordination, effective communication, legal harmonization, stakeholder engagement, and a balanced approach to development. By finding innovative solutions and promoting a shared understanding of the value of heritage, it is possible to strike a balance that ensures the preservation of cultural treasures while facilitating sustainable urban development.

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TRACK 6: LAND USE AND PLANNING LAW

THE LEGAL CHALLENGES IN TENURE SECURITY OF LAND REGISTRATION SYSTEM IN WEST MALAYSIA AGAINST LAND FRAUD ACTIVITIES

Noraziah Abu Bakar^{1*}, Azhani Arshad², Ismah Ismail³, Hartini Saripan⁴, Syuhaeda Aeni Mat Ali⁵ & Che
Audah Hassan⁶

^{1,2,3,4,5,6} Faculty of Law, Universiti Teknologi MARA, Malaysia.

Email: ¹noraziah@uitm.edu.my; ²azhani_arshad@uitm.edu.my; ³ismah65@uitm.edu.my;
⁴hartinisaripan@uitm.edu.my; ⁵syuha497@uitm.edu.my; ⁶audah@uitm.edu.my

*Corresponding Author

ABSTRACT

The National Land Code 2020 (Act 828) (NLC) has adopted the Torrens System, where registration is the cardinal principle. Hence, the lengthy process to enable the instruments' registration inevitably exposes the process to a possible fraudulent land transaction. As a result, the validity of the registration is open to attack under Section 340(2) of the NLC. The statistics of the Royal Malaysia Police from 2010 until 2021 show that 1,894 cases were reported, indicating that land fraud is rampant. The computerised land registration system was introduced via Schedules 14 and 16 of the NLC. In the interest of justice, the paradigm shift to an automated registration system should continue to serve the core of the Torrens System more efficiently. Thus, this study aims to review the conveyancing's weaknesses that allow fraudsters to penetrate the conveyancing system and dilute the security of tenure. A doctrinal method is used where the relevant legal provisions and cases are evaluated.

Keywords: *registration, land transaction, land fraud, conveyancing system, security of tenure*

INTRODUCTION

The UN-Habitat states that security of tenure is an effective way to safeguard the relationship between people and land in rural and urban areas to derive social stability, poverty reduction, improved land management and functioning urban land markets. It derives from the fact that a known set of rules underwrites the right to access and use land and property and that this right is justiciable (Kamilah Wati, 2020). Registration is used to achieve certainty of title as proposed by Robert Torrens in 1857. Registration results from the conveyancing procedures and practices are legally monitored by the National Land Code 2020 (NLC) since no specific statute governs the conveyancing law and procedures. It is, therefore, appropriate to evaluate the conveyancing procedures and practices and the relevant stakeholders to detect any inconsistencies in the chain of the conveyancing process. Society depends on the stakeholders, especially the land authority and solicitors, to ensure their title or interest is safely safeguarded, and they could obtain an indefeasibility upon registration. Introducing the computerised Land Registration System (CLRS) under the 14th and 16th Schedule of the NLC provides an efficient avenue for the land administration in West Malaysia to ensure registration is not tainted with land fraud. However, these fraudulent activities are still rampant, and the tainted instruments can be registered without detection. During the Movement Control Order (MCO) restrictions, statistics from the Royal Malaysia Police indicate that 244 cases were reported for land fraud activities. In brief, such activities are still possible despite MCO restrictions.

LITERATURE REVIEW

Low (2008) identified that fraud or forgery is mainly committed in land transactions to obtain illegal financial profit or easy money. Thus, the usually targeted land transactions are charges and transfers since these two types of dealings can provide lucrative gains. It is established that various factors enable land fraud, such as the title deed or instrument of dealings handed over by the fraudster to secure execution, no proper verification procedures being conducted by the parties, and simultaneously it also involves non-compliance with attestation procedures provided under the law (Abdul Nasir, 2005). According to (Wong,

2011), it is a familiar fact and accepted practice that solicitors will only sign the attestation form after the relevant parties have executed the instrument in the land transaction. Therefore, non-compliance with the legal requirement of the attesting provisions inadvertently assists fraudsters in accomplishing their mission of registering title or interest (Abu Bakar, 2019). Inevitably, as pointed out by (Karim, 2011), various types of fraud may easily penetrate the conveyancing process, such as fraud by forging instruments, forged court orders or power of attorney.

The NLC provides a legal mechanism that serves as a filter for fraud detection, which requires that the Registrar, as the registering authority, is entitled to suspend or reject any dealing instrument that is not fit for registration as provided under Section 298. However, as viewed by (Kok, 1998), the filter functions in a limited way because the duty is only to determine whether the dealing instruments and all other accompanying documents are technically fit for registration without the need to ascertain or verify the authenticity of the documents or signature of the parties in the documents. Wong (2011) identified that most fraud or forgery occurred before registration, which can go undetected at the Land Registry or Land Office. To a certain extent, (Salleh, 2006) states that if a fraudster can penetrate the filter without much difficulty, then it poses a question as to whether the NLC as it stands today is still good law when an innocent party becomes a victim.

METHODOLOGY

Doctrinal legal research is employed to systematically obtain legal resources relating to the legal challenges in ensuring land fraud activities are curbed from penetrating the automated land registration system.

FINDINGS AND DISCUSSION

Othman (2015) opines that registering instruments of dealings by using additional support documents, such as Power of Attorney and Court Order, may also contribute to fraudulent activities since the registering authority does not authenticate these documents. Besides that, a lack of monitoring in the procedures for applying lost title deeds and the staff of the land authority may also conspire with the fraudster for illegal gains (Othman, 2015). (Teo, 2012) suggested that the Land Authority should put adequate safeguards and be more vigilant when registering instruments of dealings.

CLRS that may become a solid base for the modernisation of the land administration system is the conversion of manual documents of title to computerised documents of title, where the result would be that the land information system will be kept and maintained in a database which is more reliable and able to accommodate future electronic transactions. However, by incorporating technology into the registration system, precautions should be adequately taken, especially on safety and security measures relating to the database. In *The Bank of Nova Scotia Bhd v Saunah Kasni & Or [2016] 1 CLJ 503*, it was decided by the court that the plaintiff who has in its custody the original title deed shall have priority over the land even though the original computerised print out was issued illegally. In *Rajamani Meyappa Chettiar v Eng Beng Development Sdn Bhd & Ors [2016] 4 CLJ 510 HC*, it was decided by the court that the issuance of a second title over the same piece of land is a nullity and the replacement is void, having no legal effect and incapable of conferring indefeasibility.

CONCLUSION AND RECOMMENDATIONS

Maidin & Hunud (2009) opine that the most effective ways to curb and reduce fraudulent land transactions were by opting for a more rigorous conveyancing system and a sound land administration system. As described by (Abu Bakar, 2019), fraud is based on human greediness where dishonest opportunists in society, through the loopholes of law or the ignorance of the society, which allows any dishonest opportunists to commit malpractices. Summarily, fraudulent conduct can never be eliminated, but it may be curbed by strengthening the law and evaluating the weak links within the registration process. Documents must be authentic, people must be genuine parties, and the database must be accurate to ensure validity and gain indefeasible title or interest in land. As such, an option could be to execute the administrative measure by having a synergy relationship between all related government agencies and the Malaysian Bar Council which could be implemented by setting up a one-stop-centre, consisting of the representatives of all the government agencies for reference purposes, by any parties who may need to seek verification of documents and parties.

ACKNOWLEDGEMENT

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TRACK 6: LAND USE AND PLANNING LAW

AN ASSESSMENT OF PROCESS, PROCEDURE, AND MONITORING SYSTEM IN HILLY AND SLOPE AREAS

Yusnaim Abdul Rani^{1*}, Muhammad Adam Che Yusof²^{1,2}*College of Built Environment, ³Universiti Teknologi MARA, Malaysia.**Email: ¹yusnaim@uitm.edu.my; ²adam828@uitm.edu.my***Corresponding author***ABSTRACT**

Development pressure is often linked to aggressive development activities carried out in the region with a slope of 25 degrees and above. Development control in hilly and slope areas is enforced through statutory provisions. Among the acts and guidelines outlined for hillside planning and development control are the Town and Country Planning Act 1976 [Act 172], Land Conservation Act, 1960 [Act 385], Environmental Quality Act 1974 [Act 127], and planning guidelines. Legislation is a method or tool to control development in the hills. The main purpose of this paper is to assess the process, procedure, and monitoring system of development in the hilly and slope areas. Methods used in this paper consist of physical analysis and qualitative analysis. This paper found that the processes and procedures during development in hilly and slope areas are following the overall development process. However, it should be further refined by referring to the application to the National Physical Planning Council (NPPC) for large-scale and high-density development. Local plans need to be streamlined again by marking areas within the environmentally sensitive area and are not necessarily zoning as development areas. The lack of continuous monitoring of the local planning authority has been a factor in the occurrence of landslides and so on in hilly and slope areas. The recommendation and conclusion are to improve the process, procedures, and monitoring systems in hilly and slope areas through marking in the development plan, development who needs to refer to NPPC, and a new development procedure regarding hilly and slope areas.

Keywords: *Procedure, Monitoring, Slope, Legislation, Local Plan*

INTRODUCTION

Development pressure is often linked to aggressive development activities carried out in the region with a slope of 25 degrees and above. Rapid development is undertaken in order to meet current demands for development. Uncontrolled development activities in hilly areas often affect soil stability (change the geology) in which these problems lead to catastrophes like soil erosion and landslides. Eventually, in the long term, this calamity will form downstream sedimentation and flooding. Among acts and guidelines outlined for hillside planning and development control are Town and Country Planning Act 1976 [Act 172], Land Conservation Act, 1960 [Act 385], Environmental Quality Act 1974 [Act 127], and planning guidelines. Thus, legislation is a method or tool to control development in the hills. However, if the legislation, rules, and guidelines provided are not adhered to by the key players; developers, and decision-makers in order to maintain the quality of community life and to safeguard the environment, definitely this situation will further hurdle issues and problems related to hillside development. Therefore, an inclusive mechanism is needed to strictly monitor the implementation of all related rules and guidelines on highland development before, during, and after a development activity takes place. Abdul Rani, Y (2018) have identified problems related to this issue as (1) development pressure, (2) Lack of understanding of the process, procedures, and guidelines for the development in hilly and slope areas, (3) Lack of monitoring by the Local Planning Authority and (4) no zoning regulation in the context of Environmentally Sensitive Areas in the Local Plan. The main purpose of this paper is to study the existing process and procedure of development in the hilly and slope areas. The objective of the research is to (1) identify the gap in process, procedures, and monitoring of development in the hilly and slope areas, (2) identify the issues of the development in the hilly and slope areas, and (3) suggest improvements for existing process, procedures, and monitoring in the hilly and slope areas. The research question is (1) what

the significant impacts of the development process in hilly and slope areas are, (2) how are the decision being made for development in hilly and slope areas, and (3) Why still have development in environmentally sensitive areas.

LITERATURE REVIEW

The 'development' activities in the country are subject to some existing legislation such as the National Land Code 1965 (Act 56) and the Town and Country Planning Act 1976 (Act 172) which are the basis of the land development control regulation. The two laws are enacted to establish a systematic land administration, regulating, controlling, and planning the development and use of land and buildings within the country. According to the Development Guidelines in the Highlands and Hillside for the State of Selangor (2015), the definition of highlands is a land of more than 150m above sea level and the slope is above 25 degrees, while the hillside is a high-risk hillside with a natural slope from 25 degrees upwards and is a natural slope before cutting and reclamation activities. Unit Cerun dan Geoteknik, (2015) identified hill areas are divided into three (3) groups which are hilly and slope areas for maintenance; hilly and slope areas that can be developed with control; hilly and slope areas that cannot be developed.

The Scenario of the Process and Procedure in Malaysia

Subsection 2(1) of Act 172 defines planning permission as the authorization granted, with or without conditions to carry out development. Section IV of Act 172 provides for all applications to carry out 'development' or 'development' to be submitted to the local planning authority to obtain the application for planning permission. Normally a local planning authority has certain procedures that are followed in managing an application for planning permission based on a policy determined by the State Authority. Notwithstanding any applicable procedure, it shall satisfy the requirements provided under Act 172. Every application for planning permission involving development on the summit and hillside should be referred to the State Technical Committee on Environmentally Sensitive Areas. According to Sew, G.S (2015), the Committee also assesses the suitability of the Layout Plans, the Development Proposal Report (LCP), the Topographic Geology Mapping Report, the Earth Work Plans, the Geotechnical Investigation Report and the Slope Stability Analysis, the Report on the Cuts and Erosion Sediment Control (ESCP) Report, Stormwater Management Report) based on the Environmentally-Friendly Drainage Manual (MSMA) 2012, Environmental Impact Assessment (EIA), and other related application reports involving class III and class IV of land. Current practice shows that there are eight (8) states in Peninsular Malaysia that have special committees namely Selangor, Perak, Penang, Pahang, Kedah, Kelantan, Melaka, and Terengganu, while three (3) other states namely Johor, Negeri Sembilan, and Perlis has no such committees. However, these specialized committees have different memberships, roles, and procedures between each state. The Committee is responsible for considering applications involving development at hilly and slope areas and determining whether an application should be referred to NPPC or not. Currently, the implementation of development in the ESA is not referring to NPPC as stipulated in Act 172. It is because paragraph 22(2A)(c) of Act 172 does not apply to the size/type of development in the ESA areas that need to seek advice from NPPC. Without the provision of the size/type of development, project proponents face difficulty determining whether there is a need for such a project to seek advice from NPPC. Nowadays, the local plan does not clearly state whether the area is located within the ESA or not because it is not stated in the zoning plan (proposal map). Local authorities will face difficulty deciding on planning permission for development involved in the ESA area. The interpretation of hilly and slope areas varies according to some states in Peninsular Malaysia. Most states adopt the interpretation as in the Guidelines of Development in Hillside and High Land (2012), provided by PLANMalaysia, KPKT (> 300m are categorized as highlands). Nevertheless, in Penang, an area over 76m has been classified as a highland in The Penang Safety Guideline for Hillside Development, (2012). There are several states that have specialized procedures and committees in processing planning permission involved in ESA areas.

Comparative Study between Malaysia, Hong Kong, and Indonesia

Guidelines and procedures are compared between Hong Kong, Indonesia, and Malaysia. In Hong Kong, The Hong Kong Planning Standards and Guidelines (HKSPG, 2013) is an administration manual of criteria for deciding the scale, area, and site prerequisites of different land uses (Hussein & Mohd Yaacob, 2012). The reason for the HKSPG is to give general rules to guarantee that amid the arranging procedure. The capable department that involves in land and planning development in Hong Kong is the Department of Planning, Hong Kong. The Planning Department oversees detailing, observing, and exploring urban

and regional planning in arranging related customized policies for the physical advancement of Hong Kong. It additionally manages to arrange at the regional, sub-territorial, and district levels and furthermore as an administration to The Town Planning Board. (Liu et al., 1997). The idea of the One Stop Center (OSC) is to give a brought-together office to getting entries of plans and related applications, (for example, those for uncovering grants, specialized review for waste and water supply association works), and in addition planning joint assessments to be directed by various government divisions. It intends to provide accommodation to the business by offering a solitary purpose of contact. It ought to likewise spare the opportunity for engineers and their approved people or delegates in influencing applications to various offices and service organizations and reach diverse gatherings for assessment (To figure 1). (Efficiency Unit, 2013)

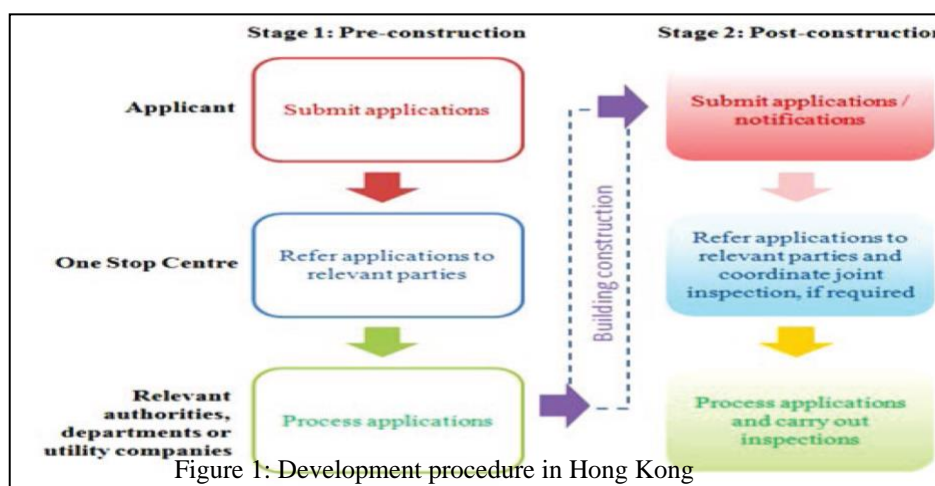


Figure 1: Development procedure in Hong Kong
 Source: Efficiency Unit, Hong Kong, 2013

Table 1 depicts a useful relative examination of pertinent enactments for good country improvement in Malaysia and Hong Kong.

Table 1: Comparative of relevant legislations for highland development between Malaysia and Hong Kong

Country	Act	Key Emphasis
Malaysia	National Land Code (1965) [Act 56]	The National Land Code gives control relating to arrival matters. It incorporates the conclusions for distribution, organization, access to data, and assent worried ashore utilize rights, interests, and limitations. It incorporates advancement endorsement and land utilization conditions, title creation, limitation, and intrigue creation.
	Town and Planning Act 1976 [Act 172]	Town and Country Planning Act has been made for legitimate control of town and nation arranging in neighborhood expert regions. It is additionally has been stipulated that land improvement might be controlled and started through the detailing and recognizable proof of a structured design and a nearby arrangement.
	Environment Quality Act 1974 [Act 127]	The Environment Quality Act 1974 has accentuated the critical part of deliberately controlling and encouraging the significance of natural security from being annihilated in the land improvement process.
Hong Kong	Hong Kong Planning Standards and Guideline (HKPSG)	The Hong Kong Planning Standards and Guidelines is an administration manual of criteria for deciding the scale, area, and site prerequisites of different land uses and offices. The reason for the HKPSG is to give general rules to guarantee that amid the arranging procedure.
	The Building Ordinance	The Building Ordinance is to give the arranging, outline, and development of buildings and furthermore to make

Country	Act	Key Emphasis
		arrangements for rendering hazardous buildings and land safe.

Source: Hussein & Mohd Yaacob, 2012

In Indonesia, areas prone to landslide disasters are distinguished over zones based on their natural character and physical condition (Karnawati, 2005). A potential landslide zone is a region/region prone to landslide disasters with terrain conditions and geological conditions that are very sensitive to external disturbance, both natural and human activities as a trigger factor for soil movement, potentially causing landslides. From several incidents the disaster of moving the mass of soil/rocks in Indonesia divides the movement conditions in general can be distinguished over several typologies based on the speed of motion as follows:

a. Zone Type A

Potentially landslide zones on mountain slopes, mountain slopes, hillsides, hillsides, and river cliffs with slopes more than 40%, with altitudes above 2000 m.

b. Zone Type B

Potentially landslide zone at the foot of the mountain, the foot of mountains, the foothills, the foothills, and the riverbanks with a slope ranging from 21% to 40%, with a height of 500 meters to 2000 m.

c. Type C Zone

This zone is a plateau, lowland, plain cliffs, or river valley with a slope ranging from 0% to 20%, with a height of 0 to 500 m.

METHODOLOGY

This research methodology is organized into two (2) parts of analysis which are the physical analysis and qualitative analysis, with the intention to highlight the issues in terms of process, procedure, and monitoring system of development in hilly and slope areas. For physical analysis, Geography Information System (GIS) is used to identify the sensitive areas that should be protected from development. The frame of the analysis will be based on the analysis of the slope, height, and land use elements in the study area. Data such as slope and height are the basic data where the sensitivity of the area to development will be derived based on the analysis. The integration of disaster risk areas will result in a whole model of environmentally sensitive areas in the context of hilly and slope areas. This model will combine the three (3) elements and divide them into two (2) degrees of sensitivity which are high and low. From the height analysis, slope analysis, and disaster-prone areas plan, sieving techniques are used to identify development-sensitive areas. The analysis is carried out using GIS software where Figure A shows a height analysis, while Figure B shows a slope analysis. Figure C shows the sieving analysis from height and slope analysis to get disaster-prone areas. Figure D shows the results of the analysis of the three (3) criteria and has resulted in a development suitability plan. The criteria used to obtain a suitability plan for development is to select an area over 300 meters and an area that is more than 25 degrees. The specified criteria are based on the Guidelines on Development Planning in the Highlands and Hillside issued by PLANMalaysia. While qualitative analysis involves interviews with experts. The interviews involved stakeholders that related to the study which consisted of the local authority, the custodians of Town and Country Planning, professional bodies, and developers. All data obtained from all respondents were compiled and analyzed according to their respective fields via content analysis. From this method, it is much easier to understand the roots of the problems and generate solutions. Therefore, it is important to digest the opinions and suggestions of the experts in general on process, procedure, and monitoring systems of development in hilly and slope areas.

FINDINGS AND DISCUSSION

Based on the figure below, it is found that the Local Authority has given planning approvals to areas that have been categorized as areas of risk for development. The dark chocolate color of the map shows the areas that are sensitive in terms of hilly and slope areas and not suitable for development. Among the developments is the development of residential land. This can be seen by the breakdown of housing lots in areas categorized as risky areas for development in these risk areas may result in landslides, soil erosion,

mudflows, etc. which may result in damage to property and safety of residents living in the area if the processes, procedures and controls are not carried out with integrity.

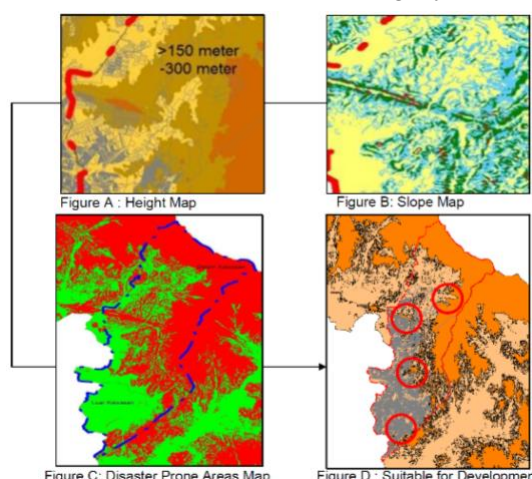


Figure 2: An analytical

model for suitable areas

Based on the expert interviews, there have been identified a number of key issues that are key factors that need to be addressed to evaluate the process, procedures, and monitoring system for the development of hill and slope areas. The key issues that can be identified are described in the table 2 below:

Table 2: Main issues of process, procedure and monitoring system in hillside areas

Main Issues of Process, Procedure, and Monitoring System in Hillside Areas											
Main Problems	Federal Govt.		State Govt.		Local Authority		Developers		Professional Bodies		Total
	R1	R2	R1	R2	R1	R2	R1	R2	R1	R2	
Monitoring And Enforcement Aspects	√	√	√	√	√	√	√	√	√	√	10
Complex Process and Procedure	√	√	√	√	√	√	√	√	√	√	10
A policy that Allows Development categorized In Class 3 Slope.	√	√	√	√	√	√	--	-	-	√	7
Different Interpretation for Hilly and Slope Areas	√	√	√	-	-	-	√	√	√	√	7
Developers are Not Following Procedures and Conditions Imposed By LPA	-	√	√	√	√	√	√	√	-	-	7
Longer Time Taken in Processing The Applications	-	-	-	-	-	-	√	√	√	√	4

This paper found that the processes and procedures during development in hilly and slope areas are following the overall development process. However, it should be further refined by referring the application to the National Physical Planning Council (NPPC) for large-scale and high-density development. There are significant differences in the context of development processes and procedures in hilly and slope areas have occurred between states. It is found that the State of Selangor and the State of Penang have different methods of assessment and hill interpretation due to the differences in landforms between areas that enable the state to look into detail at the application of planning permission in hilly and slope areas. In my point of view, it is a good thing to make sure each state has its own method of assessment and criteria as each state has no similar topography structure.

The monitoring system was less conducted by the local planning authority (LPA). According to the Development Guidelines in the Highlands and Hillside for the State of Selangor (2015), the monitoring stages for development projects at hilly and slope areas are divided into three (3) main stages namely monitoring before construction work, monitoring during construction work and monitoring after construction work. This is because it will cost substantially to the LPA because it will involve monitoring the schedule at least once a month and will need meetings with developers for reporting the issues. The lack of continuous monitoring of the local planning authority has been a factor in the occurrence of landslides and so on in hilly and slope areas. Based on the analysis conducted through expert interviews, it is found that most developers do not comply with the comments required by the Local Authorities such as a plot ratio not more than 1:1.25 (not less than 5 storey) and to do self-monitoring. This is a mistake that can cause a slope failure factor and an undesirable event. This is because the review required by technical agencies is a professional view that has been viewed through various aspects. If monitoring is carried out before construction, during construction, and after construction, the percentage of landslides and so on will be reduced even more efficiently.

This study also found that 40% area in Ampang Jaya is a highland area from level 1 to level 3 and is in the slope of classes 3 and 4. This is evidenced by the height analysis and slope analysis plan. In addition, the area is also an area that has experienced landslides. Based on the findings, it is not surprising that most housing developments are carried out in hilly and slope areas. With the increasingly dense development of flat land, developers have shifted to development in highland areas with their own value. It was found that applications in hilly and slope areas were approved by the local planning authority. This is because the saturated land use factors in the development focus area and the local planning authority have no right to deny development to be carried out in these hilly and slope areas. This is because the power to make any development is from the landowner and there is no policy from the government that does not allow development in the environmentally sensitive areas. Local plans need to be streamlined again by marking areas within the environmentally sensitive area and are not necessarily zoning as development areas. The lack of continuous monitoring of the local planning authority has been a factor in the occurrence of landslides and so on in hilly and slope areas. This research also found that applications in hilly and slope areas were approved by the local planning authority. This is because of the saturated land use factors in the development focus area, and the local planning authority has no right to deny development to be carried out in these hilly and slope areas. This is because the power to make any development is from the landowner and there is no policy from the government that does not allow development in the environmentally sensitive areas.

CONCLUSION AND RECOMMENDATIONS

Among the recommendations is to enhance the process and procedure but it depends on the willingness of a local plan in identifying the environment-sensitive area. Currently, almost all local plans do not specifically indicate the area categorized as ESA. Hence, the provision of the upcoming local plan requires the establishment to enable the application to be referred to the NPPC. In this regard, this study has proposed a procedure for processing development applications in hilly and slope areas to be implemented in the states of Peninsular Malaysia. The determination of the planning permission application to be referred to get advice from the NPPC is based on reinforcing the criteria as set in the guidelines in housing development and environmental quality order (1) any residential development and urbanization which has an area >20 ha; (2) development involves >50% of the area is located on the slope of class III and above (>25°); and (3) high-density development proposals, which include a housing with density >40 units per acre, or ≥100 units per hectare; or commercial with plot ratio >1: 4. Generally, the set criteria is a large-scale development that will have a significant impact on the surrounding area and the impact on the environment. Therefore, the criteria for such a determination shall be referred to NPPC for advice and views.

As a conclusion, detailed processes and procedures are crucial in ensuring the area of ESA, which is also the final venue for flora, fauna, and habitats that are agents of the country's biodiversity balance. Referring to the problems that occurred in the process, procedure, and monitoring system in hilly and slope areas, it was found that the process, procedure, and monitoring in development for hilly areas are very important in order to prevent a disaster in urban areas. The problem statement such as development pressure, lack of understanding of the process, procedures, and guidelines for the development in hilly and slope areas, lack

of monitoring by Local Planning Authority made to the existing slope, and no zoning regulation in the context of ESA in term of highlands in the Local Plan, strengthening the facts that the process, procedure, and monitoring in development for hilly areas need to be assessed to ensure the holistic planning was implemented in the current situation. Therefore, improvement actions and solutions should be taken wisely plus the responsibility of authorities in addressing these problems to strengthen the process, procedure, and monitoring system in hilly and slope areas.

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TRACK 6: LAND USE AND PLANNING LAW

PRELIMINARY STUDY OF DISPUTE SETTLEMENT OF INCOMPATIBILITY OF LAND RIGHTS WITH SPATIAL PLANS IN INDONESIA

Arif Firmansyah^{1*} & Sri Poejiastuti²

^{1,2}*Faculty of Law Universitas Islam Bandung, Indonesia*

Email: ¹arif.firmansyah@unisba.ac.id; sri.poedjiastoeti@unisba.ac.id ²yyy@uitm.edu.my

**Corresponding author*

ABSTRACT

Land use requires government authorization. Numerous instances of landing have resulted in the arbitrary application of laws to revoke individual property rights. Implementation of Law No. 26 of 2007 on the establishment of space, which in principle respects individual property rights, is used as a tool to repress, extinguish, or even eradicate individual rights. There is an inconsistency between the setting up of the land and the arrangement of the space so that a significant number of people who have the right to the land cannot use their land because its use is inconsistent with the spatial plan. This study uses normative juridical research methods with conceptual approaches and legislative approaches. The scope of the settlement of the inconsistency between the right to land with the spatial planning plan is settlement of regional boundaries, settlement of discrepancies in provincial spatial layout plans, forest area spatial plans, permits, concessions, land rights and/or management rights; institutional and management of Spatial Inconsistencies, Forest Areas, Permits, Concessions, Land Rights, and/or Management Rights.

Keywords: *Labelling, Land Right, Land Management, Dispute Settlement*

INTRODUCTION

In carrying out the authority of the state's right to control, the state gives the authority to regulate and administer the allotment and use of land. The state can draw up a general plan in the arrangement for allotment of land use. In contrast, the arrangement that gives authority to use land is determined by various types of land rights. General plan arrangements are regulated more specifically by Law Number 26 of 2007 and the Job Creation Law. Land use will lead to legal consequences related to land rights and space allocation as regulated in the Spatial Plan. The Spatial Plan has no concept of geographical limitations. However, boundaries, functions, and systems must be clear because space is associated with arrangements. Aspects of spatial planning and land rights are significantly interrelated because land functions as a resource for human activities that can be evaluated based on its characteristics, process and use. (Kotijah, 2011)

Land management is related to land tenure and ownership, while spatial planning is related to the use and utilization of space. The two are often in conflict in the current condition because the spatial use policy has yet to be integrated with land ownership. Spatial planning will be realized well if there is a balance between land use and utilization policies with land ownership and control. This can be seen in the issuance of certificates which often need to be in line with spatial planning, which is one of the problems that often occur in spatial planning. Owners of land rights often think that land ownership rights apply exclusively, so they often carry out activities outside the spatial plan on their land. This begins with land administration activities that are not correlated with land use regulation activities. This condition triggers the emergence of problems. (Puspasari & Sutaryono, 2017)

In 2021 the Ministry of Agrarian Affairs and Spatial Planning noted that based on the results of an audit report on controlling spatial use violations, the target was 336 and 240 cases were realized by the local government's agreement. (Direktorat Jenderal Pemanfaatan Ruang, 2021) Several cases occurred due to the need for more sync between Spatial Planning policies with land policies and activities in the forestry

sector. So it is necessary to compile a harmonization of control over the use of zoning and land use.

LITERATURE REVIEW

Land Right

Land rights are one of the company's rights to land. Individual land rights give authority to the right holders (individuals, groups of people collectively, legal entities) to control, which may include using or taking advantage of the land. Land rights are rights that give freedom to the right holders to use or take advantage of the land they own. The word "use" means that the land can be used to build a building, while the word takes advantage means that the land can be used for agricultural, plantation and animal husbandry purposes. (Urip Santoso, 2005)

Land rights must be registered. Land registration aims to create legal certainty by registering the land. (Ramadhani, 2017) The goal of legal certainty over land rights is to provide legal protection to holders of land rights (who owns it, whether or not there is a burden on it) and certainty regarding the object, namely its location, boundaries and extent, as well as whether or not there are buildings or plants on it. (Shinta Novi Wardhani -Rusdianto Sesung, 2018).

Spacial Planning

Space is a container that unites land, sea, and air as a single territorial unit, where people and other animals reside, do business and ensure their survival. Whether intentional or not, space utilization follows a structure and pattern called spatial planning. In contrast, spatial planning includes space utilization, space planning, and space utilization control. *Spatial planning* can be defined more precisely as an effort to implement a planned spatial layout while taking into account the state of the natural environment, the built environment, the social environment, interactions between environments, the stages and management of development, as well as enhancing existing institutional and human resource capabilities. Additionally, readily available, always grounded in national territorial integrity, and geared toward the maximum prosperity of the populace. Space needs to be organized to preserve natural harmony and give cosy support for people and other living things to engage in activities and maintain their best chances of survival. (Sinaga, 2020)

METHODOLOGY

This study uses normative legal research methods. Normative legal or library law research is conducted through research on library materials or secondary data. Normative legal research uses a conceptual approach and a statutory approach. This study focuses on normative research methods for legal synchronization both vertically and horizontally, and as a complement to arranging synchronization and harmonization, comparative law methods are used.

FINDINGS AND DISCUSSION

According to Article 2, paragraph (2) of the Basic Agrarian Law relating to the right to control the state, state authority is a juridical consequence of the state's existence as the owner of sovereignty in the context of the welfare of the people. The principle of controlling the state is a norm. The most important thing is that through the state's right to control, the government can make statutory regulatory instruments so that people have the legitimacy to own land and bring legal certainty to the community and investors in investing. (Ginting, 2011) Regulations or legitimacy for land rights is regulated in the Basic Agrarian Law. *Land rights* give the right holders authority to use and/or take advantage of the land. (Santoso, 2012)

Using the land required permission from the government. Many land cases resulted from applying arbitrary laws to eliminate individual property rights. The implementation of Law Number 26 of 2007 concerning Spatial Planning, which normally respects individual property rights, turns out to be used as a tool to repress, kill and even abolish individual rights. (Ginting, 2011) There needs to be more consistency in determining land rights with spatial planning so that few people with land rights cannot use their land because its utilization is not by the spatial plan. Territorial space includes land, sea, and air space, including space inside the earth and resources. It is a gift from God Almighty to the Indonesian people, who need to be grateful for, protected and managed sustainably for the greatest prosperity of the people. Spatial planning activities consist of 3 (three) interrelated activities, namely: spatial planning, spatial use, and control of spatial use. (Ahmad Jazuli, 2017). There are three important causes of urban spatial problems in

Indonesia: first, Indonesia needs to have integrated planning, so various problems arise related to urban development; second, consistency in implementing existing rules needs to be stronger. Third, the government cannot anticipate future problems. (Junef, 2016) The government 2020 has issued laws and regulations regarding job creation. In order to harmonize, the state issued Government Regulation Number 43 of 2021 concerning the Settlement of Disputes in Inconsistencies in Forest Areas, Permits and/or Land Rights.

In Government Regulation Number 43 of 2020, there are several discrepancies in resolving disputes between the land sector and spatial planning, namely:

1. settlement of regional boundaries
2. settlement of discrepancies in provincial spatial layout plans, forest area spatial plans, permits, concessions, land rights and/or management rights;
3. institutional and management of Spatial Inconsistencies, Forest Areas, Permits, Concessions, Land Rights, and/or Management Rights

CONCLUSION AND RECOMMENDATIONS

Conclusion

In resolving the dispute of land rights inconsistency with the space planning plan in Indonesia, several problems need to be addressed. There needs to be more clarity between the spatial and land policies, resulting in a conflict between land rights owners and the space planning plan. Many cases of landing are caused by the arbitrary application of the law and the inconsistency of the arrangement of the determination of the right to land with the layout of the space.

Recommendation

Improvement of land administration: Improving land administration is essential to ensure that the issuance of land certificates is in line with the land planning plan. Good administration will help avoid activities outside the spatial planning plan. Increased cooperation and Public Awareness: To resolve land rights issues through the spatial planning plan, there should be better cooperation between the local government, the Ministry of Agriculture and Space/National Farming Agency, and other relevant agencies. Adequate socialization and education should also raise public understanding of the value of conforming to spatial planning.

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TRACK 6: LAND USE AND PLANNING LAW

LEGAL OWNERSHIP OF “LOT LIDI”: AT THE PURCHASER’S OWN RISK

Norliza Abdul Hamid^{1*}, Noraziah Abu Bakar², Anwar Najib A’zmi³, Mazlifah Mansoor⁴, Rozlinda Abdullah⁵ & Hariati Mansor⁶

^{1,2,3,4,5} Faculty of Law, Universiti Teknologi MARA, Malaysia. ⁶ Universiti Teknologi MARA, Johor, Malaysia.

Email:

¹norlizahamid@uitm.edu.my; ²noraziah@uitm.edu.my; ³anwarnajib@uitm.edu.my; ⁴mazlifah414@uitm.edu.my.
⁵rozlinda@uitm.edu.my; ⁶hariati@uitm.edu.my.

*Corresponding Author

ABSTRACT

“Lot Lidi” or “stick lot” refers to a piece of land owned by a registered proprietor which is later subdivided into small plots to resell for the purpose of building houses. The category for the land use of this land is agriculture. Hence, building houses on the said land is violating the condition of land use under the law. Registered owners of land are subject to the National Land Code 2020 (Act 828), and the owners cannot act contrary to Act 828. Development or transactions relating to the land shall be based on the type of land use and development recognised under Act 828, such as partition and subdivision. For development purposes, such as erecting buildings, it is also subject to the Town and Country Planning Act (Act 172) and the Street Drainage and Building Act 1974 (Act 133). In principle, subdivision without making an application to the local authority before constructing the building is an offence under the law. This paper aims to analyse the reasons for the existence of Lot Lidi and why it is thriving in Malaysia. Doctrinal legal research is employed to obtain legal resources relating to the sale of *Lot Lidi* over agricultural land and its legal impact on the purchasers, who have incurred expenses with the expectation that, in return, they will obtain an indefeasible title over the *Lot Lidi*.

Keywords: *Ownership, Lot Lidi, land use, partition, subdivision*

INTRODUCTION

On 20 April 2009, in the Penang State Legislative Assembly, the Honorable Lim Guan Eng (the then Penang Chief Minister) (Penang State Legislative Assembly Conference, Hansard 231-315 2009) said that the concept of *Lot Lidi* does not actually exist in the National Land Code. The term “*Lot Lidi*” is widely used to mean that a piece of land is divided into a number of specific plots, where these plots are then sold. The buyers of the plots will build houses on their respective plots but the plots are not registered with separate issue documents of title. A typical scenario relating to *Lot Lidi* is that the landowners own the land jointly. They each build a house, and share an undivided grant. The registration of their names in the title is allowed since these lands are first grade lands. The problem that arises for them is the problem of sharing the title grant and the name of the registered landlord mortgaging the land to the bank or the landlord selling the land to a third party. Grace Xavier (2022) states that the concept of *Lot Lidi* does not exist in the National Land Code (Act 828), and defines *Lot Lidi* as land sold to a willing buyer who does not receive a title deed but, instead, receives a letter stating that the land is held under a Letter of Trusteeship. Ahmad Zaharin et al. (2020) states that based on the PLANMalaysia 2018 and JUPEM 2017 Land Use Information Division Report, Selangor is the state with the largest number of master stick lots (1,298,952 or 10.16%), Johor is the second (1,251,751 or 11.85%) and Perak is the third (1,026,807 or 11.34%). The research question for this study is what are the factors that attract people to purchase *Lot Lidi*. The objective is to ascertain the factors that attract people to purchase *Lot Lidi*.

LITERATURE REVIEW

The National Physical Plan Glossary issued by the Town and Country Planning Department (PLANMalaysia) defines a stick lot as a piece of land that has a valid land grant, but is later broken into

small lots for resale for the purpose of building houses. This general interpretation basically involves a contract for the sale of a small plot of land being legally valid because all the elements constituting a valid contract are met. However, the sale of a piece of agricultural land that has a valid title document which is then sold as small lots without making arrangements to transfer ownership to the purchaser will not confer a valid ownership of the land (Norhayati Umor 2018; Kerian District and Land Office, 2017; Muhamaad Razis Ismail, 2020; Department of the Director General of Land and Mines, 2021). If the condition of land use in the title deed is agricultural under Act 828, it has express and implied conditions that must be complied with by the registered owner. Section 115(1)(a) read together with Section 115(4) of Act 828 state specifically the implicit condition of agricultural land for the purpose of constructing buildings where it is only allowed for the following matters:

a house erected by the registered owner, employee, wage earner as a residence or for purposes related to agriculture such as a store in order to store agricultural produce. Buildings that can be constructed shall not exceed $\frac{1}{5}$ of the land area or two hectares, whichever is smaller;

buildings for agricultural purposes;

buildings for processing agricultural products;

buildings for the preparation of materials or agricultural products such as bee houses (honey), chicken coops or other agricultural products; and

management center, learning and others related to agriculture etc.

These terms must be complied with by the registered owner. The offence of violating land conditions shall render the land to be forfeited by the State Authority under Section 125 and Section 130 of Act 828 (Ahmad Zaharin et al. 2020). From the perspective of the authorities, the *Lot Lidi* issue is not only a legal issue, but it is also an economic and social issue and affects local authorities in carrying out their duties. If the purpose of the purchase of *Lot Lidi* is to build a house, then it is land development. There is no definition of development in Act 828, but Act 172 defines development under section 2 as carrying out any building. Therefore, the development of *Lot Lidi* that is made on agricultural land, must comply with the conditions of alteration and division of land under Section 124A of Act 828. In addition to that, Section 205(3) of Act 828 prohibits any subdivision application if a lot on agricultural land is to be divided result in the lot becoming less than $\frac{1}{5}$ of a hectare.

In a Deed of Trust prepared by the Vendor in the sale of *Lot Lidi*, the purchasers shall execute the Deed of Trust. Through the Deed of Trust, the purchasers are agreeable to appoint the Vendor as a trustee who will be responsible for managing the boundary violation application until the individual title to the building status is issued and transferred to the buyer (Real Estate Commander 2022). The situation becomes complicated if the Trustee dies without having time to apply for border breach. The purchasers' name is not registered. Thus, in any conflict between the beneficiary of the deceased and the purchasers of the land, the beneficiary's right shall prevail.

METHODOLOGY

Doctrinal legal research is employed to systematically obtain legal resources relating to the sale of *Lot Lidi* over agricultural land and its legal impact on the purchasers.

FINDINGS AND DISCUSSION

There are several factors that attract people to purchase a *Lot Lidi*. Salkukhairi A Shukor (2020) and Grace Xavier (2022) stated that *Lot Lidi* is cheaper compared to a land that has a title deed or offered by developers. Ismail Omar (2019) and Ahmad Zaharin M Saad et al (2020) view that buying *Lot Lidi* can reduce the cost in appointing architects or real estate consultants. In addition, the purchaser's reluctance to deal with many parties. Ahmad Zaharin M Saad et al. (2020) refers to the lackadaisical attitude of the purchasers. (Hijau Suria Blog 2021, Nezuha Nezuakifli 2022) the purchasers were trapped into buying *Lot Lidi* because they have no knowledge on real estate transactions and their desire to build a house on their own land. Nezuha Nezuakifli (2022) opines that the purchasers have confidence in the seller because of a clean track record and also, they failed to carry out a legal risk study. Land owners, on the other hand, enter into such transactions because *Lot Lidi* can be highly profitable (Aminah Mohsin et al. 2022).

The increase in house prices, the desire to own a house on their own land at a lower cost and the lack of knowledge about land law are factors contributing to the purchase of *Lot Lidi*.

CONCLUSION AND RECOMMENDATIONS

Due to the absence of name registration in the title deed, the purchaser is not entitled to get a bank loan using the land as collateral, including taking out insurance or rent (Ahmad Zaharin et al. 2020). If the purchaser dies, his beneficiary is not entitled to the *Lot Lidi*. In addition to the difficulties mentioned, the issue of water pipe installation, electricity installation, drainage and sewage lines, access roads to the lot and disposal of solid waste or in short environmental issues are also risks that the buyer of a stick lot has to bear. *Lot Lidi* purchasers are not legally recognised or is considered as *persona non grata*. Therefore, the public must be educated by the Federal and State Governments to prevent them from buying *Lot Lidi* because, in order to obtain an indefeasibility of title in land, they must be registered as the owners and be issued with separate issue documents of title.

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TRACK 7: BUILDING & CONSTRUCTION LAW

THE PRACTICE AND APPLICATION OF JUDICIAL MANAGEMENT ON INSOLVENT RESIDENTIAL DEVELOPER COMPANIES IN MALAYSIA AND SINGAPORE: A COMPARATIVE ANALYSIS

Aneesa Azaria Binti Shariful Azman¹, Mohd Affifuddin Bin Rusnan², Nur Afiqah Husna Binti Mohd Adnan³, Shahira Shasha Binti Redzuan⁴ & Syuhaeda Aeni binti Mat Ali^{5*}

^{1,2,3,4,5} Faculty of Law, Universiti Teknologi MARA, Malaysia

Email: ¹aneesaazaria97@gmail.com; ²affifuddinrusnan@gmail.com; ³husnamohdadnan@gmail.com; ⁴shxhira@gmail.com; ⁵syuha497@uitm.edu.my

*Corresponding author

ABSTRACT

Judicial Management (“JM”) is a court-supervised corporate rescue mechanism introduced in Malaysia, under the Companies Act 2016 (“CA 2016”) and governed under Companies (Corporate Rescue Mechanism) Rules 2018. JM involves a court-appointed liquidator whose main duty and function is to rehabilitate and rescue a financial distressed company by devising a restructuring scheme or statement of proposal for the approval of the company’s creditors. If rehabilitation is not possible, then the appointment of a Judicial Manager is aimed at ensuring that the creditors are able to obtain a better return on their debts than going through liquidation. The focus of this article is to analyse on JM’s strengths and weaknesses particularly in dealing with the problems of failed residential projects of insolvent residential developer companies. This article is a result of research conducted through a comparative legal research methodology with our neighbouring country, the Republic of Singapore. From the comparative study we can analyse, investigate and identify the respective jurisdictions’ strengths and weaknesses on JM, from which Malaysia can learn and initiate the appropriate legal reforms to strengthen our very own JM scheme. In due course, this paper seeks to identify any advantages and weaknesses of the JM scheme and provide recommendations to further improve the corporate rehabilitation mechanism carried out by the judicial manager in insolvency administration involving insolvent residential developer companies whose residential projects failed. Equally, this paper aims to also provide recommendations on how to better protect the rights and interests of the aggrieved purchasers in failed residential projects.

Keywords: Judicial Management (JM), Failed Residential Projects, Rights of Aggrieved Purchasers, Rehabilitation, Rescue Mechanism

INTRODUCTION

Judicial Management (“JM”) is a temporary court-supervised rehabilitation plan introduced through the Companies Act 2016 to assist financially distressed companies by affording an opportunity to rehabilitate and restore itself back to profitability. The Court shall make an order for the appointment of a Judicial Manager, and the Judicial Manager will work out a rehabilitation plan acceptable to the majority of creditors. However, this does not necessarily mean that the JM mechanism is able to protect the rights and interest of aggrieved purchasers that were unfortunately involved in an abandoned or failed residential project by an insolvent residential developer company. In this paper, we will analyse the current practice and ability of JM to deal with issue in failed residential projects and its rehabilitation. Due to that, research will be conducted in a selected scope where comparison will be made in terms of legal position between Malaysia and Republic of Singapore. The main objectives of this paper are to analyse the existing legal framework and current application and practice of JM in cases involving insolvent residential developer companies, and also to discover how Malaysia can examine the strengths and learn from Singapore to improve the JM legal framework that can adequately deal with the issues arising from failed residential projects. The research questions for this paper are:

(a) whether the existing legal framework pertaining JM mechanism is able to fully protect the rights

and interests of the aggrieved purchasers involving a failed residential projects of insolvent residential developer companies; (b) if the answer to the former is in the negative, what are the reform or improvements needed to improvised the existing framework for the benefits and protection of the purchasers' rights and interests; and (c) whether the current legislation, laws and practice in Singapore's JM mechanism are able to provide adequate protection to aggrieved purchasers in failed residential projects of insolvent residential developer companies.

LITERATURE REVIEW

Pursuant to the Section 18A of the Housing Development (Control and Licensing) Act 166 (Act A118), a residential project in Malaysia can be deemed to have been abandoned (failed), if the housing developer has refused to carry out or delays or suspends or ceases housing development work continuously for a period of six months or more or beyond the stipulated period of completion as agreed under the sale and purchase agreement. The practical current definition has been given by the Rehabilitation of Abandoned Housing Unit, under the Department of National Housing of the MUWHLG as follows (E-Home, Portal Rasmi Jabatan Perumahan Negara, 2013): (a) a residential project which is not completed within or beyond prescribed period of the sale and purchase agreement and there is not obvious activities on the site project for six months consecutively; or, (b) petition to wind up the housing developer company has been filed at the High Court pursuant to Section 218 of the Companies Act 1965; or, (c) the developer company is put under the control of the receiver and manager; or, (d) the developers admit in writing to the housing controller that they are unable to complete their projects; and, (e) the project is endorsed as a failed residential project by the Minister of Urban Wellbeing, Housing and Local Government pursuant to Section 11(1)(c) of the Housing Development (Control and Licensing) Act 1966 (Act 118) (Md Dahlan, 2014). According to GP Selvam J in *Re Genesis Technologies International (S) Pte Ltd* ([1994] 3 SLR 390 (HC)), the judicial management is an alternative to winding up because, as long as a judicial management order is in force, no resolution may be passed or order made for the winding up of a company. Its primary objective is to give the company a new lease of life as a going concern. It is, therefore, a device to save the company from creditors who may wish to destroy the company when it can be rehabilitated for the benefit not only of the shareholders but the unsecured creditors as well (GP Selvam, 1994). The purpose of Administration/Judicial Management is to deal with the assets and manage the business of the insolvent company, to settle or pay off all the debts of the creditors as well as to improve the position of the company's creditors. Administration/Judicial Management is an insolvency measure to rescue the ailing insolvent company and facilitate a rescue culture for business (Keay & Walton, 2003).

METHODOLOGY

This paper adopts a qualitative approach under the doctrinal research category. The primary sources include various policies and statutes such as Companies Act 2016, Insolvency (Winding Up) Rules 2018, Companies Act 1967 [SG] and Housing Development (Control and Licensing) Act 1966 (Act 118). In addition, the secondary sources include books, journals, and online databases such as CLJLaw, HeinOnline, and LexisNexis. For the purpose of comparative legal research, sources such as legislations, legislative texts, and legal doctrines from the Republic of Singapore were also observed.

FINDINGS AND DISCUSSION

The benefit of the Judicial Management ("JM") is that it provides financially distressed companies with breathing space to rehabilitate and to save themselves from liquidation. Its main agenda is to achieve this by placing a moratorium on proceedings against the company, divesting the control of the company from its management and allowing the court-appointed Judicial Manager to take over the running of the company. However, the current JM mechanism is still an inadequate preventive and curative measure, unable to protect the rights and interests of the aggrieved purchasers in failed residential projects. The main reason and issue is that there are insufficient legal provisions and protection to avoid and prevent the occurrences of failed residential projects and to protect the interests of purchasers. In the event that rehabilitation can be carried out, the ensuing problems have caused pecuniary and non-pecuniary losses to purchasers. The problems are still left hanging and unsettled for most of the purchasers and stakeholders, without any sufficient remedies and measures to address them. If the majority or the requisite number of creditors agreed that a JM be carried out in order to ensure rehabilitation of the

failed residential projects of the insolvent residential developer companies, the JM can be used to actualise the purported rehabilitation. Nonetheless, if the available funds to finance the rehabilitation are inadequate and that there are many complications and problems in the failed residential projects that carries the risks of jeopardising the creditors' rights and interests, it is opined, that a JM may not be the best insolvency method to rehabilitate the projects and protect the rights and interests of the purchasers. In Singapore, they adopted a similar scheme or mechanism as Malaysia, in which the said mechanism is also called Judicial Management (JM). Similarly, it is a method of rescuing the insolvent company in Singapore by way of court's appointment of judicial manager either on the application by the creditors or the company itself. The main purpose is to take over the affairs and business of the ailing company and maximise the rescue/rehabilitation process of the insolvent company in the most advantageous, efficient and practical ways and for the benefits of the creditors, including the unsecured creditors, without having to go through the process of liquidation which lacks certain favourable/advantageous characteristics.

CONCLUSION AND RECOMMENDATIONS

It is apparent that the current legal framework pertaining JM and its practice may not be able to fully protect the interests of the purchasers. In order to protect the interests and rights of the aggrieved purchasers in the course of rehabilitation, and also to ensure that the rehabilitation can be effectively carried out, it is proposed that the Malaysian government should introduce a special law governing rehabilitation of failed residential projects. This law should be incorporated in the Housing Development (Control and Licensing) Act 1966 (Act 118). The Malaysian government also should adopt 'full build then sell' of residential delivery concept to guard against any occurrences of failed residential projects and its problematic consequences. Through this concept, it is believed that this concept can eliminate altogether the problems and occurrences of failed residential projects in Malaysia.

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TRACK 8: WOMEN & CHILD LAW

LEGAL FRAMEWORK FOR CHILD PROTECTION THROUGH FAMILY BASED CARE IN MALAYSIA: TOWARDS SUSTAINABLE DEVELOPMENT

Nadhilah A.Kadir^{1*}, Siti Mahanisayu Marhaban²

^{1, 2} *Faculty of Law, Universiti Kebangsaan Malaysia.*

Email: ¹nadhilah@ukm.edu.my; ²P129534@siswa.ukm.edu.my

**Corresponding author*

ABSTRACT

This qualitative research explores the linkages between child protection and family-based care within the context of sustainable development. The paper investigates the benefits and implications of family-based care as an alternative care option focusing on children without families. The findings highlight that family-based care offers significant advantages compared to institutional care, including improved emotional well-being, cognitive development, and social relationships for children. Through content analysis, the study further examines the legislative frameworks and policies that support family-based care. The study also delves into the legal challenges of family-based care arrangements in Malaysia especially adoption and foster care. This emphasises the need for robust legal protections and effective implementation to ensure the well-being and rights of children without families. Furthermore, the research identifies the intersections between family-based care and sustainable development goals (SDGs). Family-based care contributes to poverty eradication by providing vulnerable children with a nurturing environment and reducing the likelihood of future poverty. It supports social protection efforts by offering stability, support, and access to essential services. Additionally, family-based care promotes child protection by providing a safe and secure environment. In conclusion, this study underscores the importance of family-based care for child protection and sustainable development. The findings call for policies and practices that prioritize and promote family-based care as a preferred option, ensuring the well-being and long-term development of children without families.

Keywords: Child Protection, Family Based-Care, Alternative Care, Children Without Families, Sustainable

INTRODUCTION

Although the Child Act (Amendment) 2016 in Malaysia recognizes family-based care as the preferred option, many children still remain in institutional care. Numerous studies have demonstrated the detrimental effects of institutional care on a child's physical, intellectual, and mental development. Therefore, it is crucial to prioritize family-based care to uphold a child's well-being and their right to a family. Adoption and foster care are considered the best alternatives for providing family-based care. Currently, adoption in West Malaysia is regulated by the Adoption Act 1952 and the Registration of Adoptions Act 1952. However, these statutes only cover limited adoptions from Sabah and Sarawak and impose restrictions on intercountry adoption. Foster care, on the other hand, lacks specific legislation, with only a few provisions mentioned in the Child Act 2001. Additionally, there is a lack of adoption and foster care agencies in Malaysia to formally assess the eligibility of prospective adoptive and foster parents. As a result, many children continue to remain in institutional care. To address this issue, this research aims to examine the role of family-based care in promoting child protection and well-being; analyze the legal frameworks and policies supporting family-based care in Malaysia and explore the intersections between family-based care and sustainable development goals, emphasizing the contribution of family-based care to poverty eradication, social protection, and sustainable communities.

LITERATURE REVIEW

Children in need of care and protection, such as needy, orphaned, abandoned, abused, and neglected children, are considered to be deprived of a family environment according to Section 17 of the Child Act 2001 in Malaysia. These children require assistance from the state authority to provide them with alternative or substitute family care through the child protection system. In Malaysia, institutional or

residential care has been the primary response for vulnerable children, with a greater number of children being placed in such institutions compared to those who have been adopted or fostered (UNICEF EAPRO, n.d.). However, there is a growing international trend towards developing family-based care for vulnerable children. The Child Act (Amendment) 2016 in Malaysia prioritizes family-based care for children, considering institutional care as a last resort (Government of Malaysia, 2016). This shift towards family-based care aligns with Article 20 of the United Nations Convention on the Rights of the Child (UNCRC), which emphasizes that residential care should only be used as a last resort for children who are deprived of a family environment. The implementation of family-based care in Malaysia began in 2017, with a focus on granting custody to biological and foster parents through the deinstitutionalization process of children in need of care, protection, and rehabilitation. (Chan, 2015). Efforts have been made to ensure that children in need of care and protection are not placed in institutions. Instead, they are reintegrated into the community through various initiatives. Family-based care offers vulnerable children a family setting where they can thrive physically, intellectually, and mentally, as opposed to institutional care. Research has shown that children in institutions often experience health issues, malnutrition, emotional neglect, and abuse, leading to serious developmental delays (Shapiro, 2008; Zeanah & Humphreys, 2020). Family-based care options for children in need of care and protection include kinship care, adoption, foster care, and small group homes. For children without families, adoption and foster care can provide a permanent family setting where they can live like other ordinary children, with their own home and substitute parents (Shapiro, 2008). UNICEF EAPRO (n.d) also recommends that children whose parents are unable to provide care for them should be made available for adoption. Overall, the shift towards family-based care for children in need of care and protection, especially those without families, reflects a recognition of the importance of providing a nurturing and permanent family environment for their overall well-being and development. These works, however, did not relate family-based care to sustainable development.

METHODOLOGY

This research adopts qualitative research method which is based primarily on library research. Content analysis will help to identify improvement needed in the legislation and policies regarding family based care in Malaysia contributing to achieving sustainable development goals.

FINDINGS AND DISCUSSION

The research identifies the intersections between family-based care and sustainable development goals (SDGs). Family-based care contributes to poverty eradication by providing vulnerable children with a nurturing environment and reducing the likelihood of future poverty. It supports social protection efforts by offering stability, support, and access to essential services. Additionally, family-based care promotes child protection by providing a safe and secure environment.

CONCLUSION AND RECOMMENDATIONS

In conclusion, this study underscores the importance of family-based care for child protection and sustainable development. The findings call for policies and practices that prioritize and promote family-based care as a preferred option, ensuring the well-being and long-term development of children without families.

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TRACK 8: WOMEN & CHILD LAW

REALISING SDGs ON ENDING CHILD POVERTY AND FOOD INSECURITY IN NIGERIA THROUGH AN EFFECTIVE CHILD-CENTRIC SUSTAINABLE SOCIAL PROTECTION SYSTEM

Hadiza O. Okunrobo^{1*} & Juliet Aimienrovbiye^{2**}

^{1,2} Faculty of Law, University of Benin, Edo State, Nigeria.

Email: ¹hadiza.okunrobo@uniben.edu; ²juliet.aimienrovbiye@uniben.edu

*Corresponding author

ABSTRACT

Child poverty and food insecurity are major problems that manifests in several ways including inadequate access to amenities and food insecurity. The 2019 UNICEF report indicates that Nigeria ranks highest in the world with an estimated number of about 13.5 million children living in extreme poverty. The 2022 Multidimensional Poverty Index Survey shows that about two-thirds of children are multidimensionally poor. Also, the 2022 Global Hunger Index reports that about 828 million people are undernourished and children are most vulnerable. The key drivers of poverty and food insecurity are institutional weakness, conflicts, healthcare inequalities and climate change. The resultant consequences include increased risk of malnutrition, illness, and mortality, gender inequality in access to education, and unequal access to health care and other services for children, especially the poor, vulnerable and orphaned child. These have long-term effects on their well-being and future opportunities and impede the 2030 SDGs on ending poverty and hunger. The Nigerian government has made efforts to improve social equity measures related to child protection. However, the limited policy traction of social protection weakens programme implementation because it lacks resources and a child-centred human rights approach. This paper through a desk review assesses the multidimensional effects of the SDGs objectives and linkages between child poverty and food security in Nigeria. It proposes the upscaling of the existing social protection policies through the use of an all-inclusive child-centric approach in its design and implementation and multisectoral partnership to address its multidimensional gaps in meeting its goal in 2030.

Keywords: *Child Poverty, Food Insecurity, Human Rights, SDGs, Social Protection*

INTRODUCTION

The reality is grim as reports of the Multidimensional Poverty Index and 2022 Global Hunger Index show child poverty and food insecurity as serious problems respectively. With drivers such as conflict, climate change, the COVID-19 pandemic, institutional weakness and inequalities, Nigeria is presently deeply immersed in the twin problems of child poverty and food insecurity. In 2019, the Food and Agriculture Organisation declared Nigeria food insecure as the number of undernourished people increased to 25.6 million in 2018. Poverty has huge implications for food insecurity. Poverty is evident in several ways including inadequate access to amenities, lack of access to good shelter and lack of access to basic needs. Being the most vulnerable specie, a child who is faced with poverty also stands the risk of being food insecure. However, Nigeria lacks effective legal structures such as child-centred policies that are imbued with social security measures to address poverty and food insecurity. This study asks questions such as: Is there a link between child poverty and food insecurity? How effective are the policies in addressing child poverty and insecurity in Nigeria? what better ways can these policies be upscaled to effectively address these challenges in line with international best practices that are child-centred? Hence this paper advocates the need for an inclusive child-centred approach through a multisectoral approach this cover the multidimensional impacts of child poverty and food security to meet the needs of all children in Nigeria. This would put the country on a better footing in the march towards achieving not just goals 1 and 2(ending poverty, and hunger) of the 2030 Sustainable Development Goals but other goals that are interlinked with these goals.

LITERATURE REVIEW

Several authors have expressed their views on child poverty and food insecurity. However, the linkage between these terms has not been clearly articulated. Enakhe and Tamuno (2021) rightly observed that

Poverty could deprive one of the means to both achieve the income and food required to sustain a living. However, they did not view this link from the perspective of the child as a vulnerable group. The Food Research and Action Centres contended that food insecurity has direct and indirect impacts on physical and mental health for people of all ages. Furthermore, food insecurity is especially detrimental to the health, development, and well-being of children in the short and long terms. (National Demographic Health Survey 2018). This has been exacerbated by the COVID-19 pandemic with resultant effects on household income and health which is another major cause of child poverty and food insecurity. (Lain & Vishwanath 2020). Ogunidipe et al. (2016), study further examined the nexus between agricultural productivity, poverty reduction and inclusive growth in Nigeria. Aderounmu et al (2021) further highlights the impact of armed conflict as another major drivers of poverty in Nigeria. Researchers such as (Adeoti and Popoola, 2012) and (Edoh, 2003) agreed with Chimobi (2010) that the causes of poverty in Nigeria are multifaceted as it impacts the health, education, nutrition, and sanitation of all children in Nigeria. it further impacts boys and girls differently. (Ozoemenam et al, 2021). Researchers agree that the non-money-metric (multidimensional) method is the best way to quantify child poverty because it takes household size, household member ages, and gender into account. Haveman et al. (2015) contend that a multidimensional approach increases the likelihood of identifying homes in need of basic requirements such as health care, clean water, food, shelter, education, and social inclusion. Both Dunga & Makhalima (2016) and Minujin et al. (2006) share this opinion. In addition, several measures have been proposed in combating child poverty and food security.

The United Nations observed that social protection can play an important role in the progressive realization of the right to adequate food for all, including children. Social protection programmes can help to mitigate the level of poverty and hunger by transferring resources to people living in poverty, enabling them to generate income, protect their assets and accumulate human capital. Despite the relevance of these literature in explicating the multidimensional impact of child poverty on the rights and needs of the child, scant attention has been placed by scholars on the upscaling a child-centred approach to social protection through multisectoral approach to meet the sustainable development goals of ending poverty, hunger and other linked SDGs. Accordingly, this paper proposes that Nigeria can key into this programme in addition to adopting a human rights-based approach by upscaling the coverage of social protection programmes to meet the needs of children in Nigeria through active interface and collaboration with Non-Governmental Organisations for the provision of basic amenities in the actualization of the rights.

METHODOLOGY

There is a vast amount of literature on poverty and food insecurity at the global level. However, findings on child-centric approach to ending poverty are scanty in developing countries and Nigeria in particular. The paper draws from desk-based review of existing literature and data reports from government, international organisations and online sources to provide clarity of expression to present available findings emanating from the research findings.

FINDINGS AND DISCUSSION

Several legal tools and policies have been put in place to address child poverty and food insecurity in Nigeria. Furthermore, the authors find that a mapping of the existing social protection landscape in Nigeria shows that a sizable number of actors, including those from the government, funders, foreign non-governmental organisations, and civil society, are involved in funding and executing social protection. Social safety provided by the federal government consists of three primary initiatives: the Community-Based Health Insurance Program; the Health Fee Waiver for Pregnant Women and Children Under Five; and the Conditional Cash Transfer In Care of the People (COPE) targeted at households with specific social categories (those with children of school-going age that are female-headed, or contain members who are elderly, physically challenged, or are fistula or HIV/AIDS patients).

However, due to the multi-dimensional effect of poverty and food insecurity, these programmes have remained inadequate in realising the SDG goals in 2030. The reasons are not farfetched due to its very small-scale effect in meeting the needs of many disadvantaged children in Nigeria and the absence of a child-centric framework which projects an all-inclusive child-centred social protection policy to adequate to meet the needs of all children. To achieve its objective, Nigeria needs to accelerate the existing policy framework of social protection that projects an inclusive child-centred approach through multisectoral design and implementation.

CONCLUSION AND RECOMMENDATIONS

Poverty and Food Insecurity are endemic problems that need to be addressed in consonance with the mandate of Goals 1 and 2 of the Sustainable Development Goals. The multidimensional effect of these issues calls for a multisectoral approach in realising its goal of ending child poverty in Nigeria. This is because, ending child poverty and hunger will also assist the Nigerian government to meet other sustainable goals such as promoting health and well-being for all children, ending gender inequalities in access to education and also inequalities in the distribution of resources. Hence, there is a need for government at all levels to transcend from the formulation of mere theoretical policies to the implementation of practical child-centred policies. In proposing the formulation of a holistic policy framework on poverty and food security, this paper suggests that Government should upscale existing policies in an inclusive child-centred social protection approach through a multisectoral approach where all agencies and institutions will upscale the measures at each level to reduce the effect of child poverty and hunger, thereby meeting the needs of all the Nigerian children in 2030.

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TRACK 10: MEDICAL & HEALTHCARE LAW

THE ROLE OF LEGAL AND REGULATORY REFORMS IN ESTABLISHMENT OF CLINICAL ETHICS SUPPORT IN MALAYSIA

Hazdalila Yais Haji Razali^{1*}

¹*Faculty of Medicine, Universiti Teknologi MARA, Malaysia.*

Email: ¹hazdalila@uitm.edu.my

**Corresponding author*

ABSTRACT

Clinical Ethics Support Services (CESS) is essential in resolving ethical dilemmas within hospitals, but its absence in Malaysia poses a significant challenge for healthcare professionals. Although CESS is implemented in various countries, Malaysia lacks legal provisions that mandate its establishment in healthcare institutions. The research proposes utilizing existing human resources, laws, and regulations to develop a network of individuals interested in Clinical Ethics, creating committees to support Ethics Consultants, and fostering ongoing education and training to establish CESS in Malaysia. The establishment of CESS in Malaysia aligns with the Sustainable Development Goals of promoting good health and well-being and strengthening healthcare systems. However, legal and regulatory reforms may be necessary to ensure proper recognition, support, and integration into the healthcare system. The research uses a qualitative approach, including library-based and doctrinal research, to gain insights into the problem and uncover trends in theory and opinion. The research process involves three phases: a library-based search, data collection, and data analysis. The findings propose a feasible model of the Clinical Ethics Committee to deliver uniform, standard services that conform to the goals of promoting good health and well-being, thereby indirectly developing a strong institution. In conclusion, the legal structuring is crucial in establishing CESS in Malaysia to achieve the third Sustainable Development Goal of good health and well-being. The proposed model of the Clinical Ethics Committee is feasible, requires minimal legal restructuring, and yet significantly improves the current situation. Legal and regulatory reforms may be necessary to ensure proper recognition, support, and integration into the healthcare system. The establishment of CESS in Malaysia would provide a supportive environment to navigate complex ethical issues, empowering healthcare providers to make well-informed decisions.

Keywords: *Clinical Ethics Support Service, Clinical Ethics Committee, Malaysia, SDG, Good Health*

INTRODUCTION

Clinical Ethics Support Services (CESS) is crucial in resolving ethical dilemmas within hospitals, and its absence in Malaysia presents a significant challenge for healthcare professionals. Inclusion of CESS in the healthcare system can provide a supportive environment to navigate complex ethical issues, empowering healthcare providers to make well-informed decisions. Despite its implementation in various countries, Malaysia lacks legal provisions that mandate the establishment of CESS in healthcare institutions. To address this, existing human resources, laws, and regulations must be utilized to develop a network of individuals interested in Clinical Ethics, create committees to support Ethics Consultants, and foster ongoing education and training. Recognizing Clinical Ethics Consultant as a distinct specialization in Malaysia's Healthcare System can facilitate the integration of CESS and promote ethical awareness and accountability among healthcare professionals. The establishment of CESS in Malaysia aligns with the Sustainable Development Goals of promoting good health and well-being and strengthening healthcare systems. However, legal and regulatory reforms may be necessary to ensure proper recognition, support, and integration into the healthcare system.

LITERATURE REVIEW

The provision of Clinical Ethics Support Services (CESS) plays a pivotal role in the resolution of clinical ethics dilemmas within hospitals, particularly in the current healthcare climate. CESS is a complex intervention that operates within the healthcare setting, as defined by Schilcmann et al. (2019). According to the Medical Research Council (MRC), CESS comprises various independent or dependent components that form a complex intervention (Medical Research Council, 2000). Since its inception in the United States in the 1970s, CESS has proliferated globally in various ways, influenced by the legal landscape and

healthcare practices of different countries.

The delivery of Clinical Ethics Support Services can take various forms, with top-down and bottom-up approaches being common, as noted by Rasoal, Skovdahl, Gifford, and Kihlgren (2017). Moreover, CESS can be categorized based on the timing of the support required. Request-based consultations, Clinical Ethics Committees, and reflection sessions such as Moral Case Deliberation are some of the ways CESS can be provided. Among the available CESS, Clinical Ethics Committees are widely used to manage clinical ethics dilemmas.

METHODOLOGY

The research uses a qualitative approach, including library-based and doctrinal research, to gain insights into the problem and uncover trends in theory and opinion. The research is classified as socio-legal and exploratory as it analyses the application of law and policy intertwined with social factors and aims to explore the most appropriate model for establishing the Clinical Ethics Committee in Malaysia. The research process involves three phases: a library-based search, data collection, and data analysis. The library search collects information from various sources, including legislative texts, institutional policies, and bioethics textbooks, while controlling bias and applying inclusion and exclusion criteria. Data analysis involves content and legal analyses using positive and normative approaches to propose a feasible model of the Clinical Ethics Committee. The findings are included in the proposal for the Ethics Consultation Service in Malaysia.

FINDINGS AND DISCUSSION

In Malaysia, the Ministry of Health (MOH) holds regulatory oversight over the public sector, pharmaceutical industry, and food safety. Meanwhile, the Private Healthcare Facilities and Services Act 1998 [Act 568] governs private healthcare providers and their services. Although there are currently 27 statutes related to the practice of healthcare in Malaysia, none of them specifically address or guide the requirement for the establishment of Clinical Ethics Support Services (CESS) in Malaysia.

All healthcare professionals are required to register with the relevant statutory professional bodies, in compliance with the relevant legislation. It is essential to recognize that several governing bodies exist for healthcare professionals in Malaysia. Eight healthcare professions, namely Medical Practitioners, Dental Practitioners, Pharmacists, Nurses, Midwives, Community Nurses, Assistant Nurses, Assistant Medical Officers, Opticians and Optometrists, Food Analysts, Counselors, and Allied health professionals, are governed by laws and regulations through specific statutory bodies. Each governing body is responsible for setting standards for professional education, licensing, annual practice certificates, and maintaining the register of licensed and active practitioners. The statutory bodies also investigate complaints of malpractice and possess the authority to take disciplinary action against practitioners where necessary.

In light of the regulatory landscape for healthcare professionals in Malaysia, there is a clear need for legal reform to address the establishment of a CESS body. This legal reform will standardize the recruitment process, including examination if necessary, and regulate the practice for ethicists in the country. The purpose of this legal reform is to deliver uniform, standard services that conform to the goals of promoting good health and well-being, thereby indirectly developing a strong institution.

CONCLUSION AND RECOMMENDATIONS

The Malaysian healthcare system is highly regarded for its affordable and patient-focused services. However, there are some challenges that need to be addressed, such as the abundance of contract medical officers and the lack of clinical ethics support for patients and healthcare staff. To achieve the third Sustainable Development Goal of good health and well-being, legal structuring is crucial in establishing a Clinical Ethics Support Service (CESS) in Malaysia. Fortunately, the proposed model requires minimal legal restructuring, and yet it could significantly improve the current situation. Although there are guidelines for ethical practice, there are no mechanisms in place to provide acute ethics consultation or help healthcare staff navigate ethical dilemmas. It is recommended that a clinical ethics committee be established in each institution utilizing existing manpower and a sustainable strategy. While there are no legal restrictions on establishing CESS, formal teaching, training, and certification of healthcare professionals are necessary, and they should be registered under the Allied Healthcare Professional Act. The most feasible method for delivering CESS in Malaysia is through a Clinical Ethics Committee with Clinical Ethics Consultation, which would utilize the current system, legislation, and manpower with structured regulations to ensure continuity of the service.

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TRACK 10: MEDICAL & HEALTHCARE LAW

CRIMINAL PROVISIONS OF MEDICAL MALPRACTICE PERFORMED BY DOCTORS (CASE STUDY NUMBER: 79/PID.SUS/2011/PN.KD.MN JO 1110K/PID.SUS/2012 JO 210PK/PID.SUS/2014)

Nabila Afifah Salwa^{1*}, Alvi Syahrin², Mahmud Siregar³ & Mahmud Mulyadi^{4*}

Faculty of Law, Universitas Sumatera Utara, Indonesia.

Email: ¹nabilaafifah.salwa99@gmail.com; ²alviprofdr@gmail.com ; ³mahmuls@yahoo.com; ⁴mahmud_mulyadi@usu.ac.id

**Corresponding authors*

ABSTRACT

Health is a very basic thing which is a very important basic need for human life. The need for health is used as one of the goals in the Sustainable Development Goals on pillar number 3, this implies the importance of ensuring human health throughout the world. However, in the implementation and implementation of health efforts, legal problems are often encountered by health workers. One of these legal problems is commonly called Malpractice. When viewed from the theory of Unlawful Acts, the actions of doctors who have committed a violation of the law are categorized as unlawful acts. From 2009 to 2023 there were around 256 malpractice cases throughout Indonesia. This figure is a high number with an average of 18 cases per year. One of them is a medical malpractice case with number 79/Pid.Sus/2011/PN.Kd.Mn jo 1110K/Pid.Sus/2012 jo 210PK/Pid.Sus/2014. The purpose of this paper is to find out how a health worker can be qualified to commit medical malpractice, explain how medical malpractice is criminally responsible for a doctor and examine the purpose of punishment in health malpractice crimes. The method used in this research is a normative juridical research method that focuses on legal principles that focus on the object of study on the Medical Practice Act, the Health Law, and the Indonesian Criminal Code.

Keywords: *Criminal Provisions, Malpractice, Doctors*

INTRODUCTION

Background of The Research

Health is a very basic thing that is a basic need that is very important for human life. The implementation of health development is based on covering health efforts and resources. Health efforts that were originally focused on healing efforts for patients gradually developed towards the integration of comprehensive health efforts. In the implementation and implementation of health efforts, legal problems are often found by health workers. One of these legal problems is commonly called Malpractice. Malpractice itself in Indonesia is not something new.

With the promulgation of Law Number 36 of 2009 concerning Health (UUK) and Law Number 29 of 2004 concerning Medical Practises (UUPK) which is a *Lex Specialist* Law that provides legal protection and certainty to patients, doctors, and dentists. Mistakes in carrying out the profession as a health worker will form criminal liability (*depending on the nature of the losses that arise*) which contain 3 (three) main aspects as an inseparable unit, namely the first is treatment that is not in accordance with the norm, second is carried out with negligence, and the third contains the result of losses in the law. Losses in the law are losses that are declared legally and can be recovered by imposing legal responsibility to the perpetrator and those involved in a legal way. Medical treatment of malpractice in the medical world is found in the examination of tools and methods used in the examination, the acquisition of incorrect medical facts, diagnoses withdrawn from the acquisition of facts, therapeutic treatment. Negligence/Culpa is a legal definition that at the level of its application in the field of medical malpractice is not yet uniform, The reference for determining legal liability in medical treatment of malpractice is in the consequences caused in the form of losses according to the law.

The Supreme Court as a high state institution is an institution that holds judicial power, has various functions, namely, 1) judicial functions; and 2) Non-judicial functions consisting of supervisory functions,

coaching functions and administrative functions; Advisory functions; and regulatory functions. This is where the role of judges in deciding cases plays a role in finding the law and creating the law. The judge himself is obliged to play a role in making legal discoveries when the judge considers that the decisions of the first-degree court and the high court have not reflected the legal values that live and develop in society. Therefore, judges from the first level or district courts and high court judges in their implementation in deciding cases must apply *Judex Factie* and judges at the cassation level or in the Supreme Court are obliged to apply *Judex Juris* in its implementation.

On the way there was one case of medical malpractice with Case Number 79/Pid.Sus/2011/PN.Kd.Mn with the name of the Defendant dr. Bambang Suprpto, Sp.B.M.Surg. Based on the case, there is an interesting thing that will be discussed, first there is an unlawful act from the defendant where the defendant is a surgeon who works as a surgeon but the defendant does not have a practice license, where a doctor has an obligation related to the standards of the medical profession which in health services the doctor should act carefully and carefully, then there In the first court, the defendant was declared free from all lawsuits and the defendant's actions did not constitute a criminal offence. At the cassation stage, the Defendant was tried with a prison sentence of 1 (one) year 6 (six) months. Then in the process of Review the Defendant was released from all lawsuits.

Doctors who generally hold the opinion of "*misguided*" that the doctor's actions cannot be blamed / prosecuted if intended to "*help patients*" and for the sake of humanity. In other words, doctors can do what they want if the pretext is service or helping patients. In fact, this should not be the case, because even though the purpose and purpose of helping patients, there are still ethical and legal rules that must be obeyed. In this case, the term solidarity or peace cannot be used to cover up or justify a violation of the law committed by a doctor, unless in this case the principle of reverse proof is the principle of innocence (*presume of innocence*) changes to the principle of presumption of innocence (*inference of negligence*).

Problem Statement

Based on the background described above, the author identifies the problem formulation as follows:

1. How can a health worker be qualified to commit acts of medical malpractice?
2. What is the accountability of medical malpractice against a doctor (Case Study Number: 79/Pid.Sus/2011/PN.Kd.Mn jo 1110K/Pid.Sus/2012 jo 210PK/Pid.Sus/2014)?
3. What is the purpose of conviction in criminal acts of health malpractice?

The Aim

To increase and expand knowledge and can be a study material for knowledge about criminal law in general and regarding the application of court decisions from the first instance to cassation of malpractice cases in Indonesia in particular. As well as to know the role of criminal law in the enforcement of malpractice law, it is hoped that it can contribute thoughts and/or input to law enforcement officers in carrying out their duties and overcoming things that are obstacles in health law enforcement (malpractice) so that prevention and violations of malpractice law can be overcome. Then to create justice, benefit and legal certainty for the whole community.

LITERATURE REVIEW

The source of this research itself was taken through secondary data. Secondary data itself is data obtained outside the correspondent in the sense that the data is obtained indirectly, which can be divided, among others: 1) Criminal Code (KUHP); 2) Law No. 29/2004 Concerning Medical Practice; 3) Law No. 3/2009 Concerning the Supreme Court; 4) Law No. 36/2009 Concerning Health; 5) Law No. 48/2009 Concerning Judicial Power. As well as the author also takes secondary legal material from literature studies, namely books related to primary legal materials.

METHODOLOGY

This research itself is analytical descriptive research, namely analysing a problem by providing an overview and finding legal facts in this research with the aim of providing an assessment of right or wrong or how it should be according to the law against legal facts or events from a research result.

FINDINGS AND DISCUSSION

Medical malpractice is the negligence of a doctor or health worker to use the level of skills and knowledge commonly used in treating patients or injured people in a way that is not appropriate according to the same size in the environment and situation. Medical malpractice can be said to be an act against the law in

criminal law because one of the parties has committed an act against the law because his actions or his actions are contrary to the principles of propriety, rigour and prudence, especially in this case an agreement or agreement between the patient and the doctor. The element contained in unlawful acts here is the existence of acts of carelessness committed by a doctor or health worker.

Negligence is not a violation of law or crime, if the negligence does not bring harm or injury to another person and that person can accept it. This is based on the legal principle of '*De minimis noncurat lex*', which means the law does not interfere in things that are considered trivial. But if the negligence results in material losses, harm and even claimed the lives of others, then this is classified as gross negligence (*culpa lata*), serious and criminal. Medical malpractice itself in a broad sense is not only limited to negligence or medical negligence. So it also includes malpractice that occurs due to intentionality (*delict dolus/opzet*). In *dolus* (intentionally), because it contains *volitief* (will) and *intellectual* (knowledge) or *volontie et connaissance*. Actions are deliberately always *willens* (wanted) and *wetens* (realised or known).

CONCLUSION AND RECOMMENDATIONS

The threat of punishment is very influential on the prudence of the medical profession, in order to reduce the number of negligence of malpractice of the medical profession if from a maximum threat of only 5 years the medical profession considers it as an ordinary thing, but if the threat is 15 years or more the medical profession will see it as a serious thing so as to increase the pr Criminal provisions can provide legal certainty for patients from excessive fear if things occur that cause certain consequences that are very detrimental. The author sees that there is still insecurity and lack of understanding and knowledge possessed by the Panel of Judges to resolve medical disputes in deciding cases and explore all legal facts that consequently harm one of the parties who are seeking justice. In criminal justice such as the nature of unlaw that must be proven formally and materially, can be strengthened, or weakened by whether an act also violates disciplinary or ethical rules at once or not.

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TRACK 10: MEDICAL & HEALTHCARE LAW

ASSESSING THE UTILIZATION OF OMBUDSMAN IN MEDICAL DISPUTE RESOLUTION IN INDONESIA: OPPORTUNITIES AND CHALLENGES

Rimba Supriatna S.H, M.H^{1*}, Dr. Sri Ratna Suminar S.H, M.H²

^{1,2}*Faculty of Law, Bandung Islamic University, Indonesia*

Email: rimba@unisba.ac.id¹; sratnasuminar9@gmail.com²

**Corresponding authors*

ABSTRACT

Medical conflicts in healthcare practice involve various parties like patients, doctors, medical institutions and authorities. Litigation as a dispute resolution mechanism can be time-consuming, pricey, and unsatisfactory for those involved. As an alternative, ombudsmen are independent watchdogs that can help mediate and facilitate informal dispute resolution, avoiding costly litigation. This article focuses on how ombudsmen play a vital role in medical dispute resolution, focusing on the Indonesian context. The evaluation covers the role of ombudsmen in medical dispute resolution, the legal and institutional framework in Indonesia, the Indonesian health system's characteristics, cultural factors, and recommendations for increasing the use of ombudsmen in medical dispute resolution. The research uses normative and descriptive legal methodologies. The use of an ombudsman in medical dispute resolution is a potential alternative to litigation, with benefits and drawbacks. More research is required to assess its effectiveness in settling medical disputes and developing guidelines for its implementation in Indonesia.

Keywords: *Healthcare, Dispute, Alternative Resolution, Ombudsman*

INTRODUCTION

Indonesia's health sector has seen remarkable growth due to its status as a developing country. However, medical disputes have increased alongside the expansion of medical services. These cases involve complicated legal and ethical dilemmas that require swift and equitable conflict resolution strategies (Sulistiyono, 2017). The legal system in Indonesia provides various ways to resolve medical disputes, including litigation, mediation, and arbitration.

Nevertheless, patients have criticized these methods for being costly and not conveniently accessible (Wahyudi, 2019). Therefore, many are now looking into alternative dispute resolution techniques such as an ombudsman. An ombudsman is a fair and unbiased official that investigates complaints against both public and private institutions. Its goals are to promote transparency, accountability, and good governance (Satrio, 2016). In the context of medical disputes, an ombudsman can serve as a mediator between healthcare providers and patients, facilitating a resolution and reducing the need for litigation.

Several nations have utilized the ombudsman to settle medical disputes, including England and Sweden (Gustafsson & Juthberg, 2018). Though Indonesia implemented the concept in 2000 with the institution of the Ombudsman of the Republic of Indonesia (ORI), the ORI's role in resolving medical disputes remains limited and underdeveloped (Sulistiyono, 2017). This study seeks to evaluate the effectiveness of the ombudsman in handling medical disputes in Indonesia, by scrutinizing its implementation obstacles and possibilities. The research will rely on a comprehensive review of relevant studies, as well as an analysis of global best practices.

Increased access to justice, reduced litigation costs, and enhanced patient-provider trust are some benefits of having an ombudsman handle medical disputes (Gustafsson & Juthberg, 2018). However, several challenges must be tackled, including insufficient understanding of the ombudsman's role, inadequate resources and training, and potential conflicts of interest (Satrio, 2016). To promote good governance and facilitate access to justice in the healthcare system of Indonesia, the use of an ombudsman for medical dispute resolution is an auspicious approach. Nevertheless, addressing associated difficulties and devising a comprehensive legal and institutional framework for the ombudsman's role is pivotal for reaping the

complete benefits in question.

LITERATURE REVIEW

In order to paint a picture of how ombudsmen are utilized for resolving medical disputes in Indonesia, this literature review has been composed. Spanning a variety of subjects, the following shall be covered: the role of ombudsmen within medical dispute resolution, the Indonesian legal and institutional framework, the defining traits of the Indonesian healthcare system, cultural nuances that impact the process, and suggestions geared towards bolstering usage of ombudsman in resolving medical disputes.

1. Role of the Ombudsman in Medical Dispute Resolution:

Gustafsson and Juthberg (2018) compared the use of ombudsman in medical dispute resolution between England and Sweden.

2. Legal and Institutional Framework in Indonesia:

Sulistiyono (2017) examines the challenges and prospects for resolving medical disputes in Indonesia.

3. Characteristics of the Indonesian Healthcare System:

Sulistiyono (2017) sheds light on the difficulties patients face while navigating Indonesia's healthcare system, which comprises public and private providers of varying accessibility and quality.

4. Cultural Factors:

In Indonesia, cultural factors play a pivotal role in resolving medical disputes, as Satrio (2016) suggests. "Saving face" is a key concept that impacts patients' willingness to report healthcare practitioners.

METHODOLOGY

Upon analyzing the content and approach taken, the research utilizes both normative and descriptive legal methodologies. Normative legal methodology involves scrutinizing laws, policy documents, and relevant principles of law as they pertain to the topic under investigation.

The authors of this research analyze the legal framework in Indonesia, specifically Law no. 37 of 2008 regarding the Ombudsman, and various institutions such as the Indonesian Medical Council (KKI) and Indonesian Doctors Association (IDI) in resolving medical disputes. Utilizing a normative legal methodology, identify gaps and uncertainties within current regulations to offer recommendations for improvement.

FINDINGS AND DISCUSSION

In the area of medical law, medical dispute resolution is a complicated and delicate topic. Several parties are involved in this debate, including patients, physicians, healthcare facilities, and regulatory bodies. Ombudsman use as a dispute settlement method has occasionally been suggested as a possible substitute. In order to avoid time-consuming and expensive judicial procedures, the ombudsman can assist in informal dispute resolution by serving as an unbiased overseer and mediator.

One of the problems that frequently come up in the practice of healthcare is medical disagreements. Numerous parties, including patients, patient families, physicians, nurses, and healthcare organizations, may be involved in this conflict. The resolution of medical disputes through litigation frequently takes a long time, is expensive, and leaves the parties unhappy (Latifah, 2017). As a result, there is a need for more efficient and effective dispute resolution options.

CONCLUSION AND RECOMMENDATIONS

Based on the analysis of the opportunities and challenges associated with utilizing an ombudsman for medical dispute resolution in Indonesia, the following recommendations can be suggested:

1. Enhance the clarity of the ombudsman's role in medical dispute resolution through amendments to legislation and the establishment of policy guidelines. This will ensure a well-defined and coherent framework for its implementation.
2. Strengthen the capacity of the Ombudsman of the Republic of Indonesia (ORI) and other relevant institutions by providing sufficient resources, training programs, and support to effectively handle medical disputes.
3. Develop standardized guidelines and protocols for medical practice to enhance the quality of healthcare and minimize the occurrence of disputes.

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TRACK 11: ISLAMIC/ SHARIAH/ HALAL LAW

AN ANALYSIS OF THE CASE JRI RESOURCES SDN. BHD V KUWAIT FINANCE HOUSE (MALAYSIA) BERHAD (PRESIDENT OF ASSOCIATION OF ISLAMIC BANKING INSTITUTION MALAYSIA & ANOR, INTERVENERS)

Mohamad Farid bin Abdul Rahim¹, Hasnatulsyima binti Abdullah Hadi², Nur Syahirah binti Mohd Sani³, Nur Izwanie binti Mohd Rizan⁴, Wan Nurfarah Izzah binti Wan Arifin⁵, & Dr. Syuhaeda Aeni Binti Mat Ali⁶

^{1,2}*Faculty of Law, Universiti Teknologi MARA, Malaysia*

mohamadfaridabdrahim@gmail.com, ²hasnatulsyima@gmail.com, ³syahirahsani7@gmail.com, ⁴wnfarahizzah@gmail.com, ⁵izwanierizan@gmail.com, ⁶syuha497@uitm.edu.my.

**Corresponding Author*

ABSTRACT

This paper shall discuss the decision of the case decided by the Federal Court known as JRI Resources Sdn. Bhd v Kuwait Finance House (Malaysia) Berhad (President of Association of Islamic Banking Institution Malaysia & Anor, interveners) [2019] 3 MLJ 561. Pursuant to the decision, it is settled law that the power of SAC and provision of Sections 56 and 57 of CBMA is constitutional. The paper hence will discuss the principle decided by the Federal Court in the case JRI Resources Sdn. Bhd v Kuwait Finance House (Malaysia) Berhad (President of Association of Islamic Banking Institution Malaysia & Anor, interveners) [2019] 3 MLJ 561 whereby the judges had provided ample opinion and findings that suit the current status of the Islamic Banking in Malaysia. The methodology adopted based on qualitative method whereby it is research-based paper where in the end of the discussion the position under this case is adapted to the current situation for any dispute on Islamic Finance brought before the Court.

Keywords: *Shariah Advisory Council, Islamic Banking Financial Institution, Judicial Power*

INTRODUCTION

Islamic banking and financial business in Malaysia are governed by the Islamic Financial Services Act 2013 (IFSA 2013) and the Central Bank of Malaysia Act 2009 (CBMA 2009). In Malaysia, the Shariah Advisory Council (SAC) of Bank Negara Malaysia is the highest Shariah authority in Islamic finance which has been given the authority for the ascertainment of Islamic law for the purposes of Islamic banking business, Islamic financial business, takaful business, development financial business or any other business which is based on Shariah principles and is supervised by Bank Negara Malaysia. As been decided by the Federal Court in the case of *JRI Resources Sdn Bhd v Kuwait Finance House (M) Bhd (President of Association of Islamic Banking Institution Malaysia & Anor, interveners) [2019] 3 MLJ 561*, the rulings of the SAC shall prevail over any contradictory ruling given by a Shariah body or committee constituted in Malaysia. The court and arbitrator are also required to refer to the rulings of the SAC for any proceedings relating to Islamic financial business, and such rulings shall be binding on civil court. Therefore, this paper aims to analyse the decision in this case which has set a rule of law on the function and role played by the SAC.

LITERATURE REVIEW

As Islamic Banking disputes shall be heard before the civil courts, in Malaysia, the judiciary as governed under Section 56 and 57 of CBMA 2009 has given power to the Shariah Advisory Council appointed under Bank Negara Malaysia to provide a ruling for any dispute under Islamic Banking system. Section 56 of the CBMA 2009 seems to compel the courts to consider SAC's rulings, while Section 57 of the CBMA 2009 provides for the binding effect of SAC's rulings. In the case of *JRI Resources Sdn Bhd v Kuwait Finance House (M) Bhd (President of Association of Islamic Banking Institutions Malaysia & Anor, interveners), [2019] 3 MLJ 561* which two (2) judges on the bench among the panel has provided the dissenting judgment on the application of basic principle and the role played by the Shariah Advisory Council on providing such ruling to the Court where the Court is bound to deliver such ruling to the parties of the dispute.

Meanwhile, the dissenting judgements can be seen in the case of *Semenyih Jaya Sdn Bhd v Pentadbir Tanah Daerah Hulu Langat and another case* [2017] 5 CLJ 526. Azahar Mohamed FCJ concluded that the ascertainment of Islamic law for the purposes of Islamic financial business embodied in sections 56 and 57 of the CBMA is a function or power delegated by the legislative branch to the judicial branch and the SAC. As such, the impugned provisions did not trespass on the judicial power and did not violate the doctrine of separation of powers. The principle of separation of powers did not apply to invalidate any legislative delegation of powers to the SAC and the courts to ascertain Islamic law for the purposes of resolving disputes on Islamic financial matters.

Hence, this paper shall analyze decision made by the apex court in deriving its decision towards the constitutionality of the SAC in governing Islamic Financial Institution in Malaysia while also looking at the reasoning behind the dissenting judgment among the panels.

METHODOLOGY

The methodology for this study follows the qualitative research approach where we analyse and interpret the core role of the judiciary system in Malaysia in order to understand the different perspectives and ideologies of the legal framework of separation of powers exercised by the SAC in the Malaysia legal system. To relate to our research, we shall apply a mixed methods approach to analyse the data collection and data analysis from various sources to complete this research. By applying a mixed method approach, it allows us to use several methods to examine the data that has been collected. The purpose of this research is to address the opinion of the expertise upon decision made by the Federal Court in this case. Thus, our group obtains relevant research materials and resources that are relevant and essential towards the completion of our study. Primary sources such as statutes and cases and secondary sources such as journal articles, newspapers and books are the forms of research materials that we shall refer to complete this study.

FINDING AND DISCUSSION

The central argument in this case is in respect of the constitutionality of sections 56 and 57 of the CBMA where three main issues were raised i.e (i) separation of powers (ii) judicial power (iii) doctrine of basic structure. In respect of Judicial Power, it was argued by the Applicant in JRI Resources that SAC possessed the characteristic of a Judicial Body and exercising Judicial Power which ultimately made it unconstitutional as it was considered as taking the power away from the civil court. The characteristic of Judicial Power was aptly stated in a series of decisions made in Australia vide cases of *Huddart Parker & Co Pty Ltd & Appleton v Moorehead; Rola Co (Australia) Pty Ltd v The Commonwealth, R v Davison¹, Palmer v Ayres (in their capacities as liquidators of Queensland Nickel Pty Ltd (in liq) and others* (2017) 341 ALR 18.

By virtue of the Australian cases, the Federal Court recognized that there are 3 main elements of Judicial Power i.e (i) exercising adjudicative functions (ii) finality in resolving the whole dispute (iii) the enforceability of its own decision. With all due respect to the dissenting judges, this is inaccurate as SAC only has the power to determine Syariah's matter. Any other issues such as the liability of parties, shall be determined by the High Court based on the facts and evidence before the court. Therefore, the duty to determine Islamic Law is conferred upon the legislature and SAC is merely its intermediary in exercising the function on behalf of the Legislature. The existence of SAC is merely to assist judges in the High Court as in the current regime of our judiciary system, High Court judges are not well equipped to make findings on Islamic law compared to SAC which comprises experts in Islamic Banking.

Therefore, the decision in JRI Resources resolved the issue of the power and constitutionality of SAC. Subsequently, after the conclusion of JRI Resources, other cases had followed the footsteps of JRI Resources and affirmed the majority decision of the Federal Court.

Another case that further enlightens the position of SAC and the effect of its ruling is in the case of *Bank Kerjasama Rakyat Berhad (M) v Koperasi Serbaguna Iman Malaysia Berhad*. In this case, Defendant submitted that any ruling made by the SAC shall bind Islamic Banking Institutions and the Court, thus the SAC will need to ascertain the Islamic law and then it is for the court to apply the ascertained Islamic law for banking to the facts of the case. In that sense, the Defendant argued that the Court cannot hold that the contract is still enforceable when not in compliance with Shariah principles. The court disagreed with the Defendant's contention and held that in JRI Resources, the ascertainment of Islamic Law for banking does not settle the dispute between the parties as the SAC does not usurp the courts' power to interpret and apply the law in the case before the court. The SAC does not determine the liability of the borrower under the

Islamic facility but instead, the determination of a borrower's liability under any banking facility is decided by the presiding judge and not the SAC.

In summary, the court recognizes the separation between the legislative, judiciary and the executive. However, the separation of power between these three branches is not absolute. Thus, it is trite that SAC does not usurp the power of the High Court and section 56 & 57 of CBMA remains valid.

CONCLUSIONS AND RECOMMENDATIONS

The establishment of the SAC by the Bank Negara Malaysia has created a different opinion to the core role of the judiciary system in Malaysia as decided by the Federal Court in the case of *JRI Resources Sdn. Bhd v Kuwait Finance House (Malaysia) Berhad (President of Association of Islamic Banking Institution Malaysia & Anor, interveners) [2019] 3 MLJ 561*. However, the dissenting judgment in that case has given another perspective and ideology in terms of the legal framework of separation of powers that be exercised under the Malaysian legal system. The learned judges have expressed their view that although the SAC is not part of the court structure, two important features cannot be disregarded. Firstly, that the court is obliged to refer a dispute on Shariah compliance to the SAC, and secondly, that the ruling is binding on the court, including the appellate courts. However, the majority judges in this case have pointed out that SAC does not interfere with the judicial authority held by the court and the power in deciding the matter still remains with the trial judge in analyzing the case based on its facts by applying the SAC's ruling. Therefore, it cannot be denied that SAC which comprises experts with vast experience and knowledge in finance and Islamic law plays a significant and an important role in Malaysian judicial framework as to provide certainty in Islamic banking principles by vesting the interpretation of Shariah law.

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TRACK 11: ISLAMIC/ SHARIAH/ HALAL LAW

LEGAL ANALYSIS ON THE ROLE OF OMBUDSMAN IN ISLAMIC FINANCE DISPUTE

Muzairi Bin Shaikh Osman¹, Muhammad Salihin Bin Muhammad Shukri Wong², Shahnaz Aina Binti Mohd Nor Shah³, Ilyani Binti Noor Khuszairy⁴, Nurr Fazreen Binti Mohd Zamili⁵, Syuhaeda Aeni Binti Mat Ali^{6*}

^{1,2,3,4,5,6}Faculty of Law, Universiti Teknologi MARA, Malaysia.

Email:¹muzairi78@gmail.com;²salihinshukri@gmail.com;³shahnazainamns@gmail.com; ⁴ilyanikhuszairy11@gmail.com; ⁵fazreenzamili@gmail.com; ⁶syuha497@uitm.edu.my

*Corresponding author

ABSTRACT

Ombudsman for Financial Service (OFS) in Malaysia is a form of Alternative Dispute Resolution (ADR). OFS has wide jurisdiction to hear financial disputes between individuals and Financial Service Providers against private organisations and/or individual claims. However, with the increasing number of Islamic finance disputes over the years, many people have chosen to resolve their issues or problems by initiating a claim in court and not through OFS. This has resulted in a backlog of cases and a delay in disposing of the claimant's claims. Based on the 2021 and 2020 OFS's Annual Report, only 1 and 7 disputes registered based on Islamic financing product type. Therefore, one question arises; why is the OFS less preferred compared to the court system? By using legal research methods, this article seeks to analyse the challenges that faces the current OFS framework when dealing with Islamic banking disputes. Over the past 12 years, the Ombudsman for Financial Services has helped to resolve 2 BIS central bankers' speeches close to 25,000 financial disputes. It saved significant costs and time for both consumers and FSPs. Assuming a cost of about RM15,000 to resolve a case through a court proceeding, it will translate to a cost savings of RM375 million. This study is conducted for the purpose of strengthening the role of the OFS as an independent alternative body to resolve disputes in the area of Islamic finance and to suggest a review or necessary statutory amendments to Section 138 of the Islamic Financial Services Act (IFSA) 2013. This study found that in spite of the requirement that a member of the board of directors of the scheme operator has background in, or an understanding of, law, finance, audit and accountancy, consumer issues, and government policy, neither the IFSA 2013 nor the Islamic Financial Services (Financial Ombudsman Scheme) Regulations 2015 required (mandatory) that a member of the board of directors of the scheme operator has qualifications in Shariah fields. The study also found that there is uncertainty on how an ombudsman or the scheme operator should refer any Shariah matter to the Shariah Advisory Council (SAC), as the Islamic Financial Services (Financial Ombudsman Scheme) Regulations 2015 do not specify.

Keywords: *Financial Ombudsman Scheme, Islamic Finance Dispute, Ombudsman for Financial Services, Alternative Dispute Resolution, Islamic Financial Services Act 2013*

INTRODUCTION

Without any doubt, Islamic finance has grown tremendously in the last decades. The development of an effective dispute resolution mechanism is one of the key criteria for the growth and expansion of Islamic banking and finance industry. For instance, the Ombudsman for Financial Service (OFS) was officially launched and approved by the Central Bank of Malaysia 2019 (CBM) as the scheme operator of the financial ombudsman scheme on 1 October 2016, pursuant to the Financial Services Act 2013 and the Islamic Financial Services Act 2013. Unfortunately, a substantial number of people in Malaysia are still unaware of OFS. A recent study found that only 12.7% of the respondents had heard of the OFS before (Nadiah, Nooraneda, Michele and Jasminder Kaur, 2022).

OFS is a company limited by guarantee and non-profit organisation that serves as an alternative dispute resolution channel. OFS resolves disputes between its Members who are the financial service providers (FSPs) licensed or approved by Bank Negara Malaysia (BNM), and financial consumers. Tun Ariffin Zakaria (2013) being the Chief Justice was of the view that the introduction of OFS is "a bold step in the right direction". Since 2016, the OFS has substantially benefited Malaysian clients by offering a different path for the fair resolution of financial disputes, including Islamic finance issues.

Thus, by using doctrinal legal research methods, this study is conducted for the purpose of strengthening the roles of the OFS as an independent alternative body to resolve disputes in the area of Islamic finance and to suggest a review or necessary statutory amendments on Section 138 of the Islamic Financial Services Act (IFSA) 2013 in strengthening the role of OFS in settling Islamic financial disputes.

LITERATURE REVIEW

In the future, Islamic Finance in Malaysia is anticipated to surpass conventional banks (Surin, 2023). This indicates that more consumers will choose Islamic finance as their source of financial assistance. With Islamic Finance on the rise, conflicts and disputes cannot be prevented.

As passed, OFS only admits financial dispute cases that fall within its monetary jurisdiction, which for Islamic financial services or products offered by its members is RM250,000.00. This limit prevents the OFS from hearing disputes because the current market value does not align with the limit. The average price of a terrace property, for instance, is RM418,592.00 (NAPIC, 2023).

Furthermore, for any parties to refer to OFS, the eligible complainants are strictly confined to financial consumers of financial service providers who are members of the OFS, including Islamic banks. Thus, this platform cannot be resorted to if Islamic banks wish to pursue legal action against the consumers (Rusni Hassan et al., 2022).

Any regulation or rules regarding the requirement to be appointed as Ombudsman were not specified, neither in Section 138 of IFSA 2013 nor in the Islamic Financial Services (Financial Ombudsman Scheme) Regulation 2015. Section 2 of Islamic Financial Services (Financial Ombudsman Scheme) Regulation 2015 only defines Ombudsman as an officer of the scheme operator appointed by the board of directors of the scheme operator to adjudicate disputes referred to the approved financial ombudsman scheme.

According to Rusni Hassan et al., (2022), the ombudsman's decision is final and concludes the OFS's dispute resolution procedure. The member shall not initiate legal proceedings that are inconsistent with the agreement once the dispute has been resolved by mutual agreement of the parties. In contrast, if the award is not acceptable, the disputing parties are free to pursue their rights through any other means, including litigation or arbitration.

METHODOLOGY

The research methodology adopts a qualitative approach under the doctrinal research category including analytical and comparative approaches. Primary sources such as the IFSA 2013, Islamic Financial Services (Financial Ombudsman Scheme) Regulations 2015 and case law together with secondary sources such as academic journals, books, online databases Current Law Journal, HeinOnline, and LexisNexis and newspaper articles were used to collect the research materials.

FINDINGS AND DISCUSSION

From January 2021 until December 2021, the OFS handled 1,911 disputes, consisting of 1,156 newly registered cases and 755 brought forward disputes from 2020 (OFS, 2021). Overall, the registered disputes were down by ten percent compared to 2020. More than half of the disputes lodged with OFS last year were against the banking, Islamic banking, and payment systems sectors. Nevertheless, based on the 2021 and 2020 OFS's Annual Report, only 1 and 7 disputes registered based on Islamic financing product type. It was found that the nature of disputes received in relation to Islamic finance were interest rate unreasonable or wrongly charged, wrong computation of instalment amount and method of interest/profit computation.

In 2021, half of the disputes lodged with OFS were for monetary amounts lower than RM10,000 (OFS, 2021). OFS successfully closed 1,186 disputes last year, comprising 711 cases from the insurance/takaful sector and 475 cases from the banking, Islamic banking, and payment systems sectors. OFS only accepts disputes involving financial disputes within the monetary limit of RM250,000.00. The OFS's monetary jurisdiction forms an impediment for the OFS to hear the bulk of cases involving financial disputes. Taking things into perspective, most houses in Malaysia are currently priced at more than RM250,000.00. In order to ensure that society as a whole can benefit from the OFS's service, it is important to expand the OFS's monetary jurisdiction.

Malaysia's OFS also struggles with marketability and public knowledge of the service that it provides.

This can be seen in the number of new registered complaints for the year 2021. In Malaysia, the number of new registered cases for the year 2021 is 6,475. Meanwhile, in the United Kingdom, the number of new registered cases is 165,263. There is a stark difference between the number of complaints received in Malaysia and the United Kingdom. Taking into consideration that Malaysia's population is around 34 million people and the United Kingdom's is around 68 million, Malaysia lags substantially behind in the use of OFS in comparison with the United Kingdom. This might be caused by the lack of marketability of the OFS in Malaysia. This is proven to be true as this issue has been raised by Malaysiakini through their publication entitled 'Many are still unaware of the Ombudsman for Financial Services'.

In addition, the study also found that there is uncertainty on how an ombudsman or the scheme operator in referring any Shariah matter to the Shariah Advisory Council (SAC) as the Islamic Financial Services (Financial Ombudsman Scheme) Regulations 2015 does not specify on it. In contrast, where any question arises relating to Islamic financial business before any court or arbitration that concerns a Shariah matter, the court or the arbitrator must take into consideration any published ruling of the SAC or refer such question to the SAC for its rulings by virtue of Section 56 of the CBM.

CONCLUSION AND RECOMMENDATIONS

The roles of OFS in Malaysia, specifically relating to the settlement of disputes in Islamic Banking and Finance must be strengthened and acknowledged not only by private organisations but also by the Courts and Legislative bodies so as to cater to the needs of the society at large in dealing with the settlement of their disputes through the OFS. Based on the findings, it is important to highlight the importance of monetary jurisdiction exercised by the OFS, in which the limit provided is only RM250,000.00. It is therefore very pertinent to increase the limit of monetary jurisdiction, for instance, up to RM1,000,000.00, so that the customers can enjoy the benefit of settling their disputes by way of OFS.

Furthermore, the law must be amended and/or reformed and/or reviewed, particularly Section 138 of the Islamic Financial Services Act 2016, so as to give more options to the OFS and the consumers in cases where one party is not satisfied with the decision of the OFS and vice versa, either party can file an appeal or a review to the High Court of Malaya to seek for the reliefs. These options are very important in order to strengthen and expand the roles and functions of the OFS so that the Courts and the society can acknowledge and resolve their disputes through the OFS. This can, in many ways, help the Courts to dispose of the backlog of cases in a short period of time.

Apart from that, creating awareness about the roles of the Ombudsman in resolving Islamic Financial disputes in Malaysia is also important so as to enable the public to resolve their disputes to OFS. This public knowledge should start from the Court itself as well as other legislative bodies through conferences, public speaking, public discussion, or even through the proceedings in Court, where the Judge hearing the matter involving Islamic Banking and Finance can give options to the parties either to resolve their disputes through OFS or other alternative dispute resolution method.

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TRACK 11: ISLAMIC/ SHARIAH/ HALAL LAW

SYNERGY OF CASH WAQF AND LAND WAQF IN THE DEVELOPMENT OF HOUSING FOR LOW INCOME COMMUNITIES

Helza Nova Lita^{1*}, Yusuf Saeful Zamil² & Betty Rubiati³

^{1,2,3} Faculty of Law, Universitas Padjadjaran, Indonesia.

Email: ¹helza.nova@unpad.ac.id; ²yusuf@unpad.ac.id; ³betty.rubiati@unpad.ac.id

*Corresponding author helza.nova@unpad.ac.id

ABSTRACT

As one of the basic human needs, every family should ideally have a house, especially for people with low incomes and for people who live in densely populated urban areas. Seeing the potential of waqf land in Indonesia, this can be a solution for providing land to build houses for low-income people. This also requires the financing and management of flats on the waqf land. This article will examine how the funding model for housing development for low-income people and what the legal framework is. Existing Islamic financial instruments can be developed into housing and settlement financing schemes, including through cash waqf. The independence and togetherness of all parties involved in the construction of flats is very much in line with what is one of the principles for the establishment of flats stipulated in the Flats Law, namely to provide a foundation for the organization of flats that is based on initiative, self-help, and community participation so that they are able to build confidence, ability, and own strength as well as the creation of cooperation between stakeholders.

Keywords: Housing, Low Income Communities, Waqf

INTRODUCTION

Housing is one of the basic human needs. Today's increasingly dense population, especially in urban areas, while land is limited, causing higher land and house prices, which not all people can afford, especially low-income people. For this reason, efforts are needed to make it easy for the community to obtain decent housing though. The government's role is to be responsible for providing welfare to the community, including facilitating the acquisition of housing for the community through housing and settlement areas as well as community self-help. The provision and ease of acquiring such houses is a functional unit in the form of spatial planning, economic life, and socio-culture that is capable of guaranteeing environmental sustainability in line with the spirit of democracy, regional autonomy, and openness in the order of life in society, nation and state.

Seeing the potential of waqf land in Indonesia, this can be a solution for providing land to build houses for low-income people. This can be done, among others, based on the provisions of Article 16 paragraph (1) of Law Number 41 of 2004 concerning Waqf which states that waqf assets consist of immovable objects and movable objects. Furthermore, in the next paragraph (2) it states that "immovable objects referred to in paragraph (1) letter a include: land rights in accordance with the provisions of the applicable laws and regulations, both already registered and unregistered, buildings or parts of buildings that are standing on land and plants, and other objects related to land, ownership rights to apartment units in accordance with applicable laws and regulations, other immovable objects in accordance with sharia provisions and applicable laws and regulations. As a comparison, several countries such as Jordan and Turkey have provided examples of the use of waka land for community housing. However, in implementing the construction of these houses, considering that problems related to limited land and financing are part of the problems faced in achieving housing and settlement development targets, the use of endowments in the form of land and money to help fulfill livable housing for the community, especially low-income communities (MBR)), This article will further examine the synergy of waqf land and money in the construction of adequate housing for low-income people, how are the mechanisms and regulations related, including to maintain the continuity of the productivity of waqf objects so that economically they also provide productive benefits but still prioritize aspects of maslahah for social interests.

LITERATURE REVIEW

Waqf is a form of economic distribution that has the potential to be developed. Muhammad Anas Zarqa stated that “Awqaf transfers wealth from private ownership to a beneficial social collective ownership (Muhammad Anas Zarqa dalam Munawar Iqbal, 1986, p. 183). Muhammad Ibn Isma'il as-San'any, waqf is holding property that may be benefited without spending or destroying the object ('ainnya) and used for good (Muhammad Ibn. Isma'il as-Sa'any, in Farida Hartini, 2005, P. 108). Imam Taqiy al-Din Abi Bakr bin Muhammad al-Husaeni in the book *Kifayat al-Akhyar* argues that what is meant by waqf is the detention of property that allows it to be used with the eternal object (substance), it is prohibited to classify its substance and the benefits are managed in goodness to get closer to Allah (Abi Bakr ibn Muhammad Taqiyal-Din).

The waqf institution is an economic potential in Islam that is closely related to the socio-economic problems of society. Waqf has a role in distributing welfare to the community in addition to zakat, infaq, and alms institutions. In neighboring countries, waqf institutions have developed and are able to contribute to economic and social problems. In neighboring countries, productive waqf management has been successfully implemented, including in Egypt and Singapore. In Egypt, waqf assets are in the form of buildings and agricultural land which are leased or divided for processing to those who are willing to work on them with a profit-sharing system, giving shares in various business fields. (Wakaf di Singapura dan Mesir, 2011, p. 19).

Productive management of waqf for the welfare of society is an unavoidable demand. (Kementerian Agama Republik Indonesia, 2005, p. 62). Waqf manager Nazhir requires collaborative partnerships with various professional institutions. In the formulation of the partnership cooperation must pay attention to the principles of sharia/Islamic jurisprudence according to waqf, namely the principle of immortality (ta'bidul ashli) and the principle of expediency (tashbilul manfaah) which has the consequence that there must be guaranteed protection of waqf objects while being able to increase the productivity of waqf objects for the benefit of worship and public welfare. (Tholhah hasan, 2009, p.3)

METHODOLOGY

The research method that will be used in this study is as follows. The method used in this research is a normative legal research method with a statutory approach. Normative legal research is antype of research that is commonly carried out in the development of legal studies, which in the West is usually called Legal Dogmatics (Bernard Arief Sidharta, 2011, p. 42). This research is analytical descriptive in nature, meaning that it provides a comprehensive, in-depth description of a condition or symptom being studied. The research stages used in this research are Library Research, namely research on secondary data related to the problem under study, which includes Primary Legal Materials; namely, binding legal materials in the form of statutory regulations, Secondary Legal Materials, namely: materials that are closely related to primary legal materials (Soerjono Soekanto & Sri Mamudji, 2006, P. 29), and can help analyze primary legal materials, including books, scientific work and research scholars, as well as other literature related to the research topic, and Tertiary Legal Materials, namely materials that provide information on primary legal materials and secondary materials including bibliographies, magazines, journals, dictionaries, and encyclopedias. The data collection technique used in this research is a literature study, namely conducting research on documents and interviews. The analysis of primary data and secondary data used in this study is a qualitative juridical data analysis using legal interpretations and legal constructions which are then described descriptively.

FINDINGS AND DISCUSSION

Related to the provisions of the Waqf Law, that waqf asset management activities must be in harmony with sharia principles. This also requires that the financing and management of flats on waqf land be carried out through a sharia-based financing system. The waqf management system is either through musyarakah or mudharabah. The use of the sharia system is intended so that waqf management is in accordance with Islamic values (Kementerian Agama RI, 2005, P. 45). The management and development of waqf objects is carried out in accordance with these sharia principles, among others, specifically regulated in the provisions of Article 43 of Law Number 41 of 2004 concerning Waqf. Islamic financial instruments that have been and are being developed in housing and settlement financing schemes include: Murabahah Financing, Mudharabah Financing, Istisna' Financing, Musyarakah Financing, Musyarakah Mutanaqishah Financing, Hawalah, Sukuk (SBSN), Waqf (land & building endowments, as well as waqf cash).

Pursuant to the provisions of Article 20 of the Law on Flats, the use of waqf land for the construction of flats as intended is carried out by way of leasing or joint utilization in accordance with the waqf pledge. If

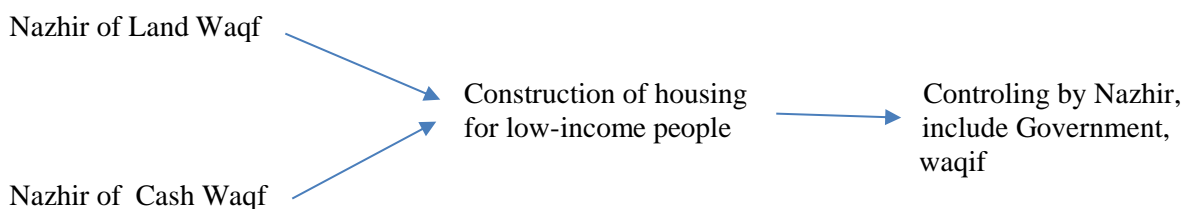
the utilization of waqf land is not in accordance with the waqf pledge, a change in designation can be made after obtaining written approval and/or permission from the Indonesian Waqf Board in accordance with statutory provisions. Allocation changes can only be made for the construction of public flats.

Implementation of leasing or utilization cooperation is carried out in accordance with sharia principles and provisions of laws and regulations. This lease agreement includes: 1) The identity of both parties, 2) The time of the agreement, 3) Contains general provisions and regulations that must be obeyed by both parties, 4) Obligations and prohibitions of the parties, 5) Term and expiration of the agreement, 6) Circumstances beyond the ability (force majeure), and 6) Settlement of disputes and sanctions for violations (Ninik Respati, 2015).

Funding for the construction of flats for low-income people on waqf land can be done by synergizing through cash waqf/cash waqf. Management results or profits from cash waqf can be distributed to appropriate housing for low-income people, in this case it can also be intended for public flats for them as long as it is mandated by the waqif. The independence and togetherness of all parties involved in the construction of flats is very much in line with what is one of the principles for the establishment of flats stipulated in the Law on Flats, namely to provide a basis for the organization of flats which is based on initiative, self-help and participation. community so that they are able to build their own trust, ability, and strength as well as create cooperation between stakeholders.

The collection of cash waqf can be carried out by nazhir parties who have been mandated by waqf land from the waqif. Of course the designation of the waqf land itself has been approved by the wakif for the management of building proper houses to help low-income people. On the other hand, the Nazir who receives the land waqf can also cooperate with other Nazhir parties who are fundraising in collecting cash waqf. An analogy that can be given is the example of the establishment of an eye hospital in Serang, where the land waqf for the construction of the hospital was managed by Nazhir Badan Waqf Indonesia, while for collective activities to collect funds for the establishment was carried out by Nazhir Dompot Dhuafa. Below is a chart that can be given to illustrate collaboration between nazirs

Figure 1 : Construction Land & Cash Waqf



Nazhir can also independently carry out both roles as land waqf nazhir and at the same time can act as money waqf nazhir. The collection of cash waqf is carried out by Nazhir in partnership with Islamic financial institutions as collectors of cash waqf funds. Waqf money collected will be used for the construction of decent housing for low-income people.

In order to maintain the continuity of housing management for low-income people, it is necessary to carry out productive economic empowerment, so that there is an endowment fund for housing maintenance. In discussions with the management of the Indonesian Waqf Board, investors are generally reluctant to manage housing for low-income people because it is economically unfavorable, partly because the rental prices offered are relatively low because poor people are prioritized. For this reason, Nazhir needs to innovate by being able to utilize the building with modifications by providing several special spaces for commercialization such as being a shop for rent, or a business area, while still prioritizing its main function for housing for underprivileged people. So that the profits from the business space in the building can be used for building maintenance and other waqf social activities.

CONCLUSION AND RECOMMENDATIONS

Financing through cash waqf for the construction of housing for low-income people on waqf land, can be carried out independently by nazirs or in collaboration with other nazhirs, including Islamic financial institutions. This financing must be in line with sharia principles according to the provisions of the Waqf Law.

The need for partnership synergies, especially with the business world in the development of waqf land for the construction of buildings including flats, Nazhir waqf land which is empowered for the establishment of flats based on Article 11 of the Waqf Law carries out administration, management and development of waqf assets in this case waqf land in accordance with its purpose, function and designation, including supervising and protecting waqf assets, and reporting on the implementation of tasks to the Indonesian Waqf Board.

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TRACK 11: ISLAMIC/ SHARIAH/ HALAL LAW

SYSTEMATIC LITERATURE REVIEW OF THE ROLE OF ISLAMIC FINANCIAL INSTITUTIONS TOWARDS THE GROWTH OF ISLAMIC PUBLIC FINANCE

Afidah Nur Aslamah¹, Muhammad Irwin Muslimin², Yusi Gumansari³, Muhammad Zilal Hamzah⁴

^{1,2,3}*School of Strategic and Global Studies University of Indonesia, Jakarta, Indonesia*

⁴*School of Strategic and Global Studies University of Indonesia and Faculty of Economics and Business Trisakti University, Jakarta Indonesia*

Email: ¹*afidah.nur@ui.ac.id*; ²*muslimin.irwin@gmail.com*; ³*yusi.prasetyo@gmail.com*

⁴*mhd_zilal_hamzah@hotmail.com*

**Corresponding author. Email: afidah.nur@ui.ac.id*

ABSTRACT

This research aims to analyze the role of Islamic Financial Institutions or IFI in facilitating the growth of Islamic public finance worldwide. The research method used is a qualitative method through Systematic Literature Review approach and is described comprehensively through PRISMA flow diagram. The flow diagram portrays information flow through the different stages of a systematic review. It maps out the number of records identified, included and excluded, and the reasons for exclusions. Various templates are available dependent upon the type of review (new or updated) and sources used to identify research. We selected articles from credible and relevant Scopus Q1-Q4 databases that met the standard eligibility criteria. The selected articles were analyzed using the VOSviewer tool to map the article titles, author names, country of origin, and keyword trends related to Islamic Financial Institutions (IFI) and Islamic Public Finance (IPF). The results yielded 76 articles which were then filtered through several stages resulting in seven final articles for further analysis. We critically examined the research findings in these articles and addressed them based on the research questions i.e. the role of IFI, the approach used to measure the role of IFI, and the factors influencing the role of IFI in the growth of IPF. Our analysis revealed that IFI plays a crucial role in the growth of IPF as multi- institutional entities collectively responsible for the social welfare of the ummah. Additionally, the measurement approach to IFI's role can utilize various Islamic public policy instruments such as zakah and waqf. Factors influencing the role of IFI include the need for intensive government-led programs in socializing and improving financial literacy among the public to ensure that Islamic financial inclusivity reaches all segments of society.

Keywords: Systematic Literature Review, Islamic Financial Institutions, Islamic Public Finance

INTRODUCTION

Various paradigms and definitions of development shape the variation of indicators for the success of a country in implementing development. Based on the development theory and paradigms in the modern era, the basic and initial indicators of development are economic growth (GDP Growth) and income per capita (Frey & Stutzer, 2002; Ranis et al., 2000; Romina Conceicao, 2008; Todaro & Smith, 2015). Subsequently, several indicators of development measurement emerged such as Living Index, Development Index, and Physical Quality of Life Index. include: improving opportunities and expanding the distribution of basic human needs, raising the standard of living, and expanding economic and social choice. The concept of national development is also one of the discussions studied in Islamic development economics. Islamic development economics aims to achieve falah (success) and maslahah (welfare) of society based on Islamic principles in a just economic system. Moreover, the main characteristics of the Islamic economic system, which also serve as the essence of Islamic development economics, include being based on market economic principles, sustainable development, upholding justice, and not making economic growth GDP per capita the primary objectives of development (Mahri et al., 2021).

Efforts to implement Islamic development in a country make Islamic public finance a navigational direction for the success of development. Classical Muslim economists such as Abu Ubaid view public wealth as a special wealth where a government has the right to regulate and manage its finances, even distributing them to the people (Dahlan, 2008). Therefore, the state requires the role of Islamic Financial Institutions (IFI) in

managing public finance based on Islamic principles.

A few recent studies on IFI have been conducted in various countries such as GCC Countries (Akkas & Al Samman, 2022), Malaysia (Jabbar, 2020), (Madah Marzuki et al., 2021), (Aman, 2020) and Pakistan (Rashid et al., 2023). However, these studies generally focus on the concept of governance and resilience of IFI. Researchers have not found many specific empirical studies or literature reviews that specifically examine the role of IFI, the approaches used to measure their role, and the factors influencing their role. Based on the background mentioned above, the researchers have developed this research titled The Systematic Literature Review of The Role of Islamic Financial Institutions Towards The Growth of Islamic Public Finance.

LITERATURE REVIEW

Islamic Public Finance

Richard A. Musgrave in Rosen (2002) explains that public finance is a discipline that studies the economic activities of a government as a whole. Another definition provided by Winer & Shibata (2002) states that public finance is the study of the utilization of funds provided for making payments as planned by the government. There are several aspects studied in the discipline of public finance, including government expenditure and revenue, public administration, stabilization and growth, and the impact on the country's economy (Jaelani, 2016).

Islamic Financial Institution

Financial institutions are businesses that engage in financial activities such as collecting funds, distributing funds, and providing financial services to the public (Mardani, 2015). The economic development, particularly in Islamic economics, has given rise to Islamic financial institutions. Islamic financial institutions are financial institutions based on Islamic principles. The Islamic principles refer to prohibited elements (maysir, gharar, riba, and bathil), conducting business based on lawful profit according to Sharia, and the distribution of zakah, infak, and sadaqah (Soemitra, 2009).

METHODOLOGY

This research uses a qualitative research approach. Qualitative research is a research strategy that emphasizes words rather than quantification in the collection and analysis of data (Bryman, 2012). The method used in this research is Systematic Literature Review (SLR) which involves reviewing relevant literature sources to answer the research questions. This is done by identifying, selecting, and evaluating literature that is relevant to the focus of the research (Baloyi & Jordan, 2016). Therefore, the researcher formulates several research questions as follows:

What is the role of Islamic Financial Institutions in facilitating the growth of Islamic Public Finance?

What approaches are used to measure the role of Islamic Financial Institutions in facilitating the growth of Islamic Public Finance?

What are the factors that influence the role of Islamic Financial Institutions in facilitating the growth of Islamic Public Finance?

FINDINGS AND DISCUSSION

Based on the analysis using the Publish or Perish (PoP) software, the development of research on IPF and IFI in the past 30 years from 1992 to 2022 indexed in Scopus yielded a total of 76 articles. The number of published articles in 2004, 2007, and 2009 was 1 article each while in 2008, there were 4 articles. From 2011 to 2022, the number of articles published each year was 3, 2, 3, 4, 4, 4, 8, 6, 10, 9, 5, and 11 articles. The year 2022 was the year with the highest number of research articles published with 11 articles. Based on the analysis using VOSviewer, a total of 117 items were identified, divided into 10 clusters, with a total of 1967 links. Research on IPF is still very limited as reflected by the absence of IPF items in the above map. However, there is an item related to Public Finance in Cluster 2 which is connected to Governance, Institution, Society, and Informal revenue generation, all of which also belong to Cluster 2, and Economy in Cluster 8. On the other hand, IFI items are located in Cluster 8 connected to Islamic Finance in Cluster 1, Islamic Banking in Cluster 5, and Institution in Cluster 2. The dispersion mapping shows the historical development of research over time where darker visualization indicates long-standing historical implementation while brighter visualization indicates research conducted in recent years. The results of the mapping show that research on Public Finance has been relatively conducted for a long time as reflected by the light blue color (around the years 2014- 2016) while research on IFI is relatively new as indicated by the bright green color (around the years 2018-2020). The researcher conducted a series of SLR processes in the Scopus database resulting in a total of 76 publications. Among the selected

publications were a total of 7 journals. Figure 5 depicts the journal selection process using a PRISMA flowchart.

Based on the previous discussions on the objectives and findings of empirical and theoretical research related to IPF and IFI, the roles of IFI in facilitating the growth of IPF can be summarized as follows: (i) IFI, together with various other institutions such as the government, private sector, and other sectors, have a collective responsibility to promote social welfare in the economy (Barom, 2019); (ii) IFI, particularly Islamic banks, plays a role in promoting justice and transparency to the public regarding Islamic banks products and services (Abdul Aris et al., 2013); (iii) IFI, particularly Islamic unit trust companies, are responsible for managing investment risks effectively and providing transparent reports in relation to the management of financing for public goods and mixed public goods through waqf (Azrai Azaimi Ambrose et al., 2018).

The approaches used in these studies to identify the roles of IFI in facilitating the growth of IPF include qualitative methods such as integrative analysis, content analysis, library research, observation, and semi-structured interviews (Abdul Aris et al., 2013; Azrai Azaimi Ambrose et al., 2018; Barom, 2019; Raja Adnan et al., 2022; Sungkawaningrum et al., 2022). Additionally, quantitative approaches such as exploratory quantitative methods and multiple regression analysis were also employed (Kannaiah et al., 2017; Shaikh, 2017). Furthermore, the factors influencing the roles of IFI in facilitating the growth of IPF include financial literacy, socialization, and accelerated marketing of IFI financial products (Kannaiah et al., 2017; Sungkawaningrum et al., 2022), waqf as an alternative source of financing for the government (Azrai Azaimi Ambrose et al., 2018), private-public cooperation in the form of mudarabah for waqf governance (Raja Adnan et al., 2022) and zakah to address inequality and funding deficits (Shaikh, 2017).

CONCLUSION AND RECOMMENDATIONS

Overall, this research provides an understanding of the approaches used in existing literatures to examine, measure, and analyze the factors influencing the role of Islamic Financial Institutions (IFI) in the growth of Islamic Public Finance (IPF). The findings of this research review indicate a greater focus on theoretical studies, highlighting the need for high-quality empirical studies within the context of Islamic financial institutions. For example, empirical studies could measure the government's role in promoting financial inclusivity in society through available Islamic financial institutions. Individuals with a good understanding of Islamic financial literacy and inclusion are more likely to exhibit financial behavior based on Islamic principles. Islamic financial institutions are expected to bridge the gap in financial access for all segments of society by offering various features and services based on government regulations on Islamic finance. Additionally, the systematic literature review in this research can inspire other researchers to further explore the extent of IFI's role in IPF through Islamic public financial policy instruments such as zakah and waqf, as they are believed to contribute to the welfare of the community.

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TRACK 11: ISLAMIC/ SHARIAH/ HALAL LAW

ISLAMIC HOME FINANCING: TACKLING THE CHALLENGES OF MODERN REAL ESTATE MARKETS

Khairul Aiman Samsudin¹, Fatin Syafiqah Muhsin², Nur Ameera Suhaimi³, Wan Nor Ramizah Amani Wan Remali⁴, Zubatrisyia Zulkiffli⁵ & Syuhaeda Aeni Mat Ali^{6*}

Faculty of Law, Universiti Teknologi MARA, Malaysia.

Email: ¹khairulaiman@uitm.edu.my; ²fatinsyafiqah179@gmail.com; ³ameerasuhaimi94@gmail.com; ⁴ramizahamani@gmail.com; ⁵teeshazulkiffli@gmail.com; ⁶syuha497@uitm.edu.my

**Corresponding author*

ABSTRACT

Islamic finance products introduce finance based on the concept of profit and loss sharing with no interest involved to be speculated as *Riba'*. Islamic Home Finance (“IHF”) is one of the products offered under *Shar'iah* compliance by way of ownership sharing or by deferred payment agreement with the Banks. Over the years, the real estate business has undergone tremendous transformation. While Islamic Finance Institutions (“IFIs”) confront comparable risks as the convention bank, IHF products are equally prone to challenges. Thus, this paper will study the challenges faced by Malaysian IFIs using the common IHF products in the modern real estate markets in Malaysia such as *Ba' I Bithaman Ajil* (“BBA”) and *Tawarruq'* that are accused of replacing *riba'* and one of the challenges also increase in the documentation costs for the customers while implementing *Musharakah Mutanaqisah* (“MM”). The methodology adopted is qualitative research method and doctrinal analysis. The process of gathering and analysing data will be conducted through the primary sources, which are statutes and case law including secondary sources such as journal articles and book reviews. The significance of this study is to show the flexibility of IHF products in combating challenges faced in the modern real estate markets. It is hoped that these findings can contribute to Malaysian policymakers in improving the policy and procedure of the IHF products that have evolved following the latest trend in real estate markets in Malaysia.

Keywords: *Islamic Finance, Real Estate, Islamic Banking, Home Financing, Shariah Law*

INTRODUCTION

As conventional financial institutions use *riba* (usury/interest) and *gharar* (extreme uncertainty), which are forbidden in Islam, many Muslim deliberately choose not to engage in financing products. Nevertheless, this voluntary exclusion has decreased as IFIs have grown and been established throughout the world. Consumers can profit from a wide range of financial services utilising *shari'ah*-compliant procedures provided by the IFIs (M. Ozdemir et al., 2022). Although the COVID-19 epidemic was the global Islamic Financial Services Industries' (“IFSI”) first significant test, it still has so far shown resilience. IFSI is expected to grow 11.3% year over year and has reached USD 3.06 trillion in 2021 (IFSB, 2022). It is to be noted that IHF is distinct in comparison to conventional housing loans because it is constitutionalist, which supports a stable and more secure financial system (Ahmed T et al., 2023). However, IHF products are also sensitive to the modern risks that necessitate a change in traditional risk management practices (Che Arshad et al., 2016). The phrase “*the latest trend in real estate markets*” implies that the real estate market in Malaysia is continuously evolving and that IFIs may have faced challenges in adapting to the current changes.

Therefore, the main objective of this research paper is to delve into the various challenges encountered by IFIs in Malaysia within the context of the modern real estate market. More specifically, the focus will be on analysing the utilisation of the common IHF products, namely *Bay' Bithaman Ajil* (“BBA”) and *Tawarruq*, which have been introduced as alternatives to the prohibited practice of *riba'* (usury). Additionally, the paper aims to explore the complexities associated with documentation issues and the heightened risks and increased costs faced by IFIs when implementing *Musharakah Mutanaqisah* (“MM”) as an alternative to BBA and to study both BBA and the *Tawarruq* method that validates it is not a replacement practice of *riba'* and instead prohibits it. To accomplish these objectives, the research will employ a qualitative research methodology coupled with a doctrinal analysis. This approach will enable a comprehensive examination of the challenges faced by Malaysian IFIs in adopting IHF products within the

modern real estate market. By utilizing qualitative research methods, such as case studies, the study intends to gather in-depth insights into the experiences and perspectives of various stakeholders, including industry professionals, scholars, regulators, and customers through secondary sources such as articles, journals and books. Furthermore, a thorough doctrinal analysis will be conducted to examine the existing legal and regulatory framework governing Islamic finance and real estate transactions in Malaysia. By addressing the challenges faced by IFIs in the real estate sector and providing a comprehensive understanding of the issues surrounding IHF products, the study aims to assist policymakers in formulating effective governance strategies. The ultimate goal is to create an enabling environment that encourages innovation and offers a broader range of options for IHF products within the emerging modern real estate market in Malaysia.

LITERATURE REVIEW

Over the last three decades, Ibrahim, N. and Mohd Sopian, S. (2023) alleged that the Malaysian IFIs have evolved into one of the most dynamic, aided by a well-structured infrastructures that has allowed it to develop a slew of new Islamic banking products, including the IHF. However, there are challenges faced by IFIs in the modern real estate markets and IHF products have evolved from time to time to tackle these challenges.

The creation of Islamic banking products begins when IFIs see the need to innovate and produce new goods to compete with conventional products. (Abdull Manaf et al., 2017). Adapting to the modern challenges, the core of the arguments between the early products; BBA and one of the latest IHF products; *Tawarruq* is the problem of usury approach. In the end, both BBA and *Tawarruq* are perceived to resemble the contentious *Ba'i al- 'Inah* ("BAI") (Hasmad & Alosman, 2022). The authors further mentioned that the majority of the experts oppose BAI since it is viewed as a technique for avoiding usury. This is a serious challenge since usury (*riba'*) is one of the major sins that believers are taught not to do. MM is considered a preferable alternative to the BBA controversial contract in Islamic housing financing. However, only a limited number of Malaysian IFIs have adopted MM as a replacement for BBA, some institutions still offer both contracts to customers for choice and variety (Mouhoub, D., & Deghmoum, H., 2021). Implementing MM as a housing finance contract presents significant challenges. Smolo and Hassan (2011) argue that although MM seems ideal in theory, its practical application is far from perfect. The issues surrounding are that due to the documentation issues, IFIs face higher risks, and there is an increase in the documentation costs for the customers while implementing MM. (Subky, K. H. Liu et al, 2017)

RESEARCH METHODOLOGY

This study adopts a qualitative research method by carrying out a comprehensive and detailed analysis of the legal framework governing Islamic home financing in Malaysia, the legal challenges and the gaps in the existing framework. Doctrinal studies were conducted by examining primary and secondary sources involving a critical review of the Islamic Financial Services Act 2013 ("IFSA 2013") along with journal articles and book reviews. The data collected were analysed using descriptive analysis, thematic analysis, content analysis and comparative analysis.

FINDINGS AND DISCUSSION

Malaysia's supportive regulatory environment and Islamic finance ecosystem contribute to its position as the world's third-largest Islamic banking market. (Fitch Ratings, 2023). At present, there are 177 IFIs that have registered under BNM and operate under IFSA 2013 in Malaysia (BNM, 2023). In the BNM's Financial Stability Review – Second Half 2019, Annual Report 2020, Malaysia's 30-year track record of successfully developing local IFIs provide Malaysia with a stable basis - a financial bedrock of stability that adds to the depth, diversity, and maturity of the financial system. Malaysia's Islamic banking assets now stand at USD 254 billion as of December 2019, with total funds put with Islamic banks accounting for 38.0% of total banking sector deposits.

The IFSA 2013 includes several sections that are pertinent to IHF, such as s 31; which addresses the licensing and compliance requirements for IFIs offering home financing; s 32 focuses on the internal control and governance standards for such institutions, including risk management and internal audit functions; s 33 emphasizes the establishment of a *Shariah* committee to ensure *Shariah* compliance in all aspects of home finance operations. s 34 highlights the importance of transparent disclosure to consumers, covering terms, fees, and other relevant details of home financing products; s 35 outlines consumer protection obligations, responsible financing practices, and mechanisms for resolving customer complaints related to IFH; and s 46 outlines the role and responsibilities of the Shariah Advisory Council ("SAC") in guiding and ensuring the *Shariah* compliance of Islamic financial institutions in their home financing

activities. In the study conducted by Bassir, N.F. et al (2014) the strong religiosity of the Muslim population, together with the brand or reputation of IFIs, the price or cost of financing, and the degree of education or awareness in Islamic finance, all impact the continuous subscriptions of IHF in Malaysia. Overall, Malaysia's supportive regulatory environment, coupled with the focus on Shariah compliance, transparent practices of SAC, and consumer protection under IFSA 2013, has fostered the growth of IHF, making it a prominent choice for individuals seeking home financing in accordance with Islamic principles.

CONCLUSION AND RECOMMENDATIONS

Conclusion: IHF in Malaysia has experienced significant growth and evolution over the years. However, there are challenges related to the modern real estate market and the need for alternative financing contracts. One such alternative is MM, but its implementation faces hurdles due to existing rules and regulations. This includes the introduction of *Tawarruq* which lead to the issue of replacing *riba*’.

Recommendations: In order to address challenges and promote the adoption of Islamic home financing (IHF) in Malaysia, Islamic financial institutions (IFIs) should focus on several key aspects. By following the principles of SAC, IFIs can build trust among potential customers who prioritise religious principles in their financial decisions. Another important factor is customer education. IFIs should invest in initiatives to increase awareness and knowledge about IHF by conducting free awareness sessions for the existing customers or collaborative events with *Bank Negara Malaysia*. By providing comprehensive information about the benefits and features of IHF, potential customers can make informed decisions and feel more confident in choosing IHF as their preferred option. Furthermore, product innovation plays a vital role in attracting customers and meeting their evolving needs. IFIs should continuously explore and develop innovative IHF products that cater to the demands and preferences of modern real estate markets by collecting feedback from Islamic scholars in Malaysia or attending symposiums and courses of IHF from other countries. This could include introducing flexible repayment options, competitive pricing, and additional value-added services in the IHF products.

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TRACK 12: ENVIRONMENTAL POLICIES AND GOVERNANCE

REFORMULATION OF REGULATIONS ON ENVIRONMENTAL INSURANCE TO GUARANTEE COMPENSATION AND RECOVERY OF THE ENVIRONMENT IN INDONESIA DUE TO POLLUTION AND/OR DESTRUCTION

Frencky Siska^{1*}

¹*Faculty of Law, Universitas Islam Bandung, Indonesia.*

Email: ¹frencysiska@unisba.ac.id

*Corresponding author

ABSTRACT

Environmental insurance in environmental law in Indonesia is one of the environmental economic instruments as an effort to ensure the availability of funds to pay compensation and environmental recovery due to pollution and/or damage committed by business actors to the environment. This study aims to understand the implications of limiting the scope of an environmental insurance application in environmental regulation in Indonesia and to find appropriate regulatory reformulation related to environmental insurance to guarantee compensation and recovery of the environment in Indonesia due to pollution and/or damage. The research method used is a normative juridical approach, with analytical descriptive research specifications, to produce qualitative analysis. This study concludes that limiting the scope of the application of environmental insurance in environmental law in Indonesia has implications for the application of environmental insurance that is not optimal for companies whose activities and/or businesses do not include using hazardous and toxic materials (B3) or producing B3 waste. Reformulation of appropriate regulations related to environmental insurance to guarantee compensation and recovery of the environment in Indonesia due to pollution and/or damage is to accommodate clear regulations regarding the necessity to apply environmental insurance for business actors whose activities and/or businesses have the potential to have an important impact on the environment.

Keywords: Environmental Insurance, Indemnity, Environmental Restoration, Pollution and/or Damage, Reformulation of Regulations

INTRODUCTION

The occurrence of pollution and/or damage to the environment is a risk that may be borne by every activity either in the context of development or running a business. As a result, the environment, including a group of people, suffers losses. Law Number 32 of 2009 concerning Environmental Protection and Management (UUPPLH) has stipulated that the person in charge of a business and/or activity must be responsible for compensating for these losses and making efforts to restore the environment. This responsibility can be fulfilled by transferring business risks through environmental insurance institutions so that business actors guarantee the availability of funds for compensation and environmental restoration.

LITERATURE REVIEW

Indonesian environmental law has used a combination of regulatory instruments that regulate two instruments, namely command and control instruments (CAC) and economic instruments. Economic instruments are the second generation of regulatory instruments in response to the shortcomings of CAC instruments. (Wiryadi & Novendra, 2020) The benefits of economic instruments are first, the strict and flexible nature of regulation. Strict means that policymakers must exert pressure, increase corporate environmental awareness, and set environmental goals to be achieved. Flexible regulation, on the other hand, means letting companies decide how and innovate to achieve these goals. Then, the regulation must be combined with economic incentives rather than technological standards. With economic

instruments, economic and environmental targets are achieved. (Porter & Linde, 2019) Environmental insurance is part of an environmental economic instrument that is an incentive or disincentive based on Article 42 of the UUPPLH which must be developed and applied to support environmental sustainability. (Ardianto, 2016) The explanation of Article 43 of the UUPPLH and Article 1 Number 9 of PP IELH states that mining companies, plantation companies, and industry players are charged with the obligation to pay environmental insurance as a condition for being able to carry out their business or activities. Environmental insurance can be viewed as a preventive and anticipatory effort from the government as a guarantee to repair and restore the environment that is polluted and damaged due to mining, plantation, and industrial activities or businesses, or due to forest and land fires. (Aridarmo, 2022) The main purpose of the concept of environmental insurance is to implement environmental pollution management and control programs that can damage the environment and endanger the community, especially those who live around industrial estates. In addition, it is also to provide appropriate funding for environmental management through an effective and efficient business institution in the management and handling of environmental pollution. (Rahmatiar & Gubtara, 2021)

METHODOLOGY

This research uses a normative juridical approach or normative legal research, which is an activity that examines aspects to solve problems that exist within the internal of positive law. (Benuf & Azhar, 2020) The research specification used in this study is descriptive-analytical, namely research that describes applicable laws and regulations associated with positive legal theories concerning the problem being studied. (Sumitro, 2010) The analysis of this research is qualitative, namely in analyzing data, this research uses the deductive method, which is the method used in discussions that depart from general knowledge and then to assess a specific event. (Hadi, 1989)

FINDINGS AND DISCUSSION

The funds needed to compensate for losses and carry out environmental restoration materially are very large, so obtaining funds as compensation and restoration of the environment for a company or government takes a relatively long time. Although the judge has decided that business actors pay some compensation and are obliged to carry out environmental restoration, in implementing the ruling, business actors and the government experience obstacles to providing funds. UUPPLH has regulated several environmental economic instruments that can be applied to control environmental pollution and/or damage, one of which is through environmental insurance instruments. Furthermore, in the implementation of regulations of environmental economic instruments as regulated in the UUPPLH, namely Government Regulation Number 46 of 2017 concerning Environmental Economic Instruments (PP IELH), affirming to the central and regional governments to develop and implement environmental insurance instruments. However, the environmental insurance mentioned in the UUPPLH and PP IELH only covers the field of hazardous and toxic waste management (B3 waste) and in activities that have high risk such as activities and/or businesses that use nuclear, to reserve fixed or tactical funds for compensation and/or environmental recovery. While other fields also have almost the same risk of causing important impacts on the environment, which requires environmental insurance instruments to be applied by business actors, therefore arrangements must be made. For example, environmental damage in the Porong Sidoarjo area, East Java Province, due to leakage of gas drilling wells in carrying out natural gas exploration activities. The environmental damage is marked by mud overflow, which has inundated swamps and rice fields, residential areas, the Surabaya-Gempol toll road, as well as the Surabaya-Banyuwangi and Surabaya-Malang railway lines. From 2006 until now it has been 17 years since victims have received new compensation in the community in residential areas, while 31 business actors who are also victims have not received clarity for compensation. (Salman, 2021) Another pollution case was carried out by PT Bintang Warna Mandiri (PT BWM) which is in Cimahi City, West Java Province. For the pollution acts committed, PT BWM was sanctioned to pay material compensation of Rp. 4.7 billion. (Saiyar, 2022) In both cases of environmental pollution above, it is known that the activities carried out by the company do not produce B3 waste but can arise large losses as a result of environmental pollution carried out. To guarantee compensation for losses suffered by the environment, the application of environmental insurance instruments should also cover activities or activities that do not use B3 or produce B3 waste and are at high risk but have a risk of causing pollution and/or damage to the environment.

CONCLUSION AND RECOMMENDATIONS

Limiting the scope of application of environmental insurance in environmental law in Indonesia has implications for the application of environmental insurance that is not optimal for companies whose activities and/or businesses do not include using or producing B3 waste. Reformulation of appropriate regulations related to environmental insurance to guarantee compensation and recovery of the environment in Indonesia due to pollution and/or damage is to accommodate clear regulations regarding the necessity to apply environmental insurance for business actors whose activities and/or businesses have the potential to have an important impact on the environment. The researcher proposed that the Ministry of Environment and Forestry of the Republic of Indonesia immediately formulate regulations in the form of government regulations as implementing regulations of the UUPPLH which specifically regulates environmental insurance, to provide legal certainty and guarantees for the replacement of environmental damage and recovery due to pollution and/or destruction by business actors or a development.

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TRACK 12: ENVIRONMENTAL POLICIES AND GOVERNANCE

REGULATING DISASTER MANAGEMENT PLAN IN MALAYSIAN ZOOS

Ain-Maryam Binti Zolkipli@Zulkifli^{1*}, Nurul Izza Binti Shamsul Kamal² & Khairul Bariyyah Binti Muhamad³

^{1,2,3}*Faculty of Law, Universiti Teknologi MARA, Malaysia.*

Email: ¹ain-maryam@uitm.edu.my; ²nurulizza@uitm.edu.my; ³khairulbariyyah@uitm.edu.my

**Corresponding author*

ABSTRACT

This paper aims to propose the regulation of zoo disaster management plans in Malaysia, highlighting the inadequacies of the existing Wildlife Conservation law that fails to address the necessity of regularly updated emergency plans. Employing a doctrinal approach, the study examines current regulations and analyzes their insufficiencies in effectively managing zoo disasters. The findings reveal that zoos equipped with appropriately updated and enhanced disaster management plans align with the phases of comprehensive disaster management demonstrate a proactive approach in preventing and mitigating potential disasters, as well as in efficiently responding to and recovering from them. Based on these results, the paper recommends the enforcement of Guidelines of Malaysian Zoo Standard that mandate a more comprehensive disaster management plan. This regulatory framework would ensure that all zoos in Malaysia adopt an updated and holistic approach to disaster preparedness and response, thereby safeguarding the welfare of animals and visitors alike. By enforcing these guidelines, Malaysia can enhance its zoo safety measures and contribute to the global effort of minimizing the impact of disasters on captive wildlife and their habitats through the Sustainable Development Goal (SDG) 15: Life on Land.

Keywords: *Malaysian Zoo, Disaster Management Plan, Wildlife Conservation, Sustainable Development Goal 15*

INTRODUCTION

In recent years, the importance of disaster management in Malaysian zoos has become increasingly evident as the frequency and intensity of natural disasters and emergencies continue to rise (Benjamin, 2021; Veno, 2023). Zoos play a crucial role in wildlife conservation and public education, but they are also vulnerable to various risks, such as extreme weather events, disease outbreaks, and human-induced accidents (Kementerian Sumber Asli dan Alam Sekitar, n.d.). Malaysia, with its diverse range of animal species and growing tourism industry, faces unique challenges in ensuring the safety of both animals and visitors during such calamities (Abidin et al., 2018; Ten et al., 2020). The existing Wildlife Conservation law in Malaysia, although providing a foundation for zoo operation regulations by insisting an emergency plan upon applying for a zoo permit however, falls short in addressing the necessity of regularly updated and comprehensive disaster management plans (Kementerian Sumber Asli dan Alam Sekitar, n.d.; Wildlife Conservation Act, 2010; Wildlife Conservation (Operation of Zoo) Regulations, 2012). As a result, zoos in the country lack comprehensive enforceable guidelines and face significant gaps in their preparedness and response strategies. Against this backdrop, this research paper aims to propose regulating the disaster or emergency management plans in the Guideline for Malaysia Zoo Standard. By employing a doctrinal approach, this study will analyze the existing regulations, identify their insufficiencies, and provide recommendations for improving the disaster management preparedness of Malaysian zoos. The implementation of effective regulations and guidelines will ensure that Malaysian zoos are better equipped to prevent, mitigate, and respond to disasters, safeguarding the welfare of animals and visitors alike and strengthening the overall resilience of the wildlife conservation efforts in the nation.

LITERATURE REVIEW

The disaster management plan should encompass potential emergencies that can be reasonably anticipated by conducting a hazard survey to assess the level of exposure to different risks. This plan should take into account not only the hazards that nearby facilities and external factors might present but also the potential hazards that could arise if a utility or service provider experiences a failure in their operations (Underwood, 2007). In the field of emergency management, which is also referred to as disaster management, a comprehensive approach is adopted to address hazards. This approach involves mitigating risks, preparing for the consequences of residual risks that remain even after mitigation measures, responding to disasters to safeguard lives and property, and assisting affected communities in their recovery efforts (Knight et al., 2023). It is important to note that failing to maintain and update emergency plan measures can lead to a decline in an organization's ability to effectively respond to situations, potentially resulting in a loss of agility (Lindström et al., 2010). Based on multiple studies, it has been found that around two thirds of organizations with emergency plans have conducted testing within the past year, while 15% have never done so. In terms of plan updates, approximately 60% of organizations across various sectors and 53% in the manufacturing sector have updated their plans at least once a year. Additionally, 20% of organizations update their plans every six months (Sawalha, 2020).

Article 1.43.212 of the Garis Panduan Standard Zoo Malaysia by the Ministry of Natural Resources and Environment only states the need of an Emergency Response Plan but do not touch on the need to update the plan continuously and the said article is as follows:

“1.43.212 Setiap zoo hendaklah menyediakan bantuan kecemasan apabila diperlukan dan mempunyai pelan tindakan kecemasan (Emergency Response Plan - ERP) bagi setiap keadaan di bawah dengan menggariskan langkah-langkah/prosedur terlibat.

i. Hidupan liar yang terlepas;

ii. Bencana alam seperti banjir, ribut, gempa bumi, tsunami dan sebagainya; dan

iii. Wabak penyakit (Kementerian Sumber Asli dan Alam Sekitar, n.d.).”

The need for emergency plans to be updated regularly is also absent in the main Act which Section 28(b) of the Wildlife Conservation Act 2010 which requires the zoo operator to prepare an emergency plan, relating to plague, natural disaster and animal escape (Wildlife Conservation Act, 2010). The United Nation through Goal 15 of the Sustainable Development Goal particularly under target 15.9 has set that by 2020 to integrate ecosystem and biodiversity values into national and local planning, development processes, poverty reduction strategies and accounts. According to the Secretary-General of UNCTAD 2013, Mukhisa Kituyi, “the use of biodiversity-based resources must be managed in a sustainable, equitable and inclusive manner” (UNCTAD, 2013). The World Organisation for Animal Health (WOAH) believes in the importance of emergency preparedness as when emergencies and disasters strike it will affect several of the 2030 Sustainable Development Goals and that investing in preparedness prevents or reduces the economic burden of an emergency and the following recovery phase, eventually saving millions of human and animal lives (WOAH, n.d.).

METHODOLOGY

The doctrinal research methodology employed in this study focuses on analysing and evaluating existing regulations related to zoo disaster management in Malaysia. By examining current laws and regulations, the study identifies shortcomings in the Wildlife Conservation law that overlook the importance of regularly updated emergency plans.

FINDINGS AND DISCUSSION

Recent events have highlighted the vulnerability of Malaysian zoos to disasters. The devastating floods in 2014 and 2020, which resulted in the loss of animal lives and infrastructure damage, underscored the need for proactive measures to safeguard the welfare of animals and ensure the safety of zoo personnel and visitors (Benjamin, 2021). In the year 2020, a video emerged on the internet where the footage showed rats inside the penguin enclosure at Zoo Negara. When questioned about this incident, a

representative from the zoo offered an explanation, stating that their facility was quite old, and occasionally rats and snakes managed to find a way in. However, they reassured the public that the issue had been addressed and the hole in the penguin enclosure had been sealed off (The Star, 2020). Moving forward to February 2023, another incident occurred at Zoo Negara and this time, a male hog deer was reported missing from the zoo. It was discovered that the deer had managed to escape by traversing through a stream that led outside of the park. This incident raised concerns about the zoo's security measures and their ability to prevent animals from leaving their designated areas (MONIHULDIN, 2023). Adding to the string of animal escapes in Malaysia, on March 12, 2023, two crocodiles housed in the Matang Wildlife Centre in Sarawak also managed to break free. The heavy rainfall had damaged their enclosure, providing an opportunity for the crocodiles to escape (Veno, 2023). This incident highlighted the vulnerability of wildlife facilities during adverse weather conditions and raised questions about the adequacy of the emergency plan in such places. Donald E. Moore (2014) suggests a series of steps to establish institutional preparedness in zoos. Firstly, it is crucial to develop a risk management policy and an emergency management manual for zoo staff. These documents should outline the identified risks and the measures intended to address them. Secondly, regular reviews of these policies should be conducted, accompanied by emergency training, drills, and assessments of responses to real-life situations. This ensures that the institution remains adequately prepared for potential challenges and that the staff is knowledgeable about and comprehends these policies (Moore, 2014). At the departmental level, guards should receive annual training and education plans to enhance their ability to handle emergency situations effectively. Moreover, custodians play a crucial role by providing comprehensive information about individual facilities, animals, and their behavior. They should also provide feedback on appropriate responses to emergencies. It is essential to have effective disaster containment planning to prevent minor errors from escalating into disasters. Lastly, keepers hold the responsibility of ensuring the proper functioning of secondary escape prevention devices. They should regularly inspect fencing, signage, and perimeter emergency containment systems within their designated work area (Moore, 2014).

We believe that the recommendations from Donald E. Moore (2014) emphasize the importance of developing risk management policies, conducting regular reviews, and providing comprehensive training for zoo staff. These measures aim to enhance institutional preparedness, prevent disasters, and ensure the safety of animals, visitors, and infrastructure. Implementing these recommendations will contribute to the creation of resilient zoos in Malaysia, capable of effectively responding to emergencies and mitigating risks. Such efforts align with the goal of safeguarding wildlife and their habitats. Hence the need to regulate disaster or emergency management plans in Malaysian zoos.

CONCLUSION AND RECOMMENDATIONS

Disaster or emergency management planning not only helps to safeguard the organization from catastrophe, but it also prepares the animal care staff and other key departments for any disaster. In making the plan, Malaysian zoo owners should always consider the worst then plan, prepare and must regularly update the emergency plan after each aftermath for the best possible results. On top of that, the Wildlife Department must work hand in hand with the legislative body to incorporate a comprehensive disaster management planning into the parent Act, regulation as well as the guideline. This will ensure disasters which involve wildlife in enclosure could be carried out in a proper manner and in line with Goal 15 of the SDG.

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TRACK 12: ENVIRONMENTAL POLICIES AND GOVERNANCE

FOOD SECURITY: SAVING OUR FISH

Rohani Binti Md Shah ^{1*}¹*Faculty of Law, Universiti Teknologi MARA, Malaysia.**Email: ¹rohanimohdshah@uitm.edu.my ****Corresponding author***ABSTRACT**

This article addresses a frequently overlooked but extremely important part of world food security; i.e the importance of fish in food security. The article will present the pathways between fisheries food security, including the proposal for joint policy related to the governance of fish catch between Malaysia and Indonesia. It provides insights on what needs to be done to achieve sustainable fisheries to strengthen the two-country policy. The paper is aimed to enlighten the international community and understand the wide spectrum of issues that make fisheries an important part of food security meeting the SDG requirement. In the context of the ‘Food security’ which recently agreed on the United Nations 2030 Agenda for Sustainable Development, which includes the goal to end hunger, achieve food security, and improve nutrition, this report synthesizes current understanding of capture fisheries’ contributions to food and nutrition security. This article will explore various challenges in ‘saving our fish’ at sea so that the catch will be sufficient to meet the 2030 Agenda. Although fish makes crucial contributions to food security at global, national, and local levels and is also very cheap in price and very high in supplying nutrition, still fisheries have often been arbitrarily separated from other parts of the food systems in food security studies, debates, and policy making. Through doctrinal research and relying on the UNCLOS 1982, it is possible to implement “Joint Policy between Malaysia - Indonesia on Food Security - Saving Our Fish”, in order to achieve 2030 SDG Agenda.

Keywords: *Food Security, Fish, Sustainable Development Goal, UNCLOS, Policy*

INTRODUCTION

Understanding Food Security from fish resources brings us to understand fisheries’ role in food and nutrition security requires not only information on how much fish is available and where it comes from. In 2014, fisheries produced 167.2 million metric tons, this capture fisheries although contributed more than half of the total global fish production but half of these catch was destined for human consumption. In fish constitute 99 percent of meals with concentrated protein and nutritious value. The nutrition and food security contributions of fish, in particular from capture fisheries, are of crucial importance to the world’s growing population. Globally, more than 3.1 billion people rely on fish for nearly one-fifth of their average protein (Riddhi Vagh, et.al. 2021). Some countries like Maldives, Cambodia, Sierra Leone, Kiribati, Solomon Islands, Sri Lanka, Bangladesh, Indonesia, and Ghana and Brazil obtain more than half of their animal-source protein from fish (Lugten G.2008). Previous study showed that many projections indicate that capture fisheries production is likely to stagnate or decline due to overfishing and other threats such as climate change. However, other analyses suggest that under appropriate management the supply of fish from capture fisheries could expand in the relatively short term period to accommodate the need for food. To maintain these important nutrition and food security contributions, a policy based on UNCLOS 1982 is needed to implemented the desire to secure nutrition food from the sea since both countries are party and so does 179 other countries, are party to the Convention. The Joint Policy between Malaysia and Indonesia to not only about increasing catch of the day but also preserving fish catchment for the future too (Andrew,N.L.et.al 2011). Creating a joint policy between Malaysia- Indonesia in Food Security Policy to support the food security must also ensure the sustainability of fish resource (either from the sea or the farm) , to recognize existing trade between them and build a synergies between State’s maritime jurisdiction in the Exclusive Economic

Zone and in the High Sea (WorldFish (2011).

LITERATURE REVIEW

Current Context of Food and Nutrition Security Food insecurity and malnutrition remain urgent challenges (Yumiko K, Nozomi K.(2021). Alleviating hunger and malnutrition is critical because the global population is likely to grow by about two billion over the next two decades (Bishwajit Ghose 2014). UN Research and policy study show that seeking to alleviate hunger and malnutrition increasingly recognize multiple facets of food security, which include sufficient energy intake, food access and quality, and dietary and micro-nutrient diversity. (Jennifer Blesh 2019). The most recent estimates suggest that between 2015 and 2016, the prevalence of hunger increased from 10.6 percent of the global population (777 million people) to 11 percent (815 million people)(AO et al.(2017). The most important contribution of fish is multiple micro-nutrients essential to addressing a variety of health issues worldwide. Fish contains vitamin A, D, and B and calcium, phosphorus, zinc, iron, and iodine. Precise nutrient profiles vary across fish species, processing and preparation techniques, and habitat (Lisa C. et.al. 2000). Micro-nutrients in fish can lead to a variety of health benefits, including lowered risk of cardiovascular disease; positive maternal health and pregnancy outcomes and increased early childhood physical and cognitive development; improved immune system function; and alleviated health issues associated with micro-nutrient deficiencies such as anemia, rickets, childhood blindness, and stunting (Hendriks, S.L, 2015). UNCLOS is the implementation convention that allows country members to commit policy to meet their needs. In fact, UNCLOS 82, section 56 to section 76 promote cooperation between member states (Eggersdorfer and Bird. (2016).

METHODOLOGY

The article will be based on doctrinal research and literature review relevant to United Nations Convention on the Law of the Sea (UNCLOS) 1982 and the SDG14 UN 2030 Agenda for Sustainable Development - Food Security. The UNCLOS 1982 itself is full of challenges and not fully an open umbrella to address or offer protection especially to construct policy to protect/ secure fish catch of the State (James Kraska, 2019). However the SDG14 of the United Nations 2030 Agenda for Sustainable Development (UN 2017 Report) aimed is clear to;

“conserve and sustainably uses from the oceans, seas and marine resources for sustainable development” as the “increasingly adverse impacts of climate change (including ocean acidification), overfishing and marine pollution are jeopardizing recent gains in protecting portions of the world’s oceans”.

Although fishery activities and industry is the task under the Fisheries Department of Malaysia, the department has very limited capacity and Indonesia has a bigger capacity of catch of the day (Youn et al. 2014). Since both countries are member to UNCLOS 1982 and the 2030 SDG14 UN Agenda - it is best the two country complement each other and activate the Joint Policy for food security. Initial move to secure our food and save our fish is to analyses the collect data and begin our own local commitment first. Three overarching questions will dominate; (a) What contributions do capture fisheries make to food security in each country? (b) What is the current dialogue/policy regarding the links between capture fisheries and food security between the two countries? (c) What data from other jurisdiction are available to inform research and policy development to support the contributions of capture fisheries to food security?

FINDINGS AND DISCUSSION

The keys to policy development need to concentrate on these issues. First both countries need to identify their actual status quo. The Fisheries policy and Food policy arenas have to be isolated from each other. The Fisheries Policies often aim to optimize economic benefits or conserve charismatic species, and most Food Policies tend to focus almost exclusively on terrestrial systems. Therefore both countries must supporting the food and nutrition security contributions of fisheries and thus require development of coherent policies integrated across domains: (economic, social, environmental, legal, and political), issues (health and nutrition, climate change adaptation, trade), and sectors (capture fisheries and aquaculture, agriculture)(Anderson, 2015).

Some of the ideal content of the Joint Policy of Food Security can include; First, setting up the basic tonnage of capture fisheries needed to help end hunger and malnutrition, which illegal fishing should not be included. Second, there should be the appropriate governance reforms moves adhere in the local government to address the need for the hunger and malnutrition to end. Third, cooperation in fishing activities in EEZ of Malaysia and Indonesia to be recognized and enforcement issues to be dealt with harmoniously and several joint action to address more general challenges associated with governing common pool resources – “identifying common pool of common fish”. Fourth, governance reforms can be particularly challenging when fish resources are highly mobile and in contexts in which the number of fishing vessels is high and in which fishing activities are highly dispersed – leasing/renting/hiring foreign fishing vessel.

CONCLUSION AND RECOMMENDATIONS

A need to activate the policy will depend on research that enhances understanding of both the magnitude of fisheries’ contributions as well as the factors that affect the distribution, access, and use of fisheries resources, so far coordinate between two ministries is weak (Battersby, 2017). A successful ‘Joint Policy Between Malaysia and Indonesia To Save Our Fish For Food Security’, depend on both Governments readiness to work together to accept the fact that nutritious and cheap food to build a strong nations, from fish as nutritious food security will soon deteriorate and gone.

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TRACK 13: INTELLECTUAL PROPERTY LAW

REDEFINING THE CONCEPT OF “PUBLIC DOMAIN” FOR THE EQUITABLE PROTECTION OF TRADITIONAL KNOWLEDGE AND TRADITIONAL CULTURAL EXPRESSIONS

Lim Heng Gee^{1*}

Faculty of Law, Universiti Teknologi MARA, Malaysia.

Email: ¹henggee277@uitm.edu.my

**Corresponding author*

ABSTRACT

Negotiations for an international instrument for the protection of genetic resources, traditional knowledge (TK) and traditional cultural expressions (TCEs) have been on-going since 2001. The remit of these negotiations is to negotiate towards attaining an international instrument that would ensure the effective an equitable protection of genetic resources, TK and TCEs. The major stumbling block to these negotiations is the concept of “public domain”. This paper argues that while there is still a place for the application of the concept of public domain in relation to any treaty for the protection of TK and TCEs, there needs to be a paradigm shift in the understanding and application of this concept in the ongoing negotiations. The public domain as understood in the conventional sense is based on the western intellectual property rights system, and it would not be fair nor workable to apply this conventional understanding of public domain to any law or international convention relating to the protection of TK and TCEs. The methodology used is the doctrinal research methodology in the discipline of law.

Keywords: *Traditional Knowledge, Traditional Cultural Expressions, Traditional Property, Intellectual Property, Public Domain.*

INTRODUCTION

The WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore was established in 2000, with its first session held in 2001. The remit of the Government delegates from member states is to negotiate an international instrument to ensure the equitable protection of genetic resources, traditional knowledge (TK) and traditional cultural expressions (TCEs). However, after twenty-one years of negotiation, the end is still not yet in sight. A quick look at the latest text of the documents relating to the protection of TK and TCEs show that the negotiators are nowhere near reaching any consensus, with numerous alternatives and words and phrases in square brackets. One major sticking point is the scope of the term “public domain”. This paper argues that while there is still a place for the application of the concept of public domain in relation to any treaty for the protection of TK and TCEs, there needs to be a paradigm shift in the understanding and application of this concept in the ongoing negotiations to ensure a fair and equitable protection of TK and TCEs.

LITERATURE REVIEW

The public domain as understood in the conventional sense is based on the western intellectual property (IP) rights system. Boyle (2003) refers to the public domain as “the material that is free for all to use and to build upon.” Chander and Sunder (2004) define it as “Resources for which legal rights to access and use for free are held broadly.” According to Lee (2003), “Properly understood, the public domain is the public’s domain, meaning that it is off-limits to government control.” (p. 98) However, even in this system the concept is not immutable. There are variations in how the concepts of the “public domain”, “prior art” and “publicly available” have been applied in the western type IP system. For example, a comparison between the approaches of the court under the Patents Act 1949 and Patents Act

1977 suffices to demonstrate the different application of the phrase “made available to the public”. In *Bristol Myers Co v Beecham Group Ltd*, (1974) a case under the Patents Act 1949, the court held that any commercial sale by any trader before the priority date of a claim to a product as an invention is “use” of that invention . . . notwithstanding the seller's ignorance of its identity or his lack of knowledge of its composition or his uncertainty as to how or where further supplies of it could be obtained”. In contrast, under the Patents Act 1977, the court in *PLG Research Ltd and anor v. Ardon International Ltd and ors*, (1993) said, “Unlike the Patents Act 1949, under the 1977 Act, patents may be granted for an invention covering a product that has been put on the market provided the product does not provide an enabling disclosure of the invention claimed.” The effect of the above decision means that the scope of the public domain has been cut back by redefining the definition of the “public domain” and the concept of “availability to the public”.

METHODOLOGY

The methodology used is the doctrinal research methodology in the discipline of law. Relevant legislations, case law and negotiating documents are analysed to assist in obtaining the desired solution.

FINDINGS AND DISCUSSION

If we were to use Professor Boyle’s definition of public domain as “the material that is free for all to use and to build upon,” this would mean that any such material could not be the subject of intellectual property rights. However, this begs the question, “When would a material be regarded to be free for all to use?” In relation to the public domain as a restriction on granting intellectual property rights, concepts like “made available to the public”, or part of the “prior art” are often used to demarcate the territory within which no IP rights can be granted. In other words, what has been placed in the public domain cannot satisfy the novelty requirement laid down in the applicable law.

There are two opposing views on whether the concept of public domain is applicable in designing an IP-like system of protection for traditional property. Proponents of the western IP rights system argue that it is an essential principle by which to achieve balance between the producers and users of TK and TCEs. As opposed to that, it is said that this concept has no place in discussions for such protection. It is submitted that while the concept of the public domain has a place in any future agreements relating to the protection of traditional property, there need to be a cut-off point to determine what traditional property is, and what is not protectable. Traditional property that has been assimilated into the mainstream culture should be considered to be in the public domain, free for the general community to use. However, just because a piece of traditional property has been accessible to the general public does not mean that it should be in the public domain, free for all to use without restrictions. It is arguable that even though some traditional property had been known and used by members of the public, the traditional property cannot be regarded to have fallen into the public domain unless members of the public can use or gain access to it “as of right”. In many cases, traditional property has been used and disseminated without the consent, or possibly even without the knowledge of the traditional communities. In such a situation, the traditional communities cannot be deemed to have dedicated their traditional property to the public. In addition, it is arguable that even though the general public may have been using the traditional property, without a full understanding and appreciation of its holistic content however, there may not have been an “enabling disclosure” in the western intellectual property rights sense to consign it to the public domain. Hence, for the traditional property system, the scope of the public domain needs to be redefined to be in tune with, or based on, traditional communities’ understanding of when a piece of knowledge is deemed to be freely available for the general public’s use, and hence in the public domain.

A balance will have to be drawn to demarcate what traditional property is still deemed to be the property of the traditional communities. This can be done by defining the term “public domain” in such a way that justice is done to the traditional communities. The result may be that what had presently been regarded as public domain property may be “clawed back”. This is not unprecedented, as witness the European Union advocating a claw back action to reclaim geographical indications lost through genericization.

CONCLUSION AND RECOMMENDATIONS

The western IP rights system has constantly redefined the scope of the public domain to suit various needs. It is not unreasonable to ask that in any discussion on traditional property, the scope of the public domain should be fine-tuned to suit the needs and expectations of the traditional communities. Care has to be taken to ensure that the public domain is not too narrowly or widely defined to the prejudice of the traditional communities or the wider public respectively. Some possible variations to the definitions of what is not deemed to be in the “public domain” or “available to the public” could be as follows:

- “not widely known or used by people outside the relevant traditional community”
- “not made available with the prior informed consent of the relevant traditional community”
- “not made available with the consent of the relevant traditional community to people outside the community for commercial exploitation”

The acceptance of such a modified meaning of what is in the public domain will go a long way towards ensuring the equitable protection of traditional property.

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TRACK 13: INTELLECTUAL PROPERTY LAW

SMART CITIES, SUSTAINABLE DEVELOPMENT AND
INTELLECTUAL PROPERTY LAWS IN MALAYSIADiyana Sulaiman^{1*}¹*Faculty of Law, Universiti Teknologi MARA, Malaysia.**Email: ¹diyana885@uitm.edu.my***Corresponding author***ABSTRACT**

Smart cities adopt development concepts that are consistent with United Nations Sustainable Development Goals (“UNSDGs”). The purpose of this research is to analyse the intellectual property laws framework in Malaysia in supporting the development of smart cities in the country. This research employs doctrinal research method which utilizes library-based research. The findings of this research has shown that the result that the intellectual property laws through copyright law, patent law, and confidential information and trade secret, in Malaysia supports the innovative and technology-based culture that are integral to the development of smart cities which are aligned with the UNSDGs, among others, Goal 7 (Affordable and Clean Energy), Goal 9 (Industry, Innovation and Infrastructure), Goal 11 (Sustainable Cities and Communities), and Goal 12 (Responsible Consumption and Production). It can be concluded that multiple parties would benefit from the utilization of intellectual property laws in the development of smart cities in Malaysia.

Keywords: *Smart Cities, Intellectual Property Laws, Sustainability, Malaysia*

INTRODUCTION

The concept of smart cities is not foreign to the cities in South East Asian countries. As at 2018, a number of cities in South-East Asia are incorporating development concept that applies the smart cities approach, which include Hanoi (Vietnam), Singapore (Singapore), Jakarta (Indonesia), Kuala Lumpur (Malaysia), Mandalay (Myanmar), Phuket (Thailand), Makassar (Indonesia), Danang (Vietnam), Bangkok (Thailand), and New Clark City (Philippines). In Malaysia, a framework has been introduced by the government to support the development of smart cities, and the framework is known as Malaysia Smart City Framework. The seven major components of a smart city in Malaysia are smart economy, smart living, smart environment, smart people, smart government, smart mobility, and smart digital infrastructure (The Malaysian Administrative Modernisation and Management Planning Unit, 2021). In 2020, the European Union highlighted a number of intellectual property protection in South-East Asia for smart cities industry, which range from areas that include patent law, confidential information and trade secrets, and copyright, where potential issues may arise pursuant to infringements or unauthorised use of the protected works / inventions. The current environment and climate conditions require systemic and institutionalised solutions, where adjustments to the way of living are needed through approaches that focusses on quality living while importance are given to the environment. Smart cities could offer such opportunity for change, and with a steady legal infrastructure, the intended shift could happen more seamlessly. This article sought to discuss whether the intellectual property laws in Malaysia could promote the development of smart cities in the country through the existing intellectual property law framework; and whether there are avenues to address potential infringements or unauthorised use from the works / inventions.

LITERATURE REVIEW

The term “smart city” has been defined in Malaysia as “a city that uses ICT and technology and innovation advances to address urban issues including to improve the quality of life, promote economic growth, develop sustainable and safe environment and encourage efficient urban management practices” (The Malaysian Administrative Modernisation and Management Planning Unit, 2021). The

definition of sustainable smart city has been developed by UNECE and ITU, which states that “[a] smart sustainable city is an innovative city that uses ICTs and other means to improve quality of life, efficiency of urban operation and services, and competitiveness, while ensuring that it meets the needs of present and future generations with respect to economic, social, environmental as well as cultural aspects” (United Nations Economic Commission for Europe). The European Commission defines “smart cities” as “a place where traditional networks and services are made more efficient with the use of digital and telecommunication technologies for the benefit of its inhabitants and business [which] goes beyond the use of information and communication technologies (ICT) for better resource use and less emissions. It means smarter urban transport networks, upgraded water supply and waste disposal facilities and more efficient ways to light and heat buildings. It also means a more interactive and responsive city administration, safer public spaces and meeting the needs of an ageing population.” It is a common notion that technology and innovation underpins the development and the concept of smart cities. The intellectual property laws in Malaysia focusses on several areas of intellectual property laws, which for the purpose of this article, will discuss laws on copyright, patent, and confidential information and trade secrets. Szewc and Rubisz discussed nature of intellectual property laws that are integral upon the protection of smart city elements consisting of [expression of] ideas, solutions, work and inventions (2022). The intellectual property implication, deriving from the use of Big Data for smart cities planning and development has been discussed by Lofgren and Webster (2020), where among others, it was pointed that clarity regarding ownership of stored and processed data / Big Data is essential.

METHODOLOGY

The methodological approach that has been employed for this research is qualitative research method, through library-based research as it enables a comprehensive understanding on the issues concerning the intellectual property laws and smart cities in Malaysia. This research utilises primary data collection and secondary data collection deriving from legislations, case laws, treaties, government reports and documents by international and regional organisations, as well as secondary sources deriving from journal articles and online media sources. This research employs the doctrinal analysis method.

FINDINGS AND DISCUSSION

Smart cities offer potential solutions concerning responsible consumption of natural resources and energy. The yearly increase of global temperature affects the quality of living of the local population, which includes human beings, and the entire species in the ecosystem. The development of smart cities requires integration of innovations and creative works in various aspects, through building infrastructures and management of the infrastructures, software and computer system, down to utilisation of processed data. The intellectual property laws, through its system that grants rewards to the right holders of the intellectual property, could stimulate and nurture continuous interests in seeking newer solutions and in producing creative works that would improve the quality of living. The Copyright Act 1987 grants the protection to computer software, as a form of literary work; work of architecture and technical drawings as forms of graphic work which are all eligible for copyright protection pursuant to Section 6 of the Copyright Act 1987. These would benefit the authors or creators of the works, while at the same time the works can be utilised in the development of smart cities, where expression of ideas would be rewarded while at the same time achieve newer and smarter ways for buildings to be constructed with potentially smarter cooling air system. As a consequence, more effective learning process could be enabled, as heat inhibits learning (Goodman, Hurwitz, Park dan Smith (2020)). The ideal temperature for learning activities as reported by various scholars is within the range of 22 to 25 degrees Celsius (for example, see, Chao, L., Yalin, Z., Limei, S., Weijun, G., Xiaotong J. & Weirui, Y. (2021); Porrás-Salazar, J. A., Wyon, D. P., Piderit-Moreno, B., Contreras-Espinoza, S., & Wargocki, P. (2018)). The Patents Act 1983 protects innovations and inventions that are new, both are essential as soft infrastructure for smart cities. Trade secrets and confidential information are also protected through the application of Contracts Act 1950 and common law principles, as well as related statutes. Parties could opt to maintain confidentiality of information and the trade secrets through the execution of non – disclosure agreements, as well as through confidential clause in the contract that protect the secrecy of the information. In terms of legal avenues for infringements of intellectual property rights, they include criminal and civil actions that could be

brought against the parties who has infringed the law concerning the intellectual property rights, such as through unauthorised use of the intellectual property.

CONCLUSION AND RECOMMENDATIONS

The fundamentals of intellectual property laws lie upon recognition of creative works, inventions and innovations from authors / inventors. In the context of the development of smart cities, these are integral aspects that could facilitate the transition from the present day living, on to the way of living where greater care will be given to the environment and natural resources. In the present-day context and in the foreseeable future, society will be required to deal with pressing issues concerning environmental degradation and climate crisis. While smart cities are not a “one size fits all” solution, its characteristics that integrates smart ways of consumption of natural resources and energy could be an alternative, which its success could be made possible with sound legal system, including the intellectual property laws framework.

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TRACK 13: INTELLECTUAL PROPERTY LAW

THE COMMERCIAL VALUE OF PROMINENT FIGURES IN THE CONTEXT OF CLIENT INFORMATION

Valeria Gabriella, Henry Soelistyo Budi

^{1,2}*Faculty of Law, Universitas Pelita Harapan, Indonesia.*

Email: ¹valeriagabriella.legal@gmail.com; ²henry.soelistyo@uph.edu

**Corresponding author*

ABSTRACT

Trade Secret is a branch of Intellectual Property Rights that provides protection for secret information which has economic value due to its confidentiality and toward which reasonable measures have been taken to maintain its state of secrecy. The objective of this research is to analyze The Commercial Value of Prominent Figures in the Context of Client Information. This research aims to set clear parameters and guidelines regarding the commercial valuation of Client Information regarding prominent figures. The method used in this research is normative legal research using the statute approach and the case study approach by qualitative methods. This research attempts to answer two research questions. First, who are the prominent figures in the context of Client Information? Second, how is the commercial value of Client Information regarding prominent figures compared to non – prominent individuals. This paper argues that the appropriation of commercial value of a prominent figure’s identity functions differently in the context of Client Information than how it does in the publishing context. The findings indicate that if the assumption is based on the economic value generated by the identity of a prominent figure, then the differentiation of economic value prominence in the context of Client Information should not be based on the person’s public visibility and the characteristics for which he or she is known, but rather on how much a client can generate business for the company.

Keywords: *Trade Secret, Client Information, Commercial Value and Prominent Figures*

INTRODUCTION

In a lot of countries, Client Information has been widely acknowledged as an information protectable as a Trade Secret, a branch of Intellectual Property Rights that provides protection for secret information which has economic value due to its nature of secrecy and toward which reasonable steps have been taken to maintain its state of secrecy. Such criteria was first explicitly introduced through Article 39.2 of TRIPS Agreement. In essence, any information, including Client Information, competent to fulfill the said criteria may be offered protection as a Trade Secret. Problem arises from the failure to acknowledge and differentiate the commercial value of individual clients. The objective of this research is to analyze The Commercial Value of Prominent Figures in the Context of Client Information. This research aims to set clear parameters and guidelines regarding the commercial valuation of Client Information regarding prominent figures. Therefore, this research attempts to answer two research questions. First, who are the prominent figures in the context of Client Information? Second, how is the commercial value of Client Information regarding prominent figures compared to the non – prominent individuals?

LITERATURE REVIEW

This research is built on two main legal theories. The first one is the legal system theory by Lawrence M. Friedman. According to Lawrence M. Friedman, legal systems consist of three main aspects; legal structure, legal substance, and legal culture. Legal structure refers to law enforcement institutions whereas legal substance refers to the rule of law as enforced by the legal structure. Moreover, legal culture refers to the social, cultural, and ethical standards and values that affect how people interact with the legal system. Second, this research is supported by the responsive legal theory by Philippe

Nonet and Philip Selznick. According to this theory, the law should be responsive to dynamic social needs and values. Moreover, legal systems should promote social welfare and justice. Responsive law is contextual, flexible, participatory, and value - oriented.

METHODOLOGY

This research is normative legal research that uses secondary data through literature studies. The approaches used in this research are the statute approach and the case study approach by qualitative methods.

FINDINGS AND DISCUSSION

The commercial value of a prominent figure's identity has typically been raised in terms of benefits gained from publicity. However, this paper argues that the appropriation of the commercial value of a prominent figure's identity functions differently in the context of Client Information than how it does in the publishing context. In the publishing context, the risk of misappropriation is one of unauthorized use of identity or in other words, publication of identity without consent of the person whom the identity is subject to. Moreover, the damage in this situation is directly experienced by the client in the form of reputation and the lack of compensation for the use of their identity. This is different to how the commercial value of an identity is generated as a Client Information. As a Client Information, the commercial value is generated within the limitation of the products / service's price. In general, the value of a Client Information is determined by the potential of the information to convert sales offering into transactions. Therefore, the commercial value of an identity needs to be analyzed through its contribution to the commercial value of the transactions. From such a vantage point, the finding indicates that the identity of a prominent figure does not rise nor diminish the commercial value of a service. However, misappropriation of Client Information that involves prominent figures still causes economic loss for the business entity although indifferent to the economic loss caused by misappropriation of Client Information involving non – prominent figures. If the assumption is based on the economic value generated by the identity of a prominent figure, then the differentiation of economic value prominence in the context of Client Information should not be based on the person's public visibility and the characteristics for which he or she is known, but rather on how much a client can generate business for the company. In other words, prominent figures in the context of Client Information are high paying clients, be it individuals or other business entities.

CONCLUSION AND RECOMMENDATIONS

Based on the legal substance as regulated in Indonesia, Client Information is protectable under Law 30 of 2000 concerning Trade Secret Law if it fulfills the criteria of secrecy, economic values, and the measures taken to protect its confidentiality. Furthermore, the author recommends that prominent figures in the context of Client Information are determined based on their economic value contribution to the transactions.

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Law Number 30 of 2000 concerning Trade Secrets The Agreement on Trade-Related Aspects of Intellectual Property Rights

TRACK 13: INTELLECTUAL PROPERTY LAW

THE ROLE OF INTELLECTUAL PROPERTY IN RETURN OF INVESTMENT FOR GASTRONOMIC TOURISM

Rohazar Wati Zuallocobley^{1*}, Mohd Zawawi Awang Nik², Rohani Mohd Shah³, Faridah Hussain⁴ & Diyana Sulaiman⁵

Faculty of Law, Universiti Teknologi MARA, Malaysia. 40450 Shah Alam, Selangor Malaysia

Email: rohaz814@uitm.edu.my, rohanimohdshah@uitm.edu.my, faridah355@uitm.edu.my, diyana885@uitm.edu.my

*Corresponding author

ABSTRACT

The term “gastronomy tourism” has been defined as “a type of tourism activity which is characterised by the visitor’s experience linked with food and related products and activities while travelling” (The Committee on Tourism and Competitiveness (CTC) of UNWTO). The role of intellectual property rights in gastronomy has been acknowledged in preventing dilution of defining foodstuffs and related intellectual property in the global marketplace (Benson, 2021: 515). Gastronomic tourism is an emerging phenomenon that is being developed as a new tourism product, due to the fact that over a third of tourist spending is devoted to food. Wolf (2002) pointed out that gastronomic tourism motivates tourists to enjoy both food and unforgettable dining experience at the same time. In this sense, destination and location play a significant role presenting gastronomic tourism as a key factor in the competitiveness of tourist destinations through motivating tourists and in determining their choice (Henderson, 2009). As a result, tasting local foods has formed an important path to enjoy the local culture (Long, 2004), where Cohen and Avieli (2004) argue that local foods might be an attraction or impediment to tourist experience. Within this framework, it becomes important to differentiate the bridge between nature and the motives of human being and gastronomic experiences effecting factors like emotions and satisfaction. Schmitt (1999 and 2003) discussed the role of a holistic experience which resulted from the interaction of sensorial (sense), affective (feel), cognitive (think), behavioral (act) and social (relate) experiences. Efforts are continually being made by international organizations to discover new tourism products and activities that would provide a great market opportunity to be promoted as excitement and motivation factors to encourage tourists to come to a particular destination.

In the context of Malaysian intellectual property laws, a number of legal provisions from intellectual property statutes would apply in discussing gastronomic tourism. They include protection copyright protection for the recipe books; trade secret or confidential information law for confidential information pertaining to the cooking technique and recipes; applicable industrial designs law for unique kitchen and dining utensils; trademark law that could be applied for the name as well as the logo of restaurants or business establishments; and geographical indication designation that could further enhance the value of the delicacies and the ingredients used. The applicable statutes are Copyright Act 1987; protection of trade secret or confidential information law through non- disclosure agreement, application of Contracts Act 1950 and other related statutes; Industrial Designs Act 1996; Trademarks Act 2019; and Geographical Indications Act 2022.

Keywords: *Tourism, gastronomy, intellectual property, copyright trademarks*

INTRODUCTION

Of the many new tourism products identified gastronomy is the most relevant to the Malaysian context. These tourism products are now seen as valuable means of attracting tourists from all over the world to visit Malaysia (Hjalager et al, 2002). This study investigates the Malaysian gastronomy tourism products and is worth reiterating that the inclination of food, beverages and food related cultures to become one of the important tourism products for Malaysia are significantly promising (Ainudin,2013). With this inclination, the Ministry of Tourism through Malaysian Tourism Promotional Board need to

increase what they have done now of promoting the glorious haven of the country as land of fascinating, Island life, adventures, sauna, fauna and city excitement to the international tourists but make known what Malaysia can offer for arriving tourist relation to tourism gastronomy products. The government in fact starts to realize and aspires that this country can also be as ‘gastronomy paradise’. This is in line with what the Director General, Tourism Malaysia said; “Food has become an important tourism product for our country as it enriches the experience of the visiting tourist. We are certainly ready to entice travelers to our shores and offer them a flavor of Malaysia Truly Asia.”

The Melting Pot

The country’s culture is a combination of Malay, Chinese, Indian, and several native tribes. According to the report of census in 2000, over half of the populations in Malaysian cuisine is a mixture of Malay, Thai, Indian, Chinese and other cultures to create a fruitful and new cuisine of their own. Malaysian Cuisine is influenced by other ethnic group like the Arabs, Thai, Peranakan and Nyonya’s and the native tribes in Sabah and Sarawak (Ainuddin,2013).

Since Malaysia is made up of people from different cultural background, the influence of all these cultures such as Malays, Javanese, Minangkabau, Indian, Chinese, Arab and natives has impacted Malaysian gastronomy (Jalis et al, 2007). As a result, Malaysian food and flavours are highly varied. Malaysian food can be very rich and spicy as well as sweet and sour depending on the dish prepared. Malaysians love to eat and love their foods. It is normal to greet a friend by asking him “Have you eaten? (Dah makan?).

To celebrate most of these holidays, it is customary to host an “open house” or “rumah terbuka”, where guests are treated to Malaysian delicacies and hospitality. Open house means that the host house is open to receive well-wishers and guests (Karim,2006). Everyone is invited to attend regardless of their cultural or religious background, and varieties of food are served at the “open house”. To celebrate most of these holidays, it is customary to host an “open house” or “rumah terbuka”, where guests are treated to Malaysian delicacies and hospitality. Open house means that the host house is open to receive well-wishers and guests. Everyone is invited to attend regardless of their cultural or religious background, and varieties of food are served at the “open house”.

Beside the official holidays and other religious festivities, other important events such as birth, circumcision (for young Muslim men), engagement and marriage are usually celebrated by a feast, known as *kenduri*. The wedding ceremony is generally the most important and elaborate of such events among both Malay and non-Malay peoples. In rural areas the *kenduri* is normally held at the host family’s house, while in urban areas the feast often takes place in a large hall or hotel.

Malaysian cuisines served at open house or the *kenduri* reflect the mixture of ethnic groups in the country’s population. The three most prominent cuisines are Chinese, Indian, and Malay. Popular Chinese foods include sweet-and-sour Cantonese dishes and a milder favorite, such as Hainanese chicken rice. Indian cuisine ranges from the hot vegetarian dishes of southern Indian cooking to the more subtly spiced Muslim Indian food to the yogurt-marinated meats of tandoori cookery from northern India(Raji et al,2017). All these foods, while recognizably Chinese or Indian, have developed a distinctly Malaysian character.

Food tourism products are now seen as valuable means of attracting tourists from all over the world to visit Malaysia (Hall,2003). This study investigated the Malaysian gastronomy tourism products and is worth reiterating that the inclination of food, beverages and food related cultures to become one of the important tourism products for Malaysia are significantly promising (Sharif et al, 2008). With this inclination, the Ministry of Tourism through Malaysian Tourism Promotional Board need to increase what they have done now of promoting the glorious haven of the country as land of fascinating, Island life, adventures, sauna, fauna and city excitement to the international tourists but make known what Malaysia can offer for arriving tourist relation to tourism gastronomy products. The government in fact starts to realize and aspires that this country can also be as ‘gastronomy paradise’. This is in line with what the Director General, Tourism Malaysia said; “Food has become an important tourism product for

our country as it enriches the experience of the visiting tourist. We are certainly ready to entice travellers to our shores and offer them a flavor of Malaysia Truly Asia.

LITERATURE REVIEW

There was abundance of studies on the gastronomy as a tourist motivational factor (Jalis, et al., 2007). Write up on Malaysian gastronomic tourism product and assessing the level of acceptance amongst western tourist (Zahari, 2013, Jalis et al,2007). Studies also includes Malaysian gastronomy routes as a tourist destination (Zainal et al, 2010) yet there is no study which links the returns of such investment on the gastronomic product through its relevant protection that are afforded via intellectual property such as copyright, trademarks, confidential information, trade secret and geographical indications.

METHODOLOGY

This study adopted a qualitative method. Both primary and secondary data have been collected by the author from first-hand observation, interviews, questionnaires, access from the library, archives and online data bases and other internet forum.

FINDINGS AND DISCUSSION

To get maximum return of investment an analysis of the IP-related areas of the value chain of selected culinary traditions in Malaysia should be done. The analysis will aim at identifying potential IP tools, which could be used for the promotion of the selected traditions throughout their value chain. Additional to these main players in the industries, the supporting or downstream beneficiaries would be those involved in the supply chain such as the producers or breeders of the raw materials used in each special culinary dish that attract tourist to taste Malaysia.

CONCLUSION AND RECOMMENDATION

In the context of Malaysian intellectual property laws, a number of legal provisions from intellectual property statutes would apply in discussing gastronomic tourism. They include protection copyright protection for the recipe books; trade secret or confidential information law for confidential information pertaining to the cooking technique and recipes; applicable industrial designs law for unique kitchen and dining utensils; trademark law that could be applied for the name as well as the logo of restaurants or business establishments; and geographical indication designation that could further enhance the value of the delicacies and the ingredients used. The applicable statutes are Copyright Act 1987; protection of trade secret or confidential information law through non-disclosure agreement vis a vis application of Contracts Act 1950 and other related statutes; Industrial Designs Act 1996; Trademarks Act 2019; and Geographical Indications Act 2022. The correct usage of intellectual property protection will ensure the returned of investment for the entrepreneurs.

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TRACK 14: COMMERCIAL/ CONSUMER /LAW AND ECONOMICS

LINKAGE BETWEEN BEHAVIOURAL FACTORS AND INVESTMENT INTENTION AMONG YOUTH IN MALAYSIA

Au Yong Hui Nee¹, Chia Wan Thing^{2*}, Koh Kah Fong³, Ng Wee Kit⁴ & Yap Zheng Hee⁵

^{1,2,3,4,5}*Faculty of Business and Finance, Universiti Tunku Abdul Rahman, Malaysia.*

Email: ¹*auyonghn@utar.edu.my*; ²*chiawt1025@lutar.my*; ³*kohkahfong0000@lutar.my*;
⁴*derrickng0714@lutar.my*; ⁵*yapzhee705@lutar.my*

**Corresponding author*

ABSTRACT

The emerging field of behaviour finance emphasises how numerous psychological aspects have a significant impact on how an individual investor behaves. It is predicated on the idea that investors are not always rational and that their purpose to engage in the financial markets may be affected by behavioural factors. This research carries the purpose of examining the relationship between behavioural factors and investment intention among youth in Malaysia. The combination of behavioural finance theory and the theory of planned behaviour is applied to investigate how behavioural factors affect investment intention. In this research, primary data, as well as convenience sampling method, was implemented. A total of 400 respondents were collected from individuals aged between 18 – 30 across Malaysia. Data collected for analysis and interpretation was generated with the aid of IBM SPSS Statistics Version 28. Indeed, the results obtained were examined and interpreted using Descriptive Analysis, Reliability Analysis, Pearson's Correlation Coefficient analysis, Multicollinearity Test, Multiple Regression Analysis, and ANOVA test. From the research outcomes, behavioural factors including risk tolerance, financial literacy, overconfidence bias, social interaction, disposition effect, and perceived behavioural control have a significant impact on investment intention whereas herding behaviour is not statistically significant in influencing investment intention. In addition, the implications, limitations, and recommendations of the research are provided to facilitate future research related to this field.

Keywords: Behavioural Finance, Financial Literacy, Investment Intention, Youth

INTRODUCTION

In contrast to traditional finance which assumes investors are rational and they seek to maximise their return by focusing solely on macroeconomic and microeconomic considerations, behaviour finance explains how various investors interpret and react to the information available and do not always make unbiased and impartial predictions of stock prices. Individuals are more being shaped by their personality traits, financial profiles, and behavioural biases which prohibit them from forming their investment intention with complete rationality (Zamri et al., 2017). There are few issues observed in driving the motive of conducting this study, in which there are phenomenon of rising number of investors in the stock market, an increased usage of digital trading platforms especially among the youth population, and a drastic increase in the cases of investment scams. Hence, a research question of “what are the behavioural factors that affect the investment intention of Malaysian youth?” is constructed. Alongside with our research objective, this study aims to determine if the behavioural characteristics, including social interaction, overconfidence bias, perceived behavioural control, herding behaviour, risk tolerance, disposition effect, and financial literacy play significant roles in affecting the investment intention of Malaysian youth investors.

LITERATURE REVIEW

In accordance with Akhtar and Das (2019), the Theory of Planned Behaviour (TPB) was first founded by Icek Ajzen, incorporating the Theory of Reasoned Action (TRA) as its foundation. TPB is a prominent model that examines how information and incentives affect human behaviour. Both theories consider a person's behavioural and normative beliefs, as well as social standards, as important factors in understanding their attitudes and intentions toward a particular action. Madaan and Singh (2019) have provided research with Behavioural Finance Theory, where it argues that stock or security prices differ due to non-rational investor behaviour and inefficiencies in financial markets. The theory of behavioural finance combines sociology, economics, and psychology, and arose when financial institutions sought to understand how people behave both individually and in groups when investing in a simple society. In this paper, both the theories are integrated to analyze investment intention, investigating the influence of various factors on investment intention, including Risk Tolerance, Financial Literacy, Overconfidence Bias, Social Interaction, and Perceived Behavioural Control from the TPB theory (Yang et al, 2021; Samsuria et al, 2019; Xiao, 2008) and Disposition Effect and Herding Behaviours from Behavioural Finance Theory (Madaan & Singh, 2019; Lee et al, 2008). This integration of theories offers a comprehensive understanding of investment intention, considering psychological and behavioural factors that affect investment intentions, which differs from the other studies. Besides, the study focuses on Malaysian youth, which differentiates it from previous research such as Ahmed et al (2022) and Akhtar and Das (2019) that concentrated on other regions and target groups. The research sheds light on investment intentions specifically among Malaysian youth, an important demographic in terms of financial literacy and investment. However, the study does not include the determinant of financial well-being due to its unreliable nature as indicated by the reliability test. Nevertheless, the study provides valuable insights into the factors influencing investment intention among Malaysian youth to promote financial awareness.

METHODOLOGY

This study used a cross-sectional approach to gather quantitative data using an online survey on Facebook, Instagram, UTAR Mail, and a Chinese platform called "Xiao Hong Shu" via links to a Google form. One of the practical sampling techniques that has been regularly used by academics to gather data is an online survey. This study used the sample size established on the needed precision table created by Gill et al. (2014) in order to obtain the minimal sample size. The estimated minimum sample size for this study was 384, with a 95% level of confidence and a 5% margin of error. This study attempted to gather information from 400 respondents to eliminate any issues brought on by the limited sample size. To evaluate the effects of a few constructions on investment intention, the acquired data were analysed using IBM SPSS Statistics Version 28.

FINDINGS AND DISCUSSION

Table 1: Multicollinearity Test's Result

	VIF	TOL
RT	3.152	0.317
FL	3.063	0.326
OB	4.828	0.207
SI	2.273	0.440
HB	2.231	0.448
DE	2.925	0.342
PBC	4.656	0.215

a. Dependent Variable: INT

Table 1 shows that the results of the multicollinearity test using VIF and TOL. When the value of VIF is below 10, we can infer no to have significant multicollinearity issue. Besides, the TOL used to examine for the presence of multicollinearity; if TOL less than 0.2, the model is said to have significant multicollinearity. As a result, the multicollinearity test's finding indicate the projected regression result are always fair, consistent, and efficient.

Table 2: Predicted Regression Result (Multiple Regression Analysis)

	Beta	Standard error	T-statistic	P-value
Constant	0.037	0.156	0.240	0.810
RT	0.196**	0.046	4.232	<0.001
FL	0.432**	0.054	8.070	<0.001

OB	-0.189**	0.049	-3.847	<0.001
SI	0.077*	0.036	2.151	0.032
HB	0.033	0.039	0.853	0.394
DE	0.296**	0.053	5.619	<0.001
PBC	0.192**	0.044	4.330	<0.001
R ²	0.719			
Adjusted R ²	0.714			
Standard error	0.48344			

Note: ** Indicates significance at 0.01 level
 * Indicates significance at 0.05 level

According to Table 2, all the independent variables was considered have significant relationship towards investment intention among youth except the herding behaviour since the p-value of herding behaviour is 0.394, which more than the critical value of 0.05. Besides, the figure of R² in Table 2 used to indicate the model's ability to fit data. The variation in the Is employed in this analysis may account for 71.9% of the variation in the DV, according to the R2 value of 0.719. The adjusted R2 (0.714) number demonstrates that 71.4% of the variation in the DV can be accounted for by the variance in the Is after the degree of freedom has been taken into consideration.

Table 3: ANOVA Result

	Sum of Squares	df	Mean Square	F	Significance
Regression	234.439	7	33.491	143.299	<0.001 ^b
Residual	91.617	392	0.234		
Total	326.056	399			

a. Dependent Variable: INT

b. Predictors: (Constant), PBC, HB, RT, SI, DE, FL, OB

The outcome of the ANOVA displayed in Table 3. The outcome reveals that the p-value for ANOVA is below 0.001, which is below the CV of 0.05, suggesting that the outcome is significant at the level of 5%. This is based on the F-statistic and its associated significance value. As a result, it can be judged that the means of all groups differ from one another and the Is and DV are statistically significant related.

CONCLUSION AND RECOMMENDATIONS

By combining the Theory of Planned Behavior (TPB) with Behavioral Finance Theory, this research has demonstrated the practicality and potential of these two theories. As a result, this study has shed new light on how to understand complex behavior among Malaysian youth by integrating different perspectives. Specifically, the study has highlighted the significance of risk tolerance, financial literacy, overconfidence bias, social interaction, disposition effect, and perceived behavioral control in influencing investment intentions. In addition, the research has revealed the prevalence of conservatism behavior among Malaysian youth, as evidenced by the significant negative overconfidence bias. In order to encourage youth participation in the investment market, it is crucial to equip them with knowledge on personal finance and economics. Therefore, this research emphasizes the importance of the Financial Education Network, which plays a vital role in promoting financial literacy throughout the nation. Besides, the survey findings reflect a lack of financial confidence among youth, indicating the urgent need to increase transparency within the investment sector. By providing better access and outreach to youth and other investors regarding market risks, it could create a more informed and confident investing community.

As recommendation to further study on the behavioral finance among Malaysian youth, it's advised to combine qualitative and quantitative studies and include open-ended questions in questionnaires. Additionally, utilizing stratified or cluster sampling techniques can improve sample representativeness. These approaches can provide a comprehensive view of complex behavior and generate accurate, generalizable findings to improve financial literacy and investment confidence among Malaysian youth.

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TRACK 14: COMMERCIAL/ CONSUMER /LAW AND ECONOMICS

A COMPARATIVE STUDY OF THE FOOD DONORS PROTECTION ACT 2020 IN MALAYSIA AND SELECTED FOREIGN JURISDICTIONS

Auni Izzati Mohammad¹, Lazarus Chendang Anak Isa², Muhd Yusri Yahya³, Nur Aimi Athirah Ramlee⁴ & Su'aida Safei^{5*}

^{1,2,3,4,5}*Faculty of Law, Universiti Teknologi MARA, Malaysia.*

Email: ¹2020470816@student.uitm.edu.my; ²2020471028@student.uitm.edu.my; ³2020866204@student.uitm.edu.my; ⁴2020471354@student.uitm.edu.my; ⁵suaida@uitm.edu.my

**Corresponding author*

ABSTRACT

Food donation is mainly distributed through food banks i.e, non-governmental organisations and governmental organisations. However, due to the lack of awareness and ignorance of the law governing food donation, the good deed of donating food is decreasing in practice year by year. The first objective of this paper is to review the weaknesses in the Food Donors Protection Act 2020 (FDPA 2020) in some aspects relevant to food donation. The second objective of this paper is to compare the FDPA 2020 with the laws related to food donation in foreign jurisdictions such as Australia and India. This paper applies qualitative analysis and doctrinal legal research primarily through library-based research. The recommendations of this paper include proposing new provisions on tax exemption and tax credit for food donors in Malaysia in the FDPA 2020, introducing national grants and incentives to food donors, and imposing food waste penalties on the corporation.

Keywords: *Food donation, Food Donors Protection Act 2022, tax exemptions*

INTRODUCTION

In the recent pandemic, food donations have been a crucial part of Malaysia's safety net to help those in need during the challenges posed by Coronavirus disease (COVID-19). Presently, the food donation law in Malaysia is governed by the Food Donors Protection Act 2020 (hereinafter referred to as FDPA 2020). This legislation was legislated to protect food donors who are donating food such as volunteers, or those involved in distribution of food. Among the parties that are protected by this law are corporations, foundations, government entities, manufacturers, and suppliers. This paper focuses on the FDPA 2020, particularly on the concerns regarding (1) the issue of taxation among food donors; (2) the lack of help from the government to the donors in regards to giving incentives and providing guidelines for the food safety; and (3) the lack of laws in edible food being wasted by corporations.

LITERATURE REVIEW

According to a study by Minor et al. in 2019, food waste has been described as a "wicked problem" with multiple core causes (Minor et al., 2019). Earlier in 2018, Facchini et al. quoted a research conducted by the United Nations in 2015, which stated that Sustainable Development Goal goals contain a defined goal of eliminating per capita food waste at the retail and consumer level by 2030. They said that there would inevitably be some surplus food, and the requirement for finding workable ways for its redistribution has been recognised and implemented to address these problems (Facchini et al., 2018). Previously, Reynolds in 2016 highlighted one of the most essential things that can be done to reduce the amount of wasted food is to redistribute food or donate food. This practice is sometimes called food recovery or rescue (Reynolds, 2015). On the main players involved in food donation, a research conducted by Talati et al. in 2017 highlighted that the food donation system primarily comprises four actors. These actors are the donor, the donee, the third-party vendor, and the

administrator. (Talati, 2017). In another research by Buzby in 2020, it was discovered that most countries lack liability protection for food donors and food recovery organisations, even though the passage of such laws has increased in recent years. It was stated that the lack of liability protection still exposes food donors and food recovery organisations to liability for harm resulting from donated food. Some countries offer protection only to food donors but do not offer protection to food recovery organisations (Buzby, 2020). In addition, Hamik et al. in 2021 highlighted that there is less research done on food redistribution in Malaysia in the local context. They stated that it is impossible to build or improve food redistribution organisations to reduce commercial food waste if the motivations and consequences of food redistribution organisations are not fully understood. They highlighted that the local context might overlook the significance of food donation and are unaware of the existing legislation governing the law applicable to food donation (Hamik et al., 2021).

METHODOLOGY

In writing this paper, doctrinal, comparative, and qualitative research methodologies were adopted. This paper employed doctrinal legal research to analyse the weaknesses in the FDPA 2020. In the comparative research, references were made to primary and secondary sources. The primary sources were the FDPA 2020 in Malaysia and other laws in selected foreign jurisdictions, such as Australia Income Tax Assessments Act 1997. Meanwhile, secondary sources of law, such as journal articles, reports, conference papers, and other periodicals, were thoroughly examined to supplement the analysis of primary sources of law.

FINDINGS AND DISCUSSION

It is reported that an individual in Malaysia wasted an average of 1.17 kilograms of waste per day. Meanwhile, the amount of waste generated in Malaysia, as estimated by Malaysia Investment Development Authority (MIDA) in 2021, around 38,427 metric tonnes of waste per day was generated. 83% of the waste is destined for landfill (Malaysia Investment Development Authority, 2021).

One of the limitations of FDPA 2020 is on the aspect of a past date for food that is fit for human consumption, whereby the different date labels between the expiry date and date of minimum durability, which carries different meanings, will confuse the ill-informed public. Subsequently, this will also cause them to shun away from buying food products beyond the date of minimum durability. This will cause a huge amount of unsold food items in the supermarkets that will ultimately be disposed of by the supermarkets. Hence, corporations that heavily rely on the food industries, such as restaurants, food courts, hawker centres and hotels, are the major contributors of food waste since instead of donating the food items that have already passed the said date, it is being wasted to landfills and no monetary penalties are imposed on them. Eventually, this will lead to the critically rising issue of food waste in Malaysia.

A positive effort in increasing food donations can be seen in Australia, where the Australian government offers financial incentives to donors to ease the burden placed on those donors by the Australian government. Tax deductions are available in Australia for both monetary and in-kind donations. Like other in-kind donations, food donations are eligible to claim these tax deductions. The Income Tax Assessments Act 1997 of Australia defines these deductions (Beckmann et al., 2022). Similarly, in India, incentives were given to encourage organisations to actively participate in food donation initiatives, which may include monetary benefits, tax incentives, grants, and subsidies (Sanborn, 2020, June 24).

CONCLUSION AND RECOMMENDATIONS

As there is an urgent need for Malaysia to look into curbing food waste in the country, it is suggested that the law imposes monetary penalties for food that is sent to the landfill, besides imposing a law that requires big corporations such as supermarkets who are involved in the food industries to donate well-condition leftover foods items to food charity organisations. The law should also impose food waste penalties on those corporations who refuse to do so and instead disposes of the excess food in the landfill. For the betterment of food donation in Malaysia, it is also recommended to introduce tax exemptions for food donors. Increasing and expanding tax benefits for donors will help in lessening the

burden of the food donors and will impliedly encourage other organisations to start donating food too. Besides, building a tax system by these ideas will aid governments in developing partnerships between actors in the food supply chain and food rescue operations that mutually benefit both parties. This will stimulate an increase in the amount of food that is donated. In addition, giving national grant or incentive programs can be an essential resource for food donation initiatives, especially as an alternative or supplement to tax incentives. The proposed incentives would support small to medium enterprises, particularly farmers and small businesses, in transport and logistics.

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TRACK 14: COMMERCIAL/ CONSUMER /LAW AND ECONOMICS

FOOD INSECURITY AND ITS LEGAL & POLICY RESCUE IN MALAYSIA

Norazlina Abdul Aziz¹, Anwar Najib A'zmi², Siti Sarah Sulaiman³, Anida Mahmood⁴

^{1,2,3,4}*Faculty of Law, Universiti Teknologi MARA, 40450 Shah Alam, Selangor, Malaysia*

Email: noraz397@uitm.edu.my¹, anwarnajib@uitm.edu.my², siti_sarah@uitm.edu.my³, anida131@uitm.edu.my⁴

**Corresponding author*

ABSTRACT

Food insecurity is a critical issue in Malaysia, affecting a significant portion of the population. According to a survey by the Ministry of Health, about 3.9 million Malaysians suffer from food insecurity which means they lack access to sufficient, safe, and nutritious food to meet their dietary needs. The country has experienced rapid economic growth recently, but the benefits have been distributed unevenly. The Malaysian government has implemented various programs and policies to address food insecurity, such as the Food Bank Malaysia program and the *Bantuan Prihatin Rakyat* cash assistance scheme. However, these measures have yet to address the problem entirely. There is, a need for further action and intervention to ensure that all Malaysians have access to sufficient, safe, and nutritious food. This study examined these significant issues relating to food insecurity and the legal and policy implemented in Malaysia. The study adopts an in-depth qualitative research analysis and 'black letter' law approach to provide a thorough descriptive analysis of legal norms based on the collected sources. Data acquired from both works were analyzed using specific gleaning themes and coding to supplement the analytical discourse of this area.

Keywords: *Food security, Legal Remedies, Law in Malaysia, Food law*

INTRODUCTION

Food insecurity refers to a situation when the people in a household cannot consistently access sufficient food to live an active and healthy lifestyle (United States Department of Agriculture, 2018). Over the past year, food insecurity has become a global challenge. Following this, the 2030 Agenda for Sustainable Development, adopted by all U.N. Member States in 2015, urges urgent action. However, 135 million individuals in 55 countries and territories reported acute food insecurity in 2019 (Food Security Information Network, 2020). According to the Food Agriculture Organization (FAO) report, 650 million people were undernourished in 2019 (FAO, 2021). Based on the prediction, at least 280 million people to experience severe food insecurity in 2020 due to the COVID-19 pandemic (WFP, 2021). Food insecurity is particularly prevalent among vulnerable groups, including low-income households, single-parent families, and those living in rural areas. Malaysia is not spared with the phenomenon. Malaysia has faced several critical issues relating to the food supply, such as a supply shortage of eggs and chicken due to the global crisis (Hanif & Amin, 2023). This study examined these significant issues relating to food insecurity in Malaysia to suggest appropriate legal rescues.

LITERATURE REVIEW

There was an abundance of studies on food insecurity issues. Several studies have shown that agricultural production, nutritional status, and food consumption lead to food insecurity (Martin-Shields et al., 2019, Brück, T, et al., 2019). Awad (2023) further identifies weak government, poor income growth and inadequate educational access as contributing to food insecurity among developing countries. Other factors include food waste (Hao, N., Zhang et al., 2022), the influence of food trade-export and import (Rogachev et al., 2015), and food prices (Akbari, M et al., 2022). Many authors have recognized food insecurity as a global issue that contributes to, among others, deterioration in rights to health and rights to food (Jankhotkaew et al., 2022). it calls for the intervention of the world's human

rights institutions like the United Nations to resolve food insecurity issues. The literature shows that factors contributing to food insecurity differ from country to country. The preceding works of literature examine the causes and consequences of food insecurity in Malaysia, as well as the social, medical, economic, and legal measures taken to address the issue of food insecurity. However, less work has been done to analyze the existing legal framework in Malaysia in suggesting appropriate legal rescues.

METHODOLOGY

This research is designed based on the doctrinal study comprising the primary and secondary data and investigation on food insecurity in Malaysia and how the current legal system addresses its emerging issues, which is essential in providing consolidated analytical findings for the proposal of legal rescue. The basis of the analysis is on guided themes that include an overview of global food security issues and legal remedies adopted by Malaysia. Data acquired through literature reviews & doctrinal study were analyzed using thematic and content analysis.

FINDINGS AND DISCUSSION

Based on the analysis made, the table below provides summary of the underlying threats and challenges facing the country’s food security and the legal and policy adopted to overcome these threats. The legal and policy rescue are implemented in tandem with other Malaysian government initiatives to improve agricultural productivity, increase food reserves, and promote sustainable food systems such as Malaysian Agricultural Practice (MyGAP), Malaysian Sustainable Palm Oil (MSPO), Malaysian Organic (MyORGANIC) and National Agrofood Policy 2021-2030 (NAP 2.0).

Table 1: Summary of Food Security Threats and Legal & Policy Rescue

THREATS TO FOOD SECURITY IN MALAYSIA	LEGAL & POLICY RESCUE
Poverty which affects a significant proportion of the population, particularly in rural areas (Alam et al.,2016). The distribution of wealth and resources in Malaysia is not evenly spread, leading to an urban-rural divide that leads to food insecurity in the rural area. Rural areas are often more vulnerable to food insecurity, as they have limited access to fresh produce and other essential resources.	National Poverty Eradication Plan (NPEP) was launched in 1991, aiming to eradicate poverty by 2030. The Minimum Wage Order 2012, The Zakat and Wakaf Act 1991 & National Social Protection Policy (NSPP) was introduced in 2015 and aimed to provide social protection to vulnerable groups, including people experiencing poverty, the elderly, and persons with disabilities. Rural Development Act 1993. The government has focused on developing NKEAs in rural areas to promote rural economic development and reduce the rural-urban divide, Rural Transformation Programme (RTP)2019 & Sabah Development Corridor (SDC) and Sarawak Corridor of Renewable Energy (SCORE)
Climate change which affects agricultural productivity and food production (Alam et al. 2011).	Climate Change Act 2021, Renewable Energy Act 2011, Energy Efficiency Act 2014, Environmental Quality Act 1974, National Biodiversity Act 2010.
Food Contamination and Adulteration	Consumer Protection Act 1999, Contract Act 1950, Sales of Goods Act 1957, Food Act 1983, Food Regulations 1985.
Food waste. It was reported in 2021 that Malaysians produced 4,081 tonnes of edible food waste from 38,219 tonnes of solid waste produced daily in Malaysia (The Star, 2022).	Solid Waste and Public Cleansing Management Act 2007, Food Donors Protection Act 2019, National Food Waste Reduction Policy 2019, Zero Food Waste campaign, Green Technology Financing Scheme.
Food price inflation. The rise in food prices has made it more challenging for households to afford enough food, leading to food insecurity.	Price Control and Anti-Profiteering Act 2011, Essential Goods Act 1982, Consumer Protection Act 1999, Agricultural Marketing Act 1973.

CONCLUSION AND RECOMMENDATIONS

Food insecurity may lead to negative consequences like malnutrition, which can cause stunted growth, anaemia, and other health problems, particularly in children. Food insecurity can impact children's academic performance, leading to poor grades, low attendance, and reduced concentration in class. It also impacts health problems where inadequate access to nutritious food can lead to obesity and other chronic diseases, such as diabetes and cardiovascular diseases. In conclusion, food insecurity remains a significant challenge in Malaysia, particularly for vulnerable populations. The causes of food

insecurity in Malaysia are multifaceted and require comprehensive solutions to address them effectively. While the government has implemented several measures to address the issue, there is still a need for further action and investment to ensure that all Malaysians have access to sufficient, safe, and nutritious food.

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TRACK 14: COMMERCIAL/ CONSUMER /LAW AND ECONOMICS

A LEGAL STUDY ON THE CORPORATE RESCUE MECHANISM CULTURE IN MALAYSIA

Muhamad Syah Azlan bin Abdullah¹, Mariam binti Ramli², Aina Shafika binti Rosli³, Fitrah Ain binti Idris⁴ & Syuhaeda Aeni binti Mat Ali^{5*}

^{1,2,3,4,5}*Faculty of Law, Universiti Teknologi MARA, Malaysia.*

Email: ¹syahazlan07@gmail.com; ²mariam.ramli@gmail.com; ³ainarosli39@gmail.com; ⁴fitrahain.idris@gmail.com; ⁵syuha497@uitm.edu.my

**Corresponding author*

ABSTRACT

This paper aims to provide a study of the Corporate Rescue Mechanisms in Malaysia that have been introduced to promote a culture of rehabilitation and revival for financially distressed companies. The Corporate Rescue Mechanism ('CRM') provisions, which include the Scheme of Arrangement ('SOA'), Corporate Voluntary Arrangement ('CVA'), and Judicial Management ('JM') provide a framework for companies to restructure their operations and avoid liquidation. In addition, the objectives of introducing the CRM were identified. These findings may pave the way to reform the corporate rescue law in order to enhance its conformity with the objectives of corporate rescue in Malaysia. This in turn would facilitate the recovery of financially distressed companies and the minimization of the loss of employment. The success of the CRM in promoting a culture of corporate rescue depends on the cooperation of all stakeholders involved, the availability of skilled professionals, the efficiency of the court system, and the willingness of companies to seek help at an early stage. The CRM provisions have the potential to preserve the value of the company and protect the interests of its stakeholders, including employees, creditors, and shareholders.

Keywords: *Corporate Insolvency, Corporate Rescue Mechanism, Corporate Voluntary Arrangement, Judicial Management*

INTRODUCTION

CRM culture in Malaysia refers to the legal framework that allows struggling companies to restructure their operations and avoid liquidation. This legal framework is primarily governed by the Companies Act 2016 ('CA 2016') and the Corporate (Corporate Rescue Mechanism) Rules 2018 ('CRM provisions'). The CRM provisions provide a range of mechanisms, including the SOA, CVA, and JM, which have been designed to encourage a culture of corporate rescue and rehabilitation in Malaysia. The provisions are aimed at preserving the value of the company and protecting the interests of its stakeholders, including employees, creditors, and shareholders. However, the success of the CRM provisions in promoting a culture of corporate rescue in Malaysia depends on several factors. Hence, this study seeks to discover the CRM provisions in Malaysia that have created a legal framework that promotes a culture of corporate rescue and rehabilitation, and factors that need to be considered for the success of this culture.

LITERATURE REVIEW

Belcher (1997) defined a corporate rescue as a necessary intervention to avert failure of the company. The corporate rescue amounts to the restoration of the company's financial position to its previous healthy status (Sandra, 2004). The corporate rescue culture does not adopt liquidation of financial distress companies as its main objective was to encourage and revive those companies with the aim of restoring its business to viability (Aishah, 2004). Nevertheless, it has been observed that this objective is difficult to be achieved in some situations. Fundamentally, while Malaysia has implemented several legal frameworks and mechanisms to facilitate corporate restructuring and rescue, there are still

challenges and limitations in the effectiveness and efficiency of these mechanisms (Norziana et al., 2020). The new CRM was introduced by the Companies Commission of Malaysia ('CCM') after the revised CA 2016 was implemented in February 2017. However, the guidelines and provisions of the new CRM are only implemented on 1st March 2018. Even though the CRM is still at an early stage, its effectiveness seems to be overshadowed by some limitations of the CRM where the options available under CRM (CVA and JM) are only for small companies. Public companies, licensed institutions, and companies operating under designated payment systems of *Bank Negara Malaysia* (Central Bank of Malaysia), and companies subject to the Capital Market Services Act 2007 are excluded from resorting to CVA and JM (Norziana et al., 2020). It is also restricted to a company that has not created a charge to protect secured creditors. The secured creditors also have veto power to reject an application for JM. This restriction limits the effectiveness of the new CRM (Foo and Lee, 2017). The primary issue that necessitates attention in the existing corporate insolvency law is the insufficient emphasis on rescue mechanisms or endeavors to rehabilitate companies (Azrol Abdullah et al., 2016).

METHODOLOGY

In order to achieve the objectives of this study, qualitative research and a doctrinal methodology approach are adopted in conducting this research. Qualitative research is the best method to adopt since it involves a legal study of the CRM culture in Malaysia. The important characteristic of qualitative research is that it involves small-scale interviews, observation, and document analysis that value depth over quantity. Hence, it is more suitable for this study as it allows us to determine the subject in depth and gain deep insights into the context of CRM culture in Malaysia. On the other hand, the doctrinal methodology approach is library-based studies that analyze the primary and secondary sources of law in relation to CRM culture in Malaysia which are retrieved from online sources. It relies on articles and research papers which discuss CRM in Malaysia and its current position in the law. The doctrinal methodology is best suited for this study as it comprises an in-depth analysis of the legal doctrine together with its development process and legal reasoning.

FINDINGS AND DISCUSSION

The Insolvency law for companies in Malaysia has changed from a 'liquidation culture' as per the CA 1965 to that of a 'corporate rescue culture' under the CA 2016. The liquidation culture is either receivership or liquidation, which was based on the traditional pro-creditor laws of winding up and receivership (Thim et al., 2020). A company that is facing temporary financial problems may still have a viable business that is a financially distressed company may still be economically viable with its assets. The new CA 2016 replicated many of the insolvency provisions in the CA 1965 but did change some of the provisions to cater to the issues of the CRM (Elaine, 2016). Division 8 of Part III in the CA 2016 together with the Corporate (Corporate Rescue Mechanism) Rules 2018 discusses the corporate rescue measures in Malaysia, which aim to facilitate financially distressed companies by providing alternatives other than liquidation. This new culture of the CRM recognizes that not all insolvent companies should be liquidated. The outcome of this new corporate rescue culture is a pure rescue which amounts to the restoration of the company's financial position to its previous healthy status (Cassandra, 2020). The success of the CRM in promoting a culture of corporate rescue in Malaysia depends on several factors, such as (i) the cooperation of all the stakeholders, (ii) skilled professionals who can guide the company through the restructuring process, (iii) the efficiency of the Malaysian court system in handling corporate restructuring cases, and (iv) the willingness of companies to seek help at an early stage, before their financial problems become too severe.

CONCLUSION AND RECOMMENDATIONS

CRM is provided to help distressed companies in Malaysia to overcome financial difficulties and remain viable. Overall, corporate insolvency can be a complex and challenging issue for businesses in Malaysia, but there is a range of legal and financial tools available to help them manage the situation and potentially recover from financial difficulties.

One key aspect of CRM is the culture surrounding them, which can greatly affect their effectiveness. Here are some recommendations on how to promote a culture of CRM in Malaysia. Firstly, to increase awareness. The government and relevant organizations should increase awareness of these mechanisms

through campaigns, workshops, and seminars. Secondly, encourage early intervention: Early intervention is key to the success of corporate rescue mechanisms. Companies should be encouraged to seek help as soon as they experience financial difficulty as early intervention is the key to the success of CRM. Thirdly, by providing support to distressed companies. The government and relevant organizations should provide support and resources to help these companies, such as financial assistance, access to legal and financial experts, and other relevant services. Fourth, promote a culture of cooperation: Successful CRM requires cooperation from all stakeholders involved, including creditors, shareholders, and management. Fifth, by improving the legal framework: The legal framework for CRM in Malaysia should be reviewed and updated as necessary to ensure it is effective and in line with international best practices. By promoting a culture of CRM in Malaysia, distressed companies can be given a better chance of recovery, which can ultimately benefit the economy as a whole.

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TRACK 14: COMMERCIAL/ CONSUMER /LAW AND ECONOMICS

THE BUY-NOW-PAY-LATER SCHEME: A CRITICAL ANALYSIS OF LEGAL FRAMEWORK, ISSUES AND APPLICATION IN MALAYSIA

Norazlina Abd Aziz¹, Ilyana @ Ibtisam Ilias² & Hariz Sufi Zahari^{3*}

^{1, 2, 3} Faculty of Law, Universiti Teknologi MARA, Malaysia.

Email: ¹noraz397@uitm.edu.my; ²ilyanailias@uitm.edu.my; ³harizsufi@uitm.edu.my

*Corresponding author

ABSTRACT

The application of the Buy-Now-Pay-Later (BNPL) scheme has been increasingly popular in many commercial sectors as it allows consumers to purchase even when they do not possess sufficient funds. In Malaysia, the BNPL scheme has found firm footing among consumers, particularly involving online transactions. However, a myriad of issues surrounds the application of the BNPL scheme due to the insufficiency of its governing legal framework and its general implementation. Hence, it justifies the need for this study to critically analyse the regulatory framework surrounding BNPL schemes, identify the key issues arising from their implementation, and evaluate their impact on consumers, businesses, and the overall economy. This study utilises a doctrinal legal research methodology to analyse relevant legislation and regulations. It employs a comparative legal research methodology to evaluate the approach taken by other countries in managing BNPL schemes. The significant findings indicate that the legal framework for BNPL schemes in Malaysia, primarily governed by the Consumer Protection Act 1999 and the Hire-Purchase Act 1967, has gaps that leave consumers vulnerable to exploitation. Issues such as high-interest rates, hidden fees, lack of transparency, and inadequate consumer protection were identified. In addition, consumers often lack awareness of the total costs associated with BNPL schemes and may be misled by advertising and sales tactics. This study recommends the introduction of regulations or guidelines to improve transparency and protect consumers. Extensive measures and strengthened regulatory oversight are suggested to ensure compliance with consumer protection laws and to address data privacy concerns.

Keywords: *Buy Now, Pay Later, Credit, Consumer Protection, Unfair Terms*

INTRODUCTION

The Buy-Now-Pay-Later (BNPL) concept has witnessed a surge in popularity as a financing alternative for consumers facing financial constraints (Kenney et al., 2023). In essence, the BNPL scheme entails a loan arrangement between a seller and a buyer, where the seller repurchases the goods from the buyer at an elevated price, and the buyer commits to making instalment payments over a predetermined period. Despite the widespread utilisation of BNPL schemes in Malaysia, scant research exists regarding their legal framework, issues, and implementation. Criticism surrounding BNPL schemes stems from allegations of exploitative, deceptive, and opaque practices, with many consumers being unaware of the exorbitant interest rates and concealed charges linked to such schemes. Furthermore, concerns arise regarding the potential violation of consumer protection laws in Malaysia by BBPL schemes, as they may exhibit elements of unfairness or unconscionability.

Consequently, a comprehensive examination of the legal framework, issues, and implementation of BNPL schemes in Malaysia becomes imperative. This research aims to analyse the applicable legislative and regulatory framework governing BNPL schemes in Malaysia and identify crucial concerns associated with these schemes, such as the prevalence of high-interest rates, concealed charges, and a lack of transparency (Subramaniam, 2021; Lestari et al., 2021; Lake, 2022). Moreover, the effectiveness of existing consumer protection laws in Malaysia pertaining to the regulation of BNPL schemes will be evaluated. It is crucial to acknowledge that BNPL schemes can substantially impact

the broader economy, particularly if they contribute to heightened levels of consumer indebtedness. The escalation of consumer debt levels can engender economic instability and precipitate financial crises, as exemplified by the global financial crisis of 2008.

LITERATURE REVIEW

The shift from conventional credit services to online platforms is propelled by changes in consumer lifestyles and the advent of communication technology (Subramaniam, 2021; Lestari et al., 2021; Lake, 2022; Nik Azmi et al., 2022). The limitations associated with traditional credit services have prompted consumers to embrace online credit options such as BNPL schemes. BNPL schemes exhibit heterogeneous repayment structures among different lenders (Kenney et al., 2023). Although BNPL provides immediate gratification by enabling customers to enjoy the benefits of purchase without upfront payment, it may foster impulsive buying and excessive spending. Concerns regarding the potential risks of BNPL have raised regulatory and policy considerations, aiming to establish measures to ensure responsible lending practices and safeguard consumer interests. The expanding prevalence of BNPL suggests that manipulating policy interest rates through monetary policy proves ineffective, as credit creation within BNPL frameworks circumvents the transmission mechanism originating from the overnight policy rate (OPR) (Awani Columnist, 2023). Diverging from traditional short-term credit products, BNPL schemes centre around the concept of "responsible spending" instead of adhering strictly to the prescribed notions of "responsible lending," offering a potentially more cost-effective alternative to credit cards (Gerrans et al., 2021).

Research on consumer protection emphasises the necessity of providing specialised considerations and safeguards for consumers who may lack the capacity to comprehend the intricate nature of fintech services. Regulatory evaluations should incorporate social and consumer factors to ensure the provision of financially sustainable and socially valuable services (Johnson, 2021). A notable vulnerability of BNPL schemes in the United Kingdom (UK) lies in the absence of creditworthiness assessments or affordability checks performed by BNPL operators (Kenney et al., 2023). Non-banking financial institutions typically offer BNPL options, enabling customers to divide payments into multiple equal instalments without upfront fees or interest, except for SPayLater, which imposes a monthly charge of 1.5% (Awani Columnist, 2023). Traditional banking institutions in Malaysia have recently begun collaborating with BNPL providers or introducing their own BNPL services (Globenewswire, 2022). In the UK, the Financial Conduct Authority (FCA) has recommended measures to enhance consumer information and prohibit retroactive interest charges in BNPL schemes (Johnson, 2021). However, fee-based programs exempted from interest charges often elude these regulations, highlighting a regulatory gap that may be addressed through an imminent FCA review. In Canada, fee-based BNPL schemes operate within an unregulated sphere, as the Financial Consumer Agency of Canada (FCAC) does not provide guidance concerning schemes beyond personal loans or credit cards. Unlike the UK, there is presently no definite plan to intensify scrutiny of these schemes in Canada.

METHODOLOGY

This study employs a doctrinal legal research methodology in analysing the legal framework governing BNPL schemes in Malaysia, which includes the relevant legislations and regulations, as well as in identifying key issues such as high-interest rates, hidden fees and lack of transparency. A comparative legal research methodology is employed in appraising the approach adopted by other countries towards managing BNPL schemes. The primary sources of law were carefully analysed, as well as secondary sources of law, such as academic journal articles, considered in attaining a comprehensive view of the subject matter.

FINDINGS AND DISCUSSION

The legal framework for BNPL schemes in Malaysia is primarily governed by the Consumer Protection Act 1999 and the Hire-Purchase Act 1967. However, there are gaps in the existing legal framework that may leave consumers vulnerable to exploitation by BNPL providers. The critical issues associated with BNPL schemes in Malaysia include high-interest rates, hidden fees, lack of transparency and inadequate consumer protection. Many consumers are not aware of the total cost of BNPL schemes and may end up paying significantly more than the original purchase price of the goods. Moreover, BBPL providers

may use misleading advertising and sales tactics to lure consumers into signing up for the schemes.

This study observes several key legal issues on the BNPL scheme which has come to light in recent years. The primary concern surrounding BNPL schemes pertains to consumer protection, as individuals may lack a comprehensive understanding of the agreement's terms, conditions, and potential risks associated with deferred payments. This lack of awareness increases the likelihood of consumers accumulating unmanageable debts, leading to financial hardship. Additionally, BNPL companies have faced allegations of engaging in misleading or deceptive advertising practices, particularly regarding interest rates, fees, and payment schedules, which can misinform consumers about the actual cost of the loan and contribute to financial difficulties. Furthermore, the regulatory oversight of BNPL schemes may be inadequate in countries where the market is still emerging, resulting in a lack of transparency and consumer uncertainty regarding their rights and obligations under the agreement. Another crucial concern is the collection of substantial amounts of personal and financial data by BNPL companies, posing risks of data misuse, mishandling, identity theft, and fraudulent activities. Several countries have implemented new regulations and guidelines to enhance transparency and safeguard consumer interests in response to these issues. To mitigate risks, consumers should diligently assess the terms and conditions of any BNPL scheme before enrollment while being aware of their rights and obligations within the agreement.

BNPL agreements in Malaysia may contain unfair terms that significantly affect the borrower's repayment capability, potentially leading to financial difficulties. Unfair terms include undisclosed fees or charges, such as late payment or administration fees, which hinder the borrower's accurate assessment of the loan's total cost. Higher interest rates in BNPL agreements, especially when payments are missed, pose challenges for borrowers, potentially causing long-term financial hardship. Unreasonable payment schedules may result in missed payments and additional fees, particularly for individuals with limited income or other financial obligations. Moreover, unfair terms and conditions that restrict the borrower's ability to dispute the loan or allow the lender to modify the agreement without consent unilaterally can be present in BNPL agreements.

It is crucial to meticulously review BNPL agreement terms and conditions to safeguard consumers, understanding rights and obligations. If borrowers encounter unfair or unreasonable terms, seeking legal advice or contacting the appropriate regulatory authority is advised. In Malaysia, the Consumer Protection Act 1999 offers legal protection to consumers regarding unfair practices and contracts, including those related to BNPL schemes. Pertinent provisions in the Act require BNPL companies to disclose all relevant information clearly and in both English and Bahasa Malaysia before entering into an agreement. Unfair contract terms, which are ambiguous, misleading, or disadvantageous to consumers, are prohibited. The Act also grants consumers a 10-day cooling-off period to cancel BNPL agreements without penalties, providing an opportunity to review terms and comprehend rights and obligations. In cases of unfair or deceptive practices, consumers may seek remedies under the Act, including cancellation, compensation for losses, or legal action against BNPL companies. Consequently, the Consumer Protection Act 1999 plays a vital role in safeguarding Malaysian consumers utilising BNPL schemes, necessitating awareness of their rights and obligations under the Act, with the option to seek legal recourse for potential violations.

CONCLUSION AND RECOMMENDATIONS

The BNPL scheme is indeed a popular financing alternative often sought after by consumers in Malaysia. However, it is observed that there exists a myriad of issues pertaining to its legal framework in Malaysia and its implementation towards protecting the interests of consumers. Therefore, this paper argues that there is a need for greater transparency and regulation of the BNPL scheme in Malaysia. Towards that note, it is proposed that greater consumer protection may be achieved through the introduction of caps on interest rates set on BNPL schemes, setting a mandatory disclosure of total costs in opting for the scheme as well as enacting broader and better consumer protection regulations on the BNPL scheme.

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TRACK 14: COMMERCIAL/ CONSUMER /LAW AND ECONOMICS

A LEGAL STUDY ON SCHEME OF ARRANGEMENT WITH SPECIAL REFERENCE TO AIRASIA X BERHAD

Azurah Nor Binti Sarif¹, Fairuz Fazeera Binti Nordin², Khairiyah Binti Haron³, Nur Syafiqah Binti Baharudin⁴, and Dr. Syuhaeda Aeni Binti Mat Ali^{5*}

^{1,2,3,4,5} Faculty of Law, Universiti Teknologi MARA, Malaysia.

Email: ¹mardhiahhaizam@gmail.com; ²fairuzfazeera@gmail.com; ³hnhairiyah@gmail.com; ⁴syafiqah_baharudin@yahoo.com; ⁵syuha497@uitm.edu.my;

*Corresponding author

ABSTRACT

Malaysia has not been exempted from the economic and legal issues that have emerged as a result of the COVID-19 pandemic. The COVID-19 pandemic has brought unprecedented challenges to various industries, including the aviation sector, which has been heavily impacted due to travel restrictions and reduced demand. As a result, many airlines have resorted to restructuring their operations through the Rescue Mechanism (i.e., the Scheme of Arrangement). In Malaysia, the Scheme of Arrangement has emerged as a potential solution for companies facing financial distress. This article aims to outline the advantages and weaknesses of the Scheme of Arrangement and analyze the case study of AirAsia X Berhad, one of the airlines affected by the pandemic that sought the Scheme of Arrangement as a rescue mechanism under Malaysian law. For the purpose of this paper, the authors gathered information through primary and secondary data. By examining the legal framework and case study, this article provides insights into the use of the Scheme of Arrangement as one of the rescue mechanisms available under Malaysian law in response to the COVID-19 pandemic. Our finding shows that the Scheme of Arrangement has a complicated process as it involves court proceedings (i.e., to grant leave for the Scheme of Arrangement, Restraining Order, etc.) which are time consuming and costly. Alternatively, the Companies Act 2016 then introduced Corporate Voluntary Arrangement and Judicial Management as other options of the Rescue Mechanism.

Keywords: *Scheme of Arrangement, Corporate Insolvency Law, Post-COVID 19, Aviation, AirAsia X.*

INTRODUCTION

AirAsia X Berhad (“AAX”) is a leading long-haul, low-cost airline operating primarily in the Asia-Pacific region. AAX was in a much more difficult situation due to the COVID-19 pandemic due to the Movement Control Order (“MCO”) imposed by the Government of Malaysia and most other countries in the world which resulted in international borders closed and hence, cancellation of flights to other parts of the world. AAX was completely grounded for over two years with limited cash flow coming during the said period (AirAsiaX, 2023). Having difficulty to get financing from the financial institutions and other stakeholders, as well as to avoid going into liquidation, AAX undertakes a group-wide debt and corporate restructuring under Section 366 of the Companies Act 2016 (“CA 2016”) in 2020. On 16th December 2021, AAX secured court sanction for its SOA involving more than RM33 billions of debts (Hafiz Yatim, 2021). The High Court’s decision in the AAX case (AirAsia X Berhad v BOC Aviation Limited & 14 Ors) became a landmark decision as it is the first Airline debt restructuring scheme in Malaysia impacted due to COVID-19 pandemic (Hannah Patrick, 2022). Therefore, the authors are intrigued to analyze the Scheme of Arrangement’s (“SOA”) advantages as well as its flaws under our current law and make proposals (if any) enhancement of provisions should be made thereof.

LITERATURE REVIEW

The purpose of this literature review is to provide an overview of the existing literature on the SOA provided under the current legislation in Malaysia, CA 2016, with a focus on its use as a post-pandemic

rescue mechanism for companies. The authors also intended to discuss the advantages and weaknesses of the SOA as well as discussing the AAX case. The SOA proceedings are not exclusively intended for insolvent companies and are widely used by solvent entities to achieve solvent corporate restructurings and transfers of undertakings. The companies experiencing cash flow problems and with a debt burden however, frequently utilize the SOA process (Hannah Patrick, 2022). The process has become adapted over time to the needs of corporate rescue. It is a debtor-in-possession type process that does not require the appointment of an insolvency official or practitioner who might displace management. It allows for a court-approved restructuring scheme that has been approved by all classes of creditors with the necessary voting majorities to be imposed on dissenting creditors and members. Thus, opting for SOA provides some flexibility of process to the company as compared to the traditional court-supervised insolvency proceedings. The SOA allows companies to propose a restructuring plan to their creditors and shareholders, and if approved, the plan can be implemented without the need for court's intervention. The underlying philosophy behind the statutory SOA is to encourage companies facing financial difficulties to engage with their creditors with the objective of reaching an understanding on the settlement of the payment obligations to their creditors in order to assist the company with its financial recovery instead of going down the route of liquidation.

METHODOLOGY

A qualitative research methodology will be used for the purpose of this paper in order to have an in-depth analysis by reviewing primary sources applicable to Malaysian context (i.e., the previous law under Companies Act 1965 and the current law under CA 2016). Besides, secondary sources including academic articles, books, and the case law report of the AAX case would also be reviewed. A comprehensive search from the online databases will be used for collecting the materials relating to SOA and analysis on the AAX case.

FINDINGS AND DISCUSSION

In Malaysia, there are three primary corporate rescue processes namely SOA, the Corporate Voluntary Arrangement ("CVA"), and Judicial Management ("JM"). While these rescue mechanisms have distinct characteristics, their ultimate goal remains the same (i.e., to offer the best options to support the company and protect the interests of both shareholders and creditors). Each rescue mechanism has its benefits and drawbacks, allowing companies to choose and determine the best approach in proceeding to rescue their company. SOA offers advantages such as allowing the company to negotiate with creditors without court intervention, enabling the company to continue its operations and avoid interference by a liquidator. However, there are downsides to consider. The process requires extensive documentation and adherence to a strict procedure, which can be time-consuming and costly. In addition, there is no moratorium period to protect the company unless the applicant applies for a restraining order at the convening stage itself. Further, court approval of the SOA is not a foregone conclusion and depends on various factors, including the company's financial position, feasibility of the restructuring plan, and the cooperation of creditors and shareholders. It is not an easy task to get 75% approval by the creditors on the arrangement/plan in order to proceed for court leave as required under the CA 2016. In fact, AAX' proposed scheme faces objections from the dissenting creditors which was unfortunately rejected by the Court of Appeal. The case highlights the importance of ensuring that the rights of dissenting creditors are properly protected in the SOA process, and that their objections are given due consideration by the Court. The AAX case illustrates some of the limitations and risks of the SOA, particularly when dealing with cross-border creditors and complex debt structures. Considering the above situation, the author opine that there is a merit to enhance the provision relating to the scheme of arrangement (i.e., empowering the Court to grant an "automatic moratorium", empowering the Court to restrain proceedings against subsidiary or holding company, empowering the Court to order a meeting to revoke the proposed compromise or arrangement, empowering the Court to approve a compromise or an arrangement without having the meeting of creditors and empowering the creditor to apply to the Court for a review of the decisions made by the company during the moratorium). Nonetheless, the introduction of CVA and JM under CA 2016 (which was enforced in 2017) as the other alternatives for corporate rescue mechanisms is seen as an impactful savior for the companies having financial distress in order to overcome some difficulty faced in the SOA process.

CONCLUSION AND RECOMMENDATIONS

During the COVID-19 pandemic, the Malaysian government introduced various measures to support businesses, among others, introduce loan moratoriums and increased thresholds for debt inability through the enactments of statutes namely, the Temporary Measures for Reducing the Impact of Coronavirus Disease (COVID-19) Act 2020 and Temporary Measures for Government Financing (COVID-19) Act 2020. However, these temporary reliefs are insufficient for the long term, considering the ongoing economic recovery. Although AAX successfully implemented a SOA under Section 366 of the CA 2016, the process encountered significant delays. Such delays are common in SOAs due to the need for creditors and court approval which creates uncertainty. Moreover, the SOA process can be susceptible to misuse by companies aiming to gain advantages or evade debt repayment. Therefore, it is crucial to establish effective regulations and oversight to prevent abuse and ensure fair utilization of the process. The extended duration experienced by AAX underscores the need to examine and potentially enhance the efficiency and effectiveness of the mechanism. Any improvements to the existing law should consider the impact of COVID-19 while adequately addressing the rights and responsibilities of debtors and creditors through fair and efficient procedures. In view of this, in 2021, the Companies Commission of Malaysia (“CCM”) had issued a Consultative Document proposing amendments to enhance the provisions related to SOA. The authors are of the view that SOA and other rescue mechanisms should always be improvised based on the current situation / scenario of the economic settings to ensure its relevance and efficiency to help financial distress companies and at the same time protect the creditors interest.

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TRACK 14: COMMERCIAL/ CONSUMER /LAW AND ECONOMICS

A COMPARATIVE STUDY ON CORPORATE RESCUE MECHANISMS FOR PRIVATE LIMITED COMPANIES IN MALAYSIA AND THE UNITED KINGDOM

Aimi Fadhilah Hazwani Binti Ahmad Zaini^{1*}, Muhamad Aryn Bin Rozali², Muhammad Salihin Bin Muhammad Shukri Wong³, Nur Ain Farzana Binti Baharuddin⁴ & Syuhaeda Aeni Binti Mat Ali⁵

^{1,2,3,4,5}*Faculty of Law, Universiti Teknologi MARA, Malaysia.*

*Email: ¹eyemie88@gmail.com; ²arynrozali@gmail.com; ³salihinshukri@gmail.com;
⁴farzanabadin@gmail.com; ⁵syuha497@uitm.edu.my*

**Corresponding author*

ABSTRACT

The enactment of Companies Act 2016 had satisfied a critical need for a significant revamp to corporate rescue mechanisms in Malaysia. The new Act introduces two (2) new corporate rescue mechanisms, namely judicial management and corporate voluntary management, apart from revising the scheme of arrangement for debt restructuring exercise from the previous Companies Act 1965 and acknowledging take over and mergers as part of rescue mechanisms. On the other hand, on 25 June 2020, the United Kingdom productively enacted the Corporate Insolvency and Governance Act 2020 (CIGA) with the specific aim to address financial distress faced by companies caused by the COVID-19 pandemic. Although CIGA was enacted to specifically address financial dilemmas during the COVID-19 pandemic, it is apparent that the measures introduced by CIGA are more viable in resuscitating financially distressed companies in comparison to the measures formerly implemented under the United Kingdom's Insolvency Act 1986. For instance, the position in the United Kingdom is better because in the United Kingdom, the creditors (secured or unsecured) do not have the privilege to reject and/or set aside the moratorium application made by the company. Therefore, Malaysia should consider introducing the measures adopted under CIGA to ensure that companies are able to foster in these challenging times. This paper adopts doctrinal research methodology to compare the existing legal frameworks in the United Kingdom and Malaysia pertaining to current available corporate rescue mechanisms.

Keywords: *Corporate Rescue Mechanisms, Private Limited Companies, Financial Distress, Restructuring, Rehabilitation*

INTRODUCTION

The objective of corporate insolvency law is to offer means for corporate survival or recovery. When companies are on the verge of financial collapse, they may require rescue mechanisms that go beyond internal managerial responses. Malaysia began introducing corporate rescue mechanisms in 2016 through the enactment of Companies Act 2016. This legislation established a number of procedures to assist financially distressed companies to rehabilitate and restore their business operations so that they could be given an opportunity to pay off their debts while maintaining trading power. It is significant to note that several mechanisms introduced made reference to the mechanisms implemented in the insolvency law of the United Kingdom.

Given the legislation is relatively new, it has several drawbacks. One significant drawback is the power of secured creditors to reject the application for judicial management can further hinder the Act's ability to rehabilitate ailing companies. Any secured creditors are also entitled to set aside the judicial management order in several instances. In light of this, it might be necessary to suggest improvements that can better serve the goals of these mechanisms, which mainly lower the insolvency rate and at the same time, to protect the interest of the stakeholders of the company. The focus of this paper is to make such suggestions by examining the corporate rescue mechanisms in the United Kingdom, with a particular emphasis on the newly enacted CIGA. The study will analyze the application of these mechanisms and explore how their implementation can be customized to suit our own corporate rescue mechanisms specifically that is applicable to private limited companies.

LITERATURE REVIEW

The law on winding up of companies in Malaysia is contained in the Companies Act 2016 which repealed the Companies Act 1965 on 31 March 2017. Two (2) novel rescue mechanisms embedded in the new Act came into force, which are the corporate voluntary arrangement (CVA) and judicial management (JM). These mechanisms were introduced based on recommendations by the Corporate Law Reform Committee (CLRC) that was set up by the Companies Commission of Malaysia (CCM) specifically for the purpose of amending the previous Companies Act 1965 (Lokman, 2020). JM is a court-supervised rescue mechanism whereby section 411 and section 414 of the Companies Act 2016 provide that, upon granting of a JM order by the court, a full moratorium takes effect and an insolvency practitioner (IP) is appointed to take charge of the company, its business and affairs. A salient feature in any rescue mechanism is the presence of an automatic moratorium. Unlike in the United Kingdom, application of JM in Malaysia must be accompanied and the court must be satisfied with two (2) elements namely creditor's veto and the public interest which both are not required under the insolvency law in the United Kingdom. CVA is a simpler mechanism in which a compromise agreement is made between a debtor company and its creditors to allow the company to pay off a portion of its debts as full settlement. During the CVA process, the company remains in operation with its board of directors and powers intact. The recommendations of the CLRC for the CVA were modeled based on the law in the United Kingdom, the Company Voluntary Arrangement (UK CVA). In the United Kingdom, the mechanism was devised for smaller companies with lesser involvement of the courts to minimize the costs and time spent in its restructuring (Frisby, 2011). Nevertheless, there is limitation of the availability of CVA in Malaysia as it will exclude a company that creates a charge over its property or any of its undertaking, a limitation which does not exist in the UK CVA (Thim, 2022).

METHODOLOGY

This research is conducted using the doctrinal method, in which primary and secondary sources of law are examined. The relevant statutes, case laws, journals and articles are the prime sources of information. References are specifically made to the United Kingdom's Insolvency Act 1986, CIGA and Malaysia's Companies Act 2016. Comparative legal analysis was also conducted wherein the legal frameworks available in the United Kingdom and Malaysia regarding corporate rescue mechanisms for private limited companies are compared. The legal framework in the United Kingdom is employed as the benchmark of this study due to the similarities of the legal frameworks of both countries.

FINDINGS AND DISCUSSION

Contrary to the previous Companies Act 1965, when a company is insolvent, the paramount importance is placed on the creditors' interest. The Corporate Law Reform Committee (CLRC) established by the Companies Commission of Malaysia (CCM), that was tasked to reform the previous Act, found that the said legislation did not provide sufficient avenues for companies to rehabilitate from the debts due and owed to the creditors other than liquidation and receivership, in which both were not intended as rescue mechanisms.

The rescue mechanisms according to CLRC must adhere to key rescuing elements, including the establishment of a well-defined rehabilitation plan, a realistic timeframe for achieving goals plan, a moratorium period to cease creditor actions, protection of creditors' interests with voting rights and access of creditors to correct information, appointment of capable insolvency practitioners to oversee the rescue process and inclusion of court supervision. Influenced by the mechanisms employed in the United Kingdom and Singapore, on 31 January 2017, the Companies Act 2016 has repealed the old Act and effectively implemented four (4) corporate rescue mechanisms that were absent in the old Act. Despite this, the United Kingdom's law has progressed significantly in response to COVID-19, while our own Companies Act 2016 has yet to follow suit and improve its measures.

The Insolvency Act 1986, which was enacted based on the Report of the Review Committee on Insolvency Law and Practice 1982, was the insolvency legislation in place in the United Kingdom before the COVID-19 pandemic of 2020, which had a significant impact on corporations and businesses. In recent years, the United Kingdom recognised that widely used CVA has limitations as a general “debtor in possession” restructuring tool. Similar to Malaysia, CVA application requires the support of at least 75% of the unsecured creditors and the support of any secured and preferential creditors, who usually insist on payment in full. Prior to the Act, save in the case of very small enterprises, there was no moratorium on creditor actions against the company, during the period of negotiations. Realizing that most companies require assistance in building back their businesses post COVID-19, the Corporate Insolvency and Governance Act 2020 (CIGA) was passed on 25 June 2020 in the United Kingdom, to introduce new procedures and remedies specifically designed to address financial distress caused by the pandemic. One of the key points of the CIGA that is interesting to be analyzed is the absence of creditors’ privilege to reject and/or set aside the moratorium application made by the company. Under CIGA, directors of the ailing company have full control over the affairs of the company during the moratorium period with several conditions. The procedures of filing an application are also undemanding whereby directors have two options to either apply to the court for a court order, or if the company is an English company with no pending winding up petition, they can simply file the necessary documents at the court. The primary goal of CIGA is to offer businesses a period of relief to sustain their operations during these challenging times without burdening them with complicated methods. It is apparent that the Malaysian insolvency law has yet to address this specific objective.

CONCLUSION AND RECOMMENDATIONS

Based on the comparison made by the authors on the United Kingdom’s CIGA and Malaysia's Companies Act 2016, the COVID-19 pandemic has in fact allowed the government in the United Kingdom to take advantage of expediting the passing of the legislation to provide temporary and permanent corporate rescue measures i.e the restructuring plans, the standalone moratorium and the restriction on contractual termination in response to the economic downturn due to the pandemic. While the pandemic has subsided in Malaysia, the Malaysian economy, especially involving private limited companies, is still recovering post-pandemic. Thus, the authors strongly believe that consideration should be taken by the Malaysian government in implementing similar or alike corporate rescue mechanisms in the United Kingdom in order to ensure the increase of business recovery and lowering the wound up statistics of companies in Malaysia, especially private limited companies.

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TRACK 14: COMMERCIAL/ CONSUMER /LAW AND ECONOMICS

BUYING AND SELLING ACTIVITY OF ONLINE GAME ACCOUNTS CONTAINING VIRTUAL GOODS THAT ARE SOLD ON AN ONLINE MARKETPLACE

Muhammad Ilman Abidin^{1*}, Ahmad Faizal Adha², Salma Suroyya Yuniyanti³ & Chicha Chairunnisa⁴

^{1,2,3,4}*Faculty of Law, Universitas Islam Bandung, Indonesia*

*Email : muhammadilmanabidin@unisba.ac.id, ahmadf.adha@unisba.ac.id, salmayuniyanti@unisba.ac.id,
chichachairunnisa@unisba.ac.id*

**Corresponding author*

ABSTRACT

With so many online game players today, various problems arise. There are so many online game players today who carry out buying and selling activities on online game accounts containing virtual objects that are widely available in various marketplaces in Indonesia. However, in these activities, the buyer often suffers losses such as the account being hacked or re-accessed by the seller. For this reason, it is necessary to have the validity of buying and selling online game accounts containing virtual objects, and how to protect the law against the buyer who purchases an account containing virtual objects. This writing uses a normative juridical approach, namely by reviewing the provisions in the Civil Code regarding the validity of buying and selling and most importantly the ITE Law regarding buying and selling in electronic systems, to then be analyzed descriptively qualitatively, namely by first providing a detailed description and analysis, systematic, and comprehensive regarding the laws and regulations, norms in various countries and legal theories which are then applied to the problems studied. The results of the study show that firstly, the activity of buying and selling online game accounts which contain virtual objects based on the ITE Law is legal as long as the organizer does not prohibit the existence of buying and selling activities by third parties. Second, legal protection for buyers who purchase online game accounts containing virtual objects based on Article 30 of the ITE Law is that the seller is prohibited from re-accessing accounts that have been sold, while based on Article 49 paragraph (3) PP PSTE the buyer has the right to get a return of goods and money if there is a difference between the goods purchased and the goods received.

Keywords: *Online game accounts, virtual objects, buying and selling activities*

INTRODUCTION

Video games (video games) have progressed very rapidly since they were first known around the 1960s. According to Nicolas Esposito, video games are games that are played thanks to an audiovisual set and can be based on a storyline (Esposito, 2005, p.5). Over the past half century, video games have evolved from something simple and popular with few people, to something complex and enjoyed by billions of people around the world (Eichenbaum, 2014, p.50). At this time all information technology has been carried out virtually in a network including converged telecommunications and data transmission (Budhijanto, 2013, p. 257). The activity of buying and selling virtual objects in online games is a legal problem that is currently happening in Indonesia. The objects traded in online games are virtual objects that have economic value in the game. Virtual property has three legal issues that are currently emerging, namely regarding ownership, trade, and theft. The four constraints of cyberspace are; law, social norms, markets, and architecture and "regulation". This is the sum of these four constraints (Lessig, 1999, p. 87). Virtual property has three legal issues that are currently emerging, namely regarding ownership, trade, and theft. Problems related to virtual objects in online games are not only a debate in Indonesia, but also in various countries around the world such as China, Taiwan, South Korea, and the United States.

Many transactions are found buying and selling accounts on social media platforms such as Instagram, Facebook, Twitter, and so on very freely, and many frauds occur because of it. RMT behavior is clearly prohibited by the Terms of Service of Moonton Mobile Legends : Bang-Bang, as follows:

“You agree that you voluntarily publish content on the Service using the technology and tools provided by Moonton. You understand and agree that you may not distribute, sell, transfer or license this content and/or application in any way, in any country, or on any social network or other media without Moonton's express written permission. You grant Moonton the right to act as agent on your behalf as the operator of the application.”

In addition to the Terms of Service, RMT activities are also generally prohibited by the End User License Agreement (EULA), where the meaning of EULA itself is a contract, or set of rules, which regulates and determines how people may use a computer software or application. However, in reality, buying and selling accounts in Mobile Legends games and/or other online games continues to be carried out by players. Meanwhile, if the players do not carry out the contents of the agreed agreement before being able to play, then this is a violation of the agreement they agreed to. Another consequence of this transaction is that the accounts being sold tend to have problems such as being vulnerable to being hacked by the previous account owner, because the login information is still owned by the previous account owner. If the hack occurs, the organizer, Moonton, will not be responsible because the buying and selling activity has been previously prohibited. Based on the things described above, the problems were, how is the validity of buying and selling accounts of online games containing virtual objects in online marketplace that were prohibited by the Online Games Terms of Service.

LITERATURE REVIEW

Thesis entitled, “Legal Analysis of Transactions above Virtual Property in Organizing Online Games” by Mahendra Adhi Purwanta, with the object of research namely Virtual Property with the formulation of the problem "How are the legal provisions that regulates Virtual Property?" the gap in knowledge is that the Mahendra's thesis discusses the status of virtual goods arrangements, while this research discusses the rampant sale of accounts containing virtual objects, even though it has been prohibited by regulations related to game makers.

METHODOLOGY

Methods The approach method used in the preparation of this research is the normative juridical approach, namely: A legal method carried out by examining library materials or secondary data. Normative legal research on library materials is the basic material that is classified as secondary data related to legal protection for buying and selling activities regarding online games account. This research is descriptive analysis research. Data analysis in this study was carried out in a qualitative normative manner.

FINDINGS AND DISCUSSION

Engagement means that which is binding between one person and another person (Muhammad, A, 1999, p. 1). Trade acts or buying and selling transactions carried out through electronic media that developed previously using the legal rules in the Civil Code (Siregar, 2019, p. 109). Regarding several examples of EULA and ToS from some of the most popular online games in Indonesia (Mobile Legend, Free Fire, and PUBG), all of which prohibit players from selling their accounts to third parties, the position of the players in these games only as connoisseurs and not owners, automatically the players are not entitled to profit from the game without the permission of the organizers.

Sale and purchase is a reciprocal agreement, (Meliala, 1985, p. 38) and the statement of the party receiving the offer is called acceptance (*acceptatie*) (Badrulzaman, 2001, p. 74). If the players are bound by the ToS of a game that prohibits buying and selling activities with third parties, buying and selling accounts with other parties is invalid. Considering the fourth legal requirement in Article 1320 of the Civil Code, which is a lawful cause, the contents of the agreement may not violate the law. Because the ToS agreement between the organizer and the player is considered a law, the fourth condition is automatically not fulfilled. As a result of not fulfilling the objective conditions, the agreement is

considered null and void (Ariyani, 2013, p. 7).

Null and void is a legal term which means that from the start there was never an agreement or engagement. Another term that can be used is "void ab initio", which means "to be deemed invalid from the outset". Cancellations that occur under the law will result in the legal action concerned being deemed to have never occurred. The legal effect of the cancellation of the agreement is the return to the original position as it was before the agreement (Hernoko, 2010, p. 294).

CONCLUSION AND RECOMMENDATIONS

A good theory of virtual property is also important to the future of the internet. (Fairfield, 2005, p. 1051). The activity of buying and selling online game accounts containing virtual objects cannot be concluded as valid or invalid. This depends on the ToS that has been agreed upon by the parties in advance, as long as the organizer does not prohibit the existence of buying and selling activities by third parties, then the activity is legal. However, if in the agreed ToS it is clear that this is prohibited, then the buying and selling activity of the account is declared invalid, i.e. null and void.

It is necessary to make a regulation that specifically regulates the definition of an online gaming account, and the rights attached to it. Because at this time, Indonesian people do not really understand whether their online game accounts are protected or not. Therefore, regulations that are specific in knowing the protection of online game accounts are very necessary, these regulations can be in the form of Government Regulations (PP) or Regulations of the Minister of Communication and Information

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TRACK 14: COMMERCIAL/ CONSUMER /LAW AND ECONOMICS

COMPARATIVE STUDY OF THE REQUIREMENTS FOR A JUDICIAL MANAGEMENT APPLICATION BETWEEN MALAYSIA AND SINGAPORE

Wan Sumaya binti Wan Shaari¹, Yasmin Nadhirah binti Zainal², Zaharah binti Marawan³, Syuhaeda Aeni binti Mat Ali^{4*}

^{1,2,3,4} Faculty of Law, Universiti Teknologi MARA, Shah Alam, Selangor, Malaysia

Email: ¹2022546271@student.uitm.edu.my, ²2022732749@student.uitm.edu.my,
³2021810334@student.uitm.edu.my, ⁴syuha497@uitm.edu.my

*Corresponding author

ABSTRACT

Corporate Rescue Mechanism (“CRM”) was introduced to provide assistance to save financially struggling companies from going into liquidation by way of rehabilitation. CRM in Malaysia are regulated by Division 8 of the Companies Act 2016 (“CA 2016”) wherein it consists of Judicial Management and Corporate Voluntary Arrangement. This paper focuses on Judicial Management and the requirements imposed on the applicants who resorted to the said rescue mechanism. By virtue of Section 404 of the CA 2016, Judicial Management is an application for an order that a company be placed under a judicial manager be made to the Court by the company or its creditors if it is considered that the company is unable to pay its debts and there is a reasonable probability of rehabilitating the company whereby the interests of creditors would be better served than by resorting to a winding up. Considering that Malaysia has been following the template of Judicial Management from Singapore, the judicial interpretation of the requirements of its application from the case of *Re Biaxis (M) Sdn Bhd* [2020] MLJU 1188 entailed much criticism for setting stringent set of requirements, even more than Singapore. This article utilises a predominantly qualitative approach based on doctrinal research focusing on reading and analysis of primary and secondary materials. Therefore, this article will propose a way forward theory and practice in judicial management application, specifically on the requirements imposed in both Malaysia and Singapore.

Keywords: *Corporate Insolvency, Corporate Rescue Mechanism, Judicial Management, Company winding up, Liquidation*

INTRODUCTION

The doctrine of corporate rescue mechanism was first introduced based on the reforms recommended by the Corporate Law Reform Committee (CLRC) under the Companies Commission Malaysia back in 2003 (Chen, Azmi & Rahman, 2021). From such introduction, the CLRC had discovered that the lack of focus on corporate rescue in the Companies Act 1965 (“CA1965”) had caused such law to be embodied in the statute without clear ground and reasoning of its existence. This is in line with the statement by Finch (1997) that the lack of any purpose in the development of insolvency law may lead to “inconsistencies of reasoning and failures of policy” that could possibly entail any unexpected consequences to the related legal sectors. Apart from that, Chen et al. (2021) stated that one of the features necessary for a corporate rescue mechanism, as noted by the CLRC, is to protect the interests of creditors in respect to a moratorium against any dissipation of assets of the distressed company, voting rights of the creditors and additionally, rights of creditors to receive information on the company and rescue plan. According to an analysis by Chen et al. (2021), inefficacy of corporate rescue mechanisms as provided in the CA1965 is the major reason CLRC considered the international standards of corporate rescue mechanisms set by the World Bank comprises Corporate Voluntary Arrangement (CVA) and Judicial Management. Judicial Management is a court-supervised rescue mechanism wherein upon the grant of Judicial Management order, an Insolvency Practitioner also

known as Judicial Manager will be appointed to take charge of the company, its business and affairs (Chen, Azmi & Rahman, 2021). Since the law did not provide any guiding principle on the requirements of judicial management application, the Judicial Commissioner in *Re Biaxis (M) Sdn Bhd* [2020] MLJU 1188 had set down judicial precedent of such requirements for the applicants of Judicial Management to satisfy before the Court may be able to grant such an order. In spite of such so-called “enlightenment”, the decision for setting the principles has welcomed many criticisms for it being even more stringent than what has been practiced by the model country, Singapore. Hence, this article aims to assess the relevance of such requirements and its effectiveness in comparison to Singapore.

LITERATURE REVIEW

The introduction of the Companies Act 2016 has provided a framework to facilitate the rescue of financially distressed companies known as corporate rescue mechanism which can be found in Division 8 of Part III in the Companies Act 2016 and are in the form of Corporate Voluntary Arrangement (CVA) and Judicial Management (JM) which takes effect on 1st March 2018 (Chen, Azmi & Abdul Rahman, 2020). According to Lokman & Othman (2020), Judicial Management is where the company will be placed under the supervision of the court and its application may be made by a company, its director or a creditor. Upon the approval of the application, an insolvency practitioner will manage the operation of the company’s business. Pending approval of the Judicial Management by the court, a moratorium will be in force to prevent any winding up application or any other proceeding being taken against the company without the court’s approval.

Order for Judicial Management can be dismissed by the court if it is vetoed by the secured creditors unless the court is of the view that there is an element of “public interest” and therefore the order will be granted by virtue of Section 409 and Section 405(5) of the Companies Act 2016 (Chen, Azmi & Abdul Rahman, 2022). It is further stated by Chen, Azmi & Abdul Rahman (2022), the cases in Malaysia has followed the strict interpretation of the courts in Singapore as to the term of “public interest” as per in the case of *Re Biaxis (M) Sdn Bhd* (2020) MLJU 1188 whereby the court took the view that “public interest” represented the exception for the court to grant Judicial Management and such exception must be the most exceptional situations which not included the generic reasons related to the wound up of the company such as loss of employment and uncompleted contracts.

METHODOLOGY

This article adopted qualitative research methodology where the research focuses on relevant legislations, case law, articles and other relevant trusted sources and scholars. Further, this research makes a comparative study with Singapore on the requirement for Judicial Management application.

FINDINGS AND DISCUSSION

Section 405(5) of the CA 2016 gives the Court power to make a Judicial Management order and to appoint a judicial manager. Thus, the Court will take into consideration the following circumstances before making a Judicial Management order - Firstly, the said order would accomplish either one or more of the goals outlined in Section 405(1)(b) of the CA 2016 i.e., the company's survival, the authorization under section 366 scheme, or a better realization of the company’s assets than in winding up. Secondly, the nominated judicial manager must demonstrate that he or she has made every effort to bring the proposal as close to its final form as possible. Thus, the draft statement of proposal has to be substantive even at the application stage. Thirdly, the background of the judicial manager nominated by the company. Fourthly, the nominated judicial manager must affirm and file an affidavit to support the application and exhibit an expert report in the said affidavit. Fifthly, the evidence must be produced by the applicant. Sixthly, the applicant and/or nominated judicial manager should be able to demonstrate that the application and proposal is *bona fide*; that they have made every effort to collect all relevant information, to bring the proposal as close to its final form as possible, and to obtain the pledge of parties who are providing capital and distinguish outstanding issues; Justify the reasoning for the proposal and how it will achieve the goal within the specified time frame; and any material risks to the creditors i.e., prior Judicial Management applications and their outcomes including any other relevant matters. Seventhly and lastly, the applicant and/or nominated judicial manager should state that they believe there is a reasonable chance for them to achieve the said goals (Shih, 2020).

Such stringent requirements were imposed for reasons being that there is an automatic moratorium upon filing of a Judicial Management application. In addition, there is a real risk of fraudulent applications attempting to take advantage of the automatic moratorium and unsecured creditors are barred from opposing the Judicial Management application. However, the Court of Appeal has made a contrary decision in *Re: Million Westlink Sdn Bhd (Civil Appeal No. B-02(IM)-1590-08/2019)* and ruled that unsecured creditors have the right to be heard and to oppose the making of a judicial management order. Besides that, the proposal has to be substantive with only 60 days to present the final proposal to the creditors. Subsequently, the proposal given to the creditors should exactly be the same as submitted in Court. Not only that, the court justified such requirements by referring to the creditors who are relying on the confidence that the Court has reviewed the reliability of the proposal and considers it is likely to achieve its goals. Meanwhile, in Singapore, the Court gives consideration to the Creditors' interests (such as whether minority creditor interests are disregarded); Creditors' opposition to the granting of a judicial management order; Likelihood of the company's successful rehabilitation; and/or suitability of judicial management against other form of debt recovery, such as winding up before they grant judicial management order aside from the standard statutorily imposed requirements.

CONCLUSION AND RECOMMENDATIONS

From the above elaboration, we can see that it is not easy for a company to be successful in their application for Judicial Management since the Judicial Management order is hard to attain due to difficult requirements set by the Court. It is understandable that these requirements are needed in order to curb fraudulent applications and to protect the creditor's interest. However, to have a different standard of requirements between Judicial Management and Scheme of Arrangement i.e., in terms of proposal is totally absurd since both approaches are used as a way to save a financially distressed company. Apart from that, the Companies (Amendment) Act 2019 clearly favors the secured creditor compared to debenture holder. This is because after the said amendment, only the secured creditor is entitled to veto the Judicial Management application and this is vice versa prior to the 15 January 2020. Regardless, the decision made by the Court of Appeal in *Re: Million Westlink Sdn Bhd (Civil Appeal No. B-02(IM)-1590-08/2019)* might change the whole situation. For this reason, it is necessary to have an exhaustive set of requirements by amending the current law. This is to ensure that there are clear guidelines for the order for Judicial Management application to be granted.

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TRACK 14: COMMERCIAL/ CONSUMER /LAW AND ECONOMICS

SCHEME OF ARRANGEMENT AS CORPORATE RESCUE MECHANISM FOR 'TROUBLED' COMPANIES: A LEGAL REVIEW

Khairul Aiman Samsudin¹, Fatin Syafiqah Muhsin², Muzairi Shaikh Osman³, Nur Ameera Suhaimi⁴,
Wan Nor Ramizah Amani Wan Remali⁵ & Syuhaeda Aeni Mat Ali^{6*}

^{1,2,3,4,5,6}*Faculty of Law, Universiti Teknologi MARA, Malaysia.*

*Email: ¹khairulaiman@uitm.edu.my; ²fatinsyafiqah179@gmail.com; ³muzairi.law@gmail.com;
⁴ameerasuhaimi94@gmail.com; ⁵ramizahamani@gmail.com; ⁶syuha497@uitm.edu.my*

**Corresponding author*

ABSTRACT

Scheme of Arrangement can be used by companies to steer through financial difficulties. The arrangement is binding to all by way of court application sanctioning the scheme and it can also serve as a restraining order against creditors to recover their debts while the company is in a negotiation for debt restructuring. The objective of this paper is to highlight the modes and effectiveness of the Scheme of Arrangement in Malaysia. The study adopted qualitative research methods, focusing on library-based research to review the legal framework of the Scheme of Arrangement under the Companies Act 2016. The result found that the classification of creditors under the Scheme of Arrangement in Malaysia was not specified under the Companies Act 2016 and the Scheme of Arrangement does not provide an automatic moratorium unless the company filed a restraining order at the Court. Therefore, the legal framework of the Scheme of Arrangement needs improvement. Scheme of Arrangement is excellent in providing a breathing space for these companies to negotiate and to agree to the terms of the scheme. This paper discussed the legal framework of the Scheme of Arrangement and critically analysed the law with other jurisdictions.

Keywords: *Scheme of Arrangement, Corporate Rescue Mechanism, Troubled Companies, Debt Restructuring, Compromise Arrangement*

INTRODUCTION

Malaysian Companies Act 2016 (“CA 2016”) provides three types of corporate rescue mechanisms that can be used to relieve troubled companies which include Scheme of Arrangements, Corporate Voluntary Arrangement and Judicial Management. Scheme of Arrangement are not exclusively intended for insolvent companies and are widely utilised by solvent entities as well. Scheme of arrangement is a statutory court supervised mechanism for the implementation of a wide range of possible corporate transactions which requires the approval of the target shareholders at a meeting on a majority basis and the sanction of the Court (M.A. Khan, 2013). It enables the company to apply to the court for a restraining order that acts as a moratorium from the creditor’s action and provides space for the company to negotiate the Scheme that can be tailored into their suitable needs for debt repayment (Azmi et al, 2015). The objective of this paper is to analyse the legal framework on Scheme of Arrangement in Malaysia to be significant and effective as a corporate rescue mechanism. This paper aims to enhance the mechanism of law on the application of the Scheme of Arrangement with comparisons with other jurisdictions as benchmarking on the classification of creditors under the Scheme of Arrangement and legal framework on automatic moratorium.

LITERATURE REVIEW

In Malaysia, the Court may order a compromise or agreement with creditors and members in the form of a recognised debt-restructuring arrangement under Section 366 of the CA 2016 (Lokman et al., 2020). Patrick (2022) laid down three stages to be fulfilled before a Scheme of Arrangement is successful which are convening of meeting, the meeting and the Court’s sanction. In granting leave to the application to convene a meeting, the court will consider several preliminary issues which includes

classification of creditors (Khoo, 2021). The determination of the class of creditor is vital for the success of the scheme since it involves a certain number of approvals to succeed (Yong, 2021). Chen et al., (2021) affirm that the Scheme of Arrangement is required to be agreed by at least seventy-five per centum of the total value of the present creditors or class of creditors that have the rights to vote. Since the incorrect classification of creditors is a frequent issue, it is crucial to classify the creditors appropriately.

Furthermore, Thomazios (2020) highlights that there is an absence of automatic moratorium in the Scheme of Arrangements but a study by Patrick (2022) affirms that the CA 2016 allows application of restraining order which is equivalent to the moratorium to stop creditors from commencing proceedings of enforcing their debts over the company. However, the burdensome requirements in applying for a restraining order has been challenging to satisfy which caused problems for a company to achieve a proper space in restructuring its debt (Nathan, 2021). These problems have caused uncertainty in applying the Scheme of Arrangement in Malaysia.

METHODOLOGY

This study adopts a qualitative research method, focusing on the UiTM online library database. The legal framework for the Scheme of Arrangement also serves as the foundation for comprehending the topic. For data collection, this study examines some scholarly texts, journals, articles, newspapers reports and case law using online databases such as Scopus, Researchgate, LexisNexis. Some textbooks on Corporate Rescue Mechanism and Companies Act 2016 have also been referred to support the information from the online database. Comparative based analysis with other jurisdictions is also employed to facilitate a more effective law reform and for the purpose of this study, the adoption of the Scheme of Arrangement in Singapore and Hong Kong will be referred to as benchmarking.

FINDINGS AND DISCUSSION

Scheme of Arrangement is a mechanism by the Court to ascertain the genuineness of such schemes and therefore is not an abuse of the Court's process. As far as this study is concerned, the results found that: Classification of Creditors

When the classification of creditors should be determined; If classes are not correctly classified, the court may refuse permission to have class meetings. The court could also invalidate the meeting and refuse to approve the scheme if class creditors were incorrectly classified. In England, the practice is that the determination of the classification of creditors is carried out at the stage of the application for leave. Singapore has also approved this approach as per the case of *The Royal Bank of Scotland NV (formerly known as ABN Amro Bank NV) and others v TT International Ltd* and another appeal [2012] 2 SLR 213 where the Singapore Court of Appeal held that a court should consider issues of creditors' classification when hearing the initial application for an order to summon the scheme creditors' meeting(s), rather than at the subsequent application for the court's sanction of the scheme. In contrast, the Hong Kong courts only determine the issue of the classification of creditors at the court sanction stage which is reflected in the case of *UDL Argos Engineering & Heavy Industries Co Ltd v Li Oi Lin* [2001] 3 HKLRD 634. This particular view was based on the idea that earlier processes addressing those concerns could prematurely attract controversial judicial proceedings that could have been avoided. In Malaysia, the issue of whether the classes are correctly classified is to be decided when the court's leave is applied for (Foo & Lee, 2017 and Mohd Sulaiman & Othman, 2021).

Wholly-owned Subsidiaries; Under the schemes of arrangement, a company proposes a restructuring plan to its creditors. The proposal must be approved by at least 75% in value of the creditors present and voting at the meeting convened to consider the proposal. Once approved, the scheme becomes binding on all creditors, including those who did not vote or who voted against the proposal. The classification of creditors who are related companies to the applicant company in the proposed scheme is one issue that emerges in practice with regards to Schemes of Arrangement. It can be observed that there is some divergence in the approach taken in Malaysia and in other jurisdictions. In the case of *In Re Sateras Resources (Malaysia) Bhd* [2005] 6 CLJ 194, the High Court ruled that it would be unfair to group the applicant's subsidiaries in the same class of creditors with the applicant's unsecured creditors as there was a divergence of interest. On the other hand, the Singapore Court of Appeal in *Wah Yuen Electrical Engineering Pte Ltd v. Singapore Cable Manufacturers Pte Ltd* [2003] SGCA 23

of the view that the related party creditors did not constitute a separate class of creditors simply because they were related parties. At the same time, the court made an observation that the related party may have been motivated by personal or special interests to disregard the interests of the other creditors. Ultimately, the test is focused on a community of interests amongst the members of the class (Mohd Sulaiman & Othman, 2021).

Automatic Moratorium; Unlike Corporate Voluntary Arrangement, the Scheme of Arrangement in Malaysia does not trigger an automatic moratorium upon filing of the restraining order application to the court. The CA 2016 provides a restraining order under Section 368 which requires an application to the court with difficult pre-conditions to be met before the court will allow the restraining order. However, within the time period for the company to apply for the restraining order until the date of the restraining order is granted by the court, the company can still be sued and vulnerable to proceedings by the creditors wanting to recover their debt. In comparison to Singapore's position for the Scheme of Arrangement, Section 64 of the Insolvency, Restructuring and Dissolution Act 2018, the company is granted an automatic moratorium that lasts for 30 days upon the filing of the application for stay, or until the date when the application is heard, whichever is earlier. The automatic moratorium is a feature of Singapore law relating to Schemes of Arrangement under the IRDA.

CONCLUSION AND RECOMMENDATIONS

The study's findings show that the classification of creditors under the Scheme of Arrangement in Malaysia was not specified under the CA 2016 and the Scheme of Arrangement does not provide an automatic moratorium unless the company filed a restraining order to the Court. For the recommendations, the amendment may be made to the CA 2016 to include a specific classification of creditors under the Scheme of Arrangement in Malaysia. Moreover, a more streamlined process for applicants seeking the Court's approval for the Scheme of Arrangement may be implemented by including significant reductions in the evidence that is required to be produced to Court. These reforms may lead to significant legal costs savings for Scheme of Arrangement applicants, making scheme approvals cheaper, more efficient and more timely. There is also a need to establish a more comprehensive assessment regarding the conditions imposed on the restraining order to ensure a balance of interests of rights between a troubled company and the creditors by introducing an automatic moratorium provision. Indeed, the offered automatic moratorium was a good and noble effort for Malaysians in particular during the pandemic COVID-19 for the period of 6 months. Of course, various implications, whether positive or negative, also occurred during the implementation of the moratorium.

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TRACK 14: COMMERCIAL/ CONSUMER /LAW AND ECONOMICS

A LEGAL STUDY ON THE CORPORATE RESCUE MECHANISM CULTURE IN MALAYSIA

Muhamad Syah Azlan bin Abdullah¹, Mariam binti Ramli², Aina Shafika binti Rosli³, Fitrah Ain binti Idris⁴ & Syuhaeda Aeni binti Mat Ali^{5*}

^{1,2,3,4,5}*Faculty of Law, Universiti Teknologi MARA, Malaysia.*

Email: ¹syahazlan07@gmail.com; ²mariam.ramli@gmail.com; ³ainarosli39@gmail.com; ⁴fitrahain.idris@gmail.com; ⁵syuha497@uitm.edu.my

**Corresponding author*

ABSTRACT

This paper aims to provide a study of the Corporate Rescue Mechanisms in Malaysia that have been introduced to promote a culture of rehabilitation and revival for financially distressed companies. The Corporate Rescue Mechanism ('CRM') provisions, which include the Scheme of Arrangement ('SOA'), Corporate Voluntary Arrangement ('CVA'), and Judicial Management ('JM') provide a framework for companies to restructure their operations and avoid liquidation. In addition, the objectives of introducing the CRM were identified. These findings may pave the way to reform the corporate rescue law in order to enhance its conformity with the objectives of corporate rescue in Malaysia. This in turn would facilitate the recovery of financially distressed companies and the minimization of the loss of employment. The success of the CRM in promoting a culture of corporate rescue depends on the cooperation of all stakeholders involved, the availability of skilled professionals, the efficiency of the court system, and the willingness of companies to seek help at an early stage. The CRM provisions have the potential to preserve the value of the company and protect the interests of its stakeholders, including employees, creditors, and shareholders.

Keywords: *Corporate Insolvency, Corporate Rescue Mechanism, Corporate Voluntary Arrangement, Judicial Management*

INTRODUCTION

CRM culture in Malaysia refers to the legal framework that allows struggling companies to restructure their operations and avoid liquidation. This legal framework is primarily governed by the Companies Act 2016 ('CA 2016') and the Corporate (Corporate Rescue Mechanism) Rules 2018 ('CRM provisions'). The CRM provisions provide a range of mechanisms, including the SOA, CVA, and JM, which have been designed to encourage a culture of corporate rescue and rehabilitation in Malaysia. The provisions are aimed at preserving the value of the company and protecting the interests of its stakeholders, including employees, creditors, and shareholders. However, the success of the CRM provisions in promoting a culture of corporate rescue in Malaysia depends on several factors. Hence, this study seeks to discover the CRM provisions in Malaysia that have created a legal framework that promotes a culture of corporate rescue and rehabilitation, and factors that need to be considered for the success of this culture.

LITERATURE REVIEW

Belcher (1997) defined a corporate rescue as a necessary intervention to avert failure of the company. The corporate rescue amounts to the restoration of the company's financial position to its previous healthy status (Sandra, 2004). The corporate rescue culture does not adopt liquidation of financial distress companies as its main objective was to encourage and revive those companies with the aim of restoring its business to viability (Aishah, 2004). Nevertheless, it has been observed that this objective is difficult to be achieved in some situations. Fundamentally, while Malaysia has implemented several legal frameworks and mechanisms to facilitate corporate restructuring and rescue, there are still

challenges and limitations in the effectiveness and efficiency of these mechanisms (Norziana et al., 2020). The new CRM was introduced by the Companies Commission of Malaysia ('CCM') after the revised CA 2016 was implemented in February 2017. However, the guidelines and provisions of the new CRM are only implemented on 1st March 2018. Even though the CRM is still at an early stage, its effectiveness seems to be overshadowed by some limitations of the CRM where the options available under CRM (CVA and JM) are only for small companies. Public companies, licensed institutions, and companies operating under designated payment systems of *Bank Negara Malaysia* (Central Bank of Malaysia), and companies subject to the Capital Market Services Act 2007 are excluded from resorting to CVA and JM (Norziana et al., 2020). It is also restricted to a company that has not created a charge to protect secured creditors. The secured creditors also have veto power to reject an application for JM. This restriction limits the effectiveness of the new CRM (Foo and Lee, 2017). The primary issue that necessitates attention in the existing corporate insolvency law is the insufficient emphasis on rescue mechanisms or endeavors to rehabilitate companies (Azrol Abdullah et al., 2016).

METHODOLOGY

In order to achieve the objectives of this study, qualitative research and a doctrinal methodology approach are adopted in conducting this research. Qualitative research is the best method to adopt since it involves a legal study of the CRM culture in Malaysia. The important characteristic of qualitative research is that it involves small-scale interviews, observation, and document analysis that value depth over quantity. Hence, it is more suitable for this study as it allows us to determine the subject in depth and gain deep insights into the context of CRM culture in Malaysia. On the other hand, the doctrinal methodology approach is library-based studies that analyze the primary and secondary sources of law in relation to CRM culture in Malaysia which are retrieved from online sources. It relies on articles and research papers which discuss CRM in Malaysia and its current position in the law. The doctrinal methodology is best suited for this study as it comprises an in-depth analysis of the legal doctrine together with its development process and legal reasoning.

FINDINGS AND DISCUSSION

The Insolvency law for companies in Malaysia has changed from a 'liquidation culture' as per the CA 1965 to that of a 'corporate rescue culture' under the CA 2016. The liquidation culture is either receivership or liquidation, which was based on the traditional pro-creditor laws of winding up and receivership (Thim et al., 2020). A company that is facing temporary financial problems may still have a viable business that is a financially distressed company may still be economically viable with its assets. The new CA 2016 replicated many of the insolvency provisions in the CA 1965 but did change some of the provisions to cater to the issues of the CRM (Elaine, 2016). Division 8 of Part III in the CA 2016 together with the Corporate (Corporate Rescue Mechanism) Rules 2018 discusses the corporate rescue measures in Malaysia, which aim to facilitate financially distressed companies by providing alternatives other than liquidation. This new culture of the CRM recognizes that not all insolvent companies should be liquidated. The outcome of this new corporate rescue culture is a pure rescue which amounts to the restoration of the company's financial position to its previous healthy status (Cassandra, 2020). The success of the CRM in promoting a culture of corporate rescue in Malaysia depends on several factors, such as (i) the cooperation of all the stakeholders, (ii) skilled professionals who can guide the company through the restructuring process, (iii) the efficiency of the Malaysian court system in handling corporate restructuring cases, and (iv) the willingness of companies to seek help at an early stage, before their financial problems become too severe.

CONCLUSION AND RECOMMENDATIONS

CRM is provided to help distressed companies in Malaysia to overcome financial difficulties and remain viable. Overall, corporate insolvency can be a complex and challenging issue for businesses in Malaysia, but there is a range of legal and financial tools available to help them manage the situation and potentially recover from financial difficulties.

One key aspect of CRM is the culture surrounding them, which can greatly affect their effectiveness. Here are some recommendations on how to promote a culture of CRM in Malaysia. Firstly, to increase awareness. The government and relevant organizations should increase awareness of these mechanisms through campaigns, workshops, and seminars. Secondly, encourage early intervention: Early

intervention is key to the success of corporate rescue mechanisms. Companies should be encouraged to seek help as soon as they experience financial difficulty as early intervention is the key to the success of CRM. Thirdly, by providing support to distressed companies. The government and relevant organizations should provide support and resources to help these companies, such as financial assistance, access to legal and financial experts, and other relevant services. Fourth, promote a culture of cooperation: Successful CRM requires cooperation from all stakeholders involved, including creditors, shareholders, and management. Fifth, by improving the legal framework: The legal framework for CRM in Malaysia should be reviewed and updated as necessary to ensure it is effective and in line with international best practices. By promoting a culture of CRM in Malaysia, distressed companies can be given a better chance of recovery, which can ultimately benefit the economy as a whole.

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TRACK 14: COMMERCIAL/ CONSUMER /LAW AND ECONOMICS

SUSTAINABLE DEVELOPMENT GOALS AND INCLUSION OF WOMAN DIRECTORS ON CORPORATE BOARD

Neeti Shikha^{1*}

¹*School of Law, University of Bradford, UK.*

Email: n.shikha@bradford.ac.uk

**Corresponding author*

ABSTRACT

Increased representation of women on corporate boards is critical to economic growth as well as social inclusion. There has been growing attention to increasing the number of women at the board level. During recent years, the number of women on boards of directors has increased worldwide, but the growth rate has slowed in 2020 by 0.6%. Although women directors' growth rate slowed in 2020, all-male boards have declined worldwide to 17%. Companies must see women directors as key stakeholders in enhancing the effectiveness of their governance mechanisms and their ability to meet stakeholder information needs. They should not consider the inclusion of women directors as mere formalities. Such corporate actions contribute toward SDGs and enhance the relationship between board gender diversity and SDG disclosure among international companies. In this regard, there has been increasing recognition of the importance of women on corporate boards, however, this thesis has been limited to theoretical analysis in India. In this light, the Companies Act, 2013 appointed a quota system for the appointment of women board members. It prescribes a category of companies that are required to have at least one-woman director as a member of the board. This paper evaluates the effectiveness of the quota system for increasing gender diversity in Indian companies. Have companies gone beyond the minimum prescribed number to make diversity work on corporate boards? How has the performance of the women directors been in the company? Are they active participants?

This paper offers an empirical insight into these aspects of diversity on board.

Keywords: *Woman Director, Board of Directors, SEBI, Public Companies, Corporate Governance, Gender Diversity*

Themes: Sustainability

INTRODUCTION

Gender Diversity on corporate boards has been a long-standing debate across the globe. Studies have shown that an increase in the women's workforce in companies can lead to a considerable boost in the GDP of a nation. While there is a consensus among nations that companies must work towards achieving a diverse board with significant woman participation, approaches followed by them in achieving the same have been different. Countries like Norway, Spain, Belgium, and Germany have adopted a mandatory "quota system" to increase diversity while countries such as Singapore, the UK, and the USA commit to increasing board diversity without any legal mandate. One study notes that in the United States, despite the value of bringing more women onto corporate boards being increasingly recognized, companies continue a slow march toward gender parity can boost

In the UK, women's representation on the Board is much less than the government target. Some scholars argue that Britain's public companies will need to appoint women to 40 percent of their board positions over the next two years if they are to meet government-backed targets to improve gender diversity at the top of UK PLC. In fact, the UK is a salutary example of "what happens if you take off the pressure" and arguing for mandatory quotas for women on the board.

In Asia, there has been a mixed response to the mandatory quota system. India adopted a quota of at

least one woman on the board of all publicly listed companies under the new Companies Act 2013, raising the share of women on Indian boards from 5.5% in 2010 to 12.7% in 2017. Malaysia also imposed a quota of 30% women directors, which has resulted in the proportion of female board members at its largest companies more than doubling from 7.6% in 2011 to 16.6% in 2017.⁸ However, although Singapore has not legislated mandatory quota for women on the board, it aims to increase the woman participation on board to 20% by the year 2020. With this background, this paper aims to evaluate the effectiveness of the quota system for increasing gender diversity in Indian companies.

LITERATURE REVIEW

Despite substantial progress in recent years, business leadership remains largely male-dominated. In the past, female representation on public corporate boards around the world has traditionally been low. For example, only 19% of the current U.S. Fortune 500 directors are women (Catalyst,2014). However, in the past 15 years, women's share of corporate officer positions in Fortune 500 firms has grown from 8.7 to 15.7 percent; board seats from 9.6 to 15.2 percent; and CEO positions from 0.2 percent to 3.0 percent (Catalyst,2010). This trend is likely to continue as young women increasingly invest in business school training. Combined with this, there is a legislative endeavour to mandate the inclusion of women on boards through quota systems. Since the 1970s, a broad array of research has explored the issue of gender differences in leadership and governance roles (Daily et al.,1999; Moss Kanter,1977; Nielsen,2010). The literature on gender points to fundamental differences in the preferences of men and women (Bertrand, 2003; Graham & Narasimhan,2004; Bloom & Van Reenen, 2010) and there is evidence that individual managers bring their own personal styles to managing their firms. This does not necessarily imply, however, that gender quotas will affect corporate policy decisions.

David & Miller (2013) in their research studied the impact of gender quotas for corporate board seats on corporate policy decisions, where they examined the introduction of Norway's 2006 quota. They found no evidence that the impact of the Norwegian gender quota was driven by changes in board member characteristics other than gender, such as age or experience. A growing body of work has begun to explore the different implications of female vs. male leadership, and how gender-diverse boards might differ from all-male boards (Himna et al, 2002; Sealy,2007; Singh,2008). However, research finds that women are generally more long-term oriented and altruistic than men (Andreoni & Vesterlund,2001), and survey evidence documents corresponding sex differences in corporate directors' preferences and values (Kray et al, 2014). Prior work has reported that men and women have different ethical behaviours and confidence levels. Gender diversity promotes corporate social responsibility (CSR) spending and firm reputation (Bear et al, 2010). Gender-diverse boards strengthen the company's reputation through sustainable strategies and effective CSR(Francoeur,2008). Barring a few exceptions, such as in New Zealand (Fauzi & Locke,2012), Malaysia (Darus et al,2015), or Pakistan (Majeed et al,2015), most studies demonstrate the positive influence of women on CSR performance (Xie et al,2020).

METHODOLOGY

This research aims to address two main questions:

- 1) Whether the quota system has been successful in creating a more diverse board in India? This question needs to be understood both qualitatively as well as quantitatively by analysing whether woman participation has increased on the company's board after the introduction of a mandatory quota system.
- 2) Whether gender diversity as promoted under the mandatory regime increases board effectiveness? An answer to this will require measuring board effectiveness. This will be evaluated by assessing various parameters that contribute to diversity on the Board. This paper adopts a twofold approach to addressing the research questions. Firstly, it adopts a "theoretical" approach to tracing the development of gender diversity on corporate boards. The literature will investigate the development of quotas for women directors, both in the global and Indian contexts. Even within its own theoretical premise, has the quota system added to an increase in gender diversity? This is explored by quantitatively comparing the number of woman directors before the introduction of

the quota system and after. Secondly, an “analytical’ approach evaluates the findings of the data and assesses whether the quota system has led to an increase in diversity.

FINDINGS AND CONCLUSION

Evidence from several countries shows that an increase in the quota for women has increased gender diversity on board. This is true for Asia as well as Western nations. As has been shown above, companies in India are likely to have at least one female member on their boards. While the representation of women on the board has increased, the question of obtaining diversity in the true sense remains a challenge. Measuring diversity requires ascertaining certain parameters within the gender framework. A 2015 Fusion Millennial poll of adults between the ages of 18 to 34 in the USA found that a majority see gender as a spectrum, rather than a man-woman binary. Similarly, a Harvard study found that Men’s and women’s desires and challenges about work/family balance are remarkably similar (Tinsley, Ely, 2018). Thus, measuring the number of women on the board may not be sufficient. Factors such as age, educational background, and independence aid in measuring ‘diversity’. However, there are other advantages to measuring the number of women on the board. As discussed above, female directorship may be a good proxy variable for measuring the board’s independence. It may thus be worthwhile to examine how this percentage varies over time, and these numbers may be re-examined at fixed intervals. There is a growing acceptance that independent women directors contribute to diversity and better governance. This understanding also resonates in the Kotak Mahindra committee report. However, it is submitted that the independence of a woman director denies women executive power and hence ensures that their voices are not heard. Thus, going forward, India will require the law to address the issue of women directors having more say and go beyond the tick-box approach.

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TRACK 15: MARITIME LAW

LAW ENFORCEMENT OF FOREIGN AIRCRAFT OF THE RIGHT ARCHIPELAGIC SEA LANES PASSAGE AT ALKI

Irawati ¹

Faculty of Law, Bandung Islamic University, Indonesia.

¹*Ira.wati66@gmail.com*

**Corresponding author*

ABSTRACT

This article examines the jurisdiction and law enforcement of the archipelagic states, to protect their interests in the airspace when there is a violation of the right of archipelagic sea lanes passage by foreign aircraft, both civil and military, according to provisions of international law and national law. there are no rules for this problem, while ICAO provisions only apply to civil aircraft in the airspace above the high seas. The legal vacuum, both in international and national law, regarding regulation of rights, obligations and jurisdiction of states under the rights of foreign aircraft passage in archipelagic waters can lead to problems, both international and national. The research method used in this study is normative juridical and the research specification used is analytical prescriptive. Based on the principle of territorial sovereignty and territorial jurisdiction, for the civil aircraft when they are in the territory of a country, must comply with the laws of the country under it. However, law enforcement against civil aircraft must be peaceful and pay attention to safety passenger. If those who commit violations are foreign military aircraft, then the violations committed by this type of aircraft bear the state responsibility. Based on the right to self-defense principles, law enforcers under the state have the authority to expel the foreign aircraft, intercept or even shoot down the foreign aircraft.

Keywords: *Law enforcement, archipelagic sea lanes passage, aircraft, ALKI*

INTRODUCTION

The state has full and exclusive sovereignty in the airspace above its sovereign territory. (Article 1 of the 1944 Chicago Convention). The States must effectively exercise its authority in the sovereign territory included in its the airspace (Kaczorowska , 2004). Crucial issues that are important to study related to the implementation of an archipelagic state include the regulation of right, obligation and jurisdiction archipelagic state again aircraft on the air space over Indonesian archipelagic waters. Based on UNCLOS 1982, archipelagic states have the obligation to accommodate, the right to passage of foreign aircraft in their archipelagic waters. Flight rights for foreign aircraft apply to all types of aircraft, both civil and military. Indonesia has established archipelagic sea lanes to accommodate the right of archipelagic sea lanes passage through Government Regulation No. 37 of 2002, which is the implementing regulation of Law No. 6 of 1996 concerning Indonesian Waters (Prabandari, A.P., 2019). However, national law does not yet regulate the rights, obligations and jurisdiction of Indonesia as an archipelagic country, as well as international law, while ICAO provisions only apply to civil aircraft in the airspace above the high seas (Ian, 2008). In implementing the right to passage of foreign aircraft, there were many violations committed by civil and military aircraft which disturbed and harmed Indonesia (Astuti & Suarbha, 2018). The unregulated issue of the rights, obligations and jurisdiction of the archipelagic state of the right passage foreign aircraft can cause problems, both international and national.

LITERATURE REVIEW

This article aims to obtain answers on the jurisdiction of the archipelagic state to law enforcement against foreign aircraft that violate the right of archipelagic sea lanes passage of the Indonesian waters. Previous research on the implementation of archipelagic states and the implementation of the right of

passage of foreign ships in Indonesian waters. Several previous researchers have also discussed issues related to this research, about The Role of the Indonesian Air Force in Law Enforcement in Indonesian Airspace (Sekar Tanjung Ajita, Syamsunaser, 2022) Violation of the right of passage in Indonesian airspace by foreign military aircraft (Sylvia Mega Astuti and I Wayan Suarbha, 2018) , this article discusses violations of military aircraft in Indonesian airspace. Article about the Arrangement of National Flight Crossing for Foreign Aircraft Over the Indonesian Archipelagic Sea Lanes (Levina Yustitiantias, 2019).

This article is different from the writings of other authors. Another author's writings about the regulation of foreign aircraft in the airspace of archipelagic waters, while this article talks about the jurisdiction of the archipelagic state against foreign aircraft that violate the right of archipelagic sea lanes passage.

METHODOLOGY

The method used in this research is normative juridical. the specification of the research used is analytical prescriptive. issues studied based on international laws and national law.

FINDINGS AND DISCUSSION

As a middle way for the recognition of the archipelagic state regime, archipelagic states are burdened with the obligation to accommodate the right of archipelagic sea lane passage, which applies to foreign ships and aircraft (Irawati, 2011). The rules regarding the rights of archipelagic sea lanes passage as stipulated in the 1982 UNCLOS, seem to only focus on ship passage. Meanwhile, the rights, obligations and authorities of archipelagic states over foreign aircraft are not regulated. International law of the sea and international air law are part of international law as a whole, so that the principles, related to the activities of international law subjects must comply with the rules and principles of international law. State activities in the airspace of an archipelagic state are related to the principle of sovereignty and territorial jurisdiction. Based on territorial jurisdiction, the state has the authority to make laws and law enforcement on everything within its sovereign territory, both civil and criminal. (D'Amoto & Abbassi, 2006).

Talking about the law enforcement in Indonesia's air space, it is related to several regulations, namely Law Number 3 of 2002 concerning National Defense, Law Number 34 of 2004 concerning the Indonesian National Armed Forces, Law Number 43 of 2008 concerning Territorial State, Law Number 1 of 2009 concerning Aviation. Law Number 34 of 2004 concerning the Indonesian National Armed Forces stipulates that the Indonesian Air Force has the duty to maintain and defend the sovereignty of the state in the air space.

In general, based on objective theory, all ships and can be analogous to aircraft with the flag of a country are associated as the territory of the flag state (Anderson, 2008). However, if the ship or aircraft disturbs the order and security of the coastal state, the coastal state has the authority to take action (Irawati, 2013). Law enforcement for air flights in Indonesian airspace is regulated in Chapter XXII of Law No. 1 of 2009 concerning aviation which regulates criminal provisions, in essence if there is a violation of Indonesian air space a fine will be imposed. The aviation law does not distinguish between types of aircraft, while flight rights also apply to military aircraft. Based on the territorial jurisdiction for civil aircraft it is clear that this type of aircraft must comply with Indonesian law when in Indonesian territory. The state under it has the right to intercept, force down, and even prosecute civil aircraft and flight crews who violate Indonesia's sovereign territory. But referring to ICAO rules, law enforcement must be peaceful and concern to the safety of passenger.

Criminal jurisdiction is not an absolute principle of international law, meaning that criminal jurisdiction has restrictions on its application (Dugard, 2005). A country's immunity against the jurisdiction of another country is based on customary international law (Rebecca M.M Wallace and Olga Martin Ortega, 2009, p. 137). In the field of international law, based on customary international law, territorial jurisdiction is excluded, among others, for government ships and public aircraft. Military aircraft can be categorized as public aircraft (Lowe, 2003). Military aircraft violating the right of archipelagic sea lanes passage and violating airspace can be analogous to actions against foreign warships. Referring to

Articles 29 and 30 of UNCLOS regarding violations and non-compliance with coastal state regulations by foreign warships, the coastal state only has the jurisdiction to expel these warships. In international law, as emphasized in Article 51 of the UN Charter, the right to self-defense principle gives a state that is threatened with the right to defend itself, however, the implementation of this principle must be proportional, meaning that the principle is used in situations where it is really dangerous, among others, to territorial integrity (Dixon, 2007). In addition, in international law, pre-emptive self-defense is also known, which is an act of anticipation of a threat (Christine Gray, 2003).

For the foreign military aircraft that violate the right of archipelagic sea lanes passage and violate sovereignty of airspace, based on the provisions of UNCLOS and the right to self-defense, there are 2 choices of action, firstly based on UNCLOS against the foreign military aircraft, the under country can expel and conduct interceptions. The second action, based on the right to self-defence, under the state can shoot down military aircraft that violate it.

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CONCLUSION AND RECOMMENDATIONS

Based on the principles of territorial jurisdiction and the right to self-defence, an archipelagic state has jurisdiction over all matters and events, both civil and criminal, that occur in its territorial air space. However, this jurisdiction must be exercised proportionally, which distinguishes between actions against civilian aircraft and military aircraft. For legal certainty, Indonesian legislation related to state territory, flight provisions and provisions regarding the right to archipelagic sea lanes passage need to be refined by containing rules regarding the rights, obligations and jurisdiction of the state under the aircraft in its airspace.

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TRACK 15: MARITIME LAW

ENFORCEMENT OF TRADITIONAL FISHING RIGHTS FOR TRADITIONAL FISHERMAN UNDER INDONESIAN LAW AND UNCLOS (STUDY IN PANTAI CERMIN VILLAGE, TANJUNG PURA)

Vita Cita Emia Tarigan^{1*}, Siti Khairunnissa² & Akmal Handi Ansari Nasution³

^{1,2}*Faculty of Law, University of North Sumatera Utara .Indonesia*

³*Jindal Global Lawschool, O.P Jindal Global Universiti. India .*

*Email: *¹vcet@usu.ac.id; ²Sitikhairunnissa@usu.ac.id ; ³ahansari@jgu.edu.in*

**Corresponding author*

ABSTRACT

There are large number of disputes that exist between Indonesia and another state. One of the most disputes is traditional fishing right. Traditional fishing right was expressly by article 51(1) of the United Nations Convention on the Law of the Sea (UNCLOS) which existing agreements, traditional fishing rights & existing sub marine cables. This paper examines to analyze Enforcement Of traditional fishing Rights for traditional Fisherman under Indonesian law and UNCLOS. The method used a qualitative research approach. This research was carried out in North Sumatera, particularly Pantai Cermin Village. In this study, we examined relationships between the traditional fishing right and Sustainable Development Goals (SDGs). Specifically, Goal 14 of the SDGs call for action in traditional fishing right. In Indonesia, traditional fishing rights are protected in accordance with Article 18 on Job Creation Law. This analysis concludes that the empowerment of traditional fishing right under national jurisdiction problems, as well as the state practice of traditional fishing rights that are guaranteed by one State to the nationals of another State.

Keywords: *Traditional fishing right, Indonesian law, UNCLOS*

INTRODUCTION

Pantai Cermin Village, Tanjung Pura District, Langkat Regency is one of the villages in Tanjung Pura District, Langkat Regency which has residents who make a living from Traditional Fishermen. Langkat Regency is a coastal area directly close to neighboring Malaysia. In coastal communities, traditional fishermen are the most suffering, poor and often victims of the marginalization process due to fisheries modernization policies. The enforcement of traditional fishing rights involves the protection and recognition of the rights of traditional fishermen to access and utilize fishing resources in accordance with their customary practices. It starts with the establishment of legal frameworks and regulations that explicitly recognize and protect traditional fishing rights. These laws may define the scope of traditional fishing rights, outline the procedures for determining traditional fishing areas, and establish mechanisms for resolving conflicts between traditional and commercial fishermen.

The 1945 Constitution serves as constitutional basis for recognizing and protecting traditional fishing rights. The Constitution recognizes and upholds the rights of Indonesian citizens, including traditional fishermen, to utilize and manage natural resources in accordance with their customs and traditions based on article 27(1) of 1945 Constitution. This article states that all citizens shall have equal rights and obligations and be entitled to protection by the state. Traditional fishermen, being citizens of Indonesia, are entitled to equal protection of their rights, including their traditional fishing rights. It is essential to periodically review and evaluate the implementation of traditional fishing rights to identify challenges and improvement. The implementation of the law may vary across different regions and among government agencies. In some cases, local authorities may not prioritize or fully understand the significance of traditional fishing rights, resulting in inconsistent enforcement and protection of these rights. Indonesia has Law No. 31 of 2004 on Fisheries that recognize and protect traditional fishing

right. However, The traditional fishing communities may face challenges in participating effectively in decision-making processes related to fisheries management. Their involvement and representation may be limited, which can result in decisions that do not adequately consider their needs, practices, and perspectives.

Historic and traditional fishing rights are customary rights, which means that they are not sanctioned by treaties or conventions, but solely by practice, that can become opposable to the coastal State (S. Kopela.2019, p698)

One of the main issues in the Natuna case is the overlapping territorial and maritime claims in the South China Sea. China has asserted historical fishing rights in the region, which overlap with Indonesia's EEZ and traditional fishing areas. This has resulted in confrontations between Chinese fishing vessels and Indonesian authorities, leading to tensions and concerns over resource access and control (Satria Unggul Wicaksana Prakasa, 2019). Traditional fishing rights can contribute to the achievement of several Sustainable Development Goals (SDGs) established by the United Nations. Goal 14 for SDGs is traditional fishing rights are closely linked to the conservation and sustainable use of marine and coastal resources. Indigenous and local communities often possess traditional ecological knowledge that helps inform resource management practices. By recognizing these rights, governments can support the conservation of marine biodiversity and ensure the long-term sustainability of fisheries.

To address these issues, Indonesia has taken various measures to assert its sovereignty and protect the traditional fishing rights of local communities in the Natuna Islands. These measures include increasing patrols and surveillance in the area, strengthening law enforcement, and enhancing the capacity of local fishermen to monitor and protect their fishing grounds. The Natuna case highlights the complexities surrounding traditional fishing rights in the context of overlapping territorial and maritime claims. It underscores the importance of upholding international law including the United Nations Convention on Law of the Sea (UNCLOS)

Indonesia and Malaysia stated historical traditional fishing rights in Law Number 1 of 1983, as a consequence of a bilateral agreement between Indonesia and Malaysia to recognize that one of the areas Indonesian archipelago, including by Malaysian fishermen is given to disregarding bilateral agreements between the two countries (Yoshifuma Tanaka, 2012). While some countries, including Indonesia, have recognized traditional fishing rights in their legal frameworks, there are cases where these rights are not adequately acknowledged or protected. The absence of legal recognition can result in the marginalization and vulnerability of traditional fishing communities.

LITERATURE REVIEW

It is crucial to review key relevant literature to identify any gaps and determine where the current study fits in relation. Meinarni, N. P. S., Winatha, K. R., & Permana, I. P. H. (2021). Traditional Fishing Rights for Bendega (Balinese Traditional Fisherman). *Jurnal Hukum Prasada*, 8(2), 107-115. This article examines the rights and obligations of fishermen based on applicable regulations and to find out whether these rights and obligations have gone in harmony.

METHODOLOGY

This research will be conducted using descriptive qualitative research. Research implementation was limited only in terms of traditional fishing rights according to UNCLOS and according to Indonesian law in traditional fishing communities in Pantai Cermin Village, Tanjung Pura District. Most of the data or information collected and studied in this research is qualitative data, this information will be extracted from various data sources and the types of data sources that will be used in this research include: primary data and secondary data. In accordance with the form of qualitative research and also the type of data source used, the data collection technique used in this study is data obtained by the author during field research, which is located in Pantai Cermin, by conducting interviews with the village head, the fishing community of Pantai Cermin village Tanjung Pura

FINDINGS AND DISCUSSION

Traditional fishing rights have significant implications for the sustainable management of fisheries and the well-being of fishing communities. Regarding traditional fishing rights, both according to UNCLOS

and Indonesian law, traditional fishermen in Pantai Cermin Village have never known about traditional fishing right.

In general, there are two types of traditional fishing rights: traditional fishing rights exercised by traditional inhabitants or indigenous peoples within their national jurisdiction, which are also known as customary fishing rights. The second type are traditional fishing rights granted by one State to the nationals of another State outside their national jurisdiction. Traditional fishing rights are a free translation of the term traditional fishing rights referred to in UNCLOS 1982 (and other conventions on the law of the sea) or regulations that call it that. Traditional fishing rights are rights. Furthermore Article 51 paragraph (1) UNCLOS 1982 regulates traditional fishing rights in a more significant amount. This article regulates that archipelagic state shall respect the agreement with other states and shall recognize traditional fishing rights of bordering state within any part of the archipelagic waters. Meanwhile the requirements and conditions of the rights shall be based upon the related states and regulated within the bilateral agreement (UNCLOS, 1982). Traditional fishing rights discussed in the research are specifically focused on the practice of traditional fishing right in Pantai Cermin Village, Tanjung Pura. It means the traditional fishing right conducted by domestic law.

CONCLUSION AND RECOMMENDATIONS

Based on research and results, the conclusion and suggestions are as follows: Traditional Fishermen of Pantai Cermin Village did not accomplish traditional fishing rights according to UNCLOS or Indonesian law. It needs inclusive approach and participation from relevant stakeholders of States concerned, including central and local Government, researcher, private institution. It also needs to identify and gather information relating to the issues, problems, and challenges of the traditional fishing rights in Pantai Cermin Village

The efforts to be made by the local Government of Pantai Cermin Village in an effort to uphold traditional fishing rights in Pantai Cermin Village are by holding socialization in collaboration with academic which will be carried out in the next few months.

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TRACK 16: CONFLICT OF LAWS

THE MALAY MUSLIMS AND THE PRACTICES OF TRADITIONAL PERFORMANCES RITUALS FROM THE MALAYSIAN LEGAL PERSPECTIVES

Nurulhuda Adabiah Mustafa*, Nurulhasni Shaari² & Nuraisyah Chua Abdullah³

^{*2}*Law Department, Centre of Foundation Studies, Universiti Teknologi MARA, Malaysia*

³*Faculty of Law, Universiti Teknologi MARA, Malaysia.*

Email: *adabiah@uitm.edu.my; ²nurul015@uitm.edu.my ; ³nuraisyah@uitm.edu.my

**Corresponding author*

ABSTRACT

Preservation of intangible cultural heritage in the form of traditional performances in Malaysia faces great challenges, particularly in Kelantan because it involves a matter of belief. It was suggested that coordination between the federal and the state government concerning the preservation of intangible cultural heritage is of utmost importance to ensure shariah-compliant performances. However, some elements in the traditional performances which are un-Islamic are retained for the purpose of safeguarding. This paper adopts qualitative research because it involves doctrinal legal research methodology and content analysis method that requires analysis of various documents. The aim of this paper is to examine the extent of freedom of religion involving the practices of traditional performances. The objective of this study is to clarify the position of Muslim performers practising traditional performances which is not in line with the Islamic law. This paper recommends that the existing laws should be amended to clarify that some traditional rituals and practices may be an offence under the Syariah Law. This paper contributes to the understanding of intangible cultural heritage practices among the Malay Muslims in Malaysia pursuant to Article 3, 11 and 160 of the Federal Constitution, and relevant state enactments on the effect of non-compliance with Islamic principles.

Keywords: *Intangible cultural heritage, Traditional performances, Rituals, Belief, Malay*

INTRODUCTION

Although Malaysia is not an Islamic State and Islamic Law is not the written source of federal law, Islam has a higher position than any other religion pursuant to Article 3 (1), 11 (4), and 12 (2) of the Federal Constitution. However, this position does not make Islamic law as the main sources of reference at the federal level. Moreover, even though Item 1, List 11 (State List) of the Ninth Schedule gives the State Legislative Assembly the jurisdiction to make law on Islam, this power is also very limited. It was suggested that coordination between the federal and the state government concerning the preservation of intangible cultural heritage is of utmost importance to ensure shariah-compliant performances. This paper adopts qualitative research because it involves doctrinal legal research methodology and content analysis method that requires analysis of various documents. The aim of this paper is to examine the extent of freedom of religion involving the practices of traditional performances. The objective of this study is to clarify the position of Muslim performers practising traditional performances which is not in line with the Islamic law. This paper recommends that the existing laws should be amended to clarify that some traditional rituals and practices may be an offence under the Syariah Law. This paper contributes to the understanding of intangible cultural heritage practices among the Malay Muslims in Malaysia pursuant to Article 3 and 11 of the Federal Constitution, and the effect of non-compliance with Islamic principles.

LITERATURE REVIEW

There are several judges and academics who have proposed transforming the legal system by way of harmonising common law with local religious and customary values and practices. Furthermore, it was

proposed that Islamic principles and ethical values should play an important role in the proposed reformation process and be given recognition as one of the sources of Malaysian common law (Farid Suffian, 2009). The author proposed that Islamic principles and ethical values should play an important role in the proposed reformation process and be given recognition as one of the sources of Malaysian common law. It was revealed that assimilations of Islam in many of the traditional performances in Malaysia including Makyung and Wayang Kulit, bring about conflicts among the practitioners because, despite the overwhelming acceptance of Islam, influences from the previous religious and spiritual experiences continue to be significant to this day (Ghulam Sarwar, 2010). This, according to him, is particularly evident in traditional rites and ceremonies, as well as in the performing arts. However, Islam criticised the pre-Islamic practices and rituals that encouraged blind simulation of ancestral precedents as their ultimate belief as in the verse of Qur'an al-Baqarah 2: 170. (Kamali, 1997 and 1998). *Ta'zir* is commented as the Islamic punishment which is in line with the Federal Constitution. *Ta'zir* as the Islamic punishment is in line with the Federal Constitution (Adil & Abdullah, 2016). There are several judges and academics who have proposed transforming the legal system by way of harmonising common law with local religious and customary values and practices. One of them includes the discussion on Shariah-oriented policy or *siyāsah al-shar'iyah* pertaining to the control of intangible cultural heritage in Malaysia that followed up with the state government and police of the arts, as well as reforms carried out from 1990 to 2015 (Ibrahim and Mohamad, in 2018). The focus of the research was on the application of the basic arts and entertainment through the enforcement of the Kelantan Enactment No. 8 of 1998 and the 2003 Entertainment Guidelines, which became the main purpose of the exercise of political *shar'iyah*. Religious freedom guaranteed by Article 18 of the UDHR is defined as a social phenomenon requiring legal freedom to manifest itself in the public sphere to function properly (Kippenberg, 2020). Not only clergy and theologians but also every individual has the right to openly express their religious beliefs, whether alone or in community with others. It was believed that changing one's religion is a perfectly legitimate and proper choice, as stated in Article 18. Such manifestations include teaching, practising, worshipping, and observing religious practices. These principles apply to behaviours that take place within the context of religious belief. Religion and law are distinct from one another, but agree to a certain extent when each can comprehend the activities of the other in its own terms (Kippenberg, 2020). Both are examples of cultural systems. This right does not include the right to practise Islam in a different manner (Basher and Ismail, 2021). However, Muslims in Malaysia must conform to Islamic-based rules of conduct to maintain public order (Basher and Ismail, 2021). Failure to comply with this requirement will result in a charge and conviction under the Syariah Criminal Offences Enactments. Religion must undoubtedly be respected to sustain a peaceful and harmonious public order. It was suggested that coordination between the federal and the state government concerning the preservation of intangible cultural heritage is of utmost importance to ensure shariah-compliant performances (Mustafa and Abdullah, 2022).

METHODOLOGY

This study adopts qualitative research because it involves doctrinal legal research methodology and content analysis method that requires analysis of various documents. The researcher makes references to several provisions in the Federal Constitution as the highest law in Malaysia including Article 3 on the position of Islam; article 11 on freedom of religion; and article 160 on the definition of Malay. This paper also analysed the Kelantan Control Entertainment and Places of Entertainment Enactment [Enactment No. 8 of 1998] as it provides a legal framework in Kelantan for the control of entertainment, which includes heritage-related performances such as Makyung and Wayang Kulit. Reference is also made to the Kelantan State Government (General Circular No. 4/2003) that created the Entertainment Control Guidelines in 2003, which conveyed a more explicit message of prohibiting traditional performances. The study also examines a number of syariah criminal laws in various states such as the Syariah Criminal Offences (Selangor) Enactment 1995 (Enactment No. 9 Of 1995), and the Syariah Criminal Offences (Federal Territories) Act 1997.

FINDINGS AND DISCUSSION

As a Malay which is defined under the Federal Constitution, one needs to observe Islam as his or her religion. Practising traditional performances against the principles of Islamic law is an offence under the state law. *Ta'zir* may be used as punishment who committed such offence. Section 4 of Enactment

No. 9 of 1995 provides that any person who worships nature or does any act which shows worship or reverence of any person, animal, place or thing in any manner contrary to Islamic Law shall be guilty of an offence and shall be liable on conviction to a fine not exceeding three thousand ringgit or to imprisonment for a term not exceeding two years or to both. The Court may order anything used in the commission of or related to the offence to be forfeited and destroyed. While some rituals in intangible cultural heritage is considered as un-Islamic, the so-called syariah-compliant intangible cultural heritage is still un-Islamic.

CONCLUSION AND RECOMMENDATIONS

There are certain limitations to the practices of traditional performances among the Malay Muslims. The syariah-compliant status does not fully Islamic in various contexts. There is a need for a special chapter in intangible cultural heritage Malaysian laws (federal or state laws) that restrict the practices of un-Islamic rituals in any traditional performances among the Malay Muslims. The existing laws should be amended to clarify that some practices may be an offence under the Syariah Law and the grounds for such prohibitions.

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TRACK 16: CONFLICT OF LAWS

COMPLEMENTARITY: A NECESSITY FOR THE ACTUALISATION OF PEACE, JUSTICE AND STRONG INSTITUTIONS, SUSTAINABLE DEVELOPMENT GOAL 16 (SDG16) IN SUDAN AFRICA

Ovo Imoedemhe^{1*}

¹*Faculty of Management, Law and Social Sciences
School of Law University of Bradford BD7 1DP United Kingdom*

Email: o.c.imoedemhe@bradford.ac.uk

**Corresponding author*

ABSTRACT

Access to justice for all, the building of effective, accountable and inclusive institutions to promote peaceful and inclusive societies for sustainable development is the focus of Sustainable Development Goal 16 (SDG16). However, halfway into the journey, there are more conflict situations around the world resulting in several deaths, thousand injured and forceful displacements. Using Sudan as a case study, this article argues that complementarity could be adopted to ensure effective and accountable institutions to support national and international efforts towards achieving peaceful and inclusive societies. Complementarity implies that international cooperation and collaboration will ensure peace, justice and strong institutions at the domestic spheres. After over 30 years of political turmoil and war, there has been renewed armed conflicts in Sudan. Therefore, like other African countries, Sudan's major challenge for transformation remains the existence of numerous armed groups, armed conflicts, large numbers of IDPs and refugees. With ongoing conflicts, killings and displacements of people, most African government's priorities are hardly on the actualisation of the SDGs. There have been reports on the use of explosive weapons in Sudan, where in defiance of the laws of war, these weapons have been used resulting in humanitarian catastrophes. Therefore, adopting the doctrinal approach, this article proposes that the call for national governments to implement SDG16 should transcend mere rhetoric conversations. Arguably, complementarity would ensure that accountability and practical implementation strategies needed to stop war and ensure peace, justice and strong institutions can occur domestically, and then translate to the global actualisation of SDG16.

KEYWORDS: *Sustainable Development Goals, Complementarity, Implementation Strategies, Peaceful and inclusive societies, Institutions, Africa, Sudan*

INTRODUCTION

Each Sustainable Development Goal (SDG) consists of outcome targets and means of implementation. Arguably, SDG16 comprise one of the most significant as it seeks to promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels (General Assembly Economic and Social Council, 2023). By this goal, it is envisaged that national institutions, through international cooperation, for capacity building at all levels especially in developing countries to prevent violence and combat terrorism and crime would be accomplished by 2030. It is also a target under the SDG16, that all forms of violence and related death rates would have been reduced significantly. Furthermore, it campaigns for the rule of law at the national and international levels and ensure that everyone has equal access to justice. From the signatories of the 2030 Agenda, national governments bear the primary responsibility for the implementation of the Sustainable Development Goals (SDGs). In line with this objective Sudan and a few African States continue to work towards the actualisation of the goals domestically. Presumably, states have capacities for realising the goals. However, halfway into the journey, it appears that weak institutions, absence of the rule of law and most significantly violence and abuse of human rights seem

prevalent in most developing countries, and these have stalled the actualisation of the SDGs (Gyimah, Appiah, & Appiagyei, 2023). Complementarity means that states signatories to implement the SDGs should commence from the incorporation of the SDGs relating to inclusive institutions, access to justice and accountability that promote peace. This starting point of incorporation of the SDGs is apparently lacking because a few countries have failed to incorporate the SDGs in their domestic laws and policies.

STATEMENT OF THE PROBLEM

The problem that this research seeks to highlight, and address is the failure on the part of states to incorporate SDGs into domestic laws. Arguably, this failure is linked to the non-binding nature of the SDGs and the lack of national and international implementation strategies (Biermann et al., 2022). It is therefore argued that complementarity would obligate individual states to take ownership of the SDGs in relation to the specific context and political climate of respective states. Using the African state of Sudan as a case-study, it is argued that most African states are far from achieving the SDGs. The reason is not far-fetched. First, African states continue to suffer from population depletion, human rights violations, lack of inclusive institutions that guarantee access to justice and lack of good governance and leadership accountability. Second, most African states are riddled with violence, killings and displacements arising from armed conflicts. Therefore, the focus on SDG16 is to argue that issues of peace and access to justice by all must first be prioritized at national levels. This is because the presence of peace, rule of law, inclusive institutions and access to justice at national levels are necessary for the attainment of other goals on alleviation of poverty, prevention of hunger, provision of water, security and access to education as highlighted in other SDGs. In addition to the failure to incorporate SDGs into domestic laws and policies, lack of institutional capacity is another problem. National governments have been reported to often direct their institutional campaigns towards their international development cooperation policies (Llanos et al., 2022). For example, Australia's implementation of the SDGs reveals an integration effort towards international development rather than domestically focused (Farmery et al., 2019). On the contrary, developing countries such as Nigeria (Ekhatior et al., 2022), Uganda, Togo and Sudan have incorporated the SDGs as part of the national development agenda (Izugbara et al., 2022). This means that implementation varies to the degree of individual state's political will, as well as the relative domestic peace that allows for the incorporation and implementation at the domestic level.

LITERATURE REVIEW

Despite substantial support for the Sustainable Development Goals (SDDGs) from African countries, there is little to no evidence of implementation strategies towards the actualization. This is because the most devastating challenge that plagues the continent is armed conflicts. For example, in 2020, 30 state-based conflicts were recorded in Africa. Moreover, the conflict in Sudan dates to post-independence years in the 1990s. Consequently, Patey asserts that of the many impressions of Africa is the fact that it is a continent riddled with civil war and armed conflicts (Patey, 2007). Regrettably, the reality of Sudan falls into this perception. Beyond the portrayal that the conflicts are fought on racial and religious grounds and supposedly between the Arabs and Africans or Muslims and Christians, there is a discernible possibility that similar causes of civil wars that have long plagued the African continent are found in the Sudan civil wars (Patey, 2007). Patey (2007) postulated further that marginalization, greed, retribution, poverty, struggle over even distribution of common resources, religious and ethnic divides are the motivation for violence that fueled the outbreak of the various Sudanese North-South civil wars. Articulating the greed-grievance theory as the basis for most civil conflicts in Africa, Baas (2021) noted that the greed-grievance based explanation was that armed rebellion was a reaction to marginalization, exclusion or repression of certain social groups by society in the 1960s and 1970s when insurgent groups operated in Africa. The new wars are characterized by a multiplicity of fighting units, both public and private, state and non-state. The most common fighting units are paramilitary groups that are autonomous, and generally centred around a leader (Baas, 2021). This culminates in the lack of good governance and leadership strategy to implement SDG16 domestically.

Although embroiled in conflicts, Sudan adopted the SDGs in its domestic laws in 2016, shortly after the UN's endorsement of the SDGs in 2015 (United Nations Sudan, n.d.). The United Nations Country Team (UNCT) incorporated SDGs and the 2030 Agenda as with the United Nations Development

Assistance Framework (UNDAF) as implementation strategy and contribution towards national development priorities in the period 2018-2021 (United Nations Sudan, n.d.). In addition, Ani, postulated that the Government of Sudan (GoS) adopted a 5-year country strategic plan and adopted SDG16 as a policy framework to move Sudan from conflict to stability, peace and sustainable development. Nweke however argued that though here was specific focus on SDG16 as a strategic framework, political freedom was curtailed and human rights abuses and violence remain rife in Sudan (2021).

On the other hand, within the field of international criminal justice, the concept of complementarity has been articulated in detail in relation to the functioning of the International Criminal Court and the need to apply complementarity to strengthen national institutions to close jurisdictional gaps in the investigation and prosecution of international crimes (Imoedemhe, 2017). Complementarity allows two or more things to complete and complement each other. It is a situation in which people, nations, or things improve or emphasize each other's qualities. The concept necessarily admits of deficiencies in people, countries and the need to supply or fill in the gaps, to complement, improve and make each other better. With the SDG16, it is proposed that complementarity may be adopted to ensure that access to justice, peace and inclusive institutions is fully implemented across African states and specifically Sudan. This proposal is in tandem with the recent UN General Assembly Report on the SDGs in which continued strengthening of the UN development system and the boosting of capacities of multilateral systems to support weaknesses of national and international architectures, has been advocated (United Nations General Assembly Economic and Social Council, 2023).

METHODOLOGY

The research adopts the doctrinal approach that relies on the analysis of relevant legislation, scholarly publications and reports on the SDGs. As defined by the Pearce Committee, doctrinal research '...provides a systematic exposition of the rules governing a particular legal category, analyses the relationship between rules, explains areas of difficulty and, perhaps, predicts future developments' (Hutchinson, 2015). Doctrinal research is distinguishable from other forms of legal research, including reform-oriented research which focuses on the evaluation of existing laws and makes recommendations for review, as required; theoretical research which explores the conceptual underpinnings of legal principles and rules; fundamental research which expounds on 'law as a social phenomenon' (Hutchinson & Duncan, 2012). It fits into this research as it would be used to evaluate implementation strategies of the SDGs in African states and specifically Sudan. The doctrinal approach would highlight rules and principles that are culture specific and how complementarity can be used to actualise SDG16 in Sudan taking into consideration the conflict situations and the negative impact it has on institutions, peace and access to justice within the country, thereby inhibiting the achievement of the goals.

FINDINGS AND DISCUSSION

Sustainable Development Goal 16 (SDG16) is the most significant and underpinning of all 17 goals as it aspires to stop armed conflict, violence and torture of children, stop wars, reduce corruption and bribery. In all ways this goal stands as the bedrock upon which other goals can thrive. The world needs peace, safety, security and stability in order to achieve the other SDGs. However, Africa is riddled with armed conflicts. Sudan for example, has been embattled for decades and this means that trying to stop war and at the same time working towards achieving SDG16 is a herculean task. This is true for most African states as well as some western nations. As has been demonstrated in the literature review and statement of the problem, actualizing SDG16 requires strong leadership with political will. Moreover, peace and justice are multidimensional goals that needs unpacking. Nevertheless, for strong institutions to be actualized, efforts to stop armed conflicts and restore peace in Sudan and other African states must be prioritized. Consequently, while there seems to be overwhelming support to pursue and achieve the UN SDGs Agenda 2030 in Africa, the continent is distracted, divided and depleted by armed conflicts. SDG16 does not only speak of institutions but it stipulates 'strong', effective, accountable and transparent institutions. However, the concept of institution is not defined within the SDG or its target indicators. The findings thus include what institution might entail within the context of the SDGs and how it can be achieved by Sudan and other African states. Also, the question might be asked as to what constitute a strong, effective, accountable and transparent institution? Since there are no indicators pointing to the meaning of these concepts in the SDGs, it would be presumptuous to expect the

actualization of the goal. It is argued that the word ‘institution’ transcends buildings and goes beyond formal structures and systems.

CONCLUSION AND RECOMMENDATION

There is need for a recommitment to the next seven years to actualize Agenda 2030 SDGs. Implementing the SDG16 amidst armed conflict and weak institutions requires more efforts than has been demonstrated in the first half of the journey. Current efforts are being accelerated exponentially to achieve the 2030 transformational change, access to justice, human rights and strong institutions. However, the related SDG indicators do not support monitoring of the multidimensional aspects of SDG16. It is therefore recommended that countries, non-state actors and indeed the entire international community should adopt complementarity, incorporate, and monitor the implementation of SDG16. Integration of SDG16 is only a starting point, there should be accountability where states would take ownership of the SDGs. For Sudan and Africa generally, there are weak institutions, limited fiscal space and it is often difficult to reallocate national budgets. Therefore, a more nuanced understanding of SDG16 with the application of complementarity especially in Sudan might advance efforts towards the actualization of Agenda 2030.

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TRACK 17: INTERNATIONAL LAW/ INTERNATIONAL TRADE

GLOBALIZATION AND INEQUALITY: EVIDENCE FROM ASEAN

Chew Chen Keat^{1*}, Au Yong Hui Nee²^{1,2}*Faculty of Business Finance, Universiti Tunku Abdul Rahman, Malaysia**Email: *chewchenkeat0416@gmail.com, auyonghn@utar.edu.my***Corresponding author***ABSTRACT**

The integration of markets, technology, and trade has created both opportunities and challenges for developing economies, particularly those in Southeast Asia. ASEAN is home to a diverse set of economies that have undergone rapid economic growth and structural transformation in recent years, but income inequality remained a persistent challenge. The study uses a panel dataset covering the period from 2001 to 2020 and employs a range of statistical techniques. The study uses a combination of fixed effects, random effects, and pooled ordinary least squares regression methods to analyse the relationship between income inequality and various independent variables, including foreign direct investment (FDI), trade openness, ICT development, economic growth, education, and population. This study finds that economic growth, ICT development and population have impacts on reducing income inequality in ASEAN. The results of the study suggest that trade openness and education resulted will widen the income gap in ASEAN. On the other hand, FDI has an insignificant effect on income inequality in ASEAN. This result is surprising given that trade openness and education often considered as the key drivers of economic growth and development. Therefore, countries engaging in international trade should support local infant industries for growth in initial stage to gain competitiveness. The government should also provide quality education that meets the industry's needs, as well as promote the development high value-added industries that require highly skilled talents. Then, the countries will be able to grow with less income inequality and towards meeting the sustainable development goal of no poverty.

Keywords: *ASEAN, Economic Growth, Foreign Direct Investment, Globalisation, Income Inequality*

INTRODUCTION**Background of Study**

These days, businesses want to be able to tap into global marketplaces, as doing so may present new prospects for growth. As of 17 January 2022, seven out of ten ASEAN countries are formally joined the Regional Comprehensive Economic Partnership (RCEP), an international trading bloc (The Japan Times, 2021). Free Trade Agreements (FTAs) can help to lower trading barriers, such as tariffs, and unify trade among member countries. With lower trade barriers, investors are more likely to enter the ASEAN market, and therefore inflow of foreign direct investment might increase to those countries that joined RCEP (Cali, 2020). Moreover, the development of ICT to economic trends carries the promise of new sources of productivity opportunities at the macroeconomic level. Without ICT, globalisation would not have been possible (Czernich et al., 2011). The development of ICT in ASEAN can be observed as rapid growth since the millennium. The development of ICT within ASEAN increased the trade interaction between countries.

Problem Statement

Income inequality is always one of the biggest issues faced by governments. Income inequality occurs in all countries, from the well-developed country to the least developed country. However, there are some researchers who have found that the activity of globalization is having some impact on income inequality. Trade reforms have been found to manage to decrease income inequality between countries, but they have also been accompanied by polarisation in income distribution in some areas, leading to

considerable rises in income inequality within countries. Ravallion (2006) argues that globalization can decrease poverty if it promotes economic growth and does not increase inequality. However, if the benefits of trade only go to non-poor individuals, it can negatively affect the poor. There is an ambiguous effect between ICT development and income inequality. Roller and Waverman (2001) stated that the development of ICT contributes a lot to economic growth. Hence, it is a trend that will help to reduce poverty and improve the income gap. The research objective is to determine whether the process of globalisation has a significant effect on the level of income inequality in ASEAN. For the research question, does the process of globalisation have a significant effect on the level of income inequality in ASEAN?

LITERATURE REVIEW

Review of Variables

The independent variables for this study are FDI, trade openness, ICT development, economic growth, education, and population. Acharyya (2011) stated that skill-based FDI could lead to income inequality in both developed and developing countries. This is because FDI inwards to a developing country is considered a high-skilled sector, but in some developed countries' perspective, the outflows of FDI could be to a low-skilled sector. Aradhyula et al. (2007) found that an increase in trade openness is associated with an increase in income inequality. Roller and Waverman (2001) suggested that ICT development will improve economic growth and therefore it could reduce poverty and income inequality. Greenwood and Jovanovic (1990) mentioned that the level of economic development might contribute to financial openness and reduce income inequality as it enables households to access financial markets more easily. Goldin and Katz (2010) explored the historical relationship between education and technology and positively affects income inequality over time. According to Lee et al. (2007), the population growth impact lends credence to the claim that the influx of a sizable group of young people raises income inequality by boosting the labour supply and inflating the bottom tail of the income distribution.

METHODOLOGY

The selected countries are Singapore, Malaysia, Indonesia, the Philippines, Vietnam, Thailand, and Brunei. For the time series data, this study will carry out the research method by using the annual data for the period from 2001 until 2020. The study will use a quantitative approach as the basis for this research study. It is an appropriate mechanism for explaining the relationship between these variables. The secondary data will be mainly collected from the World Bank Development Indicator and World Inequality database. The empirical model will be applied as a panel model such as POLS, FEM, and REM. There are some diagnostic tests will be performed, for instance, normality test, multicollinearity test, unit root test, and cointegration test.

FINDINGS AND DISCUSSION

Variables	C	FDI	TRD	EBS	GDPpc	LSE	LPOP
<i>Coefficient</i>	3.209057	0.004054	0.000627	-5.32E-09	-5.29E-06	0.105624	-0.247765
<i>P-value</i>	0.0475 **	0.3510	0.0268 **	0.0067 ***	0.0534 *	0.0002 ***	0.0074 **

Based on the empirical results, the FDI variable is insignificant. This is because FDI often targets industries that are labour-intensive. That is, FDI tends to flow into sectors that do not require high levels of capital investment and technology. These industries may be very labour-intensive and may not have a significant impact on wage rates in the broader economy (Keller, 2004). Next, there is a significant positive relationship between trade openness and income inequality. This outcome occurred because local businesses were unable to compete against multinational corporations. This will widen the income gap by the limited ability of the local companies to pay out a considerable wage to the domestic workers. Furthermore, ICT development is negatively and significantly affecting the income gap. Aker and Mbiti (2010) claim that the advancement of information and communication technology (ICT) can lead to the creation of job opportunities for those in low-income groups. Moreover, there is a significant negative relationship between economic growth and income inequality. Economic advancement could lead to greater financial openness, thereby facilitating household access to financial markets and potentially reducing income inequality. Besides that, the findings of this study indicate a significant positive

correlation between education levels and income inequality. This might be due to a rich family can send their children to higher-ranking Universities and market demand and graduates supply mismatch. Finally, the population has a significant negative relationship with income inequality. Firebaugh and Goesling (2004) suggest that inequality decreases if countries in the middle of the income distribution see their populations expand the fastest.

CONCLUSION AND RECOMMENDATIONS

In conclusion, the major findings in this study are the FDI, education, and population. These three variables exhibited an unconventional result compared to most of the past studies. That is, FDI has no impact on income inequality, while education will widen the income gap and the population will improve the income gap in ASEAN based on this study. It is crucial for the government to determine the relevant policy to reduce income inequality based on such results. However, the effect of variables, especially the macroeconomic variable effect, is not always clear-cut, there are a lot of factors that can affect the result significantly. It is worth conducting more research on this theme. Governments can launch some policies such as reducing education inequality and constructing more ICT infrastructure to reduce income inequality in the country. There are some recommendations for future studies. Future researchers can try to distinguish the long-run and short-run effects of the variable. It is important to determine it because the policy from the government always has different lags and lengths. Also, future researchers can involve all ASEAN countries when studying in ASEAN so that the inferential conclusion can be more accurate when applied in ASEAN.

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