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**Upholding Integrity and Legal
Certainty in Legal Institutions and
Professions in Indonesia**



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**YAYASAN PENELITIAN DAN PENGABDIAN
MASYARAKAT SISI INDONESIA**



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PREFACE

We express our gratitude to God Almighty for the publication of Equality: Journal of Law and Justice, Volume 2, Number 2 (2025). This issue presents ten peer-reviewed scholarly articles that explore contemporary legal issues across various fields, including civil law, criminal law, administrative law, financial governance, and public participation in legal and political systems.

The articles published in this issue are authored by academics and legal practitioners from one country (Indonesia), representing diverse regions such as Jakarta, Banten, Bali, Riau, South Sumatra, and North Sumatra, and affiliated with eight higher education institutions, including Universitas MPU Tantular, Universitas Sahid, Universitas Katolik Santo Thomas, Universitas Muhammadiyah Palembang, Universitas Sultan Ageng Tirtayasa, Universitas Nasional, and Universitas Islam Riau. This diversity reflects the richness of perspectives and the breadth of legal scholarship contributing to this issue.

We hope that the articles presented in this volume will serve as valuable references for scholars, practitioners, policymakers, and students, and will contribute to the advancement of legal studies and the strengthening of justice and legal certainty. Constructive feedback and scholarly dialogue are highly welcomed to support the continuous improvement of future issues.

Finally, we extend our sincere appreciation to the authors, reviewers, and editorial team for their dedication and commitment in ensuring the quality and sustainability of this journal.

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**YAYASAN PENELITIAN DAN PENGABDIAN
MASYARAKAT SISI INDONESIA**



OJK's Authority after Law No. 4/2023: A Legal Certainty Perspective

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ABSTRACT

The financial services sector, which is one of the main pillars in people's lives, has experienced rapid development. However, this progress also brings various challenges, especially related to fundamental problems in the financial sector. Financial problems in society are increasingly diverse so that the law is required to be more adaptive in responding to these problems considering that the law is basically a reflection of the will of the community. Strengthening the role of the Financial Services Authority (OJK) after the enactment of Law Number 4 of 2023 concerning the Development and Strengthening of the Financial Services Sector (UU P2SK) which includes provisions that every action and decision taken by OJK based on the law cannot be used as an object of lawsuit in state administration. This provision has a direct impact on the financial services industry and society, especially if OJK's decision has negative consequences for them. This study aims to analyze the impact of the P2SK Law on national and state life, especially in relation to the duties and functions of OJK. To achieve this goal, this study uses a literature study method to examine various views related to legal doctrines that affect financial institutions. The results of the study indicate an expansion of OJK's supervisory duties and functions, especially in the field of digital finance and education for the public. This expansion of authority is a challenge for OJK to play a role as a solution in overcoming various financial problems that occur in society.

Keyword: Authority, Financial Services Authority, Legal Certainty

Introduction

Indonesia, like other developing countries, has faced various economic crises throughout its history. Each crisis has its own causes, impacts, and lessons to be learned. The following is a review of several major economic crises that have hit Indonesia along with their consequences for the national economy. At least Indonesia has experienced major economic crises, including the first, the 1998 economic crisis, caused by the monetary crisis in Asia that started in Thailand, the sharp depreciation of the rupiah, high foreign debt, and weak corporate governance. ¹The impacts were soaring inflation, the rupiah plummeted, unemployment increased drastically, and social unrest occurred. Several banks and large companies went bankrupt. ²The second crisis was the 2008 global economic crisis, caused by the global financial crisis triggered by the *subprime mortgage problem*

¹ Waters, H. (2003). The impact of the 1997-98 East Asian economic crisis on health and health care in Indonesia. *Health Policy and Planning*, 18(2), 172–181. <https://doi.org/10.1093/heapol/czg022> .

² Suidarma, IM, Indrawati, Y., Diatmika, IGND, & Anggaradana, IN (2017). Financial System Vulnerability Indicators in Indonesia. *International Journal of Economics and Financial Issues*, 7(5), 299–306. <https://www.econjournals.com/index.php/ijefi/articiew/5393>



in the United States. *Subprime mortgage* is the provision of mortgage funds for people with bad credit scores or low incomes. The impact of this crisis is that economic growth slows, export demand decreases, and financial markets experience high *volatility*. The third economic crisis is the crisis caused by the COVID-19 pandemic in 2020-present. The cause is a global pandemic that disrupts the supply chain, reduces economic activity, and weakens demand which has an impact on economic contraction, increasing unemployment rates, and the health sector experiencing pressure. The lessons that can be learned from the economic crises that have occurred and are still happening are that macroeconomic stability needs to be maintained, the financial system must be strengthened, and transparency in company management must be increased, economic diversification is very important so as not to be too dependent on exports, strengthening the domestic sector needs to be done, economic resilience must be strengthened, digital transformation is a necessity, and cooperation between the government, the private sector, and the community is very necessary.³

The awareness of the importance of anticipating crises and maintaining the stability of the financial system has encouraged various countries to take strategic steps. One of the efforts made is the development of an *early warning system model*, monitoring the condition of the financial system, and analyzing the economy. The experience of crises experienced by various countries in the last few decades has also encouraged economists and researchers to develop theories and models in analyzing the symptoms and patterns of crises. Studying crisis patterns is considered important in order to learn from previous events. By understanding the stages of a crisis, a more in-depth analysis can be carried out, and anticipatory steps can be prepared if similar symptoms appear in the future.⁴

Given Indonesia's vulnerability to economic crises, in addition to the above, an Independent Institution must be formed that aims to integrate all activities in the financial services sector. This institution includes banking, capital markets, non-bank financial industries, and consumer protection in the financial services sector in one container, namely the Financial Services Authority (OJK). more rin c i, objective O J K has at m u a t in P a s a l 4 Invitation - Invitation Number 21 of 2011 concerning the Financial Services Authority (OJK) Which m e n y e mentioned:

“ O J K formed with objective so that to the whole activity in in the sector financial services : a. ters e leng g because s in a way regular, a in l transparent and a k untale; b. ma m pu realize financial system Which grow s in a way b e r to continue And

³<https://www.rri.co.id/lain-lain/1226404/kilas-balik-krisis-ekonomi-di-indonesia-pelajaran-dan-dampaknya> , accessed on March 12, 2025

⁴<https://fiskal.kemenkeu.go.id/files/berita-kajian/file/Pola%20Krisis%20Ekonomi.pdf> , accessed on March 12, 2025

stable ; and c . can protect the importance of consumer food and society " .

The economic crisis that occurred in the past revealed weaknesses in the financial services sector supervision system. One of the impacts was the emergence of the Century case. At that time, Bank Indonesia as the institution responsible for banking supervision was suspected of making a mistake in its policy of providing bailout funds of Rp 6.7 trillion to save PT Bank Century Tbk. The Bank Century case reflects the weak supervision of Bank Indonesia (BI) as the central bank over commercial banks. The Bank Century problem is not only a matter of administration but also a matter of the weakness of BI. According to the provisions, commercial banks are subject to strict supervision from the central bank.⁵

The dissatisfaction of several parties with the supervisory role carried out by Bank Indonesia is one of the reasons for the establishment of the Financial Services Authority (OJK). The establishment of OJK is based on three main factors, namely the growth of the financial services sector in Indonesia, the emergence of cross-sectoral problems in the financial services industry, and the mandate contained in Law No. 3 of 2004 concerning Bank Indonesia.⁶

Microprudential supervision focuses on the stability of the financial services industry and its individual institutions, while macroprudential supervision aims to maintain the stability of the financial system as a whole. Given that the sustainability of each financial services institution's business needs to be monitored continuously and systematically, microprudential supervision has an important role in ensuring the resilience and performance of each financial institution individually.⁷

Before the Financial Services Authority (OJK) was established, supervision of financial services institutions in the capital market sector and non-bank financial industry was carried out by the Capital Market and Financial Institution Supervisory Agency (Bapepam-LK) under the Ministry of Finance, while supervision of the banking industry was under Bank Indonesia (BI). The process of transferring supervision from the two institutions to OJK was carried out in stages. The transfer of supervision of the capital market sector and the Non-Bank Financial Industry (IKNB) took place on December 31, 2012, while for the banking sector it was carried out on December 31, 2013. In addition, based on Law Number 1 of 2013 concerning Microfinance Institutions, since 2015 OJK has also been responsible for the development, regulation, and supervision of Microfinance

⁵<https://nasional.kompas.com/read/2008/11/25/17114243/kasus-bank-century-pengawasan-bi-lemah>, accessed on March 12, 2025

⁶Ongkowijoyo, IY, & Setiawan, Y. E, Accountability of Financial Service Business Actors for Debtor Losses Affected by Coronavirus-Disease Caused by Rejection/Neglect of Debtor Restructuring. Jurnal Education And Development , Vol 9, No. 2, 2021, Pg. 78.

⁷Juhro, S. M, Introduction to Central Banking: Theory and Policy-Rajawali Press . PT. Raja Grafindo Persada, Jakarta, 2021, p. 79.

Institutions (MFIs).⁸

Urban development today is influenced by various factors, with one of the most influential being the growth of the economic sector. This sector plays a role in driving the progress of the business world. In addition, the financial services sector, which is one of the main pillars in people's lives, is also experiencing rapid growth.⁹

With the increasingly complex and dynamic financial sector, legal protection for the community is very important. In accordance with the purpose of its establishment as stated in Article 4 of the OJK Law, the Financial Services Authority (OJK) plays a role in protecting the interests of consumers and the community. OJK has a primary role in maintaining stability, integrity, and consumer protection in the financial industry. This approach is in line with the concept of a "*single regulator*" implemented by Indonesia, which is considered more efficient and effective in carrying out supervision.¹⁰

In order for reforms in the financial sector to run optimally, a legal basis is needed that is in line with the current development of the financial industry. This is done through policy improvements, namely by optimizing laws and regulations comprehensively and integrated into one regulation that regulates the financial sector, namely Law Number 4 of 2023 concerning the Development and Strengthening of the Financial Sector (UU P2SK).

With the enactment of the P2SK Law, the role and authority of the Financial Services Authority (OJK) have undergone significant changes. The P2SK Law, which was passed on January 1, 2023, is an important milestone in the reform of financial sector regulations in Indonesia, providing a new legal basis for OJK in carrying out its duties and functions.

Along with these changes, legal protection for the financial services industry and the public against OJK's actions and decisions is an aspect that needs to be considered in depth. Changes in regulations and authorities stipulated in the P2SK Law have the potential to have a direct impact on the financial sector and the public. Decisions and policies taken by OJK can affect financial stability and investment in the financial services industry. Therefore, legal protection is a crucial element to ensure that OJK's policies and actions remain fair and do not harm the industry or the public, while respecting their rights.

The financial services industry is part of the economic sector that offers a

⁸Financial Services Authority, Getting to Know the Financial Services Authority and the Services Industry Finance , 2020.

⁹ Khamimah, W, The Role of Entrepreneurship in Advancing the Indonesian Economy. Journal Business Disruption , 2021, Vol. 4, No. 3, p. 228

¹⁰ Nachiket Mor and Rupa Rege Nitsure, Organization of Regulatory Functions: A Single Regulator?, Economic and Political Weekly , 2020, Vol. 37, no. 5, 2002, p. 453.

variety of financial services to individuals, businesses, and governments. This sector plays a vital role in a country's economy because it supports capital turnover, investment, and various other financial activities.¹¹

Banking institutions, non-bank financing institutions, insurance companies, investment managers, stock exchanges, microfinance institutions, microcredit, credit card companies, pension institutions, and pension funds are some of the entities that provide financial services. The financial services industry serves as a liaison between parties who have funds, such as lenders and investors, and parties who need funds, such as borrowers and business actors.¹²

This sector plays a role in increasing access to finance, driving economic growth, and protecting people's finances through various products and services offered. However, this industry also faces various challenges, including credit risk, market risk, and operational risk. Therefore, the implementation of strong regulations and effective risk management are essential to maintain the stability and integrity of the financial services sector.¹³

The enactment of the PPSK Law is a significant step in strengthening the foundation of the financial system in Indonesia. This law was drafted in response to increasingly challenging global dynamics, such as economic uncertainty, potential threats of financial crime, and the need to increase the competitiveness of the national financial sector.

The enactment of Law No. 4 of 2023 marks a pivotal moment in the development of financial sector regulation in Indonesia. This law introduces substantial changes to the institutional authority, duties, and coordination mechanisms of the Financial Services Authority (OJK). Given OJK's critical role in supervising and regulating financial institutions, there is an urgent need to analyze its new legal standing and responsibilities to ensure legal certainty, institutional clarity, and public trust in the financial sector. Uncertainty about the legal boundaries and authority of OJK after the new legislation can potentially disrupt regulatory effectiveness, financial market stability, and investor confidence. Therefore, a timely legal examination is essential to address gaps and ambiguities that may arise in the transition period following the law's enactment.

¹¹ Hayati, N., & Yulianto, E, The Role of Sustainable Finance in the Banking Industry in Supporting Sustainable Development Goals: *Journal of Accounting, Business and Economics (JABE)* , 2020, Vol. 6 , No. 1, p. 1633.

¹² Yahya, A., Affandy, A., & Narimawati, U, MSME Development Through the Utilization of Ammana Sharia Fintech Service Model. *Id. @ Is The Best: Accounting Information Systems And Information Technology Business Enterprise* , 2020, Vol. 5, No. 2, pp. 106–120.

¹³ Muhammad, R., & Nissa, I. K, Analysis of Financing Risk and Sharia Resolution in Peer-To-Peer Financing. *Equilibrium: Journal of Islamic Economics* , 2020, Vol. 8, No. 1, p. 63.

This article offers a novel perspective by focusing specifically on the legal position of the Financial Services Authority (OJK) post-Law No. 4 of 2023, using the lens of the legal certainty principle. While much of the discourse has focused on the broader impact of the law on the financial sector, few studies have analyzed the institutional shift from a legal theory and doctrinal standpoint.

The novelty also lies in its focus on mapping the institutional transformation of OJK and identifying potential overlaps or conflicts with other regulatory bodies, particularly Bank Indonesia (BI) and the Deposit Insurance Corporation (LPS), in light of the new legal framework. It aims to contribute to the legal scholarship by clarifying the scope of authority, hierarchy of norms, and interpretive challenges posed by the new provisions.

Research Methodology

This study applies a normative approach with a literature study method, using sources from journals that discuss financial services in the context of positive law in Indonesia as the unit of analysis. The journals were selected based on the perspective of law as a factor that influences social reality in the financial services sector. Data processing was carried out through three main stages, namely data presentation, data reduction, and drawing conclusions. This study follows the following procedures: topic selection, information exploration, determining research focus, collecting data sources, preparing data presentation, and compiling reports. The content analysis method is used to sort, compare, and combine various findings from previous studies regarding the impact of law on the financial services sector. After all data has been collected, the next stage is to analyze the information in order to draw conclusions. To ensure accurate results, data analysis is carried out through an in-depth discussion of the contents of written information contained in the journal. This content analysis aims to review various studies that discuss the impact of law on the financial services sector. The entire analysis process is carried out to answer the formulation and objectives of the study, namely to understand the impact of law on the financial services sector in Indonesia.

Result and discussion

1.1 Supervisory Function and Independence of the Financial Services Authority after the Enactment of Law Number 4 of 2023 concerning the Development and Strengthening of the Financial Sector (PPSK Law)

This article is based on the theory of legal certainty, which is a fundamental principle in the rule of law. Legal certainty ensures that laws are clear, predictable, and consistently applied, so individuals and institutions can understand their rights and obligations. The legal certainty theory, as articulated by legal scholars such as

Gustav Radbruch and Hans Kelsen, emphasizes that legal norms must be formulated in a clear and unambiguous manner to avoid arbitrary interpretation and enforcement. It also underscores the importance of legal stability, coherence of norms, and the existence of an authoritative legal structure that supports the implementation of law in a fair and consistent way.

In the context of the Financial Services Authority (OJK), this principle is essential to assess whether the changes introduced by Law No. 4 of 2023 provide clear, predictable, and enforceable provisions regarding OJK's authority, responsibilities, and institutional position in relation to other financial regulators such as Bank Indonesia (BI) and the Indonesia Deposit Insurance Corporation (LPS). The article applies this theory to examine whether the reform of the financial legal framework strengthens or weakens legal certainty with regard to regulatory functions, inter-agency coordination, and the safeguarding of financial stability.

Changes in regulations related to the function of the Financial Services Authority (OJK) indicate an expansion of its role, namely not only as a supervisor, but also as a guardian of the stability of the financial system and a protector of consumers and the public. This places OJK in a more strategic position than before, because the additional function has a direct impact on the various activities it carries out. In addition, OJK's duties in regulation and supervision have also expanded, covering aspects such as derivative finance, digital financial assets, crypto assets, consumer education and protection, and assessment of the systemic impact of financial conglomerates. This development reflects OJK's response to the dynamics of modern finance, especially those related to digitalization. In addition, OJK is also increasingly active in providing education to the public. This regulatory change confirms that OJK's role and authority are now broader in carrying out its duties.

Consumer education and protection are important parts of efforts to protect consumer rights. Both aspects aim to increase public and consumer understanding of financial services institutions, including the products and services they offer.¹⁴

A better understanding of financial products and services in Indonesia can increase public trust and use of financial services. However, there are still obstacles in the interaction between the public and Financial Services Institutions (LJK), such as a lack of consumer understanding and minimal transparency of information related to financial products and services. To overcome this, the Financial Services Authority (OJK) divides consumer education and protection efforts into two main categories, namely preventive measures in education and regulation and implementation in consumer protection. Education is carried out through various media and methods to provide basic understanding to consumers, including

¹⁴ Bakhri, B. S, ASEAN Economic Community (AEC) and Review from the Perspective of Islamic Economics. *KIAT Economic Journal* , 2015, Vol. 26, No. 2, p. 63.

students, the general public, and certain communities. As part of consumer services, OJK also provides an education portal containing various financial literacy materials such as books, brochures, magazines, articles, infographics, and videos that are updated regularly and can be accessed for free. In addition to education, OJK ensures that LJK products and services comply with the five principles of consumer protection, namely transparency, fair treatment, compliance with regulations, protection of consumer data and information, and efficient and wise complaint and dispute resolution mechanisms.¹⁵

OJK implements preventive and punitive measures to encourage financial inclusion and maintain the stability of the financial system. In carrying out its role in consumer education and protection, OJK aims to increase public trust in financial products and services while creating fair competition in this sector. The sustainability of financial stability, growth, efficiency, and innovation in the long term is highly dependent on consumer confidence and trust in financial markets that operate optimally. The latest regulation expands the authority of the Financial Services Authority, allowing this institution to set new regulations in the financial services sector, grant and revoke permits according to agreements, and access periodic reports and notifications from industry players by imposing administrative sanctions. In addition, OJK has the authority to conduct inspections and investigations into violations of the law, issue written directives, appoint processors according to statutory provisions, and require every business transfer to ensure the protection and integrity of customer data.¹⁶

The Financial Services Authority (OJK) is an institution established by the state to independently supervise the financial services sector.¹⁷ The existence of OJK is becoming increasingly important in facing the dynamics of the increasingly complex and competitive financial services industry. Therefore, the government decided to transfer the task of supervising the financial services sector, which was previously under Bank Indonesia (BI) to OJK.¹⁸

This change has a positive impact on BI, allowing the institution to focus more on monetary policy,¹⁹ while also confirming that the establishment of the OJK was

¹⁵ Financial Services Authority, *Getting to Know the Financial Services Authority and the Services Industry Finance*, 2020.

¹⁶ Mochammad Rizaldy Insan Baihaqqy, *The Impact of Law Number 4 of 2023 Concerning the Development and Strengthening of the Financial Services Sector (P2SK) on the Duties and Supervisory Functions of the Financial Services Authority Co-Value: Journal of Economics, Cooperatives & Entrepreneurship*, 2023, Vol. 14, No. 6, p. 5.

¹⁷ Surti Yustianti, *Banking Regulatory and Supervisory Authority by Bank Indonesia and the Financial Services Authority (OJK)*, *Acta Diurnal Journal of Notary Law and PPAT-An* 1, 2017, No. 1, p. 98.

¹⁸ Yulia Hesti, *Legal Analysis of the Objectives and Authorities of the Financial Services Authority (OJK) in Banking Institutions in Indonesia*, *Pranata Hukum*, 2018, Vol. 13, No. 2, p. 170.

¹⁹ Agustin Leni Magdalen Rohi Riwu, *Transfer of the Supervision Function of Bank Indonesia to the Financial Services Authority*, *International Journal of Latest Engineering and Management Research (IJLEMR)*, 2023, Vol. 8, no. 8, p. 7.

the right step. The supervision carried out by the OJK also includes legal protection as regulated in laws and regulations, which ensures that the rights of individuals and financial services sector actors are procedurally protected.²⁰ Thus, the function of law in protecting society from actions that disrupt order, whether by individuals, state officials who abuse their authority, or foreign parties, can be realized effectively.²¹

The establishment of the Financial Services Authority (OJK) as regulated in Law No. 21 of 2011 confirms the existence of institutional independence in carrying out governance and supervision of the financial services sector. This regulation shows that the financial services sector has a strategic role as a catalyst in driving economic development. The large contribution of the financial services sector also has a significant effect on the growth of the industry as a whole.²²

The role of the financial services sector that contributes to the growth of various industries makes OJK supervision an important element in ensuring the stability of activities in the sector.²³ In carrying out its supervisory function, OJK is guided by the principles of independence, responsibility, fairness, accountability, and transparency.²⁴

Law No. 4 of 2023 concerning the Development and Strengthening of the Financial Services Sector was issued as a government response to the increasing challenges in the increasingly competitive financial services sector. The rapid development of the financial services industry, driven by advances in information technology, places the OJK as the main pillar in maintaining the stability of microprudential aspects in this sector. This regulation aims to strengthen the industry, institutional stability, and the financial system through regulatory updates that optimize the supervisory and regulatory relationship between institutions in the financial services sector, especially between the OJK and other institutions. However, Law No. 4 of 2023 also presents various challenges for the OJK in its supervisory mechanism. Indirectly, this law highlights the importance of the consultation aspect between the OJK and the House of Representatives (DPR), which is a sensitive issue in interpreting the role and independence of the OJK in supervising the financial services sector. Given that the DPR has a role in drafting

²⁰ Rizki Ramadani, Independent State Institutions in Indonesia in the Perspective of the Concept of Independent Regulatory Agencies, *Ius Quia Iustum Law Journal*, 2020, Vol. 27, No. 1, p. 75.

²¹ SE Utrecht and Moh. Saleh Djindang, *Introduction to Indonesian Law*, PT Grasindo, Jakarta, 1983, p. 123.

²² Javier Inkiriwang, The Relationship of the Financial Services Authority (OJK) as an Independent Institution with the Banking Sector, *Lex Privatum*, 2016, Vol. 15, No. 2, p. 56.

²³ FT M a m u a y a, Olga A. P a n g k e r e g o, and R o y V. When you are here, K e s i t k a n And Function Authority Service Finance in l a m S i s t e m Finance d i Indonesia, *Lex Privatum*, 2022, Vol. 5, No. 9, p. 97.

²⁴ Hengki Heriyadi, Legal Review of the Role and Function of the Financial Services Authority (OJK) in the Financial System in Indonesia, *Jurnal Hukum Progresif*, 2023, Vol. 11, No. 1, p. 36.

this regulation, in the technical aspect of designing regulations at the OJK, it has the potential to give rise to various interpretations, especially regarding independence in the preparation of policies and regulations implemented by the OJK. Challenges in the implementation of Law No. 4 of 2023 concerning the Development and Strengthening of the Financial Services Sector is also seen in the aspect of institutional coordination, especially with the emergence of new industries such as carbon trading. This development has an impact on the division of authority in regulating trade, including the development of financial derivative products, which were previously under the Commodity Futures Trading Supervisory Agency (Bappebti). In addition, coordination of supervision with various institutions is also a challenge in ensuring optimal protection for public investors and industry players. This shows that the process of drafting derivative regulations is a crucial factor for the OJK, considering the large potential involvement of various institutions in supervising the financial services sector as mandated in Law No. 4 of 2023.²⁵

With the enactment of the PPSK Law, OJK is further strengthened as an independent institution tasked with supervising the financial services sector in Indonesia. OJK's position in the financial system is now clearer with a more structured role in regulating, supervising, and enforcing regulations in various sectors, including banking, capital markets, and the non-bank financial industry (IKNB). The PPSK Law also emphasizes closer coordination between OJK, Bank Indonesia (BI), and the Deposit Insurance Corporation (LPS) in maintaining the stability of the financial system.

OJK's Authorities Post-PPSK Law The PPSK Law provides various additional authorities to OJK to strengthen supervision and regulation of the financial sector, including:

1. Strengthening OJK's Integrated Supervision

Given broader authority to carry out integrated supervision of financial services institutions, including the ability to coordinate risk mitigation measures across various financial sectors.

2. Stronger Law Enforcement of the PPSK Law

Providing a clearer legal basis for OJK in taking action against violations of the law in the financial sector, including imposing administrative sanctions, revoking business licenses, and recommending criminal legal action.

²⁵ Upita Anggunsuri and Zahara, Independence of the Financial Services Authority (After the Enactment of Law Number 4 of 2023 concerning the Strengthening and Development of Financial Services), *Ius Quia Iustum Law Journal*, 2024, p. 313.

3. Better Consumer Protection OJK

Strengthened in carrying out its function as a protector of financial service consumers through various new, stricter regulations related to financial product transparency and dispute resolution.

4. Financial Crisis Management in Maintaining Financial System Stability

OJK is given a more strategic role in managing financial crises, working with BI and LPS to prevent and handle potential disruptions in the financial sector.

1.2. Legal Protection for the Financial Services Industry and the Community Based on the UUP2SK

As an independent institution, OJK is indirectly included in the category of Government Agencies and/or Officials as regulated in Law Number 33 of 2014 concerning Government Administration. This is reflected in the phrase "other state administrators" contained in the law. Furthermore, the definition of state administrators is emphasized in Law Number 28 of 1999 concerning State Administrators Who Are Clean and Free from Corruption, Collusion, and Nepotism.

In addition, OJK funding sourced from the State Revenue and Expenditure Budget (APBN) and levies from entities operating in the financial services sector, as regulated in Article 34 paragraph (2) of Law Number 21 of 2011 concerning the Financial Services Authority, further clarifies that OJK is part of a state institution that carries out government functions as referred to in Article 1 number 2 and number 3 of Law Number 33 of 2014. Furthermore, the P2SK Law also confirms that OJK's budget is included in the State Treasury Budget Section in the APBN, and includes levies as regulated in the provisions of the following article.

In carrying out actions and making decisions, OJK adheres to several fundamental principles, namely:

1. The principle of independence, namely the freedom to make decisions and carry out the functions, duties and authorities of the OJK, remains within the corridor of applicable laws and regulations.
2. The Principle of Legal Certainty, namely upholding the supremacy of law by prioritizing the basis of statutory regulations and justice in every policy taken by the OJK.
3. The principle of public interest, namely oriented towards protecting and defending consumer and community rights, with the aim of improving public welfare.
4. The principle of openness, namely providing access to the public to obtain accurate, honest and non-discriminatory information regarding OJK activities,

while maintaining protection of individual and group rights and state confidentiality in accordance with applicable regulations.

5. The principle of professionalism, namely prioritizing expertise in carrying out the duties and authorities of the OJK, based on the code of ethics and applicable legal provisions.
6. Integrity Principle, namely ensuring that every decision and action taken adheres to strong moral values in carrying out OJK's duties.
7. The principle of accountability, namely ensuring that all OJK activities and work results can be accounted for transparently to the public.

After the enactment of the P2SK Law, especially as regulated in Article 45A Chapter IV Part Two concerning Banking, there are several important provisions, namely:

1. The Chairman of the Board of Commissioners, Deputy Chairman of the Board of Commissioners, members of the Board of Commissioners, as well as officials and employees of the Financial Services Authority (OJK) who carry out their duties based on this law cannot be subject to civil or criminal prosecution, as long as their actions are based on good faith and in accordance with applicable legal provisions.
2. All actions, including decisions taken based on this law, cannot be made the object of a lawsuit in state administrative courts.

The provisions in this article indicate that OJK now has legal protection in every decision and action issued against financial services industry players and the public. This is because both types of activities cannot be the object of lawsuits in state administrative courts. In addition, OJK officials, from the Chairman of the Board of Commissioners to employees, cannot be sued civilly or prosecuted criminally, as long as they carry out their duties in good faith and in accordance with applicable laws and regulations.

The OJK's very strong authority on the one hand is an important tool in implementing supervision and formulating regulations for the financial services sector. However, on the other hand, this can also cause problems or negative impacts. Excessive authority risks increasing the potential for corrupt practices and does not guarantee increased performance, effectiveness, or stability of the OJK itself. In addition, from the perspective of the community and business actors in the financial services sector who feel disadvantaged by OJK's decisions or actions, there is no mechanism that allows them to file objections. This condition reflects a violation of the general principles of good governance, as well as the basic principles

that should be upheld by the OJK in every action and decision made, which have basically become legal norms.²⁶

With limited access for the public and business actors to submit objections or file legal actions against actions or decisions taken by the OJK, it is necessary to consider an alternative mechanism to accommodate this. Based on practices that have been implemented in various institutions, it is possible to establish a special institution that functions as a forum for the public and business actors to submit their objections. For example, the Trademark Appeal Commission is an independent body within the ministry and in the context of administrative law is known as part of an administrative effort or tribunal that carries out quasi-administrative judicial functions. Interestingly, this institution is not related to the administrative justice system under the State Administrative Court (Peratun), but rather has a relationship with the Commercial Court which is within the scope of the General Court. A model like this can be a reference in designing a similar mechanism that aims to accommodate objections to OJK decisions without having to go through the state administrative court.²⁷

The principle of legal certainty is one of the fundamental principles in the legal system that ensures that laws and regulations must be clear, unambiguous, and predictable in their application. This principle provides protection for the public and business actors against uncertainty in regulation and legal implementation. The principle of legal certainty refers to the clarity, firmness, and consistency of regulations governing the financial sector, so that it can provide legal guarantees and protection for financial services industry players and the general public. With the P2SK Law, the principle of legal certainty is further strengthened through clearer regulations regarding the role and responsibilities of the OJK. Functions of OJK after Law No. 4 of 2023 :

1. Strengthening Integrated Supervision

With the P2SK Law, OJK has greater authority to supervise all financial services sectors in an integrated manner, including the banking sector, capital markets, and non-bank financial industry (IKNB). This aims to ensure the stability of the financial system as a whole.

2. Consumer and Community Protection Legal certainty

In the financial sector, it is also strengthened by increasing the OJK's function in protecting consumers of financial services. The P2SK Law provides a clearer

²⁶ Arjangga Yustisia Nasution, Strengthening the Role of the Financial Services Authority in Legal Protection for the Financial Services Industry and the Community after the Enactment of Law No. 4 of 2023 concerning the Development and Strengthening of the Financial Sector, *UNES Law Review*, 2024, p. 9590.

²⁷ Abi Harun Arroisi, Guntur Ilman Putra, Firzhal Arzhi Jiwantara, Regulatory Authority In Case Of Removal Of Registered Marks By The Government, *Jurnal Cakrawala Ilmiah*, 2022, Vol.1, No.12, p. 3443.

mandate to the OJK to handle consumer disputes, including dispute resolution through more effective and efficient mechanisms.

3. **Improving OJK Supervision of Microfinance Institutions and Fintech**
OJK now has a broader role in overseeing microfinance institutions and the financial technology (fintech) sector. This is important to ensure that rapidly developing financial innovations remain within a clear and safe regulatory corridor for users.
4. **Role in Handling Financial Crisis**
The P2SK Law mandates OJK to play a more active role in supporting financial crisis management policies together with Bank Indonesia, the Ministry of Finance, and the Deposit Insurance Corporation (LPS). This aims to create legal certainty in dealing with potential systemic risks in the financial sector.
5. **Strengthening Sanctions and Law Enforcement**
In an effort to increase legal certainty, the P2SK Law provides additional authority to the OJK in terms of law enforcement against regulatory violations in the financial services sector. The OJK can now impose stricter sanctions, both in administrative and criminal forms, to ensure compliance with applicable regulations.

To ensure legal certainty in the financial sector after the implementation of the P2SK Law, several steps that can be taken include:

1. **Preparation of Clear and Structured Implementing Regulations**
The government and OJK need to immediately issue derivative regulations that are transparent and free from ambiguity to ensure effective implementation.
2. **Provision of Monitoring and Objection Mechanisms for OJK Decisions**
A legal system is needed that allows the public and business actors to file objections to OJK decisions, so that their legal rights remain guaranteed.
3. **Socialization and Counseling Regarding New Regulations**
Increasing public and financial industry players' understanding of the P2SK Law through intensive socialization can help increase compliance and reduce the potential for uncertainty due to misinterpretation or lack of information regarding applicable regulations.

Conclusion

Changes in the duties and functions of the OJK as regulated in Law Number 4 of 2023 concerning the Development and Strengthening of the Financial Sector reflect the legal ability to adapt in facing various challenges and problems in the financial sector. The expansion of OJK's authority not only broadens the scope of its authority, but also becomes a challenge for this institution in optimizing the implementation of the mandate given by law. The enactment of Law Number 4 of

2023 concerning the Development and Strengthening of the Financial Services Sector presents a challenge for OJK in maintaining its independence in exercising its authority.

After the enactment of the P2SK Law, OJK has been strengthened in terms of authority to supervise and formulate regulations related to the implementation of the financial services sector. However, on the other hand, this has implications for legal protection for the community and business actors in the financial services industry. They have the potential to suffer losses due to actions or decisions taken by OJK, but do not have a mechanism or means that allows them to file objections to these decisions.

Suggestion

To respond to new challenges and authorities, OJK needs to increase information transparency, strengthen accountability, or develop a more effective internal monitoring system. There needs to be a mechanism or regulation that protects their rights, such as the establishment of an independent institution to resolve disputes if the public and business actors experience difficulties in submitting objections to OJK decisions

Expression of Gratitude

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Formulation of Contempt of Court Statute to Restore Abused Judiciary's Dignity Caused by Integrity Besmirch Through Retrial

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ABSTRACT

This research is based on the issue of lack of contempt of court statutes and the common practice of denigrating judiciaries in trials. Background of the study is due to common practice of integrity abuse and lack of judiciary's dignity protection that pushes the need for contempt of court statute formulation. The paper then formulates two research questions, namely how the regulation of contempt of court would revitalize court's dignity and how regulation can be formulated for legal remedy towards tainted legal process. The methodology of the research is based on normative research that applied statute approach, conceptual approach, case approach, and philosophical approach. The research has considered previous researches such as Probo, Perbawati, Santoso, Gayatri, and Rachman's research. The development of contempt of court in the last 5 to 10 years showed that contempt of court regulation has been better formulated through Act 1 of 2023, but it didn't specify types of contempt of court. The result showed that contempt of court statute should regulate specifically regarding act of denigrating court's dignity and reformulation of retrial legal remedy for tainted legal process.

Keyword: contempt of court, retrial, dignity, integrity besmirch

ABSTRAK

Penelitian ini mengaji tidak adanya pengaturan penghinaan pengadilan dan praktik umum merendahkan Marwah peradilan di persidangan. Latar belakang penelitian ini didasarkan dari praktik umum dari pelanggaran integritas dan kurangnya perlindungan hukum atas marwah peradilan. Penelitian ini didasarkan pada dua rumusan permasalahan yaitu bagaimana pengaturan penghinaan peradilan yang dapat memulihkan Marwah peradilan dan bagaimana pengaturan Upaya hukum terhadap proses hukum yang terciderei. Metode penelitian dari penelitian ini didasarkan pada penelitian hukum normative yang menggunakan pendekatan perundang-undangan, pendekatan konseptual, pendekatan kasus, dan pendekatan filosofis. Penelitian ini telah mempertimbangkan penelitian sebelumnya seperti penelitian dari Probo, Perbawati, Santoso, Gayatri, dan Rachman. Hasil penelitian menunjukkan bahwa undang-undang penghinaan peradilan sebaiknya mengatur secara khusus mengenai perbuatan yang merendahkan Marwah peradilan dan penataan ulang ketentuan Upaya hukum peradilan ulangan bagi proses hukum yang telah terciderei.

Kata Kunci: penghinaan peradilan, peradilan ulangan, Marwah, pelanggaran integritas

Introduction

The hashtag #NoViralNoJustice is a clear illustration of how distrusted the Indonesian judicial background has become¹. The public sees that the power of

¹ Melinda Dina Gussela et al., "Fenomena 'No Viral No Justice' Perspektif Teori Penegakkan Hukum," *Ranah Research: Journal of Multidisciplinary Research and Development* 7, no. 2 (January 2025).



public pressure is better in ensuring the fulfilment of public will by law enforcement². In this case, instead of law becoming a tool of social engineering, public pressure becomes a tool of individualistic decision-making³. Law becomes degraded because the purpose of law is limited to social justice and legal expediency but not justice and legal certainty⁴.

The change in the paradigm is understandable considering the problem lies within law enforcement, for example, judges who are involved in gratification practices, police who are involved in extortion practices, and prosecutors who are involved in illegal case management practice⁵s. The integrity of law enforcers is questionable and causes public distrust of the judiciary, especially the judiciary⁶.

Public distrust of the judiciary is increasing because the Indonesian population is experiencing moral degradation so that most Indonesians have lost tolerance and do not care about ethics or manners⁷. Based on communication theory and surveys of the welfare of Indonesian society, it turns out that Indonesian people really have a low level of digital literacy and the economic gap is far adrift so that an individualistic, self-oriented, and selfish mindset is formed⁸.

In regards to law enforcement officials, some cases where people with low digital literacy and poor economic conditions managed to succeed in becoming law enforcement officials had suffered attitude arrogance where their position and 'uniform' become the basis for acting autocratically and arrogantly without regard for their surroundings⁹. This became apparent in a recent incident where an advocate shouted angrily, accused unproven things to the panel of judges in court, and stood on the court table without any courtesy, respect, or appreciation for the court¹⁰.

² Shenglu Chen, "The Relationship Between Social Pressure," *Journal of Education, Humanities and Social Sciences* 25 (2024): 555–60.

³ Marijana M. Kotlaja, "Cultural Contexts of Individualism vs. Collectivism: Exploring the Relationships between Family Bonding, Supervision and Deviance," *European Journal of Criminology* 00, no. 0 (2018).

⁴ Rasdiana, Munira Hamzah, and Rahman Subha, "Degradasi Budaya Hukum: Tinjauan Dampak Sosio-Yuridis Atas Penangguhan Pembagian Harta Warisan," in *ICONIS: Galvanizing Islamic Civilization Through Spiritual and Cultural Acculturation* (Parepare: IAIN Parepare, 2023), 1–6.

⁵ Hasuri, "Sistem Peradilan Pidana Berkeadilan Melalui Pendekatan Kontrol Dalam Proses Penegakan Hukum," *Ajudikasi Jurnal Ilmu Hukum* 3, no. 2 (2019): 167–75.

⁶ Siska Trisia and Maudy Prima Azairin, "ZONA INTEGRITAS DAN IRONI PERILAKU KORUPTIF APARAT PENEGAK HUKUM," *Majalah Hukum Nasional* 54, no. 2 (2024): 216–38.

⁷ Yulia Pratiwi, Ammar, and Chanifudin, "Dampak Teknologi Dan Fenomena Degradasi Moral Menurut Perspektif Pendidikan Islam," *Jurnal Trilogi Ilmu Teknologi, Kesehatan, Dan Humaniora* 5, no. 2 (2024): 324–32.

⁸ Ade Vilya Ramadhani et al., "Urgensi Minat Membaca Gen Alpha Di Tengah Maraknya Penggunaan Smartphone," *Jurnal Teknologi Pendidikan* 1, no. 4 (2024).

⁹ Erik Saut H. Hutahean, "Psikologi Kepolisian: Seragam, Pangkat, Dan Senjata Api," in *Prosiding PESAT (Psikologi, Ekonomi, Sastra, Arsitektur & Teknik Sipil)* (Depok: Universitas Gunadarma, 2015).

¹⁰ Probo Pribadi S.M., "Urgensi Contempt of Court Dalam Bentuk Undang-Undang Di Indonesia," 1 (Simalungun, February 2025).

In the end, it is Indonesian society itself that degrades the ethics and morals of a profession so that advocates who should be known as *officium nobile* or noble profession do not embrace code of ethics. Mind the judges, prosecutors, other law enforcement officials that such practice would cause these fellow legal professions ignore code of ethics as a priority in work practice¹¹.

The judiciary is increasingly disrespected to the point that the public does not want to understand the relevance or urgency of maintaining the dignity and sacredness of the judiciary which supposedly represent 'fairness'¹². With the disrespect of the judiciary, it is natural that no one understands the urgency of regulating contempt of court.

This research is different from previous researches, for example research conducted by Probo Pribadi which only discusses the application of the proposed law on contempt of court without discussing legal remedies for violations of integrity due to contempt of court¹³ and Perbawati, et al who discuss contempt of court as an effort to confirm the execution of state administrative court decisions¹⁴. This research discusses how contempt of court regulations can restore the dignity of the judiciary and how contempt of court arrangements can provide legal remedies for parties harmed by violations of the integrity of judicial law enforcement officials. Another research from Santoso has shown that there's a different type of contempt of court namely neglecting court decision in which should be regulated in a contempt of court statute¹⁵. Gayatri's research had also shown results that visible contempt of court such as physical violence towards judge in a trial still lacks proper legal protection considering there's no such regulation for judge's legal basis of filing legal complaint. Lastly, Rachman's research shown that UK has applied contempt of court as embracement of strict liability principle¹⁶. All these researches showed that contempt of court has evolved with various of types yet Indonesia has yet applied such treatment to regulate contempt of court.

The problem of the absence of contempt of court regulations is a problem regarding the legal vacuum of defamation against the judiciary and the legal

¹¹ Widy Meitha Permata Putri and Nensilianti Saila, "Nilai Dan Prinsip Moral Dalam Film Keajaiban Di Sel Nomor 7," *Jurnal Onoma Pendidikan Bahasa Dan Sastra* 9, no. 1 (March 2023): 257–73.

¹² Ribut Baidi and Aji Mulyana, "Peran Hakim Memperkokoh Integritas Peradilan Sebagai Benteng Penegakan Hukum Dan Keadaban Publik," *Jurnal Hukum Mimbar Justitia (JHMJ)* 10, no. 1 (June 2024).

¹³ S.M., "Urgensi Contempt of Court Dalam Bentuk Undang-Undang Di Indonesia."

¹⁴ Candra Perbawati and Nabila Firstia Izzati, "Urgensi Kriminalisasi Contempt of Court Sebagai Penguatan Eksekusi Putusan Peradilan Tata Usaha Negara," *Demokrasi Jurnal Riset Ilmu Hukum, Sosial, Dan Politik* 2, no. 1 (2025): 202–12.

¹⁵ Bagus Teguh Santoso, Ahmad Munir, and Anisa Kurniatul Azizah, "The Use of Gijzeling Against Individuals Disobeying Court Orders Qualifying as Contempt of Court," *Halu Oleo Review* 8, no. 2 (September 28, 2024).

¹⁶ Reynaldi Julyan Nur Rachman and Lukman Hakim, "Comparison of Indonesian Criminal Law With the UK," *Journal Widya Gama Law Review* 1, no. 2 (August 2024).

vagueness of the impact of violations of the integrity of law enforcement officials. This research is important to urge the government and the public on the urgency of regulating contempt of court.

The problems can be formulated into two formulations, namely how can legal formulation of contempt of court can protect judiciary's dignity and how can notion of legal remedy can be conducted to fix tainted legal process due to integrity besmirch. The research would be useful to answer legal formulation of contempt of court that protects judiciary's dignity and answer notion of legal remedy to fix tainted legal process due to integrity besmirch.

Research Methodology

This research was conducted in the form of normative legal research¹⁷. Normative legal research is research that examines legal issues based on a legal approach with legal sources to answer legal problems¹⁸. The formulation of the problem of this research can be formulated into two problem formulations, namely how the legal regulation of contempt of court can restore the dignity of the judiciary and how the legal regulation of legal remedies against legal processes that are proven to have violated their integrity. The legal sources used are laws and regulations as primary legal sources and legal theories, books, and journals as secondary legal sources. The approaches used are statutory approach, conceptual approach, casuistic approach, and philosophical approach. The legal analysis technique used is inductive legal analysis to find answers to legal problems.

Results and Discussion

The results showed that the problems exist and required legal analysis to identify the source of the problem. Further discussion would then reveal what kind of legal resolution available for these legal issues.

1.1 Legal formulation of Contempt of Court in Protecting Judiciary's Dignity

Introduction of the research shows several examples of contempt of court practice. Contempt of court is taken as an act that degrades or injures the dignity and honor of the judiciary¹⁹. Examples of contempt of court actions such as disrespecting the trial by accusing the judges of negative things that have not been proven and climbing the trial table, hitting judges with belts, stabbing judges with sharp weapons, and destroying court rooms and buildings at the Depok District Court²⁰. These cases cannot be separated from several factors, namely the low level

¹⁷ Novritsar Hasintongan Pakpahan and Binsar Pamopo Pakpahan, "The Use of Legal Psychology in Determining Sexual Misconduct Perpetrator's Bad Intention Towards Children," *Jurnal Ilmiah Hukum Dan Hak Asasi Manusia* 3, no. 2 (January 2024).

¹⁸ Novritsar Hasintongan Pakpahan et al., "Trial Proving in Electronic Criminal Case Trial Based On the Dignified Justice Perspective," *Ius Poenale* 3, no. 1 (June 9, 2022).

¹⁹ Neisa Angrum Adisti et al., "Telaah Kritis Terhadap Libertarian Teori: Suatu Sudut Pandang Dari Presumption Of Innocence Dan Contempt Of Court," *Simbur Cahaya XXXI*, no. 2 (December 2024).

²⁰ Mahkamah Agung Republik Indonesia et al., *Modul Pelatihan Penerapan Prinsip Dan Kerangka Hukum Hak Asasi Manusia Bagi Hakim Peradilan Umum* (Jakarta: Mahkamah Agung Republik Indonesia, 2024).

of digital literacy and the high level of economic inequality which has an impact on the formation of an individualistic and selfish mindset.

Based on legal philosophy, namely the sociology of law, the emergence of law is caused by the conditions of society where in the development of the current era of Indonesian society based on research shows digital literacy as low as 35.5%²¹. This causes Indonesian people to lack knowledge and low ability to think constructively so that they do not know the purpose of the complex legal procedures in Indonesia²². By reflecting on the view of legal pragmatism, Indonesian people see that everything must be fast and instantaneous without thinking about the consequences on justice or legal certainty²³. Simply put, Indonesian society is only oriented towards legal expediency based on individualism²⁴. This condition is further exacerbated by the high level of economic inequality so that the law is used as a tool of individualistic decision-making²⁵.

The reason for the emergence of aforementioned legal problems is that the performance of law enforcements is not appreciated or even worse, disrespected²⁶. Of course, the context of respect is a concept of social context and not a legal context. The legal context of respect is known or regulated in procedural law, both criminal and civil procedural law. Although the procedures for conducting trials have been regulated in Act 1 of 1981 regarding Criminal Procedure (Criminal Procedural Code), as well as in the Reglement of *de Rechtsvordering* (Rv), *Herzien Inlandsch Reglement* (HIR), and *Rechtreglement voor de Buitengewesten* (RBg), there is no legal impact that creates a deterrent effect when there is a violation of these procedures²⁷. Although the violation of the procedure can have an impact on the invalidity of the claim (be it in the form of an indictment, lawsuit, volunteer claim), there is no personal responsibility of the legal subject who commits a violation of the trial procedure, especially those that aim to undermine the authority of the judiciary²⁸.

In the theory of legislation, the regulation of contempt of court should ideally be regulated in the form of material legislation because the act of contempt of court must be strictly regulated as a rule that violates the rules, injures the rights of other

²¹ Elva Diana, "Rendahnya Literasi Digital Peserta Didik Pada Materi HOTS Pembelajaran Project Kreatif Kewirausahaan," *Jurnal Penelitian Pendidikan Indonesia* 1, no. 3 (April 2024): 10–12.

²² Titin Yuningsih and Wika Soviana Devi, "Dinamika Pembelajaran Retorika Dan Berpikir Kritis Pada Mahasiswa Pendidikan Bahasa Dan Sastra Indonesia Universitas Muhammadiyah Jakarta," *Jurnal Penelitian Pendidikan Indonesia* 10, no. 2 (April 2024): 152–60.

²³ Pusat Kajian Hukum dan Keadilan Sosial (LSJ), "Amici Curiae Mengapa Pemilu 2024 Menjauh Dari Prinsip Jujur Dan Adil?" (Yogyakarta, April 1, 2024).

²⁴ Pusat Kajian Hukum dan Keadilan Sosial (LSJ).

²⁵ Pavel Chebotarev, "Evolution of Society Caused by Collective and Individual Decisions," *Cornell University* 12, no. 1 (2025).

²⁶ Katarina Sipulova, "Purging the Judiciary After a Transition: Between a Rock and a Hard Place," *Hague Journal on the Rule of Law* 17 (March 2024): 61–93.

²⁷ H. Asmu'i Syarkowi, "PELANGGARAN ACARA GUGATAN SEDERHANA MENURUT PERMA NOMOR 2 TAHUN 2015 DAN PERMA NOMOR 4 TAHUN 2019" (Jayapura, March 2024).

²⁸ Fauzan Azima Faturachman, Tomi J.E. Hutasoit, and Asmak Ul Hosnah, "Pertanggungjawaban Dan Penegakan Hukum Pidana Korporasi Dalam Tindak Pidana Korupsi Di Indonesia," *Akademik Jurnal Mahasiswa Humanis* 4, no. 2 (May 2024).

legal subjects, and existence of repressive along with preventive legal consequence to create a deterrent effect²⁹.

The legal vacuum on contempt of court regulation can have an impact on legal chaos (*rechtsverwarring*) which will lead to chaos in the order of society³⁰, especially the judiciary becomes a biased judiciary, namely the products issued are due to the influence of power relations from public pressure rather than enforcing the law for the sake of justice³¹.

Legislation both materially and formally regarding contempt of court has not been specifically regulated until now³². The Criminal Code (*wetboek van strafrecht*) regulates several acts that degrade the dignity of the judiciary such as Section 207, 209, 210, 211, 212, 216, 217, 224, 522, but these regulations do not fully illustrate the purpose of these provisions which is to maintain the dignity and image of the judiciary so that there needs to be a special regulation regarding contempt of court³³. Act 1 of 2023 on the new Criminal Code (Criminal Code 2023) does regulate several sections on contempt of court, namely:

Section 279

- “(1) Any person who makes noise near the Courtroom during a session and does not leave after having been ordered to do so 3 times by or on behalf of the authorized officer, shall be punished by a maximum fine of the first category;
- (2) Any person who makes noise in a court session and does not leave after being ordered to leave up to 3 times by or on behalf of the judge shall be punished by a maximum imprisonment of 6 months or a maximum fine of category II.³⁴”

Section 280

- “(1) Shall be punished by a maximum fine of category II, any person who at the time of a court session
 - a. does not comply with a court order issued in the interest of the judicial process;
 - b. Behaves disrespectfully towards law enforcement officers, court officials or court proceedings despite having been warned by the judge;
 - c. Attacking the integrity of law enforcement officers, court officers, publicizing, trial proceedings directly.

²⁹ Oktir Nebi, “Analisis Upaya Preventif Dan Represif Penegakan Hukum Pidana Terhadap Kekerasan Anak Di Wilayah Hukum Kepolisian Sektor Kota Jambi,” *Parlementer: Jurnal Studi Hukum Dan Administrasi Publik* 1, no. 3 (September 2024).

³⁰ Feri Rinaldi, Ayesha Shahnaz Aurelia Pakpahan, and Ahmad Ansyari Siregar, “Dinamika Konflik Antara Hukum Adat Dan Hukum Positif Di Era Globalisasi,” *JLEB: Journal of Law Education and Business* 2, no. 2 (October 2024).

³¹ Novritsar Hasintongan Pakpahan et al., “Juridical Analysis of Online Prostitution Service Users in the Indonesian Legal Framework,” *Jurnal Hukum Lex Generalis* 5, no. 10 (2024).

³² S.M., “Urgensi Contempt of Court Dalam Bentuk Undang-Undang Di Indonesia.”

³³ Perbawati and Izzati, “Urgensi Kriminalisasi Contempt of Court Sebagai Penguatan Eksekusi Putusan Peradilan Tata Usaha Negara.”

³⁴ Negara Republik Indonesia, “Undang-Undang Nomor 1 Tahun 2023 Tentang Kitab Undang-Undang Hukum Pidana (KUHP),” Pub. L. No. 1, Lembaran Negara Republik Tahun 2023 Nomor 1 (2023).

- (2) The criminal offense as referred to in paragraph 1 letter b and letter c may only be prosecuted based on a complaint;
- (3) The complaint as referred to in paragraph (1) may be made in writing by the judge.³⁵ "

Section 281

"Any person who obstructs intimidates or influences an official who performs the duties of investigation, prosecution, examination at a court hearing, or a court decision with the intent to force or induce him to perform or not perform his duties shall be punished by a maximum imprisonment of 7 years and 6 months or a maximum fine of category VI.³⁶"

Looking at these arrangements, it appears that the new Act places contempt of court at the level of obstructing justice or obstructing the administration of justice and misbehaving in court³⁷.

Adapting the opinion of Judge Ainal Mardhiah, she mentioned that the Supreme Court had written that the Supreme Court had compiled an academic paper for the making of the contempt of court law which focused on 5 (five) forms of contempt of court, namely³⁸:

1. Misbehaving in court
2. Disobeying court orders
3. Scandalizing the court
4. Obstructing justice
5. Contempt of court

Considering the awareness, anxiety, and urgency of the need to regulate contempt of court, it is necessary to draft contempt of court legislation in the form of a law. The drafting of the contempt of court law can be organized as follows:

1. Definition
2. Actions not degrading the dignity of the court
3. Actions that degrade the dignity of the judiciary
4. Rights of perpetrators of acts that degrade the dignity of the judiciary;

The formulation of this structure is intended to emphasize the definition of contempt of court and Article 2 should emphasize the purpose of the contempt of court law, which is to maintain the dignity of the judiciary. Then, to provide an overview of contempt of court, it is also necessary to mention the actions that do not degrade the dignity of the judiciary, such as accurate reporting of the trial process (there must be concrete data and no impact on the disruption of the trial), criticism of the trial process based on legalistic legal opinions, obtaining permission from the court to report and take documentation of the trial process.

After this explanation, it is then regulated regarding acts that degrade the dignity of the judiciary, namely as 5 (five) forms of contempt of court, namely: Disgraceful and inappropriate behavior in court, for example insulting or speaking

³⁵ Negara Republik Indonesia.

³⁶ Negara Republik Indonesia.

³⁷ Devi P. Kurniawan, " TINJAUAN YURIDIS TENTANG TINDAK PIDANA PELECEHAN TERHADAP PENGADILAN (CONTEMPT OF COURT) DALAM SISTEM PIDANA DI INDONESIA." (Bachelor, Universitas Pasundan, 2023).

³⁸ Ainal Mardhiah, "Mengenal Contempt of Court" (Banda Aceh, February 6, 2025).

harshly to a party to the court, disobeying a court order, for example ignoring an order to leave during a closed session, attacking the integrity and impartiality of the court, for example accusing judicial officers of criminal acts and attacking the impartiality of judges, obstructing the administration of justice, for example giving false testimony in court, and contempt of court, for example intimidating witnesses in court.

The rights of perpetrators of acts that allegedly degrade the dignity of the court also need to be regulated in the contempt of court law, such as the right to be accompanied by legal counsel to legal remedies for contempt of court case decisions, such as appeals to cassation.

With this formulation, it is hoped that the legislative body will have a basic concept for regulating the contempt of court law, especially with the increasing number of acts that humiliate the judiciary. The formulation of the contempt of court law is also expected to be the basis for various legal professional organizations related to the judicial process to be able to integrate it into the professional code of ethics so as to support the smooth running of the judicial process and better respect the dignity of the judiciary in order to achieve justice aimed at judicial bodies in Indonesia.

1.2 Notion of legal remedy towards integrity besmirch in legal process

The judicial process itself can undeniably be affected by violations of integrity where indeed the judicial process is affected due to violations of integrity through violations of the code of ethics and degrading the dignity of the judiciary, for example, an example of accepting bribes by the initials DS judge in 2023 to hand down a verdict in a corruption case³⁹, prosecutors also received bribes to influence the process of indictment of suspects⁴⁰, to police who received bribes not to legally process reports of criminal acts⁴¹.

Then the judicial process that has taken place, especially in the form of court legal products, namely legally enforceable decisions, becomes a problem where the judicial process has been affected by violations of the integrity of law enforcement officials so that the judicial process is not purely in accordance with current enacted legal procedures⁴².

The rampant violation of integrity by law enforcement officials cannot be separated from the philosophy of legal sociology where the existence of law is intended to realize the ideals of law (*rechtsidee*) to reflect a good value system in

³⁹ Komisi Yudisial RI, "Terbukti Terima Suap, Hakim DS Diberhentikan Tidak Dengan Hormat," https://komisiyudisial.go.id/frontend/pers_release_detail/293/terbukti-terima-suap-hakim-ds-diberhentikan-tidak-dengan-hormat, August 9, 2023.

⁴⁰ Idon Tanjung and Teuku Muhammad Valdy Arief, "Terima Suap Untuk Kasus Narkoba, Oknum Jaksa Ditangkap Di Bandara Pekanbaru," <https://regional.kompas.com/read/2023/05/09/141905978/terima-suap-untuk-kasus-narkoba-oknum-jaksa-ditangkap-di-bandara-pekanbaru?page=all>, May 9, 2023.

⁴¹ Gloria Safira Taylor, "Terima Suap Dari Petugas Damkar, Lima Polisi D Ditangkap," <https://www.cnnindonesia.com/nasional/20171123174827-12-257663/terima-suap-dari-petugas-damkar-lima-polisi-ditangkap>, November 23, 2017.

⁴² Rendy Laputigar, Suhadi, and Rodiyah, "Integrating Due Process Into The Enforcement Framework of Criminal Law Politics," *Indonesian Journal of Criminal Law Studies* 9, no. 1 (2024).

society⁴³. The problem, as said by Bagir Manan, is that when society and law do not set the ideals and goals of law, then the law itself will lose meaning⁴⁴.

In the current era of Indonesia, Indonesian society has experienced low levels of digital literacy and economic disparities are far adrift so that an individualistic, self-oriented, and selfish mindset is formed⁴⁵. As a result, the law is placed as a tool to fulfill individualistic and selfish attitudes. Philosophically, legal history is associated with the philosophy of constitutional law, that power tends to corrupt its users⁴⁶ so that Indonesian people with low literacy have an impact on selfish patterns from a long time ago, for example since 1806-1811 resulting in abuse of authority by prefects (regent level) who did not pay wages from Daendels to carry out road construction to workers at that time⁴⁷. Public indifference to universal welfare causes easy integrity violations, especially for people who have held power as law enforcement officials⁴⁸.

Violation of integrity by law enforcement officials causes the judicial process to be undermined due to violations of integrity that are not in accordance with the objectives of the law, whether it is not for justice, legal certainty, or legal expediency. Problems arise when the unachieved legal objectives harm the community.

There was no regulation that became the last resort to realize the legal objectives that were violated by law enforcement officials who violated their integrity until this research was made⁴⁹. Some legal practices show that the problem can be corrected by re-indictment of cases that have been damaged by integrity violations⁵⁰. The old regulation, Act 20 of 1947 regarding Court of Retrial, is still in effect and allows the High Court to re-examine the legal facts, but it is limited to civil cases. From the discussion, it appears that there is still a legal vacuum to answer the problem of legal products that are undermined due to violations of the integrity of law enforcement officials.

The problem of legal vacuum must be resolved with a series of settlements, namely proving integrity violations through an examination of the code of ethics first, then a retrial is carried out. This idea must of course be determined in legislation as a written legal basis that can become valid legal basis to enforce the

⁴³ H. Sirajuddin Sailallah, "Optimalisasi Pembangunan Zona Integritas Pada Lembaga Peradilan Dalam Perspektif Ketahanan Nasional" (Bogor, 2021).

⁴⁴ Restiayu Bachtien Sarastia, "ANALISIS HUKUM BESERTA DAMPAKNYA PADA PERUBAHAN NAMA BERDASARKAN PENETAPAN PENGADILAN NEGERI SEMARANG NOMOR 338/PDT.P/2020/PN.SMG" (Master, Universitas Darul Ulum Islamic Centre Sudirman GUPPI Ungaran, 2024).

⁴⁵ Chebotarev, "Evolution of Society Caused by Collective and Individual Decisions."

⁴⁶ Novritsar Hasintongan Pakpahan, "Peluang Dan Tantangan Penerapan Restorative Justice," in *Restorative Justice Dalam Sistem Peradilan Pidana* (Yogyakarta: Literasi Bangsa, 2024).

⁴⁷ Djoko Marihandono, Harto Juwono, and Benny H. Hoed, *Kebijakan Politik Dan Ekonomi Rezim Napoleon Bonaparte Di Jawa 1806-1811* (Bandung: Lubuk Agung, 2010).

⁴⁸ Nanda Silvia Ramadani, Berchah Pitoewas, and Abdul Halim, "Pengaruh Globalisasi Terhadap Pemahaman Nilai Sila Kedua Di Kalangan Generasi Muda," *Pancasila and Civics Education Journal* 3, no. 3 (October 2024).

⁴⁹ Harkristuti Harkrisnowo, "Gambaran Umum UU No. 11 Tahun 2012 Tentang Sistem Peradilan Pidana Anak" (Jakarta, August 3, 2024).

⁵⁰ Zia Akhtar, "Double Jeopardy, Autrefois Acquit and the Legal Ethics of the Rule Against Unreasonably Splitting a Case," *Criminal Justice Ethics* 43, no. 1 (April 2024).

law. The first intended legal formulation is to integrate it in criminal and civil procedural law related to the examination of the code of ethics. In the criminal procedure law, it must be written 'in the event that the criminal procedure process finds allegations of violations of criminal procedure law related to integrity, the allegations must be proven through the legal process of the code of ethics first'. After the legal examination of the code of ethics, followed by confirmation of the results of whether or not the violation of the code of ethics is proven, 'in the event that the alleged violation of the code of ethics related to the criminal procedural law process is proven, the results of the examination of the violation of the code of ethics become the basis for the Chief of District Court to issue a decision to replace the panel of judges and order a retrial'.

With the proposed existence of contempt of court statute, parties involved in trial within a courtroom will respect and honor the proceedings even more. Once again, the goal of contempt of court statute is not to put fear in trial parties, yet it becomes a legal basis for legal protection for all parties involved not only for the judiciaries but also litigating-legal parties⁵¹. Therefore, litigating parties would rethink about causing havoc or chaos in a court room, preserving court's dignity intact.

Conclusion

This research succeeded in finding results that answered two problem formulations, namely the regulation of contempt of court in the form of laws can answer the legal vacuum in affirming the dignity of the judiciary so that the judicial process can uphold justice and legal certainty and provide legal protection for the judiciary to carry out its function of realizing justice for justice seekers, The results of the formulation of the second problem also show that there is indeed a legal vacuum on cases that are violated by violations of integrity or code of ethics so that it is proposed to make laws and regulations with procedures for examining or proving violations of the code of ethics first and violations of the code of ethics become the basis for the chairman of the court to replace the panel of judges and conduct a retrial for cases that are violated by violations of the code of ethics of law enforcement officials.

Suggestions

Suggestions gained from the research are for the legislative and judicial institutions to pay more attention to efforts to protect the image of the judiciary to ensure the fulfillment of the objectives of the judicial body.

Acknowledgments

⁵¹ Emile J. Katz, "The 'Judicial Power' and Contempt of Court: A Historical Analysis of the Contempt Power as Understood by the Founders," *California Law Review* 109 (April 2021).

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**Ketidakhati-Hatian Notaris Dalam Pembuatan Akta Berakibat Tidak Sah
Akta Pernyataan Keputusan Rapat
(Studi Putusan Nomor 74/Pdt/2021/Pt Btn)**

*Notary's Carelessness in Making a Deed Resulting in the Deed of Meeting Decision
Statement being Invalid*

(Study of Decision Number 74/Pdt/2021/Pt Btn)

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ABSTRACT

Notary is one of the public officials who is authorized to make authentic deeds. Notarial Deed as an authentic deed that has perfect evidentiary power. Authentic Deed made by Notary must meet formal and material requirements, as well as the requirements for a valid agreement, if in the case of Notary does not meet one of the requirements then a notarial deed can be declared legally flawed which causes the cancellation or invalidity of the Notarial deed. The focus of this research is the consequences of the Notary's carelessness in making his legal product with a case approach to Decision Number 74 / PDT / 2021 / PT.BTN. This study concludes that LI as a Notary committed a procedural violation in making a deed by not applying the principle of caution, where the deed issued by the Notary, namely the deed of Meeting Decision Statement Number 01 dated October 5, 2015, was declared legally flawed and canceled along with its derivatives, and LI received a sanction in the form of a written warning. The purpose of this writing is to analyze and review the application of the principle of a Notary's prudence in making a Deed of Meeting Decision Statement (PKR) based on the minutes of the General Meeting of Shareholders (GMS) in the High Court Decision Number 74/PDT/2021/PT BTN. The method used is normative legal research with a case and statutory approach.

Keyword: Consequences, Notary's Carelessness, Deed Of Statement Of Meeting Decisions

ABSTRAK

Notaris adalah salah satu pejabat umum yang berwenang dalam membuat akta autentik. Akta Notaris sebagai akta autentik yang memiliki kekuatan pembuktian yang sempurna. Akta Autentik yang dibuat oleh Notaris harus memenuhi syarat formil dan materiil, serta syarat sah perjanjian, apabila dalam hal Notaris tidak memenuhi salah satu syarat maka suatu akta notaris dapat dinyatakan cacat hukum yang menyebabkan kebatalan atau ketidakabsahan akta Notaris. Fokus Penelitian ini adalah Akibat dari ketidakhatian Notaris dalam membuat produk hukumnya dengan pendekatan kasus terhadap Putusan Nomor 74/PDT/2021/PT.BTN. Penelitian ini menyimpulkan bahwa LI sebagai Notaris melakukan pelanggaran prosedur dalam pembuatan akta dengan tidak menerapkan prinsip kehati-hatian, dimana akta yang diterbitkan Notaris tersebut yaitu akta Pernyataan Keputusan Rapat Nomor 01 tanggal 05 Oktober 2015 dinyatakan cacat hukum dan dibatalkan beserta dengan turunannya, serta LI mendapat sanksi berupa teguran tertulis. Tujuan Penulisan ini untuk menganalisa dan mengkaji terkait penerapan prinsip kehati hatian seorang Notaris dalam membuat Akta Pernyataan Keputusan Rapat (PKR) yang didasarkan pada risalah Rapat Umum Pemegang Saham (RUPS) dalam Putusan Pengadilan Tinggi Nomor 74/PDT/2021/PT BTN. Metode yang digunakan adalah penelitian hukum normatif dengan pendekatan kasus dan perundang-undangan.

Kata Kunci: Akibat, Ketidakhati-hatian Notaris, Akta Pernyataan Keputusan Rapat



Pendahuluan

Notaris dikenal sebagai seorang pejabat umum, dimana seorang pejabat mempunyai tanggung jawab penuh terhadap masyarakat. Pasal 1 ayat 1 Undang-Undang Nomor 2 Tahun 2014 Tentang Jabatan Notaris menyatakan bahwa Notaris adalah pejabat umum yang berwenang untuk membuat akta autentik dan memiliki kewenangan lainnya sebagaimana dimaksud dalam Undang-Undang ini atau berdasarkan undang-undang lainnya. Kebutuhan atas lembaga kenotariatan dalam praktek hukum kehidupan bermasyarakat berguna untuk dapat meningkatnya laju perekonomian dan kesadaran masyarakat akan hukum. Kekuatan akta autentik yang dibuat oleh Notaris tentunya memiliki kekuatan serta kepastian hukum yang kuat dan mengikat, akta autentik merupakan alat bukti yang sempurna, maka tidak jarang berbagai peraturan perundangan mewajibkan suatu perbuatan hukum tertentu dibuat dalam bentuk akta autentik¹. Pasal 15 ayat (1) Undang-Undang Nomor 2 Tahun 2014 Tentang Jabatan Notaris, telah menjelaskan bagaimana kewenangan seorang Notaris sebagai berikut:

“Notaris berwenang membuat Akta autentik mengenai semua perbuatan, perjanjian, dan penetapan yang diharuskan oleh peraturan perundangundangan dan/atau yang dikehendaki oleh yang berkepentingan untuk dinyatakan dalam Akta autentik, menjamin kepastian tanggal pembuatan Akta, menyimpan Akta, memberikan grosse, salinan dan kutipan Akta, semuanya itu sepanjang pembuatan Akta itu tidak juga ditugaskan atau dikecualikan kepada pejabat lain atau orang lain yang ditetapkan oleh undang-undang.”.

Notaris juga mempunyai kewenangan lainnya yang diatur dalam Pasal 21 ayat (4) Undang-Undang Republik Indonesia Nomor 40 Tahun 2007 Tentang Perseroan Terbatas yang menegaskan bahwa akta Pernyataan Keputusan Rapat (PKR) harus dibuat secara akta Otentik. Kewenangan yang diberikan berdasarkan kewenangan atributif tersebut yang bermakna bahwa notaris mempunyai tanggung jawab atas apa yang telah ditentukan oleh Undang-Undang. Akta Pernyataan Keputusan Rapat merupakan dokumen hukum yang dibuat oleh Notaris untuk mencatat dan mengesahkan keputusan yang diambil dalam sebuah rapat seperti halnya Rapat Umum Pemegang Saham (RUPS), pencatatan dalam rapat sering kali disebut sebagai risalah rapat. Dibuatnya risalah RUPS dalam bentuk akta notaris sebagai akta autentik dimaksudkan untuk menjadi alat bukti

¹ Fira Adhisa Rivanda, “Pelanggaran Pemasangan Papan Nama Notaris Yang Tidak Sesuai Dengan Pelaksanaan Kode Etik Notaris,” *Al Qisthas Jurnal Hukum Dan Politik* 12, no. 2 (2022): 34–48, <https://doi.org/10.37035/alqisthas.v12i2.5057>.

yang mempunyai kekuatan yang sempurna serta mengikat sehingga tidak perlu dibuktikan dengan pembuktian lainnya².

Kehati-hatian sebagai pedoman fundamental wajib diterapkan oleh Notaris dalam menjalankan tugas dan kewajibannya secara profesional. Hal ini dilakukan untuk menjaga kepentingan masyarakat yang telah memberikan kepercayaannya kepada Notaris. Tujuan dari prinsip kehati-hatian adalah untuk memastikan bahwa Notaris selalu berpedoman pada prosedur yang telah ditetapkan oleh Undang-Undang Jabatan Notaris. Namun prinsip kehati-hatian tidak diatur secara tegas dalam peraturan, melainkan dijelaskan dalam Pasal 16 Undang-Undang Nomor 2 Tahun 2014 tentang Jabatan Notaris bahwa notaris wajib bertindak amanah, jujur, seksama, mandiri, tidak memihak dan melindungi kepentingan pihak terkait. Makna seksama dalam hal aturan tersebut ditafsirkan bahwa notaris harus hati-hati dalam melaksanakan kewenangannya. Apabila notaris tidak melaksanakan prinsip kehati-hatian dalam melaksanakan jabatannya, maka akan merugikan para pihak³.

Perkembangan jaman yang semakin maju membuat notaris sering memudahkan dalam membuat produk hukumnya. Sebagai pejabat umum yang berwenang membuat akta autentik, notaris sering kali bertindak tidak hati-hati yang berakibat menimbulkan permasalahan hukum baik dalam ranah pidana maupun perdata, hal ini dapat disebabkan karena kelalaian notaris maupun para pihak yang tidak memeriksa dokumen yang diberikan maupun parapihak memberikan keterangan palsu sehingga menimbulkan permasalahan hukum terhadap akta autentik yang dibuatnya⁴. Maka dalam hal akta notaris harus memberikan kepastian suatu kejadian atau fakta yang diterangkan penghadap kepadanya dengan prosedur yang sudah ditentukan dalam peraturan. Namun pada kenyataannya masih terdapat notaris yang tidak teliti dalam membuat akta autentik seperti halnya putusan nomor 74/PDT/2021/PT BTN yang pada pokoknya menyebutkan bahwa seorang notaris di tangerang terbukti tidak cermat dan tidak teliti dalam membuat Akta Nomor 01 tertanggal 05 Oktober 2015 terkait dengan Akta Pernyataan Keputusan Rapat Umum Pemegang Saham Luar Biasa PT N. Ketidacermatan notaris terletak pada saat Notaris LI tidak memeriksa risalah RUPSLB yang diberikan kepadanya, tidak memeriksa identitas pemegang saham, tidak menanyakan undangan rapat dan daftar hadir dalam RUPSLB, sehingga berakibat akta yang dibuat notaris LI dinyatakan cacat hukum dan batal demi

² Mustakim Mustakim, "Kedudukan Risalah Rapat Umum Pemegang Saham (RUPS) Sebagai Akta Otentik Dalam Kaitan Dengan Tanggung Jawab Notaris Sebagai Pejabat Umum," *Kanun Jurnal Ilmu Hukum* 18, no. 1 (2016): 159–72.

³ Bella Okladea Amanda, "Prinsip Kehati-Hatian Notaris Di Dalam Pembuatan Akta Yang Sempurna," *Recital Review* 4, no. 1 (2022): 218–43, <https://doi.org/10.22437/rr.v4i1.13815>.

⁴ Charlie Thyawarta and Markoni, "Studi Kasus Pertanggungjawaban Hukum Notaris Dalam Pembuatan Akta Otentik Ditinjau Dari Prinsip Kehati-Hatian," *Jurnal Review Pendidikan Dan Pengajaran* 7, no. 976 (2024): 1791–1800.

hukum. Berdasarkan uraian latar belakang tersebut diatas, penulis tertarik untuk mengkaji lebih dalam mengenai ketidakhati-hatian notaris dalam membuat akta yang berakibat tidak sahnya akta Pernyataan Keputusan Rapat (PKR).

Metode Penelitian

Penelitian hukum adalah suatu proses untuk menemukan aturan hukum, prinsip-prinsip hukum, maupun doktrin-doktrin hukum guna menjawab isu hukum yang dihadapi⁵. Penelitian yang dilaksanakan berlandaskan metode normatif. dengan mengkaji peraturan-peraturan atau norma hukum yang berhubungan dengan isu hukum. Penulis menitikberatkan pada ketidakhatian Notaris dalam membuat akta. Pendekatan yang digunakan adalah pendekatan kasus dengan mengkaji kasus nyata yang terjadi dalam masyarakat, dalam hal ini objek kajian pokoknya berupa akta Pernyataan Keputusan Rapat serta berupa pertimbangan hakim di Pengadilan dalam membuat putusan. Pendekatan Undang-Undang adalah pendekatan yang dilakukan dengan analisis terhadap undang-undang atau peraturan yang memiliki korelasi dengan isu hukum yang diteliti⁶ pendekatan undang-undang mengkaji lebih dalam Undang-Undang Jabatan Notaris serta kode etik notaris.

Hasil dan pembahasan

Ketidakhati-hatian Notaris Dalam Membuat Akta Yang Berakibat Tidak Sahnya Akta Pernyataan Keputusan Rapat (PKR)

Akta Notaris merupakan akta autentik yang sempurna dan memiliki kekuatan pembuktian yang mutlak selama tidak dibuktikan kembali kebenarannya. Pasal 1868 KUHPerdara memberi penjeasan mengenai Akta Otentik, unsur-unsur yang terdapat dalam Pasal 1868 KUHPerdara adalah sebagai berikut⁷ :

1. Bahwa akta itu dibuat dan diresmikan dalam bentuk menurut hukum;
2. Bahwa akta itu dibuat oleh atau dihadapan pejabat umum;
3. Bahwa akta itu dibuat dihadapan yang berwenang untuk membuatnya di tempat dimana dibuat.

Notaris dalam membuat akta dapat dibedakan antara "Partij akte" (akta pihak-pihak) dengan "ambtelijke akte" (akta pejabat). Partij Akta merupakan akta yang dibuat oleh/dihadapan Notaris yang merupakan kehendak dari para penghadap sehingga isi dari akta tersebut merupakan tanggung jawab sepenuhnya dari para penghadap. Notaris tidak bertanggung jawab secara pidana terhadap kebenaran material atas akta yang dibuat dihadapannya, kecuali dalam hal notaris terbukti telah melakukan penipuan. Bahkan notaris juga tidak bertanggung jawab secara

⁵ Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Kencana, 2008).hlm. 41

⁶ Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Kencana, 2008).hlm. 93

⁷ Rahmad Hendra, "Tanggungjawab Notaris Terhadap Akta Otentik Yang Penghadapnya Menggunakan Identitas Palsu Di Kota Pekanbaru," *Jurnal Ilmu Hukum* 3, no. 1 (2013), <https://doi.org/10.30652/jih.v3i01.1029>.

perdata terhadap kebenaran material dalam "partij akta" yang dibuat dihadapannya, kecuali notaris telah melakukan pelanggaran (sebagai misal memihak kepada salah satu pihak). Contoh Partij akta adalah: Akta Jual Beli, Akta Tukar Menukar, Akta PKR RUPS PT dan lain-lain. Dengan sendirinya keterangan yang disampaikan pengadu/pelapor/terangka yang ternyata tidak benar tidak menjadikan notaris bisa dipersalahkan. Ambelijke akta atau disebut juga akta pejabat atau akta Relas merupakan akta yang dibuat oleh Notaris yang berisikan segala sesuatu yang didengar, dilihat, dialami oleh notaris untuk dituangkan ke dalam suatu akta. Contoh: Berita Acara RUPS, Pembuatan SKW WNI keturunan Tionghoa, Undian, dan lain-lain. Notaris dapat dipertanggung jawabkan baik secara pidana maupun perdata dalam hal akta yang dibuatnya tidak sesuai/ tidak sama dengan kenyataan jalannya rapat/undian dan/atau tidak sesuai dengan data yang telah ditunjuk/diserahkan kepada notaris.

Dalam pembuatan akta notaris dapat dikatakan sah, apabila memenuhi syarat-syarat yaitu :

- a. Notaris membuat akta sesuai dengan keinginan para pihak.

Pasal 1320 KUHPerdata menjelaskan mengenai syarat sahnya suatu perjanjian adalah adanya kesepakatan mereka yang mengikatkan dirinya; kecakapan untuk membuat suatu perikatan; suatu pokok persoalan tertentu; serta suatu sebab yang tidak terlarang. Adanya kesepakatan para pihak, artinya harus ada persetujuan atau kesepakatan para pihak yang membuat perjanjian. Tidak boleh ada paksaan atau tekanan, melainkan perjanjian harus atas dasar kehendak sendiri. Tidak terpenuhinya syarat subjektif dalam perjanjian berakibat pada Perjanjian tersebut dapat dibatalkan.

- b. Secara Formal, Material, dan Lahiriah telah sesuai dengan aturan hukum tentang pembuatan akta notaris.

Kekuatan pembuktian lahir (*Uitwenduge bewijskracht*) adalah kekuatan pembuktian yang didasarkan atas keadaan lahir dari akta, artinya bahwa suatu surat yang kelihatannya seperti akta, harus diterima, dianggap, dan diperlakukan sebagai akta, sampai dapat dibuktikan sebaliknya. Pembuktian lahiriah ini menekankan bahwa sebuah akta otentik secara fisik mempunyai kekuatan untuk membuktikan sendiri keabsahannya sebagai yang otentik. Kekuatan Pembuktian Formal (*formelebewijskracht*) , Pembuktian formal dari suatu akta otentik adalah suatu pembuktian yang didasarkan atas kebenaran dari apa yang diuraikan oleh pejabat pembuat akta di dalam akta otentik tersebut, kebenaran atas tanggal dan waktu akta dibuat, kebenaran akan tanda tangan yang terdapat dalam akta, kebenaran akan jati diri pihak-pihak dalam akta dan tempat akta tersebut dibuat. Pembuktian ini menjamin kebenaran atas apa yang ada dan tertuang

didalam akta, mengenai pernyataan-pernyataan serta tanda tangan para pihaknya. Terjamin kebenaran dan kepastian tanggal dari suatu akta, kebenaran tandatangan yang terdapat dalam akta, kebenaran mengenai identitas dari orang yang hadir, tempat dimana akta dibuat⁸. Kekuatan Pembuktian Materil (*Materielle bewijskracht*) Merupakan kekuatan pembuktian yang didasarkan atas benar atau tidaknya isi dari pernyataan yang ditandatangani dalam sebuah akta otentik. Bahwa peristiwa hukum yang dinyatakan dalam akta otentik benar-benar terjadi, sehingga dapat memberikan kepastian atas materi akta tersebut. Dengan demikian pembuktian bersumber pada keinginan agar orang lain menganggap bahwa isi dan untuk siapa isi keterangan dalam akta tersebut berlaku, sebagai keterangan yang benar dan bertujuan untuk dijadikan sebagi bukti untuk dirinya sendiri. Sehingga dalam sudut pandang ini, suatu akta hanya memberikan bukti terhadap para pihak dalam akta. mengenai kepastian apa yang tersebut didalam akta maupun membuktikan yang sah terhadap pihak-pihak yang membuat akta atau mereka yang mendapat hak dan kewajiban karena akta tersebut, kecuali ada pembuktian sebaliknya.

Notaris hanya bertugas mencatat atau menuliskan dalam akta apa yang diterangkan para pihak. Tidak berhak mengubah, mengurangi atau menambah apa yang diterangkan para penghadap. Pada prinsipnya notaris tidak berwenang menyelidiki kebenaran keterangan yang dikemukakan para pihak; kan tetapi dalam hal keterangan yang disampaikan para pihak bertentangan dengan: peraturan perundang-undangan, ketertiban umum, dan kesusilaan, maka dalam hal yang demikian notaris berhak untuk menolak membuat akta⁹

Kewenangan seorang Notaris berdasarkan Undang-Undang Nomor 2 Tahun 2014 tentang Jabatan Notaris (UUJN) adalah untuk membentuk dan menyusun suatu akta otentik. Dalam pembuatan akta Pernyataan Keputusan Rapat (PKR) notaris memiliki kewenangan yang tercantum dalam Pasal 15 Undang-Undang Nomor 1 Tahun 2014 tentang jabatan Notaris juncto Undang-undang Nomor 40 tahun 2007 tentang Perseroan Terbatas menegaskan bahwa kewenangan Notaris diperoleh secara atributif, karena secara tidak langsung kewenangan Notaris dalam membuat akta otentik juga memiliki andil dalam pengesahan badan hukum serta perubahan anggaran dasar perseroan. RUPS dapat dilaksanakan tanpa kehadiran notaris secara langsung, namun dapat dibuat suatu notulen rapat. Notulen tersebut yang kemudian dibawa ke hadapan notaris untuk dibuatkan akta otentik.

⁸ Yosi Andika Mulyadi, "Kekuatan Pembuktian Akta Otentik Yang Dibuat Dihadapan Notaris Dalam Perkara Pidana" (Universitas Gadjah Mada Yogyakarta, 2016).

⁹ M.Y. Harahap, *Hukum Acara Perdata Tentang Gugatan, Pesidangan, Penyitaan, Pembuktian Dan Putusan Pengadilan* (Jakarta: Sinar Grafika, 2008).

Kewenangan dan tanggung jawab Notaris dalam pembuatan Akta Keputusan Rapat Rapat Umum Pemegang Saham (RUPS) perseroan adalah¹⁰

1. Menjamin kepastian tanggal, tandatangan dari akta yang dibuatnya tersebut,
2. Penghadap harus benar-benar hadir dihadapan notaris,
3. Membacakan isi akta,
4. Penandatanganan akta pada hari dan tanggal sebagaimana disebutkan dalam akta,
5. Penandatanganan akta di dalam wilayah jabatan notaris,
6. Menyimpan Minuta aktanya,
7. Memberikan salinan aktanya,
8. Mencatat setiap akta yang dibuat dalam suatu buku daftar akta
9. Mengirim salinan buku akta kepada Majelis Pengawas Daerah Notaris

Notaris hanya bertanggungjawab terhadap bentuk dari akta Pernyataan Keputusan Rapat (PKR) secara formalitas saja sedangkan keabsahan tentang materi atau isi perjanjian beserta segala akibat hukumnya seorang Notaris tidak dapat dituntut dan atau diminta pertanggungjawabannya oleh para pihak, hal ini sepenuhnya menjadi tanggung jawab para pihak yang membuat suatu perjanjian tersebut, sehingga perlu kecermatan dan kehati-hatian notaris dalam membuat akta otentik. Putusan Nomor 74/PDT/2021/PT.BTN yang pada pokoknya menyebutkan bahwa Notaris LI terbukti tidak cermat dan tidak teliti dalam membuat Akta Pernyataan Keputusan Rapat PT Nisshinkan Indonesia Nomor 01 Tertanggal 05 Oktober 2015. Bermula Pada Pada tanggal 5 Oktober 2015 RU Selaku Presiden Direktur menghadap Notaris LI di Kota Tangerang Selatan, dan menerangkan bahwa pada tanggal 29 September 2015 RU mengadakan RUPS-LB yang menurut pengakuannya dihadiri oleh seluruh pemegang saham perseroan. Dalam agenda RUPS-LB tersebut antara lain meminta persetujuan kepada pemegang saham perseroan dalam rangka penjualan asset perseroan, yaitu 1 (satu) bidang tanah bersertifikat Hak Guna Bangunan Nomor 7/Balekambang, seluas 1.072 m2, Memberi kuasa kepada RU selaku Presiden Direktur untuk menuangkan hasil Rapat Umum Pemegang Saham ini dalam Akta Notaris, serta menunjuk RU sebagai Presiden Direktur untuk mewakili perseroan dalam rangka penjualan asset perseroan tersebut di atas, termasuk melakukan negosiasi, mengambil keputusan, menyerahkan surat-surat atau dokumen perseroan termasuk sertifikat, menerima pembayaran, melakukan pembayaran yang berkaitan dengan jual beli asset perseroan tersebut. Dalam risalah rapat yang dibuat RU, para pemegang saham dikatakan menyetujui penjualan aset perseroan tersebut serta menunjuk RU selaku

¹⁰ SH Bambang Rianggono, "Kekuatan Akta Pernyataan Keputusan Rapat (PKR) Yang Dibuat Berdasrkan Risalah Rapat Dibawah Tangan Ditinjau Dari Tanggung Jawab Notaris" (Universitas Diponegoro, 2008).

presiden direktur untuk mewakili perseroan dalam rangka penjualan aset tersebut, sekaligus untuk menghadap Notaris guna dibuatkan Akta Notaris mengenai Pernyataan Keputusan Rapat berdasarkan Risalah Rapat RUPS-LB yang dibuat RU. Selanjutnya Notaris LI membuat Akta Notaris Nomor 01 tanggal 5 Oktober 2015 tentang Pernyataan Keputusan Rapat. Ternyata Akta Pernyataan Keputusan Rapat PT. N Nomor. 01 Tertanggal 05 Oktober 2015 yang dibuat oleh Notaris LI, mengandung cacat hukum dan informasi yang tidak benar (kebohongan) yang berasal dari Risalah RUPS-LB (fiktif) yang dibuat oleh RU. Faktanya adalah Para Pemegang Saham PT. N, yakni Katsumi Ono, Yutaka Ono, dan Fumi Ono tidak pernah diundang, menghadiri, memberikan persetujuan, dan menandatangani Risalah RUPS-LB (fiktif) tersebut. Perbuatan Notaris LI yang menerbitkan Akta Pernyataan Keputusan Rapat PT. N Nomor 01 tertanggal 5 Oktober 2015, adalah suatu kelalaian atau kesengajaan dimana Notaris LI Tidak memeriksa terkait dengan undangan rapat maupun daftar hadir dalam risalah RUPSLB.

Berdasarkan hal diatas, PT. N kemudian melaporkan Notaris LI kepada Majelis Pengawas Daerah Notaris (MPDN) Kota Tangerang Selatan tempat wilayah kerja dari Tergugat, mengenai dugaan pelanggaran kode etik jabatan Notaris yang dilakukan oleh Notaris LI. Setelah dilakukan pemeriksaan terhadap minuta yang disimpan Notaris LI oleh Sidang Majelis Pengawas Daerah Notaris (MPDN) tidak ditemukan satu pun data pendukung yang dijadikan LI sebagai landasan untuk membuat Akta Pernyataan Keputusan Rapat PT. N Nomor 01 tanggal 05 Oktober 2015, seperti Notaris tidak memeriksa Undangan RUPS-LB; Daftar hadir RUPS-LB; Keputusan RUPS-LB; dan Kartu pengenalan/KTP atau Paspor bagi pemegang saham yang bukan kewarganegaraan Indonesia sebagai para peserta RUPS-LB; Putusan Majelis Pengawas Wilayah Notaris Provinsi Banten Nomor 01/PTS/Mj.PWN Prov. Banten/II/2020, menyatakan bahwa Notaris LI terbukti melanggar Kode Etik Notaris dan pelaksanaan Jabatan Notaris sebagaimana Pasal 16 ayat (1) huruf a UUJN dan menjatuhkan sanksi kepada Notaris LI berupa Teguran Tertulis. Maka demi hukum Notaris LI, telah terbukti melakukan Perbuatan Melawan Hukum yang menimbulkan kerugian bagi PT.N, semua perbuatan hukum yang dilakukan oleh Notaris LI., termasuk Akta Pernyataan Keputusan Rapat Nomor 01 Tertanggal 05 Oktober 2015 beserta dengan turunannya dinyatakan batal demi hukum atau setidaknya dinyatakan tidak mempunyai kekuatan hukum secara mengikat. Bahwa dalam pertimbangannya, Hakim menyebutkan bawah LI sebagai Notaris telah melakukan perbuatan melawan hukum karena LI telah membuat akta Pernyataan Keputusan Rapat PT. N nomor 01 tanggal 5 Oktober 2015, berdasarkan risalah Rapat Umum Pemegang Saham Luar Biasa (selanjutnya disebut RUPSLB) tanggal 29 September 2015 yang fiktif sehingga merugikan Penggugat, Majelis Hakim dalam hal ini juga menimbang dalam berita

acara pemeriksaan oleh Majelis Pemeriksa disebutkan bahwa Tergugat / Notaris sebagai pejabat publik yang berwenang membuat akta otentik tidak cermat dan tidak teliti atau lalai dalam membuat akta nomor 1 tersebut, karena :

1. Tidak memeriksa Identitas pemegang saham sebagaimana dalam RUPSLB perseroan, mengingat para pemegang saham perseroan adalah WNA.
2. Tidak mengecek/menanyakan undangan rapat;
3. Tidak mengecek / menanyakan daftar hadir peserta rapat yang diundang - berkaitan dengan quorum;
4. Tidak menanyakan paraf pada notulen RUPSLB yang hanya diparaf oleh RU, sedangkan yang membubuhkan tanda tangan ada 4 (empat) orang;

Dalam Amar Putusan, Majelis Hakim Memutuskan :

1. Mengabulkan gugatan Penggugat untuk sebagian;
2. Menyatakan bahwa Tergugat telah melakukan Perbuatan Melawan Hukum;
3. Menyatakan batal demi hukum dan tidak mempunyai kekuatan hukum mengikat Akta No. 01 tanggal 05-10-2015 tentang Pernyataan Keputusan Rapat PT. Nisshinkan Indonesia, yang dibuat oleh LUSI INDRIANI, SH., MKn., Notaris di Tangerang Selatan, beserta akta-akta turunannya;
4. Menyatakan bahwa obyek tanah dan bangunan seluas 1.072 m2, berdasarkan Sertifikat HGB Nomor: 7/Balekambang yang berlokasi di Jalan Condet Raya No. 11 RT.04/RW.04 kelurahan Balekambang Kec. Kramat Jati, Jakarta Timur, adalah milik Penggugat dan sampai saat ini masih dalam penguasaan Penggugat;
5. Menghukum kepada siapapun yang memegang dan/atau menguasai Akta No. 01 tanggal 05-10-2015 dibuat oleh Notaris Lusi Indriyani, SH., MKn., dan/atau akta atau surat-surat turunan lainnya untuk tidak menggunakan bagi kepentingan apapun berkaitan dengan obyek tanah dan bangunan seluas 1.072 m2, yang berlokasi di Jalan Condet Raya No. 11 RT.04/RW, kelurahan Balekambang Kec. Kramat Jati, Jakarta Timur, dan mengembalikannya kepada Penggugat (PT. N) selaku pemiliknya yang sah, sebagaimana keadaan semula sebelum terjadinya perbuatan hukum yang mengakibatkan beralihnya obyek tanah tersebut;
6. Menolak gugatan Penggugat untuk selain dan selebihnya;
7. Menghukum Terbanding semula Tergugat untuk membayar biaya perkara dalam kedua tingkat peradilan, yang dalam tingkat banding ditetapkan sejumlah Rp. 150.000,00 (seratus lima puluh ribu Rupiah);

Berdasar pada Putusan tersebut, perbuatan yang dilakukan oleh Notaris LI dikategorikan sebagai Perbuatan Melawan Hukum oleh Majelis Hakim Pengadilan Tinggi Banten, dikarenakan Akta Pernyataan Keputusan Rapat Nomor 01 Tanggal

05 Oktober 2015 adalah cacat hukum dan dinyatakan tidak sah karena melanggar ketentuan Pasal 16 Undang-Undang Nomor 2 Tahun 2014 Tentang Jabatan Notaris bahwa notaris dalam menjalankan jabatannya wajib untuk bertindak amanah, jujur, seksama, mandiri dan tidak berpihak serta menjaga kepentingan terhadap pihak terkait dalam perbuatan hukum. Serta melanggar Pasal 3 Kode Etik Notaris, dikatakan bahwa notaris memiliki kewajiban, yaitu salah satunya menjalankan jabatan notaris terutama dalam pembuatan, pembacaan, dan penandatanganan akta. Kode etik menjadi pedoman perilaku notaris apakah layak/tidak layak, patut atau tidak perbuatan dilakukan. Notaris dituntut melakukan pembuatan akta dengan baik dan benar, artinya akta yang dibuatnya harus berdasarkan undang-undang yang berlaku dalam memenuhi permintaan pihak-pihak yang berkepentingan. Sehingga dengan hal ini, notaris dapat memberikan kepastian kepada kliennya bahwa akta yang dibuatnya tidak ada cacat yang dapat menimbulkan masalah dikemudian hari. Seorang Notaris diwajibkan untuk memiliki perilaku yang jujur, sifat yang mandiri, tidak berpihak dan amanah, seksama, penuh dengan rasa tanggung jawab. Secara umum pertanggungjawaban yang biasa dikenakan terhadap Notaris adalah pertanggungjawaban pidana, administrasi dan perdata. Itu merupakan konsekuensi dari akibat pelanggaran atau kelalaian yang dilakukan oleh Notaris dalam proses pembuatan akta otentik¹¹

Akta Pernyataan Keputusan Rapat (PKR) dapat dinyatakan batal demi hukum jika tidak memenuhi syarat-syarat yang ditentukan oleh peraturan perundang-undangan. Berikut beberapa alasan yang dapat menyebabkan Akta PKR dinyatakan batal demi hukum:

- 1) Tidak Memenuhi Syarat Formal: Akta PKR tidak memenuhi syarat formal, seperti tidak ditandatangani oleh notaris atau tidak memiliki cap notaris.
- 2) Tidak Memenuhi Syarat Materiil: Akta PKR tidak memenuhi syarat materiil, seperti tidak mencantumkan tanggal, waktu, dan tempat rapat.
- 3) Kesalahan dalam Pembuatan Akta: Akta PKR dibuat dengan kesalahan, seperti kesalahan dalam mencantumkan nama atau jabatan seseorang.
- 4) Pembuatan Akta PKR oleh Notaris yang Tidak Berwenang: Akta PKR dibuat oleh notaris yang tidak berwenang untuk membuat akta tersebut.

Berpandangan pada kesalahan Notaris, maka Pentingnya bagi Notaris untuk melakukan peninjauan kembali setiap akta yang dibuatnya sehingga Notaris dapat

¹¹ Anita Afriana, "Kedudukan Dan Tanggung Jawab Notaris Sebagai Pihak Dalam Penyelesaian Sengketa Perdata Di Indonesia Terkait Akta Yang Dibuatnya Position and Responsibility of Notary As a Party To the Resolution of Civil Disputes in Indonesia Relating To the Deed," *Poros Hukum Padjadjaran* 1, no. 2 (2020): 246–61, <https://doi.org/10.23920/jphp>.

menerapkan prinsip kehati-hatian. Bentuk penerapan prinsip kehati-hatian yang seharusnya dilakukan oleh Notaris, antara lain :

- a) Melakukan pengenalan kepada penghadap, berdasarkan identitasnya yang ditunjukkan pada Notaris: Dalam hal ini, Notaris LI tidak melakukan pengenalan kepada penghadap dikarenakan para penghadap tidak berhadapan langsung dan tidak menunjukkan identitasnya. Padahal secara umum yang seharusnya dilakukan Notaris apabila berhadapan langsung dengan para pihak Notaris/PPAT akan melakukan pengecekan KTP asli dan dikonfirmasi langsung oleh penghadap.
- b) Melakukan tanya-jawab dan mencermati kehendak para pihak: Notaris LI menerima draft akta yang sudah terdapat tandatangan para pihak sehingga tidak mencermati apa yang sebenarnya dikehendaki para pihak karena semua pihak yang terlibat dalam transaksi ini tidak berhadapan secara langsung dengan Notaris.
- c) Memeriksa dengan teliti dan hati-hati bukti surat yang berkenaan dengan kehendak para pihak: Notaris LI tidak menerapkan prinsip kehati-hatian saat menerima berkas yang diberikan. Seharusnya meskipun dengan sesama rekan kerja tetap harus melakukan pengecekan dengan teliti
- d) Memberikan saran dan membuat kerangka akta untuk memenuhi kehendak para pihak: Draft akta jual beli sudah disiapkan oleh pihak lain sehingga Notaris LI tidak membuat kerangka akta terlebih dahulu untuk memenuhi kehendak para pihak.
- e) Memenuhi segala teknik syarat pembuatan akta Notaris, seperti pembacaan, penandatanganan, memberikan salinan serta pemberkasan untuk minuta: Notaris LI tidak melakukan pembacaan akta dihadapan para pihak karena para pihak tidak menghadap. Hal tersebut melanggar salah satu kewajiban Notaris yang tercantum dalam UUJN.
- f) Notaris dituntut melakukan perbuatan akta dengan baik dan benar. Artinya akta yang dibuat itu memenuhi kehendak hukum dan permintaan pihak-pihak yang berkepentingan karena jabatannya: Akta tersebut dibuat seolah-olah sudah terjadi RUPS, Namun ternyata RU yang mengarang adanya RUPS Fiktif
- g) Notaris dituntut menghasilkan akta yang bermutu. Artinya akta yang dibuatnya itu sesuai dengan aturan hukum dan kehendak pihak-pihak yang berkepentingan dalam arti yang sebenarnya. Notaris harus menjelaskan kepada pihak-pihak yang berkepentingan akan kebenaran isi dan prosedur akta yang dibuatnya itu: Terbitnya Akta Pernyataan Keputusan Rapat Nomor 01 tanggal 05 Oktober 2015 yang isinya bertentangan dengan kebenaran. Oleh karena itu, akta Pernyataan Keputusan Rapat tersebut

dapat dikatakan tidak bermutu karena bertentangan dengan prosedur pembuatan Akta PPAT.

- h) Berdampak positif, artinya siapapun akan mengakui akta Notaris itu mempunyai kekuatan bukti sempurna: Produk Akta Akta Pernyataan Keputusan Rapat Nomor 01 tanggal 05 Oktober 2015 yang dikeluarkan LI tidak mempunyai kekuatan bukti sempurna karena memuat keterangan-keterangan palsu yang disusun oleh para pihak yang terlibat dalam kasus ini.

Dijaki dalam teori Kepastian Hukum menekankan pentingnya kepastian dan kejelasan dalam setiap tindakan hukum, termasuk dalam pembuatan akta notaris. Sudikno Mertokusumo juga memberikan pengertian, yaitu kepastian hukum merupakan sebuah jaminan bahwa hukum tersebut harus dijalankan dengan cara yang baik. Artinya bahwa kepastian hukum mengharuskan adanya upaya pengaturan hukum dalam peraturan perundang-undangan yang dibuat secara berwibawa. Sehingga aturan-aturan tersebut memiliki aspek yuridis yang dapat menjamin adanya kepastian bahwa hukum berfungsi sebagai suatu peraturan yang harus ditaati¹². Akibat hukum terhadap notaris yang tidak menerapkan prinsip kehati-hatian berdasarkan teori kepastian hukum dapat dilihat dari dua aspek utama, yaitu tanggung jawab hukum dan keabsahan perbuatan hukum.

1. Tanggung Jawab Hukum

Notaris yang tidak menerapkan prinsip kehati-hatian dalam menjalankan tugasnya dapat dikenakan sanksi administratif atau bahkan tanggung jawab pidana. Secara spesifik, jika seorang notaris terbukti melakukan kelalaian atau penyalahgunaan wewenang dalam pembuatan akta yang merugikan pihak lain, notaris tersebut dapat dikenakan tindakan disipliner oleh Majelis Kehormatan Notaris (MKN). Selain itu, jika terdapat unsur pidana, notaris tersebut bisa dikenakan hukuman pidana, seperti penjara atau denda sesuai dengan ketentuan dalam Undang-Undang Jabatan Notaris.

2. Keabsahan Perbuatan Hukum

Dalam konteks teori kepastian hukum, tidak diterapkannya prinsip kehati-hatian oleh notaris bisa berdampak pada keabsahan perbuatan hukum yang dibuatnya. Prinsip kehati-hatian ini bertujuan untuk memastikan bahwa perbuatan hukum yang dilakukan oleh notaris memenuhi syarat-syarat yang sah dan tidak merugikan pihak lain. Jika notaris tidak berhati-hati dan tidak memenuhi prosedur yang benar dalam pembuatan akta, maka perbuatan hukum yang dilaksanakan berdasarkan akta tersebut bisa dibatalkan atau dianggap tidak sah oleh pengadilan

¹² Asikin Zainal, *Pengantar Tata Hukum Indonesia* (Jakarta: Rajawali Press, 2012).Hlm 25

Dalam kasus ini menjadi penting untuk Notaris melakukan Peninjauan Kembali pada setiap akta yang dibuatnya, maka dalam proses pembuatan akta tersebut harus melaksanakan prinsip kehati-hatian. Prinsip kehati-hatian adalah suatu asas yang menyatakan bahwa notaris dalam menjalankan fungsi dan jabatannya wajib menerapkan prinsip kehati-hatian dalam rangka melindungi kepentingan masyarakat yang dipercayakan padanya. Tujuan diberlakukannya prinsip kehati-hatian tidak lain adalah agar notaris selalu dalam rambu-rambu yang benar. Dengan diberlakukannya prinsip kehati-hatian diharapkan agar kepercayaan masyarakat terhadap notaris tetap tinggi, sehingga masyarakat bersedia dan tidak ragu-ragu menggunakan jasa notaris. Sesuatu perbuatan harus diambil dan disusun dengan pertimbangan cermat¹³ Penerapan prinsip kehati-hatian sangat relevan diterapkan dalam upaya mengurangi adanya perbuatan melawan hukum seorang notaris dan menjadikan notaris lebih teliti, karena notaris memiliki peran dalam mencegah adanya perbuatan hukum para pihak. Apabila Notaris tidak hati-hati dalam membuat produk hukumnya maka mengakibatkan akta yang dibuatnya menjadi tidak sah atau batal. Dalam putusan ini penulis beranggapan bahwa putusan hakim ini telah memenuhi unsur putusan yang baik, penulis berpendapat bahwa prinsip kehati-hatian harus selalu diterapkan oleh Notaris dalam pembuatan akta otentik dan terkait akta yang dibuat oleh Notaris dinyatakan bahwa Akta Pernyataan Keputusan Rapat Nomor 01 Tanggal 05 Oktober 2015 beserta dengan akta turunannya dinyatakan Batal Demi Hukum serta notaris diberikan sanksi berupa teguran tertulis.

Penutup

Akta Pernyataan Keputusan Rapat merupakan suatu akta Notariil yang dibuat dihadapan Notaris atas kehendak para pihak yang berasal dari risalah Rapat Umum Pemegang Saham Luar Biasa Perseroan Terbatas. Notaris dituntut untuk berhati-hati dan cermat dalam menjalankan kewenangannya. Ketidakhati-hatian notaris dalam menjalankan kewenangannya dapat berakibat pada tidak sahnya suatu akta otentik. Pada dasarnya pembuatan akta otentik, Notaris membuat akta sesuai dengan keinginan para pihak, serta harus memenuhi unsur-unsur dalam Pasal 1320 KUHPdata yaitu kesepakatan mereka yang mengikatkan dirinya; kecakapan untuk membuat suatu perikatan; suatu pokok persoalan tertentu; serta suatu sebab yang tidak terlarang. Tidak terpenuhinya syarat subjektif dalam perjanjian berakibat pada Perjanjian tersebut dapat dibatalkan. Perbuatan Notaris LI dikategorikan sebagai perbuatan melawan hukum oleh Majelis Hakim Pengadilan Tinggi Banten, dikarenakan Akta Pernyataan Keputusan Rapat Nomor

¹³ Fikri Ariesta Rahman, "Penerapan Prinsip Kehati-Hatian Notaris Dalam Mengenal Para Penghadap," *Jurnal Lex Renaissance* 3, no. 2 (2018): 423–40, <https://doi.org/10.20885/jlr.vol3.iss2.art11>.

01 Tanggal 05 Oktober 2015 adalah cacat hukum dan dinyatakan tidak sah karena melanggar ketentuan Pasal 16 Undang-Undang Nomor 2 Tahun 2014 Tentang Jabatan Notaris dan melanggar kode etik notaris. Ketidakhati-hatian Notaris LI dalam membuat Akta Pernyataan Keputusan Rapat ini terletak pada saat Notaris LI tidak memeriksa Identitas pemegang saham, tidak mengecek/menanyakan undangan rapat; tidak mengecek / menanyakan daftar hadir peserta rapat yang diundang - berkaitan dengan quorum; tidak menanyakan paraf pada notulen RUPSLB yang hanya diparaf, sehingga mengakibatkan Akta Pernyataan Keputusan Rapat Nomor 01 Tanggal 05 Oktober 2015 beserta dengan akta turunannya dinyatakan Batal Demi Hukum.

Saran

Notaris merupakan pejabat publik yang harus bertanggungjawab atas produk hukum yang dibuatnya, maka Prinsi kehati-hatian harus dilaksanakan oleh Notaris dalam menjalankan kewenangannya. Notaris harusnya melakukan pengenalan terhadap identitas penghadap, memverifikasi secara cermat data subjek dan objek penghadap, bertindak hati hati, cermat dan teliti dalam proses pengerjaan akta, memenuhi standar tektik pembuatan akta berdasarkan Undang-Undang Jabatan Notaris dan Kode Etik Notaris. Belum ada aturan yang mengatur secara jelas mengenai kehati-hatian notaris dan tanggung jawab notaris dalam pembuatan akta pernyataan keputusan rapat, sehingga perlu adanya aturan yang rinci dan jelas agar notaris tidak salah dalam menjalankan kewenangannya.

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The Authority of the Serang City BPBD in Legal Protection for Post-Disaster Natural Disaster Victims

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ABSTRACT

Legal protection provided by the Regional Disaster Management Agency is not given equally in receiving assistance in terms of logistical assistance and infrastructure repair. Article 8 paragraph (1) of Serang City Regional Regulation Number 16 of 2011 concerning Disaster Management, BPBD is responsible for disaster management. The problem identification of this research is how the implementation of the authority of the BPBD of Serang City in efforts to protect the law for victims of natural disasters through post-disaster rehabilitation and reconstruction and how the obstacles to the implementation of the BPBD's authority in efforts to protect the law for victims of natural disasters through post-disaster rehabilitation and reconstruction. The purpose of this study is to determine the implementation of the authority of the BPBD of Serang City in efforts to protect the law for victims of natural disasters through post-disaster rehabilitation and reconstruction and to find out the obstacles to the implementation of the authority of BPBD in efforts to protect the law for victims of natural disasters through post-disaster rehabilitation and reconstruction. This research method uses empirical juridical research methods with qualitative data analysis. The results of the study found that Disaster Management by BPBD has not been carried out optimally due to the inequality of receiving assistance in logistics and infrastructure assistance. The National Disaster Management Agency provides mandated authority to BPBD based on Serang City Regional Regulation Number 16 of 2011 concerning Disaster Management. Preventive legal protection by BPBD is provided through prevention such as conducting disaster-related socialization, disseminating disaster information and implementation, enforcing regional spatial plans through the PERKIM Office related to development and repressive legal protection by handling rehabilitation, namely logistical assistance and reconstruction, namely rebuilding facilities and infrastructure. The obstacles are lack of participation from related agencies, overlapping administration, lack of information and understanding of the community, and budget limitations. This research shows that the implementation of post-disaster rehabilitation and reconstruction by BPBD is not given equally to the provision of logistical assistance and infrastructure.

Keyword: Protection, Authority, Management, Disaster, Regional Disaster Management Agency.

ABSTRAK

Perlindungan hukum yang diberikan Badan Penanggulangan Bencana Daerah tidak diberikan secara merata dalam penerimaan bantuan dari segi bantuan logistik dan perbaikan infrastruktur. Pasal 8 ayat (1) Peraturan Daerah Kota Serang Nomor 16 Tahun 2011 tentang Penanggulangan Bencana, BPBD bertanggung jawab dalam penanggulangan bencana. Identifikasi masalah penelitian ini yaitu bagaimana pelaksanaan kewenangan BPBD Kota Serang dalam upaya perlindungan hukum bagi korban bencana alam melalui rehabilitasi dan rekonstruksi pasca bencana dan bagaimana hambatan pelaksanaan kewenangan BPBD dalam upaya perlindungan hukum bagi korban bencana alam melalui rehabilitasi dan rekonstruksi pasca bencana. Tujuan pada penelitian ini yaitu untuk mengetahui pelaksanaan kewenangan BPBD Kota Serang dalam upaya perlindungan hukum bagi korban bencana alam melalui rehabilitasi dan rekonstruksi pasca bencana dan untuk mengetahui hambatan pelaksanaan kewenangan BPBD dalam upaya perlindungan hukum bagi korban bencana alam melalui rehabilitasi dan rekonstruksi pasca bencana. Metode Penelitian ini menggunakan metode penelitian yuridis empiris dengan analisis data kualitatif. Hasil penelitian diperoleh bahwa Penanggulangan Bencana oleh BPBD belum terlaksana secara optimal karena ketidakmerataan penerimaan bantuan pada bantuan logistik dan infrastruktur. Badan Nasional Penanggulangan Bencana memberikan kewenangan secara mandat kepada BPBD



berdasarkan Peraturan Daerah Kota Serang Nomor 16 Tahun 2011 tentang Penanggulangan Bencana. Perlindungan hukum preventif oleh BPBD diberikan melalui pencegahan seperti melakukan sosialisasi terkait kebencanaan, penyebaran informasi kebencanaan dan pelaksanaan, penegakan rencana tata ruang wilayah melalui Dinas PERKIM terkait pembangunan dan perlindungan hukum represif melakukan penanganan rehabilitasi yaitu bantuan logistik dan rekonstruksi yaitu pembangunan kembali sarana dan prasarana. Hambatannya yaitu kurangnya partisipasi dari dinas terkait, administrasi yang tumpang tindih, kurangnya informasi dan pemahaman Masyarakat, dan keterbatasan anggaran. Penelitian ini menunjukkan bahwa pelaksanaan rehabilitasi dan rekonstruksi pasca bencana oleh BPBD tidak diberikan secara merata pada pemberian bantuan logistik maupun infrastruktur.

Kata Kunci: *Perlindungan, Kewenangan, Penanggulangan, Bencana, Badan Penanggulangan Bencana Daerah.*

Introduction

The government and local governments have duties and responsibilities that must be carried out in carrying out disaster management, both in the central region, namely the National Disaster Management Agency (BNPB) and those in the regions, namely the Regional Disaster Management Agency (BPBD).¹The Regional Disaster Management Agency is a government agency that has the task of handling disaster management in the region. The Indonesian state has an obligation in disaster management to provide protection to all Indonesian people from the threat of disasters as outlined in Article 6 of Law Number 24 of 2007 concerning Disaster Management. Disaster is an event or series of events that threatens and disrupts people's lives and livelihoods caused, either by natural factors and / or non-natural factors and human factors resulting in human casualties, environmental damage, property losses, and psychological impact.²

Related to previous research in a study conducted by Desy Lestari entitled Implementation of the Rehabilitation and Reconstruction Program Policy after the North Lombok Regency Earthquake Disaster in 2020, the results of her research indicate that in implementing program policies, factors that can affect the success or failure of running a program must be considered, in this study human resources are ineffective, the characters of some implementers are inappropriate, the attitude taken is standard and there is poor communication between implementers. This was researched using Presidential Instruction Number 5 of 2018 concerning the Acceleration of Rehabilitation and Reconstruction.³ The difference in this study is that the results of this study show that the authority exercised by the Regional Disaster Management Agency of Serang City has been done as much as possible so

¹ Pasal 5 Undang-Undang Republik Indonesia Nomor 24 Tahun 2007 Tentang Penanggulangan Bencana, JDIH , 2007, <https://jdih.serangkota.go.id>.

² Denny Susanto, Bunga Rampai Manajemen Bencana (Cilacap, Jawa Tengah: Media Pustaka Indo, 2023), https://fliphtml5.com/fkzzr/cbkb/Ebook_Buku_Manajemen_Bencana_Denny_Susanto_2023/.

³ Desy Lestari, "Implementasi Kebijakan Program Rehabilitasi Dan Rekonstruksi Pasca Bencana Gempa Bumi Kabupaten Lombok Utara Tahun 2020 (Studi Kasus Desa Gondang Kecamatan Gangga Kabupaten Lombok Utara) " (Universitas Muhamaditah Mataram, 2021).

that the implementation of rehabilitation and reconstruction runs smoothly. However, this is constrained by budget limitations which make the entire implementation hampered in terms of rebuilding facilities and infrastructure as well as rehabilitation related to the mental recovery of disaster victims. This research was analyzed using Serang City Regional Regulation Number 16 of 2011 concerning Disaster Management.

The Regional Disaster Management Agency of Serang City recorded on the infographic of disasters in the Serang City area in 2023, based on the results of research with interviews by the Regional Disaster Management Agency, namely Mr. Heri Sumbara, as Secretary of the Regional Disaster Management Agency of Serang City when conducting pre-research there were 7 disaster events including fallen trees, collapsed houses, floods, fires, drought (clean water crisis), lightning-struck houses, and landslides. The total disasters in Serang City from January to December 2023 were 28 floods, 42 fallen trees, 3 houses struck by lightning, 36 fires, 2 landslides, and 115 droughts (clean water crisis). The incident caused damage to 106 houses, including 19 lightly damaged houses, 63 moderately damaged houses, and 24 heavily damaged houses.⁴

Serang City has a Regional Regulation on Disaster Management, namely the Regional Regulation of Serang City number 16 of 2011 on Disaster Management. Article 12 of the Local Regulation of Serang City on Disaster Management states that the implementation of disaster management consists of three stages, namely pre-disaster, emergency response, and post-disaster. The implementation of post-disaster management as referred to in Article 12 letter (c) includes rehabilitation and reconstruction. Rehabilitation is an effort made after a disaster to help the community in terms of repairing houses, public facilities, and important social facilities, as well as reviving the economy.⁵ Reconstruction is the rebuilding of facilities and infrastructure in post-disaster areas to foster and redevelop economic, social, cultural, legal activities, and the revival of community roles in post-disaster aspects of life.⁶

The results of interviews conducted with Mr. Heri Sumbara, as Secretary of the Regional Disaster Management Agency of Serang City, conveyed related disaster infographics in 2023 starting from January 1, 2023 - December 31, 2023, stating:

There were 106 house damages due to extreme weather disasters such as collapsed houses, lightning-struck houses, floods, fallen trees, and fires, as

⁴ Heri Sumbara, "Info Grafis BPBD Kota Serang," *BPBD Kota Serang*, 2024, <https://bpbd.serangkota.go.id/>.

⁵ Khambali, "Manajemen Penanggulangan Bencana," *Penerbit ANDI, Yogyakarta*, 2017, 17.

⁶ Putri Cep Alam and Herbasuki, "Upaya Rehabilitasi Dan Rekonstruksi Wilayah Pasca Bencana Erupsi Gunung Merapi Di Kecamatan Kemalang Kabupaten Klaten Provinsi Jawa Tengah," *Journal Of Public Policy And Management Review* 2, no. 3 (2013): 4, <https://doi.org/https://doi.org/10.14710/jppmr.v2i3.3043>.

well as 7,724 family cards and 9,047 people affected by the disaster who were entitled to assistance programs from the government after the disaster, but in reality only 174 registered family cards received logistical assistance such as clothing, food, and first aid assistance and 18 registered houses were reconstructed after the disaster.

The unevenness of receiving assistance is a problem that must be overcome because the assistance should be received by all parties entitled to post-disaster assistance, but in reality this is not done properly where protection related to rehabilitation that is carried out is not perfect and related to the reconstruction of houses that have not been realized all.

Protection through rehabilitation is assisted by several parties such as the social service office to provide logistical assistance for disaster victims, the health service office for health services for disaster victims, and the food security, agriculture and fisheries office to provide assistance in fulfilling basic needs in the form of large and other food staples for disaster victims, where the agency was chosen based on recommendations from the Serang City Regional Disaster Management Agency.⁷ Heri Sumbara as Secretary of the Disaster Management Agency stated "The implementation of rehabilitation carried out by the Regional Disaster Management Agency of Serang City but only realizes related logistical assistance assisted by the Social Service."

Implementation related to Reconstruction by the Regional Disaster Management Agency is assisted by the Housing and Settlement Area Office in rebuilding facilities and infrastructure due to disasters.⁸ Assistance funds for reconstructing buildings are distributed based on building damage criteria, which include light damage, medium damage, and heavy damage.⁹

The implementation of rehabilitation and reconstruction activities must use disaster management funds from the district/city APBD, while if the district/city APBD is inadequate, it can request funding assistance from the provincial government. District/city governments can also request assistance such as experts, equipment and infrastructure development to the central government coordinated

⁷ Peraturan Walikota Nomor 11 Tahun 2022 Tentang Tata Cara Pemberian Bantuan Kepada Masyarakat Akibat Darurat Bencana Yang Bersumber Dari Anggaran Pendapatan Dan Belanja Daerah Kota Serang, accessed May 9, 2025, <https://jdih.serangkota.go.id/>.

⁸ Pasal 13 ayat (2) Peraturan Walikota Nomor 11 Tahun 2022 Tentang Tata Cara Pemberian Bantuan Kepada Masyarakat Akibat Darurat Bencana Yang Bersumber Dari Anggaran Pendapatan Dan Belanja Daerah Kota Serang.

⁹ Pasal 8 Peraturan Walikota Nomor 11 Tahun 2022 Tentang Tata Cara Pemberian Bantuan Kepada Masyarakat Akibat Darurat Bencana Yang Bersumber Dari Anggaran Pendapatan Dan Belanja Daerah Kota Serang.

by the National Disaster Management Agency by involving the Regional Disaster Management Agency.¹⁰

There are still many problems related to rehabilitation and reconstruction that have not been carried out optimally, such as budget limitations, lack of coordination between institutions which causes the provision of assistance to be undirected, it is difficult to reorganize areas affected by disasters, as well as the lack of community participation.¹¹ This indicates the need for improvement and good planning and coordination for a successful rehabilitation and reconstruction program. Disaster management has been coordinated with related parties but still requires greater attention from the government.¹²

Various disasters that occur in the community cause a lot of damage and losses, so it requires attention from the government such as rehabilitation and reconstruction including physical repairs and non-physical recovery. In the rehabilitation and reconstruction process, it is also seen whether there are obstacles or obstacles in the implementation of rehabilitation and reconstruction. From the above problems, researchers are interested in studying further about post-disaster management efforts including this rehabilitation and construction program. Therefore, the researcher is interested in conducting research with the title **"AUTHORITY OF THE SERANG CITY REGIONAL DISASTER RESPONSE BADAN IN THE LEGAL PROTECTION OF NATURAL DISASTER VICTIMS THROUGH REHABILITATION AND RECONSTRUCTION AFTER DISASTER BASED ON THE SERANG CITY REGULATORY REGULATION NUMBER 16 OF 2011 ON DISASTER RESPONSE"**.

The Identification of this research problem is:

1. How is the implementation of the authority of the Regional Disaster Management Agency of Serang City in efforts to provide legal protection for victims of natural disasters through post-disaster rehabilitation and reconstruction based on Serang City Regional Regulation Number 16 of 2011 concerning Disaster Management?
2. How are the obstacles to the implementation of the authority of the Regional Disaster Management Agency of Serang City in efforts to provide legal protection for victims of natural disasters through post-

¹⁰ Pasal 9 Ayat (1) Peraturan Kepala Badan Nasional Penanggulangan Bencana Nomor 17 Tahun 2010 Tentang Pedoman Umum Rehabilitasi Dan Rekonstruksi Pasca Bencana.

¹¹ Erna Yus, Wulandari Novita, and Lionardo Andries, "Efektivitas Program Rehabilitasi Dan Rekonstruksi Pasca Bencana Pada Badan Penanggulangan Bencana Daerah Kabupaten Pali," *Journal Of LAW & Policy Review* 2, no. 1 (2024): 141.

¹² BPBD Kota Serang, "Rakor Penilaian Kerusakan Dan Kerugian Sosial Ekonomi Korban Bencana," 2023, <https://bantenintens.co.id/2023/01/26/walikota-serang-sebut-permasalahan-di-kecamatan-serang-paling-krusial/>.

disaster rehabilitation and reconstruction based on Serang City Regional Regulation Number 16 of 2011 concerning Disaster Management?

This research can provide information and understanding related to the implementation of authority with legal protection provided by the Regional Disaster Management Agency of Serang City through post-disaster rehabilitation and reconstruction and is expected to contribute ideas in the development of legal science, especially related to the issue of the implementation of authority with legal protection provided by the Regional Disaster Management Agency of Serang City through post-disaster rehabilitation and reconstruction.

Research Methods

The method in this research uses a qualitative research method with an empirical juridical approach through interviews related to this research problem. The specifications of this research use descriptive analytical research specifications which describe, find facts, and examine national regulations as well as local government policies.¹³ Data analysis in this research is by means of qualitative research. This research describes how legal protection with reconstruction and rehabilitation of post-disaster victims. Data collection techniques in this study used literature research, namely literature, journals, or books, and field research through interviews and documentation. Data sources in this study used primary data sources and secondary data sources. Primary data research uses data collection techniques conducted through interviews. Secondary data in this study used books, journals, theses, and laws and regulations.

Results and discussion

1.1 Profile of the Regional Disaster Management Agency of Serang City

The Regional Disaster Management Agency (BPBD) of Serang City was formed based on the Regulation of the Mayor of Serang Number 12 of 2010 on April 1, 2010 concerning the Establishment and Organizational Structure of the Regional Disaster Management Agency. The Regional Disaster Management Agency of Serang City was formed to perform its duties and functions related to disaster prevention and management.¹⁴

The Regional Disaster Management Agency (BPBD) of Serang City is a regional apparatus that carries out the wheels of government based on the general policies of the Serang City area, in accordance with Law Number 23 of 2014 concerning Regional Government and Law Number 33 of 2004 concerning Financial Balance between the Center and Regional Governments which gives authority to City / Regency Regions to manage and advance their regions.¹⁵

¹³ Ronny Hanitijo Soemitro, *Metode Penelitian Hukum Dan Jurimetri* (Jakarta: Ghalia Indonesia, 1988).

¹⁴ Badan Penanggulangan Bencana Daerah Kota Serang, "Sejarah Singkat," November 23, 2024, <https://bpbd.serangkota.go.id/pages/sejarah-singkat>.

¹⁵ Diat Hermawan, *Rencana Kerja Badan Penanggulangan Bencana Kota Serang Tahun Anggaran 2024-2026* (Serang, 2023).

The Chief Executive and his ranks have the duties and functions of the implementing elements of the Regional Disaster Management Agency of Serang City based on Article 14 of the Regional Regulation of Serang City Number 12 of 2010 concerning the Establishment and Organizational Structure of the Regional Disaster Management Agency, including: Chief Executive, Secretariat, Prevention and Preparedness Section Head, Emergency and Logistics Section Head, Rehabilitation and Reconstruction Section Head.¹⁶

1.2 Implementation of the Authority of the Regional Disaster Management Agency of Serang City in Legal Protection for Natural Disaster Victims through Post-Disaster Rehabilitation and Reconstruction

Disaster management is an effort to provide community protection from the threat of disasters in a planned, focused, coordinated and comprehensive manner to create peace in the life of the community, nation and state.¹⁷ The government based on Article 12 paragraph (1) of Law number 23 of 2014 on Regional Government which states that disaster management is a shared responsibility between the central, provincial and district/city governments.

Disaster management based on the theory of authority of the Central Government has authority by attribution based on Law Number 24 of 2007 concerning Disaster Management where the authority is given directly by law to establish national policies. The National Disaster Management Agency (BNPB) is given delegated authority by the Central Government to implement national policies and provide direction to the Regional Disaster Management Agency (BPBD) based on the Head of the National Disaster Management Agency Regulation Number 17 of 2010 concerning General Guidelines for Organizing Post-Disaster Rehabilitation and Reconstruction. The Regional Disaster Management Agency of Serang City receives mandated authority from the National Agency to implement operational policies in Serang City based on Serang City Regional Regulation No. 16/2011 on Disaster Management.

The implementation of disaster management based on Article 33 of Law Number 24 Year 2007 concerning disaster management is carried out in pre-disaster, emergency response and post-disaster situations. The post-disaster handling mechanism in the legal protection of victims of natural disasters by the Regional Disaster Management Agency of Serang City is located in Article 39 of the Regional Regulation of Serang City Number 16 of 2011 concerning the Implementation of Disaster Management, including rehabilitation and reconstruction. Fulfillment of basic needs in legal protection provides assistance

¹⁶ Diat Hermawan, *Rencana Strategis Badan Penanggulangan Bencana Kota Serang Tahun 2024-2026* (Serang, 2023).

¹⁷ Pasal 4 Undang-Undang Republik Indonesia Nomor 24 Tahun 2007 Tentang Penanggulangan Bencana.

including clean water and sanitation needs, food and clothing, health services, psychosocial services, and shelter and temporary housing.¹⁸

The most urgent task is in the aftermath of a disaster as it is necessary to immediately assess humanitarian needs and provide rescue assistance to victims affected by the disaster.¹⁹ Disaster management consists of 4 (four) components, namely: mitigation, preparedness, response, and recovery.²⁰ The recovery phase is the return or restoration and development of facilities, quality of life and livelihoods in disaster-affected communities where efforts are made to reduce disaster risk factors.²¹ The recovery phase is rehabilitation and reconstruction activities carried out after the emergency response phase ends.²²

The results of disaster victim data by the Regional Disaster Management Agency of Serang City through infographics are 106 house damages due to extreme weather disasters such as collapsed houses, lightning-struck houses, floods, fallen trees, and fires, as well as 7,724 family cards and 9,047 people affected by disasters who are entitled to government assistance programs after disasters. The infographic of the Serang City Regional Disaster Management Agency states that there were several disasters that occurred, such as 42 fallen trees, 79 collapsed houses, 36 fires, 115 droughts, 3 houses struck by lightning, and 2 landslides. Infogarfis states that there are 9,047 people affected and 7,724 family cards affected. The total number of events from 6 regions is 307, including 51 events in Serang City, 25 events in Walantaka, 14 events in Cipocok Jaya, 184 events in Kasemen, 3 events in Curug and 30 events in Taktakan..

The Regional Disaster Management Agency of Serang City carries out several delegation tasks given by the National Disaster Management Agency in accordance with Article 4 paragraph (3) of the Head of the National Disaster Management Agency Regulation Number 17 of 2010, including in the Input point the Regional Disaster Management Agency has carried out an assessment and assessment of the consequences of the disaster in the form of classifying the damage experienced after the disaster according to the categories in the Serang City Regional Regulation Number 16 of 2011 concerning Disaster Management. Estimates of rehabilitation and reconstruction needs have also been coordinated

¹⁸ Pasal 36 Peraturan Daerah Kota Serang Nomor 16 Tahun 2011 Tentang Penanggulangan Bencana, JDIH Kota Serang, December 22, 2011, <https://jdih.serangkota.go.id>.

¹⁹ Global Faculty for Disaster Reduction and Recovery, "Post Disaster Needs Assessments," 2022, <https://www.gfdrr.org/en/post-disaster-needs-assessments>.

²⁰ Coppola Damon P, *Introduction to International Disaster Management*, 2nd ed. (Boston: Butterworth-Heinaemann, 2011).

²¹ Fitrisia Rama and Hafizha Ilma, "Evaluasi Pelaksanaan Rehabilitasi Dan Rekonstruksi: Konsep Dan Metode Teknis Monitoring," *Jurnal of Information, Communications, and Disaster* 1, no. 1 (2024): 4, <https://doi.org/https://doi.org/10.61511/icd.v1i1.2024.607>.

²² United Nations International Strategy for Disaster Reduction, "UNISDR Terminology on Disaster Risk Reduction," 2009, <https://www.undrr.org/publication/2009-unisdr-terminology-disaster-risk-reduction>.

by the Regional Disaster Management Agency of Serang City's emergency and logistics section by preparing the needs required for post-disaster rehabilitation and reconstruction.

The process of preparing action plans and determining priorities has been carried out by the Regional Disaster Management Agency of Serang City. The preparation of action plans has been made by the Regional Disaster Management Agency of Serang City which is written in the Work Plan of the Regional Disaster Management Agency of Serang City which is used as a guideline and reference in preparing the activity program of the Regional Disaster Management Agency of Serang City. The implementation of Post-Disaster Rehabilitation and Reconstruction in its rescue prioritizes vulnerable groups such as the elderly, women, children and people with disabilities.

The implementation process related to post-disaster rehabilitation and reconstruction by the Regional Disaster Management Agency of Serang City has also been carried out well, but it is not maximally implemented where there are still many victims who do not get full rights. Protection in the form of rehabilitation provided is still constrained regarding psychological health, victims need to get greater attention regarding mental health not only physical health. Protection in the form of reconstruction is also still a lot of victims who have not been able to repair facilities and infrastructure. Reporting has also been carried out by the Regional Disaster Management Agency of Serang City. Data reports on disasters, victims and repairs are carried out annually and collected in the middle of the year between February and April.

The Regional Disaster Management Agency has duties and functions as described in Article 8 of the Regional Regulation of Serang City Number 16 of 2001 concerning the Implementation of Disaster Management. The duties of the Regional Disaster Management Agency are explained in Article 8 paragraph (1) of the Regional Regulation of the City of Serang Number 16 of 2011 concerning the Implementation of Disaster Management, namely:

- a. Establish guidelines and directions in accordance with local government and National Disaster Management Agency policies for disaster management efforts that include disaster prevention, emergency management, rehabilitation, and reconstruction in a fair and equal manner;
- b. Establish the standardization and needs of disaster management implementation based on laws and regulations;
- c. Developing, stipulating, and informing disaster prone maps;
- d. Developing and stipulating fixed procedures for disaster management;

- e. Carry out the implementation of disaster management in the region;
- f. Reporting the implementation of disaster management to the regional head once a month under normal conditions and at any time during a disaster emergency;
- g. Controlling the collection and distribution of money and goods; being accountable for the use of the budget received from the regional budget;
- h. Carry out other obligations in accordance with laws and regulations.

The implementation of post-disaster rehabilitation and reconstruction has a basic principle to prioritize the interests of vulnerable groups based on Article 5 paragraph (3) of the Regulation of the Head of the National Disaster Management Agency Number 17 of 2010 concerning General Guidelines for Organizing Post-Disaster Rehabilitation and Reconstruction states that it will prioritize the interests of vulnerable groups such as the elderly, women, children and people with disabilities. Rehabilitation is an effort made after a disaster to help the community in terms of repairing houses, public facilities, and important social facilities, as well as reviving the economy.²³

The Regional Disaster Management Agency must provide legal protection to victims of natural disasters where everyone has rights in disaster management as explained in Article 50 of the Serang City Regional Regulation Number 16 of 2011 concerning Disaster Management Implementation, namely:

- a. Everyone has the right:
 - 1) Receive social protection and a sense of security, especially for disaster-prone communities;
 - 2) Receive education, training and skills in organizing disaster management;
 - 3) Obtain written and/or oral information on disaster management policies;
 - 4) Participate in the planning, operation and maintenance of health care provision programs, including psychosocial support;
 - 5) Participate in decision-making on disaster management activities, especially those related to themselves and their communities; and
 - 6) Conduct supervision in accordance with the mechanism stipulated in the implementation of disaster management.
- b. Everyone affected by a disaster is entitled to fulfillment of basic needs.
- c. Every person is entitled to compensation for losses due to disaster caused by construction failure.

²³ Khambali, Op. Cit., "Manajemen Penanggulangan Bencana.", (2017); 17

Legal protection provided by the Regional Disaster Management Agency of Serang City through preventive and repressive measures based on the Regional Regulation of Serang City Number 16 of 2011 concerning Disaster Management. Preventive legal protection is provided through prevention to prevent disasters and reduce disaster risk.

Preventive protection provided by the Regional Disaster Management Agency of Serang City based on the results of the interview is in accordance with Article 14 of the Regional Regulation of Serang City Number 16 of 2011 concerning Disaster Management. The Regional Disaster Management Agency carries out various ways of preventing disasters, including socializing disaster preparedness to the community, conducting emergency response simulations as training in dealing with disasters, disseminating disaster-related information through the website of the Regional Disaster Management Agency of Serang City and social media, as well as implementing and enforcing regional spatial plans in collaboration with related agencies in terms of development planning in the event of a disaster.

The Regional Disaster Management Agency of Serang City in disaster management also provides repressive legal protection where the Regional Disaster Management Agency of Serang City will overcome or deal with the impact of disasters after a disaster occurs. Repressive protection provided after a disaster as referred to in Article 12 letter (c) of the Serang City Regional Regulation Number 16 of 2011 is explained in Article 39 of the Serang City Regional Regulation Number 16 of 2011 concerning Disaster Management where repressive legal protection after a disaster is carried out through rehabilitation and reconstruction.

Repressive protection related to rehabilitation and reconstruction carried out by the Regional Disaster Management Agency is explained in Article 40 paragraph (1) of the Regional Regulation of the City of Serang Number 16 of 2011 concerning Disaster Management, including by carrying out environmental improvements in disaster areas, repairing public facilities and infrastructure, providing assistance to repair community houses, social psychological recovery, health services, rebuilding infrastructure and facilities, determining the right design and using better equipment, and improving social, economic and cultural conditions.

Repressive legal protection provided by the Regional Disaster Management Agency of Serang City on rehabilitation based on the results of the interview explained that "Providing assistance related to rehabilitation, the Regional Disaster Management Agency only provides logistical assistance such as clothing, food, and first aid which is carried out by the Social Service".

Logistical assistance provided by the Regional Disaster Management Agency of Serang City is in the form of clothing, food and first aid, while psychological assistance is not provided in depth. Victims of natural disasters should receive assistance related to mental and physical health services directly, because natural disasters can traumatize victims. This should be given more attention in restoring the health of victims of natural disasters.

Repressive protection related to reconstruction carried out by the Regional Disaster Management Agency of Serang City cooperates with the Public Housing and Settlement Area Office of Serang City in carrying out infrastructure development damaged by disasters, such as repairing damaged houses, and building public facilities. Legal protection provided by the Regional Disaster Management Agency will be very influential where the law has a direct and indirect influence in supporting social change.²⁴ The implementation of Disaster Management in the legal protection of victims of natural disasters can be done through several things such as preparing and responding to the emergency needs of victims of natural disasters that require the availability of natural resources, and resources are used effectively.²⁵

The implementation of post-disaster rehabilitation and reconstruction by the Regional Disaster Management Agency of Serang City is assisted by the Public Housing and Settlement Area Office of Serang City, Ms. Resty Fitria as a Property Appraiser at the Public Housing and Settlement Area Office of Serang City, that the procedures for implementing rehabilitation and reconstruction include:

- a. Received a letter of recommendation from the Regional Disaster Management Agency of Serang City;
- b. Receive a statement letter from the Kelurahan;
- c. Collected by the Public Housing and Settlement Area Agency of Kota Serang;
- d. Conduct direct verification to the field to place the damage category in terms of reconstruction carried out by the Field Facilitator (TFL);
- e. Verification results are determined in the Mayor's Decree according to the category;
- f. Preparation of RAB to reduce assistance to beneficiaries.

The implementation of legal protection for victims of natural disasters through post-disaster rehabilitation and reconstruction by the Regional Disaster Management Agency of Serang City has not been maximally implemented. The

²⁴ Otje Salma and Anthon F Susanto, *Beberapa Aspek Sosiologi Hukum* (Bandung: PT Alumni, 1993).

²⁵ Kementrian Sosial Republik Indonesia, *Modul Petugas Pendamping Sosial Penanggulangan Bencana* (Jakarta, 2011).

assistance provided by the Regional Disaster Management Agency related to post-disaster rehabilitation and reconstruction is only assisted by one agency, namely the Social Service, which provides logistical assistance to disaster victims. Providing assistance related to post-disaster rehabilitation and reconstruction in terms of social legal protection should be assisted by several agencies such as the Social Service to provide logistical assistance, the Health Service to provide health services for disaster victims.²⁶

The provision of assistance through post-disaster rehabilitation and reconstruction in terms of Infrastructure Rebuilding is carried out by the Public Housing and Settlement Areas Office of Serang City based on the Recommendation of the Regional Disaster Management Agency of Serang City. The assistance provided by the disaster victims was not carried out in its entirety, where disaster victims only received logistical assistance from the Social Service and assistance in repairing building infrastructure by the Public Housing and Settlement Areas Office of Serang City.

The provision of logistical assistance and infrastructure repairs to disaster victims is still not realized based on infographic data and data tables on the provision of assistance by the Regional Disaster Management Agency. Information on Infographics issued by the Regional Disaster Management Agency of Serang City there are 7,724 Family Cards affected by the disaster, but in the table listing the recipients of logistical assistance only 174 Family Cards, where the difference is very significant.

The provision of assistance for the reconstruction of damaged buildings is also still largely unrealized. The infographic data of the Serang City Regional Disaster Management Agency states that there are 106 houses damaged by disasters in the 2023 period, but the list of house repairs carried out by the Public Housing and Settlement Areas Office is only 18 houses registered to receive building reconstruction assistance.

1.3 Obstacles to the Implementation of the Authority of the Regional Disaster Management Agency of Serang City in Legal Protection for Natural Disaster Victims through Post-Disaster Rehabilitation and Reconstruction

The implementation of legal protection through post-disaster rehabilitation and reconstruction by the Regional Disaster Management Agency of Serang City has several obstacles. The results of an interview with Mr. Heri Sumbara, as

²⁶ Pasal 14 dan 18 Peraturan Walikota Nomor 11 Tahun 2022 Tentang Tata Cara Pemberian Bantuan Kepada Masyarakat Akibat Darurat Bencana Yang Bersumber Dari Anggaran Pendapatan Dan Belanja Daerah Kota Serang.

Secretary of the Regional Disaster Management Agency of Serang City, and further explained by Ms. Resti Fitriya as Property Appraiser of the Public Housing and Settlement Area Office of Serang City, which stated:

The obstacles contained in the implementation of rehabilitation and reconstruction are currently the lack of participation from related agencies where related to post-disaster rehabilitation and reconstruction are only assisted by the social service in logistical assistance, this is a limitation in providing maximum assistance from other aspects. The next obstacle is based on administration, namely the overlap that often occurs between the province and the city where prospective beneficiaries propose not only to the City office but sometimes also submit to the Provincial office. This is because in the event of a disaster, it is very much needed for survival, so it happens that prospective beneficiaries try in several places to get a quick response, but actually this will slow down the processing because they have to do verification repeatedly.

Another obstacle in the reconstruction process occurs in land titles, where buildings that can be repaired or can receive assistance must have land status, so rental or contract buildings cannot be given assistance. Certification activities are carried out to record damage, but when certification is carried out, sometimes some residents say that proof of ownership rights does not exist in the prospective recipient of assistance, so it cannot be declared as a candidate for the right to receive assistance. Buildings that can be repaired at least have blood relationship status such as parents, descendants, or grandparents. Buildings that cannot be proven by certificates can be asked for information from the urban village to be declared entitled to receive assistance. The biggest obstacle is related to the budget because the damage caused by the disaster is not only Rp. 10,000,000, but even more, where the cost is divided into several parts such as builders and materials. The budget obtained is very lame with the Province, because the local income of Serang City is still relatively small.

The implementation of legal protection carried out by the Regional Disaster Management Agency of Serang City faces several obstacles based on the results of the interview, as follows:

1. Lack of Participation from Related Agencies

The implementation of disaster management through post-disaster rehabilitation and reconstruction by the Regional Disaster Management Agency of Serang City is only assisted by the Social Service in providing logistical assistance and the Public Housing and Settlement Area Office in repairing building reconstruction. The implementation of post-disaster management should be assisted by several related agencies such as the

Health Office, the Agriculture and Fisheries Food Security Office, the Social Service, and the Public Housing and Settlement Area Office in Serang City.

2. Overlapping Administration

The implementation of post-disaster rehabilitation and reconstruction administratively often clashes between the Provincial Disaster Management Agency and the Serang City Regional Disaster Management Agency. This occurs because of the submission of disaster assistance from prospective beneficiaries who submit in two places, namely the Provincial Office and the City Office. As a result, verification to victims clashes where verification should be carried out by one agency but becomes two verifications, namely from the Province and the City.

3. Lack of Information and Public Understanding

The implementation of rehabilitation and reconstruction by the Regional Disaster Management Agency of Serang City still has many misunderstandings due to lack of information and understanding from the community. This occurs in one of the provision of building reconstruction assistance where building infrastructure repairs can only be carried out on certificates of ownership or still have a blood relationship with the owner of the house, such as grandparents. Certificates other than property rights such as Building Rights Certificates cannot obtain post-disaster reconstruction assistance and cannot continue verification.

4. Budget Limitations

The implementation of legal protection for victims of natural disasters through rehabilitation and reconstruction has not been realized due to the limited budget issued by the government and the income of Serang City which is still far from the necessary assistance needs. The assistance provided has not been adequate, both logistical distribution and assistance in infrastructure development.

Conclusion

The results of the research and the description of the discussion regarding the authority of the Regional Disaster Management Agency of Serang City in the Legal Protection of Natural Disaster Victims through Post-Disaster Rehabilitation and Reconstruction in the previous chapters and subchapters, the researchers draw the following conclusions:

1. Implementation of the Authority of the Regional Disaster Management Agency of Serang City in the Legal Protection of Natural Disaster Victims through Post-Disaster Rehabilitation and Reconstruction based on Regional Regulation Number 16 of 2011 concerning Disaster Management. Legal protection provided by the Regional Disaster

Management Agency of Serang City is provided preventively and repressively, preventive legal protection is carried out through the prevention of disasters by conducting socialization to the community related to disaster preparedness, disseminating disaster-related information through social media and the official website of the Regional Disaster Management Agency, as well as implementing and enforcing regional spatial plans through cooperation with the Public Housing and Settlement Areas Office in carrying out development. Repressive legal protection is carried out through rehabilitation and reconstruction. Rehabilitation is carried out through environmental improvement of disaster areas, and socio-economic and cultural recovery through logistical assistance. Reconstruction is carried out through the rebuilding of facilities and infrastructure and the application of appropriate design in the use of better equipment. These efforts are a form of legal protection for victims of post-disaster natural disasters in accordance with Articles 40 paragraph (1) and 41 paragraph (1) of Serang City Regional Regulation Number 16 of 2011 concerning Disaster Management.

2. Obstacles to the Implementation of the Authority of the Regional Disaster Management Agency of Serang City in the Legal Protection of Natural Disaster Victims through Post-Disaster Rehabilitation and Reconstruction based on Serang City Regional Regulation Number 16 of 2011 concerning Disaster Management where preventive legal protection provided by the Regional Disaster Management Agency of Serang City is by conducting socialization related to disaster preparedness and disaster management, disseminating information directly or through social media or websites and enforcing regional spatial plans assisted by the Office of Public Housing and Settlement Areas in its implementation there are obstacles where the lack of understanding of the community regarding the socialization carried out by the Regional Disaster Management Agency makes the community confused about what to do when reporting the assistance needed after a disaster. Providing assistance to the community is provided through an administrative stage to obtain verification regarding the correctness of the data so that assistance is provided. The administration carried out by the Public Housing and Settlement Areas Office still overlaps as a result of which the assistance to be provided to victims clashes during verification. Repressive legal protection provided by the Regional Disaster Management Agency of Serang City includes rehabilitation and reconstruction, namely by providing assistance in the form of logistics carried out by the Social

Service and providing assistance for infrastructure development assisted by the Public Housing and Settlement Areas Office. The obstacles in repressive legal protection are the lack of participation from the Health Office to restore mental health to victims and the Food Security and Agriculture Office to provide basic fulfillment assistance such as rice and other food staples, causing the provision of assistance to be not optimal.

The Regional Disaster Management Agency of Serang City is only assisted by. The implementation of disaster management by the Regional Disaster Management Agency of Serang City is still a lot that has not been realized due to the limited budget available.

Recommendation

The results of the description of the conclusions described above, the researchers provide recommendations and suggestions as follows:

1. It is necessary to maximize the assistance of related agencies such as the health office and the food security, agriculture and fisheries office of Serang City to provide post-disaster management assistance so that the assistance provided to victims is realized from all aspects, such as physical and mental health, opening public kitchens for victims, providing logistical assistance, providing assistance to fulfill basic needs and repairing building infrastructure in accordance with what is mandated in the Serang Mayor Regulation Number 11 of 2022 concerning Procedures for Providing Assistance to Communities Due to Disaster Emergencies Sourced from the Regional Revenue and Expenditure Budget of Serang City.
2. It is necessary to improve good communication between agencies to avoid overlapping files caused by potential beneficiaries. In order for the assistance provided to run smoothly, the Provincial and City Offices must establish good communication to continue to work together regarding verification of assistance to victims of natural disasters.
3. The need to improve public awareness and understanding of disaster management to prevent further misunderstandings among the community. Information provided by the agency to the community must be explained in detail and clearly so that the community can easily understand what is meant by the information provided.
4. The need to increase regional income for more optimal disaster management. The reason why all of the assistance provided has not been realized is due to a limited budget, which is insufficient to build better facilities and infrastructure or provide other forms of assistance. Therefore, it is hoped that

the amount of assistance can be increased for more optimal disaster management.

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Youth Engagement in Politics: Exploring the Role of Information and Personal Motivation

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ABSTRACT

The growing interest of young people in political issues has emerged as a significant focus in contemporary democratic discourse, particularly within the context of the digital era. Various discussions surrounding youth political engagement continue to generate compelling debates, underscoring the importance of understanding the extent of young people's interest in politics and the factors that shape it. This study explores the relationship between political information motivation and political participation among youth, with a particular emphasis on their involvement during the 2024 presidential election. As a crucial demographic group in shaping democratic processes, young individuals increasingly turn to digital platforms – primarily social media – to access diverse political information. Drawing upon the Uses and Gratification Theory and the Self-Determination Theory, this research examines the underlying factors that motivate youth to engage in political affairs. Employing a qualitative survey method with open-ended questions, the study involved 65 university students. The analysis reveals that young people are driven to access political information on social media by a range of motivations, including surveillance (the desire to stay informed about current political events), guidance (to understand political issues), entertainment (seeking entertainment in political issues), social utility (to support peer discussions and align with social conversations). Furthermore, the study finds that youth participation in electoral processes is primarily motivated by a sense of civic responsibility and a belief in the value of their contributions as young citizens – reflecting a form of self-determined political engagement. These findings highlight the importance of recognizing motivational and self-efficacy factors in fostering active, voluntary, and meaningful youth participation within Indonesia's democratic landscape.

Keyword: digital politic, youth political participation, uses and gratification, self-determination

ABSTRAK

Ketertarikan anak muda dengan isu politik telah menjadi perhatian penting dalam demokrasi kontemporer, khususnya dalam konteks era digital. Berbagai wacana mengenai keterlibatan anak muda dalam politik selalu menjadi diskusi dan perdebatan yang menarik sehingga penting untuk mengetahui sejauh mana minat anak muda terhadap politik dan factor-faktor yang membentuknya. Studi ini mengeksplorasi hubungan antara motivasi informasi politik dan partisipasi politik di kalangan anak muda, dengan fokus pada keterlibatan mereka selama pemilihan presiden 2024. Sebagai kelompok demografi penting dalam membentuk proses demokrasi, kaum muda semakin beralih ke platform digital – khususnya media sosial – untuk mendapatkan berbagai informasi mengenai politik. Mengacu pada Teori *Uses and Gratification* dan Teori *Self-Determination*, penelitian ini menyelidiki faktor-faktor yang mendorong anak muda untuk terlibat dalam urusan politik. Studi ini menggunakan metode survei kualitatif dengan pertanyaan terbuka, yang melibatkan 65 mahasiswa. Dari analisis yang dilakukan, studi ini menunjukkan bahwa kaum muda mengakses informasi politik di media sosial didorong oleh berbagai motivasi seperti motivasi pengawasan (ingin mendapatkan informasi tentang berbagai peristiwa politik terkini), panduan (untuk memahami persoalan politik), hiburan (mencari hiburan dalam isu politik), dan motivasi utilitas sosial (untuk modal dalam diskusi dan menyesuaikan diri dengan obrolan rekan sejawat). Selain itu, studi ini menemukan bahwa keikutsertaan anak muda dalam proses elektoral didorong oleh rasa tanggung jawab sipil dan keyakinan akan nilai kontribusi diri mereka sebagai anak muda – yang mencerminkan bentuk keterlibatan politik yang ditentukan diri sendiri. Hasil ini menunjukkan



pentingnya memahami faktor motivasi dan kepercayaan diri individu dalam mendorong partisipasi pemuda yang aktif, sukarela, dan bermanfaat dalam lanskap demokrasi Indonesia..

Kata Kunci: politik digital, partisipasi politik anak muda, uses and gratification, self-determination

Introduction

In recent years, the political engagement of young people has become an increasingly important subject of study, particularly in the context of rapid technological advancement and changing patterns of media consumption. It is characterized as a group that exhibits enthusiasm for the presence of digital media, yet demonstrates limited interest and participation in political affairs ¹, displaying apathy and, in some cases, withdrawal from political matters ². Young people today have access to an unprecedented amount of political information, largely due to the widespread use of the internet and social media platforms. This digital space not only broadens the range of political news sources but also transforms how young individuals receive, interpret, and engage with political content, thereby giving rise to novel forms of alternative political actions ³.

In the digital age, the way young people engage with political information has undergone a significant transformation. Globally, youth are increasingly turning to online platforms—especially social media—for news, produce and distribute political content, memes and humor, and civic engagement ⁴. This shift has redefined the nature of political participation, moving beyond traditional forms such as voting or party membership to include activities like online petitions, digital activism, and the creation and sharing of political content. As digital natives, today's youth are not just passive recipients of political information; many are active

¹ Hasbullah Azis, Pawito Pawito, and Agung Satyawan, "Motif Penggunaan Media Informasi Politik Oleh Anak Muda Tionghoa Di Media Sosial," *ETTISAL : Journal of Communication* 5, no. 1 (2020): 1–16, <https://doi.org/10.21111/ejoc.v5i1.3886>.

² Matt Henn and Nick Foard, "Social Differentiation in Young People's Political Participation: The Impact of Social and Educational Factors on Youth Political Engagement in Britain," *Journal of Youth Studies* 17, no. 3 (2014): 360–80, <https://doi.org/10.1080/13676261.2013.830704>; Tom P. Bakker and Claes H. de Vreese, "Good News for the Future? Young People, Internet Use, and Political Participation," *Communication Research* 38, no. 4 (2011), <https://doi.org/10.1177/0093650210381738>.

³ Ana Pontes, Matt Henn, and Mark Griffiths, "Towards a Conceptualization of Young People's Political Engagement: A Qualitative Focus Group Study," *Societies* 8, no. 1 (2018): 17, <https://doi.org/10.3390/soc8010017>; Hasbullah Azis, Pawito, and Agung Satyawan, "Examining Communication Mediation Model on Chinese on Youth Online Political Engagement," *Profetik Jurnal Komunikasi* 13, no. 2 (2020): 340–55, <http://ejournal.uin-suka.ac.id/isoshum/profetik/article/view/1841>; UNDESA, "Youth, Political Participation And Decision-Making," *United Nations Youth*, no. June (2015).

⁴ Bakker and de Vreese, "Good News for the Future? Young People, Internet Use, and Political Participation," 465; Philip N. Howard and Malcolm R. Parks, "Social Media and Political Change: Capacity, Constraint, and Consequence," *Journal of Communication*, 2012, <https://doi.org/10.1111/j.1460-2466.2012.01626.x>; Indra Lestari, Iriyani Astuti Arief, and Muh.Djufri Rachim, "PARTISIPASI POLITIK GENERASI Z PADA NEW MEDIA MENJELANG PEMILIHAN GUBERNUR SULAWESI TENGGARA 2024," *Journal Publicuho* 7, no. 4 (December 29, 2024): 2297–2308, <https://doi.org/10.35817/publicuho.v7i4.600>.

participants in shaping political discourse in the digital public sphere ⁵. This shift marks a transformation in how political awareness is developed and how civic engagement unfolds. From following political influencers on TikTok to debating on X (Twitter), young people today are engaging with politics in ways that are often creative, informal, spontaneous, and shaped by digital culture ⁶.

Indonesia, as one of the world's largest democracies with a young and digitally connected population, offers a unique context to understand these changing patterns. With more than half of its population under the age of 30 and over 80% internet penetration, Indonesian youth are among the most active internet and social media users in Southeast Asia. According to data from the Indonesian Internet Service Providers Association (APJII), more than 80% of the population is online, with youth aged 16–30 being the most active demographic ⁷. Platforms like Instagram, Twitter (now X), TikTok, and YouTube have become key spaces where young Indonesians encounter and discuss political issues—from presidential elections and policy debates to social justice movements and grassroots campaign ⁸.

However, this fragmented media environment raises important questions about how and why young people choose to consume political information. Their news media choices are not driven solely by a desire to stay informed but may include social exchange, entertainment, form and express self-identity, or access the profile of political candidate ⁹. However, the motivations that drive young people to use social media for political information—and to participate in electoral processes—are diverse and not yet fully understood.

In examining individuals' motivations for media use, scholars in the field of media propose the application of the Uses and Gratification (U&G) theory as a

⁵ Ana Laura Maltos-Tamez, Francisco Javier Martínez-Garza, and Oscar Mario Miranda-Villanueva, "Digital Media and University Political Practices in the Public Sphere," *Comunicar* 29, no. 69 (2021), <https://doi.org/10.3916/C69-2021-04>; Dagmar Hoffmann, "The Socialization Relevance of Digital Media Practices in Adolescence in Times of Polycrisis," *Zeitschrift Für Bildungsforschung* 15, no. 1 (April 9, 2025): 21–32, <https://doi.org/10.1007/s35834-024-00456-3>.

⁶ Alexander, Cho, Jasmina; Byrne, and Pelter Zoe, "Digital Civic Engagement by Young People," *UNICEF Office of Global Insight and Policy*, 2020; Tomaz Deželan, "Young People's Participation in European Democratic Processes. How to Improve and Facilitate Youth Involvement," 2023, 19.

⁷ APJII, "Survei Penetrasi Internet Indonesia 2024," *Asosiasi Penyelenggara Jasa Internet Indonesia (APJII)* (Jakarta, 2024), <https://survei.apjii.or.id/survei/group/9>.

⁸ Rachmah Ida, "Social Media Brings Young Indonesians in from Political Fringe," *360Info*, 2023, <https://360info.org/social-media-brings-young-indonesians-in-from-political-fringe/>; Deni Zein Tarsidi et al., "Social Media Usage and Civic Engagement among Indonesian Digital Natives: An Analysis," *Jurnal Civics: Media Kajian Kewarganegaraan* 20, no. 2 (2023), <https://doi.org/10.21831/jc.v20i2.60812>; Frans Ari Prasetyo, "Youth, YouTube, and Protest in the Indonesia Darurat Movement," *mediacommons.org*, 2025, <https://mediacommons.org/imr/content/youth-youtube-and-protest-indonesia-darurat-movement>.

⁹ Raffael Heiss, Johannes Knoll, and Jörg Matthes, "Pathways to Political (Dis-)Engagement: Motivations behind Social Media Use and the Role of Incidental and Intentional Exposure Modes in Adolescents' Political Engagement," *Communications* 45, no. S1 (2020), <https://doi.org/10.1515/commun-2019-2054>; Ngozi Joy Onyechi, "Taking Their Destiny in Their Hands: Social Media, Youth Participation and the 2015 Political Campaigns in Nigeria," *African Journalism Studies* 39, no. 1 (2018): 79, <https://doi.org/10.1080/23743670.2018.1434998>.

valuable framework. This theory provides insight into why individuals engage with media or adopt emerging information and communication technologies. Users actively engage in the communication process and employ a variety of media to attain specific objectives and fulfill their expectations ¹⁰. In the context of political information, UGT offers a pertinent perspective for exploring the motivations that drive individuals, particularly youth, to utilize social media as a source of political information. The theory emphasizes that media users are active agents who deliberately seek content to fulfill specific needs, such as acquiring information, engaging in social interaction, seeking entertainment, or constructing their identities ¹¹.

While digital platforms may inform and influence political attitudes, the decision to vote or participate in elections is shaped by more complex psychological and social factors. This is where the concept of Political Self-Determination becomes relevant. Political self-determination refers to an individual's belief in their capacity and right to influence political outcomes, express civic identity, and make autonomous decisions as part of a democratic society. In Indonesia's political landscape, where trust in institutions and political efficacy varies across regions and social groups, understanding how youth perceive their political agency is essential.

Likewise, their motivations to vote or participate in elections may be influenced by a range of factors including peer influence, personal values, or exposure to political content online. Understanding the motivations behind youth news media use is critical for evaluating their role in sustaining democratic dialogue and informed citizenship.

The urgency of this research stems from the widening gap between Indonesian youths' active digital presence and their limited formal political engagement—an issue that holds serious implications for the vitality of democratic processes. Recent studies have found that while youth are prolific users of social media, their engagement is often driven more by identity expression,

¹⁰ Moses Sichach, "Uses and Gratifications Theory - Background, History and Limitations," *SSRN Electronic Journal*, 2024, 2, <https://doi.org/10.2139/ssrn.4729248>; Elihu Katz, Jay G. Blumer, and Michael Gurevitch, "Utilization of Mass Communication by the Individual," in *The Uses of Mass Communications: Current Perspectives on Gratifications Research*, ed. Jay G. Blumer and Elihu Katz, 2nd ed. (California: SAGE Publication, Inc., 1974), 21.

¹¹ Kavita Sharma and Devinder Pal Singh, "Motivations for Youths' Political Participation on Social Media: Implications for Political Marketers," *International Journal of Indian Culture and Business Management* 1, no. 1 (2020), <https://doi.org/10.1504/ijicbm.2020.10028537>; Azis, Pawito, and Satyawan, "Examining Communication Mediation Model on Chinese on Youth Online Political Engagement"; Nor Hafizah Abdullah, Tuan Sharifah Azura Tuan Zaki, and Muhamad Fazil Ahmad, "Shaping the Future: Social Media's Role in Youth Political Information and Engagement - A Review of Literature," *International Journal of Academic Research in Business and Social Sciences* 14, no. 12 (December 6, 2024), <https://doi.org/10.6007/IJARBSS/v14-i12/23955>.

entertainment, or social connectivity than by a commitment to civic duty ¹². This research presents a novel contribution by combining the Uses and Gratifications Theory (UGT) with the concept of Political Self-Determination to explore how these motivations shape political behavior in digital spaces – an integrative approach that is still limited in the Indonesian context. By situating the study within Indonesia's rapidly evolving media ecosystem, this research responds directly to the need for context-specific, interdisciplinary insights into how youth form political attitudes and make decisions in a highly mediatized democracy.

Therefore, this research seeks to explore two interrelated aspects of youth political participation in the digital era:

(1) the motivations behind young people's use of social media to access political information, and

(2) the factors that influence their desire to participate in electoral processes, particularly in the Indonesian context.

By examining these motivations, this study aims to elucidate the psychological factors that affect youth engagement with political news and content on social media, as well as their participation in the 2024 Indonesian Election. The findings are anticipated to offer a comprehensive understanding that can inform government efforts in developing effective political education strategies tailored to young people, ensuring that this demographic is neither overlooked nor marginalized within the dynamics of formal political processes.

Research Methodology

This study employs a qualitative approach within the interpretivist paradigm to examine how young people in Indonesia utilize social media for political news and the factors that motivate their participation in electoral processes. According to Creswell (2014), qualitative research is exploratory and seeks to investigate a problem most effectively examined through an in-depth exploration of a specific concept or lived experience ¹³. The design of this research aims to capture the rich, subjective experiences of youth in the context of digital political engagement during the 2024 general election. The research is exploratory and descriptive, intending to generate insights rather than test hypotheses or produce statistical generalizations.

¹² Fiona Suwana, "What Motivates Digital Activism? The Case of the Save KPK Movement in Indonesia," *Information, Communication & Society* 23, no. 9 (July 28, 2020): 1295–1310, <https://doi.org/10.1080/1369118X.2018.1563205>; Loso Judijanto et al., "Pengaruh Politik Identitas Dan Penggunaan Media Sosial Terhadap Partisipasi Politik Digital Pemilih Milenial Dan Gen Z Di Indonesia," *Sanskara Ilmu Sosial Dan Humaniora* 2, no. 01 (December 31, 2024): 24–35, <https://doi.org/10.58812/sish.v2i01.500>.

¹³ John W. Creswell and J. David Creswell, *Research Design Qualitative, Quantitative, and Mixed Methods Approaches*, 5th ed. (California: SAGE Publication, Inc., 2018).

This study employed an open-ended qualitative survey to examine how individuals engage with political content on social media and how this relates to their political interests and voting intentions. The use of open-ended questions allowed participants to provide detailed, personal responses, resulting in rich textual data. Compared to traditional interviews, this approach enabled broader participation while still capturing individual experiences and insights.

The survey focused on two central themes:

1. Participants' motivations for using social media to access political information;
2. The factors that influence their interest in politics and their intention to vote.

The survey was administered online through Google Forms, making it accessible to a wide audience and allowing for efficient distribution and data collection.

The participants in this study were young individuals selected through purposive sampling, a non-probability sampling method used to ensure that respondents possessed relevant knowledge and experience related to the research focus and the research question. Specifically, the sample comprised first-time and young voters and well educated who actively use social media platforms. Participants were chosen based on predefined criteria aligned with the study's objectives, allowing the researcher to make informed, purposeful selections. The targeted demographic included college students aged 20 to 25, representing a group considered both politically emergent and digitally engaged.

The data collected were analyzed using thematic analysis, a widely used method in qualitative research for identifying, analyzing, and interpreting patterns of meaning within textual data ¹⁴. The analytical process followed several key steps: organizing and preparing the data, thoroughly reading all responses to gain familiarity, generating initial codes, constructing themes and categories, and interpreting the findings within a theoretical framework.

To guide the interpretation of the data, this study employed a dual-theoretical lens: Uses and Gratifications Theory (UGT) and Self-Determination Theory (SDT). UGT provided insight into participants' motivations for engaging with political content on social media, while SDT offered a deeper understanding of the psychological needs. Together, these frameworks facilitated a more nuanced interpretation of how young people's media use is shaped by both external motivations and internal psychological drivers in the context of digital political participation.

¹⁴ J W Creswell and Cherly N. Poth, *Qualitative Inquiry and Research Design: Choosing among Five Approaches*, 4th ed. (SAGE Publication, Inc., 2018).

Result and discussion

This section presents and interprets the findings of the study using the lenses of Uses and Gratification Theory (UGT) and Self-Determination Theory (SDT), highlighting how young people in Indonesia engage with political content on social media and what motivates their participation in the 2024 electoral process.

The survey results indicate that, in the context of the 2024 election, young people increasingly rely on social media platforms—particularly Instagram, TikTok, and Twitter/X as primary sources of political news and updates. Among these, Instagram emerged as the most frequently accessed platform for political

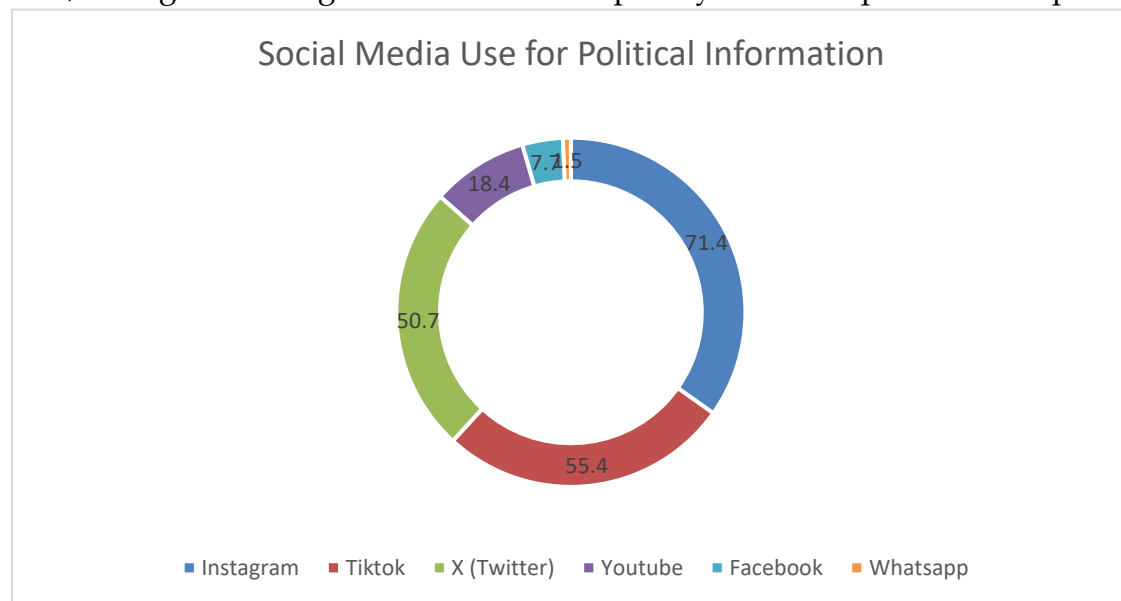


Figure 1. Social Media News Use

content. This finding aligns with recent studies that highlight the growing role of visual and interactive platforms in shaping youth political engagement¹⁵. Instagram's algorithmic feed, use of stories and reels, and high level of user engagement make it particularly effective for disseminating political messages in ways that are easily consumable and emotionally resonant for younger audiences.

1.1 Youth Motivation for Social Media News Use

This study reveals that Indonesian youth engage with political content on social media for four primary motivations: surveillance, guidance, entertainment, and social utility. These motivations reflect the broader framework of Uses and Gratification Theory, which posits that media audiences actively seek content that fulfills specific psychological and social needs.

¹⁵ Shelley Boulianne and Christian P. Hoffmann, "The Social, Civic, and Political Uses of Instagram in Four Countries," *Journal of Quantitative Description: Digital Media* 2 (2022), <https://doi.org/10.51685/jqd.2022.001>; Martino Trevisan et al., "Towards Understanding Political Interactions on Instagram," in *HT 2019 - Proceedings of the 30th ACM Conference on Hypertext and Social Media*, 2019, <https://doi.org/10.1145/3342220.3343657>.

The first motivation for young people to access political information on social media is surveillance motivation (information seeking). This is reflected in their efforts to remain updated on current political issues, developments related to the election agenda, and practical information concerning voting procedures. Social media provides a space for young people to monitor the political landscape to understand the main issues and events of each day. It serves as a primary source where political readers are interested in finding political news or information that is being widely discussed today ¹⁶.

“I want to get the latest info about politics. Observe what issues are currently being hotly discussed/trending topics by the digital community”

“I want to stay up to date with the latest political news”

With regard to political guidance, the findings of this study align with those of Gil de Zúñiga, Jung, and Valenzuela (2012), who observed that young people increasingly rely on digital media not only to access news but also to receive interpretive cues that assist in making electoral decisions ¹⁷. This trend highlights the evolving function of social media as an informal yet influential educational resource, shaping political understanding and decision-making among young voters in the digital age.

“I want to have knowledge about politics so that it helps me to be an informed voter “

“to find out what the track records and policies are of the candidates (presidential and vice presidential) that I will choose “

Entertainment also emerged as a notable motivation for political news consumption among young people. Consistent with prior research, this study found that entertainment-oriented content can serve as a gateway to political engagement. Participants reported being drawn into political discussions through humorous, emotionally resonant, or satirical formats— such as memes, humorous comments, and humorous content about politics—which initially attract attention but often lead to deeper interest in political issues.

¹⁶ Daekyung Kim and Thomas J. Johnson, “Political Blog Readers: Predictors of Motivations for Accessing Political Blogs,” *Telematics and Informatics* 29, no. 1 (2012), <https://doi.org/10.1016/j.tele.2011.04.003>.

¹⁷ Homero Gil de Zúñiga, Nakwon Jung, and Sebastián Valenzuela, “Social Media Use for News and Individuals’ Social Capital, Civic Engagement and Political Participation,” *Journal of Computer-Mediated Communication* 17, no. 3 (April 2012): 319–36, <https://doi.org/10.1111/j.1083-6101.2012.01574.x>.

“Entertain myself by watching funny political content “

“Reading funny netizen comments and content that each one is promoting their chosen candidate “

Rather than reducing the significance of political discourse, political entertainment content can play a substantive role in political socialization. This is consistent with the findings of Karlis (2013), who asserts that youth are motivated to engage with current events on social media not solely for informational purposes, but also for the entertainment and enjoyment provided by these platforms¹⁸. The entertainment value associated with social media makes news consumption more accessible, engaging, and interactive for this demographic. In this regard, entertainment functions not merely as a diversion, but as a mechanism that stimulates critical reflection, fosters discussion, and enhances youth participation in political matters.

Framing this within the Uses and Gratifications Theory, the appeal of entertainment-based political content reflects young users' desire to fulfill both informational and affective needs. UGT suggests that audiences actively select media that satisfy specific psychological gratifications, including the need for enjoyment, emotional connection, and cognitive stimulation¹⁹. In this study, the integration of humor and emotion into political content enabled youth not only to access information in a more engaging format, but also to sustain interest in topics that might otherwise seem inaccessible or overwhelming.

Another significant motivation for the use of political news on social media is social utility, wherein young individuals engage with political content to participate in discussions. This finding is consistent with previous research, which suggests that social media offers a platform for civic engagement and public discourse through its participatory and conversational nature²⁰. The study indicated that young Indonesians utilize social media to project their political identities and connect with peer groups.

“I want to be involved in political discussions “

¹⁸ John Vincent Karlis, “THAT’S NEWS TO ME: AN EXPLORATORY STUDY OF THE USES AND GRATIFICATIONS OF CURRENT EVENTS ON SOCIAL MEDIA OF 18-24 YEAR-OLDS” (University of South Carolina, 2013), <https://scholarcommons.sc.edu/etd/2347/>.

¹⁹ Katz, Blumer, and Gurevitch, “Utilization of Mass Communication by the Individual.”

²⁰ Chandralekha JS, “Social Media, Civic Engagement and Public Spheres,” *International Journal For Multidisciplinary Research* 5, no. 4 (2023), <https://doi.org/10.36948/ijfmr.2023.v05i04.4929>.

“I want to increase my knowledge (about politics) so that I can interact in class forums”

“I want to increase my (political) knowledge and participate in political discussions with people who have the same or different (political) views as me”

Furthermore, social utility is closely intertwined with the concept of social capital, which refers to the networks, relationships, and resources individuals can access through their social connections. Collins et al. (2014) emphasize the pivotal role of social capital in fostering collective efficacy, a process that drives community engagement and enhances civic participation ²¹. In this context, social media platforms provide an essential space for youth to develop and strengthen their social networks, form connections with like-minded individuals, and amplify their influence within their communities. These platforms not only facilitate political engagement but also function as crucial resources for accumulating social capital, thereby underscoring the interconnectedness of political participation and social interaction in the process of social capital development.

1.2 Youth Motivations for Electoral Participation

In relation to electoral participation, the study finds that youth are motivated by a **sense of civic responsibility** and a belief that their involvement can contribute to national progress. This aligns with Self-Determination Theory, which states that intrinsic motivation is driven by the satisfaction of three basic psychological needs: autonomy, competence, and relatedness. Autonomy refers to the ability to act according to one's own will and choices without external pressure. Competence means feeling capable and effective in completing tasks. Relatedness is the need to feel connected and accepted by others ²². In the context of youth political engagement, autonomy is reflected in young people's strong desire to freely express and exercise their political rights. They value having the freedom to form their own political opinions and make independent voting decisions. Competence relates to their efficacy and preparedness to participate in democratic processes, such as understanding political issues and feeling capable of contributing meaningfully. Relatedness involves the sense of belonging to a larger community, which motivates

²¹ Charles R. Collins, Jennifer Watling Neal, and Zachary P. Neal, “Transforming Individual Civic Engagement into Community Collective Efficacy: The Role of Bonding Social Capital,” *American Journal of Community Psychology* 54, no. 3–4 (2014), <https://doi.org/10.1007/s10464-014-9675-x>.

²² Mika Manninen et al., “Self-Determination Theory Based Instructional Interventions and Motivational Regulations in Organized Physical Activity: A Systematic Review and Multivariate Meta-Analysis,” *Psychology of Sport and Exercise*, 2022, <https://doi.org/10.1016/j.psychsport.2022.102248>; Edward L. Deci and Richard M. Ryan, “The ‘What’ and ‘Why’ of Goal Pursuits: Human Needs and the Self-Determination of Behavior,” *Psychological Inquiry* 11, no. 4 (2000), https://doi.org/10.1207/S15327965PLI1104_01; Richard M. Ryan and Edward L. Deci, *Self-Determination Theory: Basic Psychological Needs in Motivation, Development, and Wellness* (New York: The Guildford Press, 2017).

them to take part in political activities like voting and discussing political matters. Together, these three needs help explain why young people become intrinsically motivated to engage in politics.

Respondents in this study expressed a strong sense of autonomy in choosing their political affiliations and candidates, echoing findings from some research that self-efficacy is one of the key factor in youth participation ²³. Moreover, access to political information through social media enhanced their competence.

“I decided not to abstain from voting because young people (like me) are a generation that can contribute to policy regulation through the democratic party “

“I believe that voting rights are an effective way to contribute to shaping the future of the country”

“I feel it is important to continue my involvement in the democratic process to voice our aspirations as citizens “

The integration of findings reveals a clear relationship between youth media habits and political self-determination. Social media not only informs but empowers young people to participate, reinforcing their identity as active citizens. Motivations rooted in entertainment or peer interaction can lead to deeper forms of engagement, including voting.

These findings suggest that youth political engagement in the digital era is shaped by an interplay between media motivations and psychological needs. While social media serves as a tool for informing and entertaining, it also reinforces youth political agency and helps nurture a sense of belonging in democratic life. In contrast to the narrative of youth apathy, this study supports a more optimistic view of digital citizenship, where political participation is motivated not only by duty but also by identity, curiosity, and a desire for meaningful impact.

Conclusion

²³ Azis, Pawito, and Satyawan, “Examining Communication Mediation Model on Chinese on Youth Online Political Engagement”; Warhi Pandapotan Rambe et al., “Pilkada During a Pandemic: The Influence of News Media on Trust and Political Participation Amid the COVID-19 Pandemic,” *Proceedings Of International Conference On Communication Science* 2, no. 1 (2022), <https://doi.org/10.29303/iccsproceeding.v2i1.119>; Hasbullah Azis, “Pemilihan Di Masa Krisis: Refleksi Dampak Media Pemberitaan Terhadap Kepercayaan Dan Partisipasi Politik Di Tengah Krisis Kesehatan Covid-19,” *Harmoni: Jurnal Ilmu Komunikasi Dan Sosial* 2, no. 2 (April 3, 2024): 42–59, <https://doi.org/10.59581/harmoni-widyakarya.v2i2.2889>; Byongsam Jung, “Factors Affecting Korean Youth s Political Efficacy and Political Participation,” *Korea Association for Public Value* 2 (2021), <https://doi.org/10.53581/jopv.2021.2.1.23>; Brett L.M. Levy and Thomas Akiva, “Motivating Political Participation Among Youth: An Analysis of Factors Related to Adolescents’ Political Engagement,” *Political Psychology* 40, no. 5 (2019), <https://doi.org/10.1111/pops.12578>.

This study has explored the motivations of Indonesian youth in using social media for political news and their engagement in the 2024 electoral process. Drawing on Uses and Gratification Theory (UGT) and Self-Determination Theory (SDT), the research highlights that youth are not passive recipients of information, but active participants who seek out political content on social media to satisfy specific needs. These include the desire for surveillance (to stay informed), guidance (to make decisions), entertainment (to enjoy and relate), and social utility (to connect and express). In parallel, the study found that youth participation in electoral processes is significantly motivated by a sense of civic responsibility, a belief in the value of their political contribution, and the fulfillment of autonomy, competence, and relatedness.

The findings challenge the stereotype of political disengagement among young people, particularly in Indonesia. Rather than being apathetic, youth today are deeply embedded in digital political culture, where media content, civic identity, and personal values intersect. Their political involvement is shaped not only by the content they consume but also by the ways in which digital media allow them to interpret, share, and act upon that content. This has significant implications for how we understand youth civic engagement in a post-digital world.

Theoretically, the study reinforces the relevance of UGT and SDT as complementary lenses for analyzing media behavior and political action. UGT explains the functional motivations for media use, while SDT offers a psychological understanding of why young people choose to participate in democratic processes. Together, they provide a holistic framework for examining how internal drives and external media environments interact to shape youth political participation.

Suggestions

This research utilized Uses and Gratification Theory and Self-Determination Theory, other theoretical frameworks could further illuminate the complex relationships between media use, political identity, and civic behavior – such as the Civic Voluntarism Model or Networked Public Sphere Theory. Exploring how different media platforms (e.g., TikTok vs. YouTube vs. Twitter/X) uniquely shape political participation could also enrich future research.

In terms of direction, future research may explore how algorithmic filtering, misinformation, or digital activism trends impact youth political attitudes and behaviors over time. Longitudinal studies that track political engagement across multiple elections could provide a clearer picture of how media habits evolve and influence democratic participation among the youth.

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Juridical Review Of Mortgage Execution In Bad Credit Cases: A Civil Procedure Law Perspective

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ABSTRACT

This study critically examines the effectiveness of mortgage right execution under Indonesian civil procedural law in addressing non-performing loans. Employing a normative juridical approach through literature review, it analyzes statutory provisions and legal doctrines, particularly Law No. 4 of 1996 on Mortgage Rights. The findings reveal that despite the availability of mechanisms such as *parate executie*, executorial titles, and private sales, practical implementation remains hindered by complex bureaucracy, debtor objections, and procedural inefficiencies. The study highlights the potential role of digitalization, particularly blockchain technology, in enhancing transparency and legal certainty. It recommends regulatory harmonization, development of digital infrastructure, and a rights-based legal framework to strengthen protection for creditors, debtors, and third parties.

Keywords: *Mortgage Rights, Non-Performing Loans, Collateral Execution, Regulatory Reform, Legal Digitalization.*

Introduction

In the Indonesian civil law system, the mortgage rights have a vital position as an instrument of collateral in credit relationships. Mortgage rights, which are exclusively regulated in Law Number 4 of 1996 on Mortgage Rights (stated as UUHT), are a legal construction to give loan debtors with their property assets (harta benda) as securities to guarantee the reimbursement of creditors' debt. The existence of mortgage rights not only provides guarantees to creditors but also provides debtors with access to financing through the management of their assets¹. Therefore, mortgage rights constitute a crucial force to safeguard the stability of the national economic system.

A key component of the UUHT for the analytic approach is the significance of the legal formalism in creating mortgage rights, where the deed is the act in which the notary is present. According to the law articles of the Mortgage Law, mortgage deeds must be made in writing and notarised to have legal effects. This adds to the legal certainty of rights and responsibilities between the parties and minimises

¹ Fera Puspita Rianto, Toto Tohir Suriaatmadja, and Lina Jamilah, "Implementation of Mortgage Rights on the Position of Creditors of Second Mortgage Holders in the Application for Auction Submission," *Journal La Sociale* 5, no. 4 (June 13, 2024): 1072-81, <https://doi.org/10.37899/journal-la-sociale.v5i4.1241>; Bayu Setiawan Hendri Putra and Arief Suryono, "Kedudukan Sertifikat Hak Atas Tanah Sebagai Jaminan Kebendaan Berdasarkan Undang-Undang Hak Tanggungan Atas Tanah Beserta Benda-Benda Yang Berkaitan Dengan Tanah," *Jurnal Privat Law* 8, no. 1 (February 2, 2020): 57, <https://doi.org/10.20961/privat.v8i1.40367>.

possible disputes that may arise in the future². The involvement of a notary provides greater legal protection for creditors and debtors, as well as a trust relationship in providing credit transactions³.

However, implementing mortgage rights faces challenges, especially in bad debts, often the leading cause of execution. The Mortgage Law regulates this process through an auction supervised by the State Asset Service Office and the KPKNL Auction, where creditors have the right to execute collateral to obtain their receivables. Yet the efficacy of implementation is frequently hindered by administrative and technical challenges, including overly complicated documentation and pressure to respect legal procedures⁴.

On the other hand, debtors receive legal protection when executing mortgage rights. This protection aims to ensure that the debtor's rights are respected, even when they are in a position of default. One form of such protection is the obligation for creditors to provide warnings and opportunities for debtors to correct defaults before the execution process is carried out⁵. In the meantime, the equilibrium between the interests of the creditors and the debtor's security is an issue that often reaches a head and needs serious consideration in our legal system⁶.

In the framework of the Indonesian civil law system, the validity of the execution of mortgage rights is not only determined by what was already provided from legal norms as a legal regulation, but also by its impact on the effectiveness of its implementation. The research finds that despite a strong legal basis for the Mortgage Law, the execution of the provision of the mortgage is hampered by many factors, such as the extension of the external factor in the economic situation, or

² Muh Husein Ahmadi, Gusti Ayu Ketut Rachmi Handayani, and Lego Karjoko, "Validity of Mortgage Rights Based on Credit Agreement Aspects," *KnE Social Sciences*, October 4, 2022, <https://doi.org/10.18502/kss.v7i15.12141>.

³ Rianto, Suriaatmadja, and Jamilah, "Implementation of Mortgage Rights on the Position of Creditors of Second Mortgage Holders in the Application for Auction Submission"; Husein Ahmadi, Ayu Ketut Rachmi Handayani, and Karjoko, "Validity of Mortgage Rights Based on Credit Agreement Aspects."

⁴ Disa Soraya, "Legal Protection of Disadvantaged Debtor Customers in The Implementation of Object Execution Auction Procedures in Bank Credit Agreements," *Indonesia Private Law Review* 2, no. 1 (March 24, 2021): 37-48, <https://doi.org/10.25041/iplr.v2i1.2224>; Yulia Sekar Nada, "The Legal Protection for Debtors in the Implementation of Bad Credit Settlement with Guaranteed Objects of Mortgage," *Sultan Agung Notary Law Review* 4, no. 2 (September 4, 2022): 697, <https://doi.org/10.30659/sanlar.4.2.697-715>.

⁵ Aan Rizalni Kurniawan, Faisal Santiago, and Evita Isretno Israhadi, "Legal Consequences of Bankruptcy for Creditors Holding Mortgage Rights and Execution Parate," *Jurnal Indonesia Sosial Sains* 4, no. 06 (June 4, 2023): 509-15, <https://doi.org/10.59141/jiss.v4i06.817>; Nada, "The Legal Protection for Debtors in the Implementation of Bad Credit Settlement with Guaranteed Objects of Mortgage."

⁶ Muhammad Adam Furqon, Sulistyandari Sulistyandari, and Tri Lisiani Prihatinah, "Foreclosed Collateral as an Alternative for Bad Credit Settlement in Indonesia," *Problems of Legality* 1, no. 164 (May 10, 2024): 266-84, <https://doi.org/10.21564/2414-990X.164.287692>.

limited understanding of the parties on their rights and obligations⁷. This indicates the need to strengthen the legal and procedural framework to support more efficient and fair execution.

This study examines mortgage right enforcement in Indonesian civil law, focusing on non-performing loans. It evaluates legal instrument effectiveness, implementation challenges, and fair protection for all parties. Moving beyond theory, the research fills an empirical gap by analyzing how legal and institutional factors influence enforcement outcomes⁸. The findings offer data-driven recommendations to enhance procedural efficiency and fairness, contributing both to academic discourse and practical legal reform in the enforcement of secured credit.

As a formulation of the problem, given the legal and administrative challenges in enforcing mortgage rights in non-performing loan cases, it is essential to reassess the effectiveness of existing legal mechanisms. This study addresses a key question: to what extent is the execution of mortgage rights effective under Indonesian civil procedure law, and how is legal protection ensured for creditors, debtors, and third parties in settling problematic credit disputes?

Based on that question, this research aims to analyze the effectiveness of mortgage execution under Law No. 4 of 1996, identify legal and structural barriers, and propose legal reform strategies, including digital technology integration. The study seeks to support the development of a more adaptive, efficient, and justice-oriented civil legal system in enforcing secured transactions.

Research methods

This study applies a qualitative approach through normative legal analysis and library research⁹. Designed as descriptive-analytical, it explores the provisions of Law No. 4 of 1996 on Mortgage Rights to assess their practical application.

⁷ Rania Rania, Benny Djaja, and Maman Sudirman, "Electronic Legal Certainty of The Roya Deed of Encumbrance," *POLICY LAW NOTARY AND REGULATORY ISSUES (POLRI)* 3, no. 1 (November 14, 2023): 18-27, <https://doi.org/10.55047/polri.v3i1.902>; Furqon, Sulistyandari, and Prihatinah, "Foreclosed Collateral as an Alternative for Bad Credit Settlement in Indonesia."

⁸ Rianto, Suriaatmadja, and Jamilah, "Implementation of Mortgage Rights on the Position of Creditors of Second Mortgage Holders in the Application for Auction Submission"; Soraya, "Legal Protection of Disadvantaged Debtor Customers in The Implementation of Object Execution Auction Procedures in Bank Credit Agreements."

⁹ Pranee Liamputtong, "Qualitative Research in the Social Sciences: Setting the Scene," *How to Conduct Qualitative Research in Social Science*, 2023, 1-13, <https://doi.org/10.4337/9781800376199.00007>.

Library research involves collecting primary and secondary legal materials, including statutes, legal commentaries, and academic journals, focusing on the legal framework for executing mortgage rights in bad credit cases. Documentation techniques are used to extract and organize legal information as the basis for normative analysis¹⁰.

The legal data is examined by identifying relevant norms, assessing their implementation, and evaluating the consistency between written law and practical enforcement. Although no empirical fieldwork is conducted, this normative analysis seeks to uncover gaps between legal ideals and operational realities. It also draws insights from scholarly interpretations and legal doctrines to provide recommendations. The study ultimately aims to promote a more just, transparent, and effective system of mortgage execution within Indonesia's civil procedural framework¹¹.

The analysis was conducted using qualitative legal norm analysis, including identifying relevant norms, systematically interpreting legal texts, and evaluating their effectiveness and consistency. A deductive legal reasoning approach was applied to conclude general norms from specific cases. The analysis also adopted conceptual and comparative approaches by examining legal systems in Canada and Vietnam. These methods were employed to construct legal arguments, identify implementation issues, and formulate policy recommendations grounded in justice principles and regulatory reform.

Results and Discussion

1.1. Effectiveness of Mortgage Execution Mechanism in Indonesian Civil Law

The process of executing mortgage rights in Indonesia is regulated by Law No. 4 of 1996, which provides a legal basis for creditors to execute collateral in cases of debtor default. The three main mechanisms in executing mortgage rights are: First, execution based on parate executie, based on article 6 of the UUHT (Law, 1996): "If the debtor defaults, the first Mortgage Right holder has the right to sell the Mortgage Right object under his authority through a public auction and take payment of his receivables from the proceeds of the sale". This article emphasizes that the creditor carries out execution / sells directly through a public auction without going through the courts.

Second, execution based on the executorial titles, based on article 14 paragraph (2) of the UUHT (Law, 1996): "The Mortgage Certificate as referred to in paragraph

¹⁰ Kendra Lowery, "Critical Development of Courage Within Social Justice School Leaders: Silence, Tempered Radicals, and Revolutionaries," 2020, 355-73, https://doi.org/10.1007/978-3-030-14625-2_150.

¹¹ Kahryn Tarrant, "Qualitative Data Re-Use and Secondary Analysis: Researching in and About a Crisis," 2021, 156-71, <https://doi.org/10.1332/policypress/9781447363798.003.0011>.

(1) contains the words' FOR JUSTICE BASED ON THE ONE ALMIGHTY GOD'. This article confirms the existence of executive power, which can be implemented or executed as with a court decision with permanent legal force.

Third, execution through underhanded sales. The private sale of a mortgaged object is permissible if agreed upon by both the grantor and the mortgage holder. It may proceed after a one-month notice to interested parties via at least two local media outlets, provided no objections are raised. Provisions on private sales typically apply to the creditor, who holds the authority to set the selling price. However, such action requires a prior agreement with the debtor. Based on Article 20, paragraph 1 of the UUHT ¹²:

- 1) If the debtor defaults, then based on:
 - a. The right of the first Mortgage Right holder to sell the Mortgage Right object as referred to in Article 6, or
 - b. The executive title contained in the Mortgage Right certificate, as referred to in Article 14, paragraph (2), the Mortgage Right object is sold through a public auction according to the procedures determined in the laws and regulations for the settlement of the Mortgage Right holder's receivables with priority rights over other creditors.

The mechanism of execution of mortgage rights involves an administrative process involving the court and related institutions. The District Court is a supervisor to ensure that legal procedures are conducted for the execution. However, administrative obstacles and debtor objections often hamper this process¹³. Technical challenges in KPKNL, such as legal objections from third parties claiming rights to collateral objects, extend the duration and reduce the efficiency of execution¹⁴.

Complicated legal and administrative procedures are also a significant obstacle. A default in credit agreements often complicates the legal process due to legal disputes between creditors and debtors¹⁵. The lack of coordination between agencies, such as the KPKNL and the courts exacerbates this¹⁶. Therefore, Efforts to harmonize regulations and improve procedural efficiency are crucial for effective

¹² Undang-Undang, "Undang-Undang Nomor 4 Tahun 1996 Tentang Hak Tanggungan," 1996.

¹³ Yustiana Yustiana, "Eksekusi Hak Tanggungan Terhadap Kredit Macet Bank," *Al-Ishlah: Jurnal Ilmiah Hukum* 23, no. 1 (May 17, 2020): 77-97, <https://doi.org/10.56087/aijih.v23i1.38>.

¹⁴ Windy Putri Daniati, "Eksekusi Hak Tanggungan Dalam Kredit Macet Melalui Jalur Kantor Pelayanan Kekayaan Negara Dan Lelang (KPKNL)," *Jurnal Privat Law* 9, no. 1 (2021): 202-9, <https://doi.org/https://doi.org/10.20961/privat.v9i1.28744>.

¹⁵ Verianti C and Saptanti N, "Wanprestasi Dalam Perjanjian Kredit Pemilikan Rumah (KPR) Pada Bank Tabungan Negara Kantor Cabang Solo," *Perkara: Jurnal Ilmu Hukum Dan Politik* 2, no. 1 (February 26, 2024): 398-414, <https://doi.org/10.51903/perkara.v2i1.1788>.

¹⁶ Burhan Sidabariba et al., "Fulfilling the Rights of the Parties in the Auction Execution in Indonesia : A Review," *RUSSIAN LAW JOURNAL* XI, no. 5 (2023): 2910-20, <https://www.russianlawjournal.org/index.php/journal/article/view/3184/1981>.

mortgage execution in Indonesia. Legal certainty and justice for all parties remain key indicators. Digitalisation via electronic mortgage rights can streamline the process, but significant obstacles persist, including inadequate digital infrastructure and a lack of supporting regulations, which hinder full implementation and procedural effectiveness¹⁷.

Blockchain technology can increase transparency in the economic and financial sectors by reducing transaction costs and accelerating legal processes and mortgage transactions. Blockchain provides an immutable distributed ledger, allowing for faster and easier verification of information¹⁸. Highlights the potential of blockchain in supporting digitalisation in the Industry 4.0 era by combining the Internet of Things (IoT) to create an efficient and transparent system. The application of blockchain in mortgage execution allows automation through smart contracts, which speeds up decisions and reduces legal uncertainty¹⁹.

Blockchain and smart contracts enhance logistics and supply chains, and can be applied to mortgages to ensure asset data clarity and security. This technology builds trust, reduces disputes, and supports legal transparency and verification. It ensures mortgage execution aligns with regulations without harmful interference, strengthening the legal system.²⁰.

Bureaucratic hurdles remain a significant concern, such as lengthy court processes that delay execution, particularly in disputes between creditors and debtors²¹. Constitutional Court Decision No. 18/PUU-XVII/2019 has further prolonged procedures by requiring court approval for fiduciary guarantee execution²². Legal objections from debtors are also often a significant obstacle. Legal objections from debtors often lead to extended litigation, reducing overall

¹⁷ Widyadhana Muhammad Nazwan and Waluyo, "Tanggungannya Elektronik Di BPR UMKM Jawa Timur," *Kabilah: Journal of Social Community* 9, no. 14 (2024): 360–69, <https://doi.org/10.35127/kabilah.v9i1>.

¹⁸ Hany Ayaad, Autumn Bizon, and Nermin Gohar, "The Effect of Applied Blockchain on Economic Sustainability," *International Business Logistics* 4, no. 1 (2024): 21, <https://doi.org/10.21622/ibl.2024.04.1.773>.

¹⁹ Amit Kumar Tyagi et al., "Blockchain—Internet of Things Applications: Opportunities and Challenges for Industry 4.0 and Society 5.0," *Sensors* 23, no. 2 (January 13, 2023): 947, <https://doi.org/10.3390/s23020947>.

²⁰ Mohammed Ali Alqarni et al., "Use of Blockchain-Based Smart Contracts in Logistics and Supply Chains," *Electronics* 12, no. 6 (March 11, 2023): 1340, <https://doi.org/10.3390/electronics12061340>.

²¹ B Christina, "Upaya Hukum Penyelesaian Sengketa Aset Kredit Akibat (Cessie) Setelah Pelelangan Oleh Badan Penyehatan Perbankan Nasional Yang Berkeadilan," *Lex Jurnalica* 18, no. 3 (2021): 233–45, <https://doi.org/10.47007/lj.v18i3.4809>.

²² Meliza, "Pengaruh Putusan Mahkamah Konstitusi Nomor 18/PUU/XVII/2019 Terhadap Eksekusi Jaminan Fidusia (Studi Pada PT. Adira Dinamika Multifinance TBK Cabang Bengkulu)," *Jurnal Ilmu Sosial Dan Pendidikan (JISIP)* 7, no. 2 (2023): 1287–94, <https://doi.org/10.58258/jisip.v7i1.4869/http>.

efficiency²³. Consequently, traditional regulations must be adapted to green economy principles to ensure the execution process remains efficient and sustainable.

However, several solutions have been proposed to improve the effectiveness of this mechanism, recommending implementing a digital platform to facilitate the execution process²⁴, while proposing harmonising positive law and Sharia principles to overcome legal conflicts in the execution of Islamic financial institutions²⁵. This approach can reduce procedural obstacles and improve execution efficiency.

In conventional law, collateral rights allow execution if a debtor defaults. In contrast, *mudharabah* and *musyarakah* contracts are based on shared risk, making collateral execution inconsistent with Sharia principles. Sharia banking in Indonesia still relies on conventional documents that do not reflect genuine Sharia cooperation²⁶. Conventional mortgages involve debt-based relations with court-enforced execution, conflicting with Sharia's trust-based foundation. This legal disharmony creates uncertainty, potential conflict, and misunderstanding of legal relations in Sharia-compliant financing²⁷.

Several bad debt cases involving mortgage execution highlight the limitations of current mechanisms. Execution via KPKNL often has a low success rate due to objections from debtors and third parties. Empirical data shows that only around 60% of cases are resolved through auction, with many facing administrative hurdles²⁸. Legal protection for auction participants remains weak, as many report losses due to a lack of transparency. This study underscores the need for stronger regulations to safeguard auction participants' rights²⁹. This indicates the need for increased regulation to protect the rights of auction participants.

²³ Daniati, "Eksekusi Hak Tanggungan Dalam Kredit Macet Melalui Jalur Kantor Pelayanan Kekayaan Negara Dan Lelang (KPKNL)."

²⁴ Nazwan and Waluyo, "Tanggung Elektronik Di BPR UMKM Jawa Timur."

²⁵ Muhammad Fadhli et al., "Review of Islamic Law Against Execution of Collateral Auctions on Islamic Banking Institutions in Aceh, Indonesia," *The Journal of Management Theory and Practice (JMTP)* 2, no. 1 (April 8, 2021): 88–93, <https://doi.org/10.37231/jmtp.2021.2.1.95>.

²⁶ Ah Azharuddin Lathif and Diana Mutia Habibaty, "Harmonization of DSN-MUI Fatwa with Positive Law Study of Legal Bonding of Mortgage Right in Contract for *Mudharabah* & *Musyarakah* Agreement," in *Proceeding International Conference on Law, Economy, Social and Sharia (ICLESS)*, vol. 1, 2022, 290–306, <https://proceeding.icless.net/index.php/icless22/article/view/25>.

²⁷ Sudirman Sudirman, "Harmonisasi Akad Pembiayaan Syariah Terhadap Jaminan Hak Tanggungan," *Media Iuris* 6, no. 1 (February 28, 2023): 151–74, <https://doi.org/10.20473/mi.v6i1.40113>.

²⁸ Daniati, "Eksekusi Hak Tanggungan Dalam Kredit Macet Melalui Jalur Kantor Pelayanan Kekayaan Negara Dan Lelang (KPKNL)."

²⁹ Nur Laily et al., "Analisis Perlindungan Hukum Terhadap Peserta Lelang Dalam Pelaksanaan Eksekusi Hak Tanggungan Oleh Pihak Bank," *Reformasi Hukum* 24, no. 2 (December 7, 2020): 209–28, <https://doi.org/10.46257/jrh.v24i2.140>.

Regulatory and governance weaknesses have contributed to Ghana's high Non-Performing Loan (NPL) levels. This study is relevant for Indonesia in reforming mortgage execution regulations, as delays and legal uncertainty remain major obstacles. Simplifying procedures, enhancing judicial transparency, and adopting international best practices can improve credit settlement effectiveness and significantly reduce NPLs³⁰. Mortgage execution regulations in Vietnam and Canada differ substantially: Vietnam employs immovable asset collateral with strong administrative oversight involving notaries and registries, ensuring legal certainty, while Canada uses foreclosure and power of sale, enabling asset execution without court proceedings. These reflect varying approaches to creditor protection and collateral enforcement³¹.

The following table presents the main findings of the research relevant to the mechanism and explanations related to the effectiveness of the mortgage execution mechanism. This table facilitates analysis and provides a basis for comprehensive policy recommendations.

Table 1: Research Findings Related to Mortgage Rights Execution Mechanisms

Key Findings	Key Barriers	Relevance	Proposed Solutions
Mortgage execution is hindered by administrative delays, debtor objections, and weak legal protection for bidders.	Complex procedures, slow bureaucracy, and many legal objections from debtors and third parties.	Hindering legal certainty and efficiency in resolving debt disputes. Third-party law.	Digitalization of execution administration, simplification of bureaucracy, and legal protection for auction participants.
Default by creditors and debtors causes lengthy disputes, and a lack of coordination between agencies worsens the execution of mortgage rights.	Legal disagreements between institutions (KPKNL, courts) and lengthy litigation procedures.	Burdening the justice system and prolonging the resolution of bad debts.	Synchronisation of regulations and increasing coordination between legal and financial institutions.
Digitalization and blockchain can enhance transparency and accelerate collateral execution,	Inadequate technological infrastructure, resistance to change,	Improve execution efficiency, but requires adequate	Strengthening regulations, building digital infrastructure, education, and

³⁰ Charles Adusei and Jacob Bannerman, "A Retrospective Study of Non-Performing Loans of the Ghana Banking Sector between 1998 and 2019," *Theoretical Economics Letters* 12, no. 02 (2022): 498–517, <https://doi.org/10.4236/tel.2022.122028>.

³¹ Huynh V A N Chu, "Understanding Home Mortgage Regulations : A Cross- Cultural Comparison of Canadian and Vietnamese Legal," *Russian Law Journal* XI, no. 4 (2023): 279–88, <https://www.russianlawjournal.org/index.php/journal/article/view/2366>.

but regulation remains unprepared.	and no specific regulations.	regulation and infrastructure.	technology adoption.
Lengthy litigation due to legal uncertainty in sharia-based financing and the green economy.	There is an inconsistency between traditional regulations and green and Sharia economic principles.	Improving legal certainty for sharia financing and the green economy.	Harmonisation of the green economy and Sharia regulations to clarify execution mechanisms.
Comparative studies with Vietnam and Canada show more efficient execution systems with different approaches.	Indonesia's execution procedures are too bureaucratic compared to other systems like Canada.	Providing new perspectives for the reform of mortgage execution in Indonesia.	Adopting best practices from other countries' legal systems to improve execution efficiency.

Source: self-processed data from various secondary sources.

Based on Table 1, the effectiveness of mortgage execution under Indonesian Civil Law refers to Law No. 4 of 1996, which includes: (1) *parate executie*, (2) *executorial title*, and (3) *underhand sales*. While normatively grounded in legal certainty, administrative hurdles, legal objections, and weak governance often impede implementation. The enforcement rate remains low, averaging only around 60%³². The gap between legal norms (*das sollen*) and reality (*das sein*) reveals key bottlenecks in institutional coordination and transparency in the auction process, hindering timely and fair execution.

The discussion on digitalisation of civil procedural law, including making use of blockchain technology as well as smart contracts, as discussed by³³ It presents a novelty in the procedural law reform. The potential application of electronic systems to auctioning, confirming ownership, and electronic notification can streamline bureaucratic processes that have been deterrents. Nonetheless, as indicated by ³⁴The deployment of such technology needs infrastructure readiness and a dynamic and synergistic regulatory umbrella across institutions. The combination of traditional legal theory and emerging ideas of legal technology may be one way to provide a new conceptual set for a flexible and future-oriented system of mortgage execution.

The inference is that there is a need for regulatory harmonisation, institutional capacity development, and a gradual approach to technology

³² Yustiana, "Eksekusi Hak Tanggungan Terhadap Kredit Macet Bank"; Daniati, "Eksekusi Hak Tanggungan Dalam Kredit Macet Melalui Jalur Kantor Pelayanan Kekayaan Negara Dan Lelang (KPKNL)."

³³ Ayaad, Bizon, and Gohar, "The Effect of Applied Blockchain on Economic Sustainability"; Tyagi et al., "Blockchain—Internet of Things Applications: Opportunities and Challenges for Industry 4.0 and Society 5.0"; Alqarni et al., "Use of Blockchain-Based Smart Contracts in Logistics and Supply Chains."

³⁴ Nazwan and Waluyo, "Tanggung Elektronik Di BPR UMKM Jawa Timur."

application. Procedural reform has to have a technocratic and managerialist dimension, then, because we cannot allow law to stand in the way of resolving credit disputes, but as an instrument of justice capable of engaging with the demands of the complexity of a modern economy.

1.2. Legal Protection for Creditors, Debtors, and Third Parties in Cases of Bad Debts

Legal protection for creditors in executing mortgage rights is a fundamental element in maintaining legal certainty and stability of the financial system. Based on Law No. 4 of 1996 concerning Mortgage Rights, creditors have priority rights (*droit de préférence*) over the results of executing collateral objects. This principle guarantees that creditors have the right to receive payment first, compared to other creditors who do not have mortgage rights. This is confirmed by research³⁵, which found that mortgage certificates have strong legal force to protect the interests of creditors as long as the debtor does not fulfill their obligations.

In practice, multiple obstacles often hinder the implementation of creditor rights. Auctions frequently yield prices below market value, which is insufficient to cover the debtor's remaining debt. Administrative delays and legal objections from third parties also slow down enforcement³⁶. This aligns with findings that legal system inefficiencies often disadvantage creditors³⁷. Proposed solutions include digitalisation of the execution process to accelerate auctions and enhance transparency, reducing third-party objections³⁸. Additionally, harmonising regulations with green economic principles is recommended to ensure sustainability in the enforcement of mortgage rights³⁹. It can provide a guarantee of sustainability in the implementation of mortgage rights.

The main challenge in using blockchain to digitise mortgage execution lies in integrating it into the existing legal framework. While blockchain offers efficiency, security, and transparency, technical and regulatory barriers must be addressed. Institutional culture shifts and proper infrastructure are also required. Blockchain has the potential to enhance legal certainty, reduce costs, and expedite dispute resolution, but it requires collaboration between government, legal institutions, and the technology sector to create an efficient, integrated system.

³⁵ Putra and Suryono, "Kedudukan Sertifikat Hak Atas Tanah Sebagai Jaminan Kebendaan Berdasarkan Undang-Undang Hak Tanggungan Atas Tanah Beserta Benda-Benda Yang Berkaitan Dengan Tanah."

³⁶ Sidabariba et al., "Fulfilling the Rights of the Parties in the Auction Execution in Indonesia : A Review."

³⁷ Verianti C and Saptanti N, "Wanprestasi Dalam Perjanjian Kredit Pemilikan Rumah (KPR) Pada Bank Tabungan Negara Kantor Cabang Solo."

³⁸ Nazwan and Waluyo, "Tanggungan Elektronik Di BPR UMKM Jawa Timur."

³⁹ Sukardi and Hertanto, "A Review of the Law and Practice Relating to the Collateralization of Carbon Assets: A Comparison of Indonesia and England."

Debtor protection is equally important to ensure their rights are respected during execution. The Mortgage Law allows debtors to object or delay execution in the presence of a valid dispute over the collateral. Most objections stem from lack of transparency or low auction values, often becoming key obstacles in resolving bad debts⁴⁰. Constitutional Court Decision No. 18/PUU-XVII/2019 grants greater protection by requiring court approval for fiduciary executions, but it also prolongs the process and reduces the efficiency of bad debt resolution⁴¹. To enhance debtor protection, auction transparency regulations should include estimated collateral values and debtor participation. Protection for third parties remains weak, as unclear regulations often lead to disputes between auction participants and interested parties, despite legal safeguards under the Mortgage Law⁴².

In addition, the conflict between positive law and Sharia principles is also a challenge in protecting third parties. In the context of Sharia banking, there is often disharmony between applicable legal norms and the principle of *maslahah*, thus creating legal uncertainty for third parties. This is exacerbated by the lack of coordination between judicial institutions and financial authorities in resolving disputes involving third parties⁴³. Solutions to improve legal protection for third parties include the application of the principle of transparency in the auction process⁴⁴. In addition, harmonisation between positive and Sharia law can help create a more inclusive and fair legal system for all parties⁴⁵. This highlights the need for balanced legal protection for creditors, debtors, and third parties. Digitalisation, transparency, and legal harmonisation are key to enhancing fairness and efficiency in the legal system.

Legal protections for creditors and debtors in Canada and Vietnam differ. Canada enforces strict rules, including cooling-off periods and limits on prepayment penalties to reduce debtor burdens. Vietnam favors creditors with flexible collateral rights execution but faces transparency and dispute resolution

⁴⁰ Daniati, "Eksekusi Hak Tanggungan Dalam Kredit Macet Melalui Jalur Kantor Pelayanan Kekayaan Negara Dan Lelang (KPKNL)."

⁴¹ Meliza, "Pengaruh Putusan Mahkamah Konstitusi Nomor 18/PUU/XVII/2019 Terhadap Eksekusi Jaminan Fidusia (Studi Pada PT. Adira Dinamika Multifinance TBK Cabang Bengkulu)."

⁴² Laily et al., "Analisis Perlindungan Hukum Terhadap Peserta Lelang Dalam Pelaksanaan Eksekusi Hak Tanggungan Oleh Pihak Bank."

⁴³ Muhammad Fadhli et al., "Review of Islamic Law Against Execution of Collateral Auctions on Islamic Banking Institutions in Aceh, Indonesia."

⁴⁴ Sidabariba et al., "Fulfilling the Rights of the Parties in the Auction Execution in Indonesia : A Review."

⁴⁵ Muhammad Fadhli et al., "Review of Islamic Law Against Execution of Collateral Auctions on Islamic Banking Institutions in Aceh, Indonesia."

challenges, stressing debtor notification and fair asset valuation before execution⁴⁶. The UNCITRAL Legislative Guide and Model Law principles emphasise transparency and fairness in collateral law to maintain economic and business stability.

Table 2: Research Findings Related to Legal Protection in Bad Credit Cases

Protected Parties	Key Findings	Key Barriers	Relevance	Proposed Solutions
Creditors	Priority rights to execution of collateral (Law No. 4 of 1996). The collateral certificate is legally strong.	Auctions are often below market prices, bureaucracy is slow, and legal objections from third parties.	Ensuring legal certainty and stability of the financial system.	Digitalisation of execution, harmonisation of regulations, and blockchain for transparency.
Debtors	The right to protection in executing mortgage rights, including auction transparency.	Low auction prices, lack of access to information, and unfair execution.	Balancing the rights of creditors and debtors in the execution of collateral.	Auction transparency, judicial oversight, and broad access to information.
Third parties	Role as auction buyer or legal interest owner. Legal protection exists, but it is less than optimal.	Auction participant disputes, positive law vs. sharia conflict. Maintaining trust in legal and banking transactions.	Reducing legal uncertainty and third-party disputes in the mortgage execution process.	Harmonisation of regulations and adoption of international best practices.

Source: self-processed data from various secondary sources.

Based on Table 2, the evaluation of legal protection for (1) bad debt creditors, (2) bad debtors, and (3) affected third parties shows that mortgage execution in Indonesia is still impractical. Although Law No. 4 of 1996 offers a strong legal foundation, its implementation faces delays due to bureaucracy, low auction values, and objections from liability holders and third parties. The Constitutional Court Decision No. 18/PUU-XVII/2019 improves protection through court oversight, but extends the process. This imbalance reveals weak substantive justice despite formal legal certainty, rendering the system ineffective.

In this context, blockchain and digital execution are potential solutions to improve transparency and efficiency, despite institutional challenges. This paper addresses an academic gap by emphasizing the need for restructuring, harmonizing positive and Sharia law, and protecting third parties. It recommends that

⁴⁶ Thomas Keijser, "Enforcement of Security Interests in Transnational Commercial Law: Current State and Future Trends," *Transnational Commercial Law Review*, no. 2 (2022): 1-14, <https://doi.org/10.26494/tclr220222>.

policymakers integrate digital auction systems, train court personnel, and issue adaptive legal instruments. With a comprehensive and human rights-based approach, the realisation of mortgage rights can become a flexible and effective legal enforcement mechanism.

Conclusion

This study finds that, while Law No. 4 of 1996 on Mortgage Rights offers a robust normative foundation for secured credit enforcement, its application remains constrained by procedural complexity, inconsistent institutional coordination, and insufficient stakeholder protection. The existing mechanisms – *parate executie*, executorial titles, and private sales – frequently encounter operational inefficiencies that undermine their effectiveness. These implementation gaps illustrate a disconnect between legal norms and actual practice, limiting the law's ability to serve as an efficient and equitable instrument in addressing non-performing loans. This disconnect calls for systemic legal and institutional reform.

Suggestion

To address existing challenges, this study proposes several strategic recommendations. First, regulatory harmonization between conventional and Sharia-based mortgage systems is necessary to ensure normative coherence. Second, adopting digital technologies such as blockchain and smart contracts can improve transparency, traceability, and procedural efficiency. Third, strengthening legal safeguards is crucial to protect the interests of creditors, debtors, and third-party bidders. Lastly, better institutional coordination among courts, notaries, and auction offices is essential to ensure legal certainty and operational consistency in mortgage enforcement, aligning Indonesia's framework with global standards.

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Transformasi KKEP Pasca Perpol No. 7 Tahun 2022 Dan Optimalisasi Divisi Propam

Transformation of KKEP after Perpol No. 7 of 2022 and Optimization of Propam Division

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ABSTRACT

The enforcement of the code of ethics within the Indonesian National Police (Polri) still faces significant challenges, including a high number of violations, lack of transparency, and declining public trust in the institution. This study aims to analyze the transformation of the role of the Police Code of Ethics Commission (KKEP) following the enactment of Indonesian National Police Regulation No. 7 of 2022, as well as to examine the optimization of the Professional and Security Division (Propam) in strengthening Polri's internal supervision system. The research method employed is normative juridical, with data collected through literature review and in-depth interviews with AKP Nurhaedin, Head of BinEtika, Subbidwabprof, Propam Division, Banten Regional Police. The findings reveal that Regulation No. 7 of 2022 introduces significant changes by expanding KKEP's authority and providing flexibility in determining whether ethical hearings are held publicly or privately. KKEP now plays a strategic role in promoting professionalism, transparency, and accountability within Polri. The optimization of Propam through four supervision systems internal, external, community-based, and inherent supervision has also strengthened the development and enforcement of discipline among police officers. To address these challenges, it is necessary to enhance institutional capacity, improve coordination with external oversight bodies, encourage greater community participation, and reinforce continuous ethics education within Polri. Thus, the synergy between KKEP and Propam is expected to establish a code of ethics enforcement system that is more effective, fair, and responsive to technological developments, social values, and public demands for transparency.

Keyword: Police Code of Ethics Commission (KKEP), Enforcement of the Code of Ethics, Professional and Security Division (Propam)

ABSTRAK

Penegakan kode etik di lingkungan Kepolisian Negara Republik Indonesia (Polri) masih menghadapi tantangan signifikan, antara lain tingginya angka pelanggaran, rendahnya transparansi, dan menurunnya kepercayaan publik terhadap institusi kepolisian. Penelitian ini bertujuan untuk menganalisis transformasi peran Komisi Kode Etik Kepolisian (KKEP) pasca diberlakukannya Peraturan Kepolisian Nomor 7 Tahun 2022 serta mengkaji optimalisasi Divisi Profesi dan Pengamanan (Propam) dalam memperkuat sistem pengawasan internal Polri. Metode penelitian yang digunakan adalah yuridis normatif dengan pengumpulan data melalui studi kepustakaan dan wawancara mendalam bersama AKP Nurhaedin, KAURBINETIKA SUBBIDWABPROF BID PROPAM Polda Banten. Hasil penelitian menunjukkan bahwa Perpol No. 7 Tahun 2022 membawa perubahan signifikan dengan memperluas kewenangan KKEP serta memberikan fleksibilitas dalam penentuan sidang etik terbuka atau tertutup. KKEP kini berperan strategis dalam membangun profesionalisme, transparansi, dan akuntabilitas Polri. Optimalisasi Divisi Propam melalui empat sistem pengawasan (internal, eksternal, masyarakat, dan pengawasan melekat) memperkuat pembinaan serta penegakan disiplin anggota. Untuk menjawab tantangan

tersebut, diperlukan adanya penguatan kapasitas kelembagaan, peningkatan koordinasi dengan lembaga pengawas eksternal, partisipasi masyarakat, serta pendidikan etika yang berkelanjutan di lingkungan Polri. Dengan demikian, sinergi antara KKEP dan Propam diharapkan mampu menciptakan sistem penegakan kode etik yang lebih efektif, adil, dan responsif terhadap perkembangan teknologi, nilai sosial, serta tuntutan transparansi publik.

Kata Kunci: *Komisi Kode Etik Kepolisian (KKEP), Penegakan Kode Etik, Divisi Profesi dan Pengamanan (Propam)*

Pendahuluan

Dalam dinamika tata kelola pemerintahan modern, keberadaan institusi penegak hukum memainkan peran yang sangat krusial dalam mewujudkan prinsip *Good Governance* dan *Clean Government*. Kepolisian merupakan salah satu subsistem vital dalam struktur negara, tidak hanya bertanggung jawab dalam menjaga ketertiban dan keamanan publik, tetapi juga menjadi ujung tombak dalam pelaksanaan hukum yang adil dan akuntabel. Seiring dengan percepatan globalisasi, kemajuan teknologi informasi, serta meningkatnya tuntutan demokratisasi dan pemenuhan hak asasi manusia, tantangan yang dihadapi aparat kepolisian menjadi semakin kompleks. Kondisi ini menuntut reformasi institusional yang adaptif dan responsif agar kepolisian mampu menjalankan fungsi pelayanan, perlindungan, dan penegakan hukum secara profesional dan berintegritas.¹ Namun, reformasi Polri dari aspek budaya belum terlaksana sesuai harapan, khususnya dalam penegakan hukum, masih terjadi penanganan perkara yang tidak profesional dan bertentangan dengan ketentuan hukum. Gelombang kritik tajam dari masyarakat, akademisi, dan lembaga negara atas berbagai tindakan penyalahgunaan kekuasaan oleh anggota maupun struktur institusional Polri menjadi gambaran atas krusialnya reformasi Polri yang saat ini sedang dilakukan.²

Sejumlah Penelitian sebelumnya telah membahas aspek penegakan kode etik dan disiplin di tubuh Polri, pada studi yang dilakukan oleh Maria Margareth Manik et al. (2023) menguraikan mekanisme sidang Komisi Kode Etik Profesi (KKEP) berdasarkan Perpol No. 7 Tahun 2022, serta hambatan eksternal yang memperlambat proses penegakan etik,³ sementara Annisa Erikha dan Riswadi (2023) menerapkan perspektif good governance untuk menegaskan peran strategis

¹ Maria Ulfah, dkk, “Sistem Pertanggungjawaban Hukum Kepolisian Negara Republik Indonesia Secara Organisasional Maupun Personal” penelitian dan pengabdian Masyarakat (Bandung: universitas khatolik parayangan, 2013), hlm 1.

² Amin, R., & Al Aziz, M. F. “Penguatan Komisi Kepolisian Nasional Dalam Pengawasan Penyidikan Tindak Pidana Oleh Polri,” *Krtha Bhayangkara* 17, no. 1 (2023): 1-26.

³ Maria Margareth Manik, Achmad Irwan Hamzani, and Kus Rizkianto, “Problematisasi Penegakan Hukum Pelanggaran Kode Etik Di Kepolisian Republik Indonesia,” *SALAM: Jurnal Sosial Dan Budaya Syar-I* 10, no. 1 (2023): 135–44, <https://doi.org/10.15408/sjsbs.v10i1.31112>.

KKEP dalam menegakkan profesionalisme dan akuntabilitas Polri.⁴ Namun, sebagian besar kajian tersebut masih terbatas pada pendekatan normatif tanpa mengeksplorasi secara mendalam transformasi kelembagaan KKEP maupun sinerginya dengan Divisi Propam sebagai aktor kunci pengawasan internal.

Merujuk pada Pasal 2 Undang-Undang Nomor 2 Tahun 2002 tentang Kepolisian Negara Republik Indonesia, institusi kepolisian memegang peranan sebagai salah satu unsur penyelenggara pemerintahan dalam bidang pemeliharaan keamanan dan ketertiban masyarakat, penegakan hukum, serta perlindungan, pengayoman, dan pelayanan kepada masyarakat. Dalam menjalankan mandat tersebut, setiap anggota kepolisian wajib mematuhi ketentuan hukum yang berlaku, termasuk regulasi yang mengatur standar etika profesi. Salah satu regulasi tersebut adalah Peraturan Kepala Kepolisian Negara Republik Indonesia (Perkap) Nomor 14 Tahun 2011 tentang Kode Etik Profesi Kepolisian, yang menjadi pedoman normatif dalam pelaksanaan tugas secara profesional, berintegritas dan etik, selanjutnya dengan adanya Peraturan Kepolisian Negara Republik Indonesia Nomor 7 Tahun 2022 tentang Kode Etik Profesi Dan Komisi Kode Etik Kepolisian Negara Republik Indonesia, yang membawa berbagai perubahan signifikan dibandingkan dengan regulasi sebelumnya. Peraturan ini menggantikan Peraturan Kapolri Nomor 14 Tahun 2011 tentang Kode Etik Profesi Polri dan Peraturan Kapolri Nomor 19 Tahun 2012 tentang Susunan Organisasi dan Tata Kerja Komisi Kode Etik Polri.⁵

Fenomena masih banyaknya pelanggaran yang dilakukan oleh anggota Polri di lapangan telah membawa dampak serius terhadap terciptanya opini publik yang negatif, menurunnya citra institusi, dan tumbuhnya sikap antipati masyarakat. Kondisi ini berdampak langsung pada kurang optimalnya pelaksanaan tugas Polri di lapangan karena berkurangnya dukungan dan kepercayaan masyarakat.

Seiring perkembangan teknologi, perubahan nilai etika, budaya, dan perilaku masyarakat, serta dinamika tantangan yang dihadapi institusi Polri, regulasi terkait penegakan kode etik mengalami pembaruan melalui terbitnya Perpol No. 7 Tahun 2022. Peraturan ini tidak hanya mencabut dan menggantikan Perkap Polri Nomor 14 Tahun 2011 dan Perkap Polri Nomor 19 Tahun 2012, tetapi juga memperluas ruang lingkup dan memperkuat mekanisme penegakan kode etik. Perpol No. 7 Tahun 2022 menegaskan pentingnya pejabat Polri untuk menghayati dan menjiwai etika profesi sebagai kristalisasi nilai-nilai Tribrata dan

⁴ Annisa Erikha, & Riswadi Riswadi. "Penguatan Etika Kepolisian dengan Optimalisasi Peran Komisi Etik Sebagai Penjaga Prinsip Good Governance". *Mahkamah: Jurnal Riset Ilmu Hukum*, no. 2 (2025), 336–346. <https://doi.org/10.62383/mahkamah.v2i3.1036>

⁵ Piatur Pangariban and Muhamad Chusen, "PENERAPAN PRINSIP KEADILAN TERHADAP PENJATUHAN SANKSI KODE ETIK BAGI ANGGOTA POLRI YANG MELAKUKAN TINDAK PIDANA PENYALAHGUNAAN NARKOTIKA APPLICATION," *Jurnal De Facto* 5, no. 1 (2018): 87–111.

Catur Prasetya, serta memuat pengaturan yang lebih adaptif terhadap perubahan zaman, termasuk penguatan fungsi pengawasan internal dan pengaturan khusus mengenai penggunaan media sosial, moderasi beragama, serta larangan perilaku yang dapat merusak citra institusi. Transformasi peran KKEP dalam penegakan kode etik Polri pasca Perpol No. 7 Tahun 2022 menjadi sangat strategis, karena KKEP kini tidak hanya berfungsi sebagai lembaga pemeriksa dan pemutus perkara pelanggaran etik, tetapi juga sebagai pilar utama dalam membangun kembali kepercayaan publik melalui penegakan nilai-nilai profesionalisme, transparansi, dan akuntabilitas.⁶

Selanjutnya Komisi Kode Etik Polri berdasarkan Pasal 1 angka 2 Peraturan Kepolisian Nomor 7 Tahun 2022 Tentang Kode Etik Profesi dan Komisi Kode Etik Kepolisian Negara Republik Indonesia mengatakan bahwa “*Komisi Kode Etik Kepolisian Negara Republik Indonesia yang selanjutnya disingkat KKEP adalah komisi yang dibentuk di lingkungan Kepolisian Negara Republik Indonesia untuk penegakan KEPP*”.

Pelanggaran terhadap Kode Etik Profesi Kepolisian dapat dipahami sebagai bentuk penyimpangan perilaku yang dilakukan oleh anggota Polri, yang bertentangan dengan prinsip-prinsip moral dan norma-norma etika profesi yang melekat dalam tugas institusionalnya. Berdasarkan perspektif etika organisasi dan teori perilaku menyimpang dalam lembaga publik, pelanggaran ini sering kali tidak berdiri sendiri, melainkan merupakan hasil interaksi kompleks dari berbagai faktor internal dan eksternal. Secara internal, menurunnya integritas moral dan hilangnya independensi dalam pengambilan keputusan menjadi akar masalah yang krusial. Di sisi lain, faktor eksternal seperti tekanan ekonomi, rendahnya tingkat kesejahteraan personel, lemahnya sistem kontrol dan pengawasan, serta ketidakpatuhan terhadap regulasi etika yang bersifat normatif dan mengikat, turut memperparah potensi terjadinya deviasi profesional. Studi-studi sebelumnya juga menunjukkan bahwa ketidaksesuaian antara nilai-nilai personal dengan nilai-nilai institusional dapat meningkatkan risiko pelanggaran kode etik, khususnya dalam lingkungan kerja yang penuh tekanan dan minim akuntabilitas.⁷

Sidang Komisi Kode Etik Polri saat ini dinilai belum mampu memberikan rasa keadilan, terutama bagi pihak korban, karena minimnya transparansi dalam pelaksanaannya. Salah satu kritik utama adalah kecenderungan sidang dijalankan secara tertutup, yang bertentangan dengan prinsip umum peradilan terbuka sebagaimana diakui dalam sistem hukum nasional. Meskipun Pasal 51 ayat (1)

⁶ Fernandez, F., Darsono, D., & Siregar, M. “Implementasi Nilai-Nilai Tribrata dalam Mewujudkan Polri yang Presisi: Tinjauan Penerapan Kode Etik Anggota Polri Menuju SDM Polri yang Profesional dan Berkualitas di Kepolisian Resort Jombang,” *Jurnal Ilmu Sosial dan Ilmu Politik* 3, no. 2. (2023): 1-14.

⁷ Yanius Rajalahu, “PENYELESAIAN PELANGGARAN KODE ETIK PROFESI OLEH KEPOLISIAN REPUBLIK INDONESIA,” *Lex Crimen* II, no. 2 (2013): 143–61.

Perkap Nomor 19 Tahun 2012 mengatur bahwa sidang etik bersifat terbuka, ketentuan ini mengalami perubahan dalam Perkap Nomor 7 Tahun 2022. Aturan baru tersebut, melalui Pasal 40 ayat (2) huruf (a), memberikan wewenang kepada Komisi Etik untuk menentukan apakah sidang dilakukan secara terbuka atau tertutup. Hal ini membuka ruang bagi pelaksanaan sidang secara tidak transparan. Berbeda dengan mekanisme serupa di lembaga lain seperti Komisi Pemberantasan Korupsi (KPK), yang menerapkan prinsip keterbukaan penuh dan memungkinkan pemantauan publik melalui media.⁸

Divisi Profesi dan Pengamanan (Propam) adalah unsur pengawas internal Kepolisian Negara Republik Indonesia yang berkedudukan langsung di bawah Kapolri. Propam dibentuk pada 27 Oktober 2012 berdasarkan keputusan Kapolri demi mewujudkan personel Polri yang presisi dengan pengawasan personil yang optimal. Fungsi pengawasan Propam sejatinya menjadi benteng Polri mencegah penyimpangan yang bisa saja dilakukan oknum anggota dalam pelaksanaan tugas sehari-hari.⁹ Propam mengemban empat sistem pengawasan, yaitu pengawasan internal yang dilakukan oleh Propam sendiri, pengawasan eksternal oleh lembaga-lembaga yang dibentuk pemerintah seperti Kompolnas dan Komnas HAM, pengawasan oleh masyarakat melalui media sosial atau langsung, dan pengawasan melekat yang dilakukan oleh komandan atau kepala satuan. Propam juga mengemban tugas pembinaan dan fungsi pertanggungjawaban profesi termasuk penegakan disiplin dan ketertiban di lingkungan Polri serta pelayanan pengaduan masyarakat tentang penyimpangan tindakan anggota Polri. Kadiv Propam Polri menekankan optimalisasi pengawasan yang berorientasi publik untuk mewujudkan komitmen Polri dalam pengawasan melekat (Waskat) yang tidak hanya berfokus pada kepentingan internal institusi, melainkan lebih mengutamakan kepentingan publik secara menyeluruh.¹⁰

Oleh karena itu, setiap anggota Polri yang terbukti melanggar Kode Etik Profesi Kepolisian tidak dapat menghindar dari konsekuensi atas tindakan yang dilakukannya. Dalam konteks ini, keberadaan Divisi Profesi dan Pengamanan (Propam) memiliki peran strategis sebagai institusi pengawas internal yang bertanggung jawab dalam memastikan penegakan norma etika dan profesionalisme di lingkungan kepolisian secara konsisten dan berkeadilan. Pembentukan Divisi Profesi dan Pengamanan (Propam) secara resmi dimulai pada

⁸ Fauzan Ramon, Subroto Rindang, and Arie Setyawan, "PROSEDUR SIDANG KODE ETIK ANGGOTA POLRI YANG MELAKUKAN TINDAK PIDANA BERDASARKAN PERATURAN KEPOLISIAN NOMOR 7 TAHUN 2022 TENTANG KODE ETIK PROFESI DAN KOMISI KODE ETIK KEPOLISIAN NEGARA REPUBLIK INDONESIA," *WASAKA HUKUM: Jendela Informasi Dan Gagasan Hukum* 12, no. 2337 (2024): 1–18, <https://www.ojs.stihsa-bjm.ac.id/index.php/wasaka/article/view/136/142>.

⁹ Un, Antonius Steven. "Quo Vadis Polisi Indonesia?," *Jawa Pos* (2022): 1-1.

¹⁰ Lumentah, Charlie. "Pengawasan terhadap Penegak Hukum dalam Penanganan Perkara Tindak Pidana Korupsi," *Lex Crimen* 3, no 1. (2014): 125-132.

27 Oktober 2002 melalui Keputusan Kepala Kepolisian Negara Republik Indonesia No. Pol: Kep/53/X/2002 tentang Struktur Organisasi dan Tata Kerja Polri. Langkah ini menandai pemisahan fungsi pengawasan internal dari struktur lama Provos, yang sebelumnya masih terintegrasi dalam kerangka militer bersama TNI sebagai bagian dari ABRI. Perubahan ini mencerminkan arah baru dalam reformasi kelembagaan Polri, yang menegaskan identitasnya sebagai institusi sipil yang otonom sebagaimana diamanatkan dalam Undang-Undang Nomor 2 Tahun 2002 tentang Kepolisian Negara Republik Indonesia.¹¹

Dasar hukum Propam diatur dalam berbagai peraturan yang memastikan setiap anggota Polri menjalankan tugasnya sesuai dengan standar profesi yang ditetapkan. Undang-Undang Nomor 2 Tahun 2002 tentang Kepolisian Negara Republik Indonesia, khususnya Pasal 5 ayat (1) dan Pasal 13, menetapkan bahwa Polri merupakan alat negara yang berperan dalam memelihara keamanan dan ketertiban masyarakat, menegakkan hukum, serta memberikan perlindungan dan pelayanan kepada masyarakat. Tugas Propam secara umum adalah membina dan menyelenggarakan fungsi pertanggungjawaban profesi dan pengamanan internal, termasuk penegakan disiplin dan ketertiban di lingkungan Polri serta pelayanan pengaduan masyarakat tentang penyimpangan tindakan anggota Polri. Dalam struktur organisasinya, Propam terdiri dari tiga biro utama: Biro Pengamanan Internal (Ropaminal), Biro Pertanggungjawaban Profesi (Rowabprof), dan Biro Provos (Roprovos). Setiap biro memiliki fungsi spesifik dalam sistem pengawasan internal yang komprehensif. Optimalisasi Divisi Propam dalam konteks transformasi peran KKEP pasca Perpol No. 7 Tahun 2022 menjadi kunci dalam mewujudkan Polri yang profesional, akuntabel, dan responsif terhadap kebutuhan masyarakat.¹²

Penegakan kode etik di lingkungan Kepolisian Negara Republik Indonesia (Polri) masih dihadapkan pada berbagai hambatan struktural dan operasional yang menuntut pendekatan sistemik dan menyeluruh. Berbagai studi menunjukkan bahwa kendala utama dalam penanganan pelanggaran etika terletak pada keterbatasan otoritas Dewan Etik serta sifat Majelis Kode Etik yang ad hoc, sehingga berdampak pada efektivitas proses penyelesaian kasus. Proses penyelenggaraan Komisi Kode Etik Profesi (KKEP) yang cenderung berlarut-larut turut menghambat kepastian hukum dan proses pembinaan karier personel. Situasi ini diperburuk dengan masih tingginya jumlah pelanggaran etika yang belum terselesaikan secara optimal. Oleh karena itu, diperlukan reformulasi strategi untuk memperkuat peran

¹¹ Immanuel, F. "Analisis Yuridis Peran Propam Kepolisian Daerah Sumatera Utara Dalam Melakukan Penegakan Hukum Terhadap Anggota Kepolisian." *Jurnal Retentum* 5, no. 1. (2022): 120-127.

¹² Joice Soraya, "PENGUATAN NILAI-NILAI PANCASILA, DEMOKRASI, DAN HAM DI KEPOLISIAN RESOR KOTA BATU: SEBUAH UPAYA MEWUJUDKAN KEPOLISIAN YANG PROFESIONAL, AKUNTABEL, DAN RESPONSIF," *Jurnal Difusi Ipteks Legowo* 2, no. 1 (2024): 65-79.

KKEP melalui penguatan kinerja kelembagaan berbasis *capacity building* yang terintegrasi dengan kerangka *knowledge management*, guna menciptakan tata kelola penegakan etik yang lebih efektif, responsif, dan berkelanjutan.¹³

Berdasarkan isu yang berkembang, peneliti tertarik untuk melakukan pengkajian yang lebih mendalam terkait dengan masalah Kode Etik Profesi Kepolisian, khususnya dalam konteks transformasi peran Komisi Kode Etik Kepolisian (KKEP) dan optimalisasi Divisi Profesi dan Pengamanan (Propam) di lingkungan institusi kepolisian. Rumusan masalah dalam penelitian ini difokuskan pada bagaimana peran KKEP dalam menegakkan kedisiplinan dan integritas anggota Polri semakin vital seiring diberlakukannya Perpol Nomor 7 Tahun 2022, yang membawa perubahan signifikan terhadap mekanisme penegakan kode etik profesi. Penelitian ini juga akan mengkaji sejauh mana optimalisasi Divisi Propam sebagai unsur pengawas internal dapat memperkuat sistem pengawasan, pembinaan, serta penegakan disiplin terhadap anggota Polri, sehingga mampu mencegah dan menindak pelanggaran kode etik secara efektif dan berkeadilan. Dengan demikian, fokus kajian diarahkan pada analisis peran strategis KKEP dan Divisi Propam dalam mewujudkan tata kelola penegakan kode etik yang adaptif, transparan, dan akuntabel di tengah dinamika tantangan serta tuntutan reformasi kelembagaan Polri pasca terbitnya Perpol Nomor 7 Tahun 2022.

Metode Penelitian

Penelitian ini menggunakan jenis penelitian hukum normatif (*normative law research*) yang merupakan penelitian hukum kepustakaan yang dilakukan dengan cara meneliti bahan-bahan kepustakaan atau data sekunder. Metode penelitian yuridis normatif merupakan penelitian hukum yang meletakkan hukum sebagai sebuah bangunan sistem norma yang mencakup asas-asas, norma, kaidah dari peraturan perundangan, perjanjian serta doktrin.¹⁴

Pendekatan yang digunakan dalam penelitian ini adalah pendekatan yuridis normatif dengan menggunakan pendekatan perundang-undangan (*statute approach*) dan pendekatan konseptual (*conceptual approach*). Pendekatan perundang-undangan dilakukan dengan menelaah semua undang-undang dan regulasi yang bersangkut paut dengan isu hukum yang sedang ditangani, khususnya Peraturan Kepolisian No. 7 Tahun 2022.¹⁵ Sumber data primer dalam penelitian ini terdiri dari data yang diperoleh langsung dari lapangan melalui wawancara mendalam (*in-*

¹³ Anthonio Effan Sulaiman and Retno Kusumastuti, "Analisis Kinerja Komisi Kode Etik Polri : Sebuah Kajian Literatur," *PUBLISIA: Jurnal Ilmu Administrasi Publik* 8, no. 1 (2023): 71–83, <https://doi.org/10.26905/pjiap.v8i1.8712>.

¹⁴ Mukti Fajar ND dan Yulianto Achmad, *Dualisme penelitian hukum normative dan hukum empiris*, (Yogyakarta: Pustaka Pelajar, 2010), hlm. 47-49

¹⁵ Jonaedi Efendi, dan Johnny Ibrahim, *Metode Penelitian Hukum Normatif dan Empiris*, (Prenada media Group Depok), 2008, hlm. 3

depth interview) dengan narasumber kunci. Wawancara dilakukan terhadap AKP Nurhaedin S.H., M.H. yang menjabat sebagai KAURBINETIKA SUBBIDWABPROF BID PROPAM Polda Banten untuk memperoleh informasi langsung mengenai implementasi Perpol No. 7 Tahun 2022 dalam praktik penegakan kode etik.

Teknik pengumpulan data dilakukan melalui studi kepustakaan (*library research*) dengan mengumpulkan, mempelajari, dan menganalisis bahan-bahan hukum yang relevan dengan topik penelitian. Studi kepustakaan dilakukan dengan cara menelaah, mengkaji, dan menganalisis berbagai sumber literatur yang berkaitan dengan transformasi peran KKEP dan optimalisasi Divisi Propam. Pengumpulan bahan hukum dilakukan dengan cara inventarisasi peraturan perundang-undangan, putusan pengadilan, dan dokumen-dokumen hukum lainnya.¹⁶ Selanjutnya ada metode analisis data yang digunakan adalah analisis kualitatif dengan pendekatan deskriptif-analitis. Analisis kualitatif dilakukan dengan menjelaskan data-data yang ada dengan pernyataan bukan dengan angka, sesuai dengan karakteristik penelitian hukum normatif.¹⁷

Hasil dan pembahasan

1.1 Peran Komisi Kode Etik Kepolisian (KKEP) dalam Penegakan Hukum berdasarkan Peraturan Kepolisian Negara Republik Indonesia Nomor 7 Tahun 2022 Tentang Kode Etik Profesi Dan Komisi Kode Etik Kepolisian Negara Republik Indonesia

Kode etik profesi berperan sebagai pedoman fundamental yang mengatur perilaku setiap individu dalam suatu profesi, serta berfungsi sebagai instrumen pengendalian sosial untuk menjaga standar integritas dan akuntabilitas. Dalam konteks profesi hukum, termasuk institusi kepolisian, etika profesi memiliki keterkaitan sistemik dengan pelaksanaan tugas dan tanggung jawab profesional. Kepolisian sebagai lembaga penegak hukum telah dilengkapi dengan kerangka normatif yang jelas sebagai acuan perilaku personel dalam menjalankan tugas. Namun, realitas di lapangan menunjukkan adanya kesenjangan antara norma etik yang berlaku dengan implementasinya, mengingat masih terdapat sejumlah anggota Polri yang tidak sepenuhnya mematuhi pedoman etik tersebut. Fenomena ini menegaskan pentingnya penguatan kesadaran etis dan mekanisme penegakan kode etik yang lebih efektif di tubuh kepolisian.

Kode Etik Profesi Kepolisian merupakan seperangkat norma dan prinsip moral yang menyatu dengan kerangka etik dan filosofi institusi, yang memandu perilaku serta komunikasi anggota Polri dalam melaksanakan tugasnya. Kode etik ini berfungsi sebagai pedoman dalam menentukan tindakan yang diperbolehkan,

¹⁶ Soerjono Soekanto dan Sri Mamudji. *Penelitian Hukum Normatif*. (Jakarta: Penerbit PT RajaGrafindo Persada), 2012, hlm. 33.

¹⁷ Sugiyono. *Metode Penelitian Kuantitatif, Kualitatif dan R&D*. (Bandung: Alfabeta.CV), 2013, hlm 2.

dilarang, atau dianggap tidak pantas dilakukan oleh personel kepolisian. Ruang lingkup pengaturannya mencakup empat dimensi utama, yaitu:¹⁸

1. Etika kenegaraan, yang berkaitan dengan hubungan dan tanggung jawab Polri terhadap negara dan konstitusi;
2. Etika kelembagaan, yang mengatur sikap profesional terhadap organisasi dan struktur internal Polri;
3. Etika kemasyarakatan, yang mencerminkan tanggung jawab sosial dan interaksi dengan warga masyarakat; serta
4. Etika kepribadian, yang menyangkut integritas moral dan karakter personal setiap anggota Polri dalam kehidupan profesional dan pribadi.

Berdasarkan ketentuan Pasal 11 Peraturan Kepala Kepolisian Negara Republik Indonesia Nomor 19 Tahun 2012, Komisi Kode Etik memiliki mandat utama untuk menyelenggarakan sidang dalam rangka mengkaji dan mengadili dugaan pelanggaran terhadap Kode Etik Profesi Kepolisian. Selain itu, komisi ini juga berwenang menangani pelanggaran yang diatur dalam Pasal 12, Pasal 13, dan Pasal 14 Peraturan Pemerintah Nomor 1 Tahun 2003 mengenai pemberhentian anggota Polri, serta Pasal 13 dalam Peraturan Pemerintah Nomor 2 Tahun 2003 yang mengatur tentang disiplin anggota Polri. Mengacu pada Pasal 13 Peraturan Kepala Kepolisian Negara Republik Indonesia Nomor 19 Tahun 2012, Komisi Kode Etik Polri memiliki otoritas untuk memanggil anggota kepolisian dalam rangka memperoleh keterangan atau klarifikasi sebagai bagian dari proses pemeriksaan dalam pelaksanaan tugasnya. Kewenangan ini merupakan instrumen penting dalam memastikan akuntabilitas dan transparansi penegakan kode etik di lingkungan institusi Polri.¹⁹

Komisi Kode Etik Kepolisian Negara Republik Indonesia (KKEP) memiliki peran strategis dalam menegakkan kode etik profesi kepolisian untuk menjaga integritas dan kedisiplinan anggota Polri. KKEP merupakan suatu wadah yang dibentuk di lingkungan Polri untuk penegakan Kode Etik Profesi Polri (KEPP), dengan tugas utama melakukan pemeriksaan dan memberikan putusan terhadap pelanggaran yang dilakukan oleh pejabat Polri sesuai dengan jenjang kepangkatan. Peraturan Kepolisian Negara Republik Indonesia Nomor 7 Tahun 2022 tentang Kode Etik Profesi dan Komisi Kode Etik Kepolisian Negara Republik Indonesia telah membawa transformasi signifikan dalam sistem penegakan etika di

¹⁸ Amir Syarifuddin, Sabriani, and Eflan Delliansyah, "Peran Propam Dalam Menangani Oknum Anggota Polri Yang Terlibat Tindak Pidana Peyalahgunaan Narkotika Dan Penerapan Peraturan Pemerintah Nomor 03 Tahun 2003 Tentang Pelaksanaan Institusional Teknis Peradilan Umum Bagi Anggota Polri Di Wilayah Hukum Polres," *Legalitas: Jurnal Hukum* 15 (2022): 213–22, <https://doi.org/10.33087/legalitas.v15i2.50>.

¹⁹ Siharna Rajagukguk, "PERAN PROFESI DAN PENGAMANAN (PROPAM) POLDA DALAM PENEGAKAN KODE ETIK PROFESI KEPOLISIAN DI DIY," *E- Journal Universitas Atma Jaya* 9022 (2015): 1–21.

lingkungan Polri, menggantikan Peraturan Kapolri Nomor 14 Tahun 2011 dan Peraturan Kapolri Nomor 19 Tahun 2012.²⁰

Komisi Kode Etik Kepolisian (KKEP) merupakan lembaga penegak etika profesi Polri yang diatur dalam Pasal 38 Perpol No. 7 Tahun 2022 KKEP bertugas memeriksa dan memutus pelanggaran Kode Etik Profesi Polri (KEPP) yang dilakukan anggota Polri, mulai dari tingkat Perwira Tinggi hingga Tamtama. Kewenangan ini mencakup sidang pemeriksaan cepat untuk pelanggaran ringan dan sidang biasa untuk pelanggaran sedang/berat yang terdapat dalam Pasal 54 Perpol No. 7 Tahun 2022.

Perpol No. 7 Tahun 2022 menghadirkan berbagai inovasi revolusioner dalam penegakan kode etik yang mengakomodasi perkembangan dan maraknya pelanggaran dengan modus serta bentuk perbuatan yang bervariasi yang belum diakomodir dalam ketentuan KEPP sebelumnya. Inovasi-inovasi tersebut mencakup adanya KKEP peninjauan kembali (KKEP PK) sesuai Pasal 83 Perpol No. 7 Tahun 2022 yang itu menjadi kewenangan Kapolri, dimana Kapolri berwenang melakukan peninjauan kembali atas putusan KKEP atau putusan KKEP Banding yang telah final dan mengikat dalam hal terdapat kekeliruan dalam putusan atau ditemukan alat bukti yang belum diperiksa pada saat sidang. Kewenangan peninjauan kembali ini dapat dilakukan paling lama tiga tahun sejak putusan KKEP atau putusan KKEP Banding dikeluarkan.

Inovasi kedua yang sangat penting berdasarkan Pasal 107 ayat (2) dan Pasal 108 Perpol No. 7 Tahun 2022 yang didalamnya terkandung perubahan terhadap sistem pengurangan masa hukuman (remisi) yang diberikan setiap tanggal 1 Juli kepada pelanggar yang memenuhi kriteria tertentu. Pengurangan masa hukuman dapat diberikan kepada pelanggar yang telah menerima sanksi berupa demosi paling singkat 5 tahun, dinilai telah berperilaku dan berkinerja baik, serta telah menjalani setengah masa hukuman. Penilaian perilaku dan kinerja yang baik dilakukan oleh Kepala Kesatuan Kerja tempat pelanggar bertugas yang diketahui oleh Kepala Bagian Rehabilitasi Personel sesuai dengan Pasal 32 Perpol No. 7 Tahun 2022, dengan pengurangan masa hukuman diberikan paling lama 3 bulan setiap tanggal 1 Juli. Pasal 32 tentang rehabilitasi personel belum sepenuhnya efektif karena minimnya pendampingan psikologis dan pemantauan pasca-sanksi. Untuk mengatasi ini, diperlukan penguatan kapasitas SDM melalui pelatihan berkelanjutan dan integrasi sistem pengaduan dengan platform digital seperti media sosial.²¹

²⁰ Cut Adya, Sitti Mawar, and Azka Jihad, "Peran Provos Dalam Penanganan Anggota Kepolisian Dalam Menyalahgunakan Narkoba Di Banda Aceh Menurut Perpol No 7 Tahun 2022 (Studi Kasus Polresta Banda Aceh)," *Jurnal Justisia: Jurnal Ilmu Hukum, Perundang-Undangan Dan Pranata Sosial* 2, no. 2 (2025): 1–21.

²¹ Heven Sambera, Bintara Sura Priambada, and Yudhi Widyo Armono, "IMPLEMENTASI PASAL 12 PERATURAN POLRI NOMOR 7 TAHUN 2022 DI KEPOLISIAN RESOR KARANGANYAR DALAM 225 | Equality : Journal of Law and Justice, Vol. 2, No. 2, November, 2025, P. 216-238.

Selanjutnya adanya perubahan sesuai Pasal 17 Perpol No. 7 Tahun 2022 yaitu penanganan perkara dapat dikategorikan menjadi 3 kategori yaitu ringan, sedang, dan berat berdasarkan tingkat keseriusan pelanggaran. Pelanggaran kategori ringan adalah pelanggaran yang dilakukan karena kelalaian, tidak untuk kepentingan pribadi, dan tidak berdampak terhadap keluarga, masyarakat, institusi dan/atau negara. Pelanggaran kategori sedang adalah pelanggaran yang dilakukan dengan sengaja atau terdapat kepentingan pribadi dan/atau pihak lain. Sedangkan pelanggaran kategori berat adalah pelanggaran yang dilakukan dengan sengaja dan terdapat kepentingan pribadi, adanya pemufakatan jahat, berdampak terhadap keluarga, masyarakat, institusi dan/atau negara, menjadi perhatian publik, dan/atau melakukan tindak pidana dengan putusan berkekuatan hukum tetap.

Mekanisme sidang riksa acara secara cepat yang dirancang khusus untuk menangani pelanggaran kategori ringan dengan prosedur yang lebih efisien dan efektif. Sidang dengan acara pemeriksaan cepat sesuai Pasal 61 Perpol No. 7 Tahun 2022 dilakukan dengan mekanisme yang lebih sederhana, dimana penuntut, sekretaris dan terduga pelanggar sudah berada di ruang sidang sebelum sidang dimulai, diikuti dengan pembacaan tuntutan dan putusan. Sementara sidang dengan acara pemeriksaan biasa Pasal 62 Perpol No. 7 Tahun 2022 diperuntukkan bagi pelanggaran KEPP kategori sedang dan kategori berat dengan prosedur yang lebih komprehensif.

Perubahan-perubahan dalam Perpol No. 7 Tahun 2022 juga mencakup penguatan substansi kode etik dengan pengaturan yang lebih adaptif terhadap perubahan zaman, termasuk pengaturan khusus mengenai penggunaan media sosial, moderasi beragama, serta larangan perilaku yang dapat merusak citra institusi. Pasal 13 huruf g Perpol No. 7 Tahun 2022 melarang anggota Polri menggunakan sarana media sosial untuk aktivitas yang meliputi mengunggah berita yang tidak benar dan/atau ujaran kebencian, memamerkan kekayaan dan/atau gaya hidup mewah, menyebarkan aliran terorisme dan radikalisme, konten eksklusivisme terhadap kemajemukan, serta pornografi dan pornoaksi.²²

Pasal 7 huruf g Perpol No. 7 Tahun 2022 juga memperkenalkan konsep moderasi beragama sebagai bagian dari etika kemasyarakatan, dimana setiap pejabat Polri wajib melaksanakan moderasi beragama berupa sikap atau cara pandang perilaku beragama yang moderat, toleran, menghargai perbedaan agama dan selalu mewujudkan kemaslahatan bersama. Transformasi regulasi ini dilatarbelakangi oleh kebutuhan untuk merespons perubahan nilai etika, budaya,

UPAYA,” *Journal Society and Law - Jurnal Masyarakat Dan Hukum* 1, no. 1 (2024): 7–13, <https://ejournal.bsppublisher.com/index.php/jsl/article/view/53/41>.

²² Moh Renaldy Hamid et al., “Hukum Dan Kode Etik Profesi Bagi Anggota Polri,” *Demokrasi: Jurnal Riset Ilmu Hukum, Sosial Dan Politik* 2, no. 1 (2025): 248–59.

dan perilaku yang terjadi di masyarakat yang mempengaruhi sikap perilaku anggota Polri dalam pelaksanaan tugas, tanggung jawab dan kewenangannya, terutama terkait penggunaan media sosial.

Dalam menjalankan tugasnya, Komisi Kode Etik Kepolisian (KKEP) memiliki kewenangan yang sangat strategis untuk menangani pelanggaran kode etik di berbagai tingkat kesatuan melalui mekanisme yang transparan dan adil, baik dalam sidang pemeriksaan cepat maupun biasa. Berdasarkan Peraturan Kepolisian Negara Republik Indonesia Nomor 7 Tahun 2022, khususnya Pasal 38, KKEP dibentuk oleh Kapolri untuk memeriksa pelanggaran kode etik profesi kepolisian yang dilakukan oleh anggota Polri dari berbagai tingkatan, mulai dari Perwira Tinggi hingga Tamtama Polri. KKEP memiliki peran penting dalam memastikan bahwa anggota Polri menjalankan tugas dan fungsinya sesuai dengan prinsip etika yang berlaku di institusi kepolisian, sehingga dapat menjaga integritas dan kredibilitas institusi di mata masyarakat.

Keanggotaan Komisi Kode Etik Polri bertugas untuk memeriksa dugaan pelanggaran Kode Etik Profesi Polri (KEPP) yang dilakukan anggota Polri dalam suatu wadah bernama Komisi Kode Etik Polri (KKEP) melalui mekanisme sidang KKEP yang bertugas melaksanakan pemeriksaan di persidangan, membuat pertimbangan hukum, dan memutus perkara pelanggaran KEPP. Menurut Pasal 39 Perpol No. 7 Tahun 2022, dalam beberapa situasi, Kapolri dapat mendelegasikan kewenangan pembentukan KKEP kepada pejabat tertentu untuk menangani pelanggaran oleh pejabat Polri di kesatuan kewilayahan. Misalnya, Wakil Kapolri bertugas menangani pelanggaran yang dilakukan oleh Perwira Menengah di Kepolisian Daerah atau Kepolisian Resor, sementara Inspektur Pengawasan Umum Polri menangani pelanggaran oleh Perwira Pertama di level yang sama.

KKEP memiliki tugas yang sangat strategis dalam proses penegakan kode etik sebagaimana diatur dalam Pasal 40 Perpol No. 7 Tahun 2022, yang mengatur bahwa tugas KKEP meliputi mempelajari hasil pemeriksaan oleh akreditor, melaksanakan persidangan pelanggaran kode etik, dan mengeluarkan putusan sidang. Dalam menjalankan tugas tersebut, KKEP memiliki berbagai kewenangan, antara lain menentukan apakah sidang akan dilaksanakan secara terbuka atau tertutup, memeriksa identitas terduga pelanggar serta saksi, dan mengajukan pertanyaan kepada semua pihak yang terlibat. KKEP juga berwenang memeriksa barang bukti dan melakukan pertimbangan hukum yang mendalam untuk memastikan bahwa setiap putusan yang diambil telah mempertimbangkan semua aspek yang relevan.

Berdasarkan ketentuan Pasal 83 Perpol No. 7 Tahun 2022, terdapat inovasi penting berupa mekanisme peninjauan kembali (KKEP PK) yang menjadi kewenangan Kapolri, di mana Kapolri berwenang melakukan peninjauan kembali

atas putusan KKEP atau putusan KKEP banding yang telah final dan mengikat. Peninjauan kembali tersebut dapat dilakukan paling lama tiga tahun sejak putusan KKEP atau putusan KKEP Banding, dan mekanisme ini tidak diatur dalam Perkap 14/2011 dan Perkap 19/2012 sebelumnya. Kewenangan ini sangat penting untuk memastikan bahwa tidak ada kekeliruan dalam putusan atau jika ditemukan alat bukti yang belum diperiksa pada saat sidang.

Berdasarkan Pasal 107 Peraturan Kepolisian Negara Republik Indonesia Nomor 7 Tahun 2022, pejabat Kepolisian yang melakukan pelanggaran KEPP dikenakan sanksi berupa sanksi etika dan/atau sanksi administratif. Sanksi etika meliputi: pernyataan bahwa perilaku pelanggar dinyatakan sebagai perbuatan tercela; kewajiban pelanggar untuk meminta maaf secara lisan di hadapan Sidang KKEP dan secara tertulis kepada Pimpinan Polri dan pihak yang dirugikan; serta kewajiban pelanggar untuk mengikuti pembinaan rohani, mental dan pengetahuan profesi selama satu bulan. Selain sanksi etika, KKEP juga berwenang menjatuhkan sanksi administratif yang dapat berupa penempatan di tempat khusus dan mutasi demosi dengan periode tertentu. Dalam kasus yang sama, sanksi administratif yang diberikan meliputi penempatan di tempat khusus selama 30 hari dan mutasi demosi selama periode yang bervariasi tergantung tingkat pelanggaran, dengan larangan penugasan di fungsi penegakan hukum. Semua proses sidang KKEP dilaksanakan secara transparan dengan melibatkan Kompolnas untuk memastikan akuntabilitas, sebagai bentuk komitmen Polri dalam menjaga kepercayaan publik dan menjamin profesionalisme anggota.²³

Transformasi regulasi melalui Perpol No. 7 Tahun 2022 telah membawa perubahan signifikan dalam sistem penegakan etika di lingkungan Polri, menggantikan Peraturan Kapolri Nomor 14 Tahun 2011 dan Peraturan Kapolri Nomor 19 Tahun 2012. Perubahan ini tidak hanya mengakomodasi perkembangan dan maraknya pelanggaran dengan modus yang bervariasi, tetapi juga merespons perubahan nilai etika, budaya, dan perilaku yang terjadi di masyarakat. Dengan demikian, KKEP menjadi instrumen penting dalam mewujudkan Polri yang profesional, akuntabel, dan responsif terhadap kebutuhan masyarakat dalam era transformasi digital dan tuntutan transparansi publik yang semakin tinggi.

1.2 Optimalisasi Divisi Profesi Dan Pengamanan (Propam) Dalam Melaksanakan Pengawasan, Pembinaan Dan Penegakan Kode Etik Profesi

Optimalisasi Divisi Profesi dan Pengamanan (Propam) Polri menjadi aspek sentral dalam upaya memperkuat penegakan kode etik di tubuh Kepolisian Negara

²³ Muhammad Jufri Dewa et al., “Penegakan Sanksi Kode Etik Profesi Kepolisian Terhadap Anggota Polri Melakukan Pungutan Liar Enforcing the Sanctions of the Police Professional Code of Ethics Against Members of the Indonesian National Police Performing Illegal Fees,” *Halu Oleo Legal Research* 5, no. 1 (2023): 277–89.

Republik Indonesia. Propam berperan sebagai unsur pengawas dan pembantu pimpinan di bidang pembinaan profesi serta pengamanan di lingkungan internal Polri, dengan tugas utama membina dan menyelenggarakan fungsi pertanggungjawaban profesi, pengamanan internal, penegakan disiplin, serta pelayanan pengaduan masyarakat atas penyimpangan anggota Polri²⁴. Salah satu terobosan penting dalam optimalisasi Propam adalah implementasi aplikasi Propam Presisi dan Dumas Presisi. Inovasi ini bertujuan meningkatkan efektivitas pengawasan internal dan pelayanan pengaduan masyarakat secara digital. Studi di Polda Bengkulu menunjukkan, meski teknologi digital sudah diadopsi dengan baik, pemanfaatan aplikasi pengaduan masyarakat Presisi masih menghadapi tantangan pada aspek sosialisasi, aksesibilitas, dan keberanian masyarakat maupun anggota untuk melapor karena perlunya identitas pelapor yang jelas. Penelitian tersebut juga menyoroti bahwa keberhasilan optimalisasi aplikasi pengaduan sangat dipengaruhi oleh tiga strategi utama:²⁵

1. Transformasi organisasi yang adaptif terhadap perkembangan teknologi dan budaya baru.
2. Pengembangan kompetensi SDM, termasuk pelatihan digital dan pembentukan tim lintas bidang untuk percepatan solusi inovatif.
3. Peningkatan sarana-prasarana serta media pendukung implementasi sistem digital pengaduan, termasuk integrasi dengan media sosial dan penyusunan SOP berbasis digital.

Divisi Propam juga mengemban fungsi pembinaan etika profesi Polri melalui upaya preemtif, preventif, penegakan hukum, dan rehabilitasi personel. Pembinaan ini sangat penting dalam membangun personel Polri yang presisi dan profesional, sebagaimana diamanatkan Pasal 32 Undang-Undang Nomor 2 Tahun 2002 tentang Kepolisian Negara Republik Indonesia. Pembinaan etika dilakukan secara berjenjang melalui pendidikan, pelatihan, serta penugasan, dan menjadi garda terdepan dalam menjaga citra serta kepercayaan publik terhadap Polri. Optimalisasi pengawasan dan pembinaan oleh Propam sangat diperlukan mengingat masih tingginya angka pelanggaran disiplin dan kode etik di lingkungan Polri. Sosialisasi nilai-nilai Tri Brata, Catur Prasetya, serta peraturan disiplin dan kode etik menjadi kunci untuk menekan degradasi moral dan mencegah pelanggaran anggota.

²⁴ Thoyyibah, Imadah Thoyyibah Imadah. "Analisis pelanggaran kode etik Humas Polri (Studi kasus Ferdy Sambo)." *Jurnal Ilmiah Ilmu Komunikasi Communique* 5, no 2. (2023): 161-172.

²⁵ Kuswahyudi Tresnadi, Zulkifli, and Agustinus Miranda W, "STRATEGI INOVASI BIDPROPAM POLDA BENGKULU DALAM IMPLEMENTASI APLIKASI PENGADUAN MASYARAKAT PRESISI UNTUK MENINGKATKAN KINERJA ORGANISASI," *Jurnal Ekonomi, Manajemen, Bisnis Dan Akuntansi* 2, no. 6 (2023): 873–82.

Menurut Christina Magdalena, Divisi Profesi dan Pengamanan (Propam) Polri memiliki sejumlah kewajiban strategis dalam pelaksanaan tugas institusionalnya. Tanggung jawab tersebut mencakup perumusan dan pengembangan sistem serta metode kerja yang menjadi panduan pelaksanaan fungsi Propam. Selain itu, Propam juga berperan dalam melakukan supervisi dan pemantauan terhadap staf, memberikan dukungan teknis dan operasional, serta merancang kebutuhan sumber daya manusia dan anggaran, termasuk usulan terkait penempatan dan pembinaan karier personel. Fungsi lainnya mencakup pengumpulan serta penyajian data dan statistik yang berkaitan dengan pelaksanaan tugas. Divisi ini juga bertanggung jawab menangani aduan masyarakat mengenai perilaku anggota Polri, termasuk koordinasi penanganan pengaduan di seluruh jajaran. Di sisi lain, Propam melaksanakan evaluasi terhadap penanganan kasus untuk keperluan rehabilitasi, pengampunan, atau pengurangan hukuman, serta pengakhiran sanksi bagi anggota yang telah menjalani proses hukum. Dalam aspek etik dan profesionalisme, Propam bertugas merumuskan standar, menilai penerapannya, serta menegakkan kode etik melalui audit investigatif. Fungsi pengamanan internal juga dijalankan, termasuk perlindungan terhadap personel, aset, dan informasi strategis, serta penyelidikan dugaan penyimpangan dalam pelaksanaan tugas. Selain itu, fungsi Provos berada di bawah koordinasi Propam, dengan fokus pada pembinaan disiplin, penegakan hukum internal, dan penyelesaian pelanggaran disipliner di tingkat pusat sesuai kewenangan yang berlaku.²⁶

Peranan Propam dalam penegakan kode etik profesi Polri terhadap anggota yang melanggar yang pada awalnya dijalankan melalui Unit Pelayanan Pengaduan dan Penindakan Disiplin. Unit kerja ini berfungsi membantu Kepala Kepolisian Daerah dalam melaksanakan pengamanan dan pengawasan internal di lingkungan organisasi Polri. Dipimpin oleh seorang Kepala Divisi Propam yang bertanggung jawab langsung kepada Kapolda, unit ini menjadi garda terdepan dalam menegakkan kedisiplinan dan menjaga integritas anggota. Optimalisasi Divisi Propam dalam penegakan kode etik Polri sangat penting untuk memastikan setiap pelanggaran dapat ditangani secara profesional, transparan, dan akuntabel. Melalui penguatan sistem pengawasan, peningkatan kompetensi personel, serta pemanfaatan teknologi informasi dalam pelayanan pengaduan, Propam diharapkan mampu memberikan efek jera bagi pelanggar dan mendorong terciptanya budaya kerja yang berintegritas.²⁷

²⁶ Christina Magdalena, *“Peranan Profesi dan Pengamanan (Propam) dalam Penegakan Hukum Tindak Pidana Penyalahgunaan Narkotika yang Dilakukan oleh Anggota Kepolisian,”* Jakarta, Sinar Grafika, 2014, hlm. 28.

²⁷ Hamdani Ritonga, Marlina Marlina, and Mustamam Mustamam, *“PENINDAKAN PROPAM (POLRI TERHADAP ANGGOTA POLISI YANG MELAKUKAN PENGANIAYAAN (Studi Di Bidang Propam* 230 | Equality : Journal of Law and Justice, Vol. 2, No. 2, November, 2025, P. 216-238.

Menurut Pasal 17 Perkap Nomor 14 Tahun 2011, Propam berperan melakukan pemeriksaan pendahuluan terhadap pelanggaran kode etik melalui audit investigasi, pemeriksaan, dan pemberkasan oleh fungsi Propam bidang pertanggungjawaban profesi. Selain itu, Propam juga bertugas melakukan pengawasan pelaksanaan putusan dan rehabilitasi personel yang telah mendapat sanksi kode etik. Proses ini mencakup pemeriksaan pendahuluan, sidang Komisi Kode Etik Polri (KKEP), sidang komisi banding, penetapan administrasi penjatuan hukuman, pengawasan pelaksanaan putusan, dan rehabilitasi personel.²⁸

Hadirnya peran atasan dalam Divisi Propam sangat penting dalam penegakan kode etik Polri, baik dari sisi pengawasan, pembinaan, maupun pelaksanaan tugas sehari-hari. Divisi Propam merupakan salah satu unsur pelaksana khusus di lingkungan Polri yang bertanggung jawab langsung kepada Kapolri dalam hal pembinaan profesi dan pengamanan internal organisasi Polri. Fungsi dan tugas Propam diatur secara tegas dalam Pasal 17 Perkap Nomor 14 Tahun 2011 tentang Kode Etik Profesi Kepolisian, yang menyebutkan bahwa Propam berperan melakukan pemeriksaan pendahuluan terhadap pelanggaran kode etik melalui audit investigasi, pemeriksaan, dan pemberkasan oleh fungsi Propam bidang pertanggungjawaban profesi, serta pengawasan pelaksanaan putusan dan rehabilitasi personel yang telah mendapat sanksi kode etik.²⁹

Dalam pelaksanaan tugasnya, atasan di Divisi Propam, seperti Kepala Divisi (Kadiv Propam), memiliki tanggung jawab untuk memastikan seluruh proses pembinaan, pengawasan, dan penegakan disiplin berjalan sesuai dengan ketentuan hukum dan standar etika profesi Polri. Kadiv Propam bertugas memantau, mengarahkan, dan memberi supervisi kepada staf di bawahnya guna menjamin terlaksananya fungsi Propam secara optimal. Selain itu, atasan juga wajib melakukan pembinaan dan penyelenggaraan fungsi pertanggungjawaban profesi, termasuk perumusan dan pengembangan standar serta kode etik profesi, penilaian akreditasi penerapan standar profesi, audit investigasi, dan penegakan etika profesi di lingkungan Polri. Peran atasan dalam Divisi Propam juga mencakup pemberian dukungan teknis, bimbingan, serta back-up kekuatan dalam pelaksanaan fungsi pengamanan internal, pengamanan personel, materiil, kegiatan, dan bahan

Kepolisian Resor Nias Selatan),” *Jurnal Ilmiah METADATA* 4, no. 3 (2022): 347–59, <https://doi.org/10.47652/metadata.v4i3.226>.

²⁸ A.A Oka, Made Hartono, and Muhamad Setianto, “PERAN PROPAM DALAM PENEGAKAN KODE ETIK KEPOLISIAN REPUBLIK INDONESIA BERDASARKAN KETENTUAN PASAL 17 PERATURAN KEPALA KEPOLISIAN NEGARA REPUBLIK,” *E-Journal Komunikasi Yustisia Universitas Pendidikan Ganesha* 5 (2022): 515–24.

²⁹ Rizkya K and Arif Prasetyo, “Pengaruh Gaya Kepemimpinan Terhadap Stres Kerja Anggota Polri Divisi PROPAM Polda Jawa Barat,” *JURNAL MANAJEMEN DAN BISNIS* 2, no. 1 (2018): 105–15.

keterangan, serta penyelidikan terhadap kasus pelanggaran atau dugaan penyimpangan dalam pelaksanaan tugas Polri.³⁰

Penindakan Propam terhadap Polisi yang melakukan tindak pidana diatur dalam Peraturan Pemerintah Nomor 1 Tahun 2003 tentang Pemberhentian Anggota Polri serta Peraturan Kapolri No. Pol.: 7 Tahun 2006 tentang Kode Etik Profesi Polri, yang mekanisme penanganannya melalui sidang Komisi Kode Etik Polri. Tindakan oleh Propam terhadap anggota Polri yang melakukan pelanggaran pada dasarnya dilakukan sesuai dengan ketentuan KUHAP dengan mengingat, memperhatikan dan berpedoman kepada ketentuan-ketentuan yang mengatur secara khusus bagi tersangka anggota Polri.³¹

Penerapan sanksi terhadap pelanggaran Kode Etik Profesi Polri oleh Divisi Propam menghadapi sejumlah hambatan signifikan. Salah satunya adalah ketidakjelasan aturan sanksi yang tidak secara rinci mengatur jenis pelanggaran dan konsekuensinya, sehingga menyulitkan anggota dalam membedakan antara pelanggaran disiplin dan pelanggaran kode etik. Selain itu, rendahnya kesadaran dan kepatuhan anggota Polri terhadap norma etik yang berlaku turut memperparah kondisi tersebut. Tantangan budaya institusional, seperti solidaritas internal yang berlebihan dan rasa enggan pimpinan dalam memproses pelanggaran rekan sejawat, juga menghambat tegaknya supremasi hukum. Di sisi lain, keterbatasan jumlah personel Propam yang tidak seimbang dengan anggota yang harus diawasi, saat ini anggota aktif pada divisi propam sejumlah orang, sedangkan personal aktif Polda Banten sejumlah 14.755 orang di akhir 2023 menurut Abdul Karim, S.I.K., M.Si, yang pada kalanya menjadi Kapolda Banten Irjen Pol Abdul Karim, serta minimnya partisipasi masyarakat dalam melaporkan pelanggaran, memperkuat urgensi reformasi dan penguatan mekanisme pengawasan etik di tubuh Polri.³²

³⁰ Tiomaria Sijabat, "REKONTRUKSI KEWENANGAN PROPAM TERHADAP PELAYANAN PENGADUAN MASYARAKAT ADANYA PENYALAHGUNAAN" (Universitas Islam Sultan Agung, 2024).

³¹ Doly Sadewo, Nelvitia Purba, and Adil Akhyar, "PENERAPAN SANKSI KODE ETIK TERHADAP OKNUM ANGGOTA BRIMOB YANG MELAKUKAN PELANGGARAN ETIK KEPOLISIAN (Studi Penelitian Bidang Profesi Dan Pengamanan Kepolisian Daerah Sumatera Utara)," *Jurnal Meta Hukum* 2, no. 3 (2023): 34–49.

³² Riyan Yudinata et al., "FUNGSI KODE ETIK POLISI DALAM MENCEGAH PELANGGARAN YANG DILAKUKAN APARAT PENEGAK HUKUM," *MIZANUNA: Jurnal Hukum Ekonomi Syariah* 02, no. 01 (2024): 32–44.

Berikut jenis pelanggaran kode etik tahun 2021 s/d 2024 pada lingkungan Polda Banten:



NO	BENTUK PELANGGARAN	2021	2022	2023	2024
1	PENYALAHGUNAAN NARKOBA	33	24	11	6
2	ASUSILA	3	8	17	10
3	TIDAK PROFESIONAL & LAHUN WEWENANG	13	17	12	9
4	TINDAK PIDANA UMUM	7	6	3	4
5	PENIPUAN	2	3		2
6	MENINGGALKAN TUGAS	8	4	8	7
7	PENGANIAYAAN	0	2	1	1
8	PENELANTARAN KELUARGA	0	1	3	0
9	LGBT	0	0	1	4
10	MEMELIKI, JUAL BELI KENDARAAN TANPA DOKUMEN SAH	0	0	13	2
11	PENGGELAPAN	0	0	0	1

Tantangan utama dalam optimalisasi Propam antara lain adalah keterbatasan fasilitas teknologi, kurangnya kompetensi SDM dalam pemanfaatan digitalisasi, serta resistensi budaya organisasi terhadap perubahan. Selain itu, masih terdapat kendala dalam keberanian anggota untuk melakukan pengawasan terhadap kolega sendiri, sehingga diperlukan penguatan komitmen pimpinan dalam mendorong budaya inovatif dan adaptif di lingkungan Propam.

Strategi penguatan yang disarankan mencakup transformasi budaya organisasi agar lebih terbuka terhadap inovasi dan perubahan. Hal ini penting untuk menciptakan lingkungan kerja yang adaptif dan responsif terhadap dinamika perkembangan teknologi dan kebutuhan organisasi. Selain itu, untuk meningkatkan transparansi, Kapolri meluncurkan aplikasi Propam Presisi dan Dumas Presisi pada April 2021. Aplikasi ini memungkinkan masyarakat melapor pelanggaran dengan verifikasi identitas ketat. Namun, implementasinya masih menghadapi tantangan seperti kurangnya sosialisasi dan resistensi budaya organisasi. Pasal 19 Perpol No. 7 Tahun 2022 mengatur mekanisme pemeriksaan digital, termasuk penggunaan rekaman elektronik dan analisis bukti digital, yang mempercepat proses investigasi. Selanjutnya, dengan melakukan peningkatan pelatihan dan supervisi sumber daya manusia secara berkelanjutan menjadi kunci dalam memastikan kompetensi dan profesionalisme personel tetap terjaga dan berkembang sesuai dengan tuntutan tugas. Pelatihan yang berkelanjutan juga membantu dalam mengatasi tantangan baru serta meningkatkan kemampuan dalam pemanfaatan teknologi dan penerapan prosedur kerja yang efektif. Selanjutnya, pengembangan standar operasional prosedur (SOP) digital dan integrasi sistem pengaduan dengan berbagai platform komunikasi menjadi langkah

strategis untuk memperlancar proses pengawasan dan pelayanan pengaduan masyarakat. Integrasi ini memungkinkan koordinasi yang lebih baik antar unit dan mempermudah akses masyarakat dalam menyampaikan pengaduan, sehingga meningkatkan transparansi dan akuntabilitas dalam penegakan kode etik dan pengawasan internal.³³

Penutup

Berdasarkan hasil penelitian dan pembahasan yang telah dilakukan, dapat ditarik kesimpulan utama yang menjawab identifikasi masalah yang telah dikemukakan dalam penelitian ini mengenai transformasi peran Komisi Kode Etik Kepolisian (KKEP) dalam penegakan kode etik Polri pasca Perpol No. 7 Tahun 2022 dan optimalisasi Divisi Profesi dan Pengamanan (Propam). Transformasi peran Komisi Kode Etik Kepolisian (KKEP) setelah terbitnya Perpol No. 7 Tahun 2022 membawa perubahan signifikan dalam penegakan kode etik Polri. KKEP kini tidak hanya menjadi lembaga pemeriksa dan pemutus perkara etik, tetapi juga berperan penting membangun kepercayaan publik melalui penegakan profesionalisme, transparansi, dan akuntabilitas. Perpol ini memperluas mekanisme penegakan kode etik, termasuk penguatan pengawasan internal dan pengaturan perilaku anggota, seperti penggunaan media sosial. Salah satu perubahan utama adalah kewenangan KKEP menentukan sidang etik terbuka atau tertutup, berbeda dari aturan sebelumnya yang mewajibkan sidang terbuka, sehingga memberi fleksibilitas namun tetap menuntut keseimbangan dengan prinsip transparansi publik.

Optimalisasi Divisi Profesi dan Pengamanan (Propam) sebagai pengawas internal Polri telah memperkuat sistem pengawasan, pembinaan, dan penegakan disiplin anggota. Sejak dibentuk pada 27 Oktober 2002 melalui Keputusan Kapolri No. Pol: Kep/53/X/2002, Propam mengalami transformasi dari struktur Provos yang semula terintegrasi dalam militer menjadi unsur pengawasan institusi Polri yang otonom sesuai amanat UU No. 2 Tahun 2002. Propam kini menjalankan empat sistem pengawasan: internal, eksternal melalui lembaga negara, pengawasan masyarakat, dan pengawasan melekat oleh atasan. Dengan tiga biro utama Ropaminal, Rowabprof, dan Roprovos Propam memiliki fondasi kuat dalam memastikan disiplin dan profesionalisme anggota Polri.

Sinergi antara KKEP yang telah bertransformasi dan optimalisasi Divisi Propam menciptakan sistem penegakan kode etik Polri yang lebih efektif dan adil. Integrasi keduanya mengatasi hambatan struktural dan operasional, sehingga pelanggaran etika dapat dicegah, dideteksi, diinvestigasi, dan disanksi secara lebih

³³ Chantica, J. A., Cahyani, R., & Romadhon, A. "Peranan Manajemen Pengawasan: Komitmen, Perencanaan, Kemampuan Karyawan (*Literature Review Msdm*).” *Jurnal Ilmu Manajemen Terapan*, no 3. (2022): 247-256.
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sistematis dan proporsional. Transformasi ini juga merespons kritik terkait transparansi dan lamanya proses sidang etik, dengan penguatan kelembagaan dan sistem pengawasan yang lebih komprehensif untuk mewujudkan tata kelola penegakan etik yang responsif dan berkelanjutan. Transformasi peran KKEP dan optimalisasi Divisi Propam telah berdampak positif terhadap upaya mewujudkan Polri yang lebih profesional, akuntabel, dan responsif. Implementasi Perpol No. 7 Tahun 2022, didukung sistem pengawasan internal yang diperkuat, berkontribusi pada penurunan pelanggaran kode etik serta peningkatan kepercayaan publik. Reformasi kelembagaan melalui penguatan peran KKEP dan Propam menjadi langkah strategis dalam menjawab tuntutan reformasi Polri, khususnya dalam membangun budaya organisasi dan penegakan hukum yang berintegritas serta pelayanan publik yang optimal.

Dengan demikian, transformasi peran KKEP dalam penegakan kode etik Polri pasca Perpol No. 7 Tahun 2022 dan optimalisasi Divisi Propam telah berhasil menciptakan sistem penegakan kode etik yang lebih adaptif, transparan, dan akuntabel, yang pada akhirnya berkontribusi dalam membangun kembali kepercayaan publik dan mewujudkan *Good Governance* serta *Clean Government* di lingkungan institusi kepolisian.

Saran

Berdasarkan hasil penelitian, disarankan agar Polri memperkuat kapasitas KKEP dan Divisi Propam melalui peningkatan sumber daya manusia, pelatihan berkelanjutan, serta pemanfaatan teknologi digital (misalnya aplikasi pelaporan berbasis daring dan early warning system) untuk mendukung transparansi dan efektivitas pengawasan. KKEP perlu memperjelas standar dan prosedur sidang etik, misalnya dengan pedoman baku mengenai kategori pelanggaran serta mekanisme sidang terbuka yang dapat diakses publik melalui publikasi ringkasan putusan. Divisi Propam diharapkan mengembangkan program pencegahan pelanggaran melalui edukasi, sistem deteksi dini, dan penguatan kerjasama dengan unit lain serta lembaga pengawas eksternal. Dalam hal ini, Komisi Kepolisian Nasional (Kopolnas) dapat dilibatkan secara aktif sebagai mitra strategis dalam mengawasi pelaksanaan kode etik, memberikan rekomendasi, dan menjembatani suara masyarakat.

Pemerintah dan lembaga pengawas eksternal juga perlu memperkuat regulasi yang relevan. Regulasi yang dimaksud dapat berupa Peraturan Kapolri (Perkap) atau Peraturan Kepolisian (Perpol) yang lebih teknis, bahkan bila diperlukan revisi terhadap Undang-Undang No. 2 Tahun 2002 tentang Kepolisian Negara Republik Indonesia, khususnya terkait kewenangan pengawasan etik.

Partisipasi masyarakat dalam pengawasan serta penguatan kurikulum etika di institusi pendidikan kepolisian menjadi langkah penting untuk menanamkan budaya profesionalisme dan integritas sejak dini. Implementasi saran ini diharapkan mampu memperkuat sistem penegakan kode etik Polri secara menyeluruh dan berkelanjutan, sehingga tercipta institusi kepolisian yang profesional, berintegritas, dan dipercaya masyarakat.

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**Optimalisasi Peran PPAT Dalam Pencegahan Praktik Mafia Tanah:
Analisis Yuridis Atas Fungsi Pengawasan Dan Akuntabilitas Jabatan**
*Optimizing The Role Of PPAT In Preventing Land Mafia Practices: A Legal Analysis Of
The Supervisory And Accountability Function Of The Office*

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ABSTRACT

The Land Deed Official (PPAT) holds a strategic role in Indonesia's land law system, as they are authorized to draw up authentic deeds that serve as the legal basis for the transfer of land rights. The legal status of PPAT is regulated under the Basic Agrarian Law, Government Regulation No. 24 of 1997, and Government Regulation No. 37 of 1998 in conjunction with Government Regulation No. 24 of 2016. However, in practice, problems arise regarding the involvement or negligence of PPAT in land mafia activities due to weak supervision and lack of professional integrity. This raises the question of how effectively PPAT's responsibility and accountability function in preventing land-related crimes. This study aims to analyze the role, authority, and supervisory mechanisms of PPAT in preventing land mafia practices in Indonesia. The research employs a normative legal method with statutory and conceptual approaches, supported by qualitative analysis of primary and secondary legal materials. The findings show that the effectiveness of PPAT's role is highly influenced by consistent supervision from the Ministry of Agrarian Affairs/National Land Agency (ATR/BPN), strict enforcement of administrative and criminal sanctions, and the implementation of digital land administration systems. Strengthening PPAT integrity is essential to ensure legal certainty and enhance public trust in Indonesia's land law system.

Keyword: PPAT, land mafia, legal protection

ABSTRAK

Pejabat Pembuat Akta Tanah (PPAT) memiliki peran strategis dalam sistem hukum pertanahan Indonesia karena berwenang membuat akta autentik sebagai dasar sahnya peralihan hak atas tanah. Kedudukan hukum PPAT diatur dalam Undang-Undang Pokok Agraria, PP Nomor 24 Tahun 1997, serta PP Nomor 37 Tahun 1998 jo. PP Nomor 24 Tahun 2016. Namun, dalam praktiknya muncul masalah berupa keterlibatan atau kelalaian PPAT dalam praktik mafia tanah akibat lemahnya pengawasan dan integritas profesional. Hal ini menimbulkan pertanyaan sejauh mana tanggung jawab dan akuntabilitas PPAT dapat berfungsi efektif dalam mencegah kejahatan pertanahan. Penelitian ini bertujuan untuk menganalisis peran, kewenangan, dan mekanisme pengawasan PPAT dalam mencegah praktik mafia tanah di Indonesia. Metode penelitian yang digunakan adalah hukum normatif dengan pendekatan perundang-undangan dan konseptual, serta analisis kualitatif terhadap bahan hukum primer dan sekunder. Hasil penelitian menunjukkan bahwa efektivitas peran PPAT sangat dipengaruhi oleh konsistensi pengawasan Kementerian ATR/BPN, penegakan sanksi administratif dan pidana, serta penerapan sistem digital pertanahan. Penguatan integritas PPAT menjadi kunci dalam mewujudkan kepastian hukum dan meningkatkan kepercayaan publik terhadap sistem pertanahan nasional.

Kata Kunci: PPAT, mafia tanah, perlindungan hukum

Pendahuluan

Permasalahan tanah di Indonesia merupakan isu yang kompleks dan multidimensional. Tanah tidak sekadar dipandang sebagai aset ekonomi, tetapi

juga memiliki nilai sosial, politik, dan kultural yang tinggi. Dalam konteks pembangunan nasional, tanah berperan sebagai faktor strategis bagi berbagai kegiatan ekonomi masyarakat, mulai dari pemenuhan kebutuhan dasar seperti pemukiman hingga aktivitas usaha produktif. Kompleksitas pengaturan, pemanfaatan, dan penguasaan tanah sering menimbulkan permasalahan hukum yang serius. Salah satu fenomena yang mendapat sorotan publik dalam dekade terakhir adalah praktik mafia tanah, yakni tindak kejahatan terorganisir yang mencakup pemalsuan dokumen, manipulasi data pertanahan, kolusi dengan aparat, serta penguasaan tanah secara ilegal. Praktik ini tidak hanya merugikan masyarakat, tetapi juga mengganggu kepercayaan publik terhadap sistem hukum pertanahan nasional.¹

Dalam konteks tersebut, peran Pejabat Pembuat Akta Tanah (PPAT) menjadi sangat strategis. PPAT adalah pejabat umum yang diberi kewenangan negara untuk membuat akta autentik terkait perbuatan hukum mengenai hak atas tanah atau Hak Milik atas Satuan Rumah Susun, sebagaimana diatur dalam Peraturan Pemerintah Nomor 18 Tahun 2021 serta Peraturan Jabatan PPAT (PP Nomor 37 Tahun 1998 jo. PP Nomor 24 Tahun 2016). Sebagai pejabat publik, PPAT berfungsi untuk menjamin kepastian hukum, keabsahan, dan keautentikan perjanjian hukum pertanahan. Akta PPAT menjadi dasar bagi pendaftaran tanah di Kantor Pertanahan, menjadikan PPAT sebagai garda terdepan dalam menjaga tertib administrasi pertanahan.²

Namun, praktik di lapangan menunjukkan adanya celah yang dimanfaatkan oleh mafia tanah. Terdapat kasus-kasus di mana akta dibuat tanpa verifikasi yang memadai terhadap identitas pihak, keaslian sertifikat, atau status hukum tanah. Kondisi ini menunjukkan adanya kelemahan dalam pengawasan dan akuntabilitas PPAT, yang menjadi celah bagi praktik ilegal. Dengan demikian, terdapat research gap yang jelas: meskipun regulasi PPAT telah mengatur kewenangan, pengawasan, dan akuntabilitas, studi empiris dan yuridis mengenai efektivitas implementasi regulasi tersebut dalam mencegah mafia tanah masih terbatas. Kebanyakan penelitian terdahulu lebih fokus pada praktik mafia tanah secara umum atau kasus sengketa tanah tertentu, namun belum secara sistematis menganalisis peran preventif PPAT dalam konteks pengawasan dan akuntabilitas sebagai instrumen hukum nasional.

Secara normatif, kewenangan PPAT diatur dalam Pasal 2 PP No. 37 Tahun 1998, yang mencakup pembuatan akta untuk jual beli, tukar-menukar, hibah, inbreng, pembagian hak bersama, pemberian Hak Tanggungan, serta pemberian Hak Guna Bangunan/Hak Pakai atas tanah Hak Milik. Akta PPAT berfungsi sebagai instrumen legalisasi dan validasi transaksi pertanahan, menuntut PPAT bertindak independen, objektif, dan mengedepankan prinsip kehati-hatian (prudential principle). Dengan demikian, PPAT memiliki peran preventif yang

¹ Sinaga, H. S. R. (2024). Pencegahan dan Pemberantasan Praktik Mafia Tanah Melalui Pengoptimalan Peran Satgas Anti-Mafia Tanah. *HUKMY: Jurnal Hukum*, 4(1), 590-603.

² Suprpto, S. (2024). Peranan Dan Perlindungan Hukum Yang Diberikan Kepada Pejabat Notaris Dalam Menghadapi Tantangan Dan Membantu Upaya Pemberantasan Praktik Mafia Tanah Di Wilayah Indonesia. *Innovative: Journal Of Social Science Research*, 4(2), 6079-6090.

sangat potensial. Namun, pengawasan terhadap kinerja PPAT masih menunjukkan kelemahan signifikan. Majelis Pengawas PPAT, yang terdiri dari unsur Kementerian ATR/BPN, Pemerintah Daerah, dan organisasi profesi IPPAT, sering belum efektif karena keterbatasan sumber daya, lemahnya koordinasi antar lembaga, dan rendahnya tingkat penegakan sanksi terhadap pelanggaran. Akibatnya, praktik mafia tanah tetap marak dan semakin kompleks. Kesenjangan antara aturan normatif dan praktik di lapangan menjadi isu kritis yang perlu dianalisis lebih dalam.³

Selain itu, aspek akuntabilitas PPAT juga menjadi perhatian utama. Akuntabilitas menuntut setiap tindakan PPAT dapat dipertanggungjawabkan secara hukum, etika, dan administratif. Ketika PPAT lalai atau terlibat dalam praktik mafia tanah, kredibilitas profesi ini dipertaruhkan. Oleh sebab itu, penelitian yang menelaah mekanisme pengawasan, penerapan sanksi, dan peningkatan profesionalisme PPAT melalui pendidikan berkelanjutan menjadi sangat relevan dan bernilai urgensi tinggi, baik dari perspektif hukum maupun sosial. Pemerintah sendiri menempatkan pemberantasan mafia tanah sebagai prioritas nasional. Optimalisasi peran PPAT bukan sekadar mekanisme administratif, melainkan bagian integral dari strategi nasional dalam mencegah praktik manipulasi dokumen dan transaksi ilegal. Dari perspektif akademis, kajian ini menawarkan novelty, yaitu analisis komprehensif tentang bagaimana hukum positif Indonesia mengatur kewenangan, pengawasan, dan akuntabilitas PPAT, sekaligus mengeksplorasi strategi optimalisasi peran PPAT sebagai garda terdepan pencegahan mafia tanah, yang sebelumnya jarang diangkat secara sistematis dalam penelitian hukum pertanahan.

Penelitian ini berjudul *“Optimalisasi Peran PPAT dalam Pencegahan Praktik Mafia Tanah: Analisis Yuridis atas Fungsi Pengawasan dan Akuntabilitas Jabatan”* lahir dari kebutuhan mendesak untuk menutup research gap, memperkuat kepastian hukum, melindungi hak masyarakat, dan memberikan rekomendasi kebijakan bagi pemerintah, organisasi profesi, dan praktisi hukum. Kajian ini diharapkan dapat memberikan kontribusi nyata dalam upaya pemberantasan mafia tanah yang semakin meresahkan, sekaligus memperkuat integritas profesi PPAT dalam sistem hukum pertanahan nasional.

Metode Penelitian

Metode penelitian yang digunakan dalam kajian ini adalah penelitian hukum normatif, yaitu penelitian yang berfokus pada norma-norma hukum positif yang berlaku serta asas-asas hukum yang menjadi dasar pengaturannya. Penelitian hukum normatif dilakukan dengan pendekatan perundang-undangan (statute approach), pendekatan konseptual (conceptual approach), dan pendekatan kasus (case approach). Pendekatan perundang-undangan digunakan untuk mengkaji ketentuan dalam Kitab Undang-Undang Hukum Perdata (KUH Perdata), serta Peraturan Pemerintah Nomor 24 Tahun 1997 tentang Pendaftaran Tanah.

³ Nur'Ainiyah, H. (2022). *Peran Pejabat Pembuat Akta Tanah (PPAT) dan Badan Pertanahan Nasional (BPN) dalam Pencegahan Mafia Tanah di Kabupaten Tuban* (Master's thesis, Universitas Islam Sultan Agung (Indonesia)).

Pendekatan konseptual digunakan untuk memahami doktrin hukum mengenai kewenangan dan pertanggungjawaban PPAT, sedangkan pendekatan yang dilakukan dengan menelaah Peraturan terkait. Data yang digunakan bersifat sekunder berupa bahan hukum primer, sekunder, dan tersier, yang dianalisis secara kualitatif untuk memperoleh kesimpulan mengenai kepastian hukum dan perlindungan hukum dalam praktik PPAT.

Hasil dan pembahasan

1.1 Kewenangan Dan Peran Pejabat Pembuat Akta Tanah (PPAT) Dalam Mencegah Praktik Mafia Tanah Ditinjau Dari Perspektif Hukum Positif Di Indonesia

Pejabat Pembuat Akta Tanah (PPAT) merupakan pejabat umum yang memiliki peran strategis dalam lalu lintas hukum pertanahan di Indonesia. Kedudukan PPAT diatur secara tegas dalam Peraturan Pemerintah Nomor 24 Tahun 1997 tentang Pendaftaran Tanah dan Peraturan Pemerintah Nomor 37 Tahun 1998 jo. PP Nomor 24 Tahun 2016 tentang Peraturan Jabatan PPAT. Dalam ketentuan tersebut ditegaskan bahwa PPAT diberi kewenangan untuk membuat akta autentik mengenai perbuatan hukum tertentu terkait hak atas tanah atau Hak Milik atas Satuan Rumah Susun, seperti jual beli, hibah, tukar-menukar, pemasukan ke dalam perseroan, pembagian hak bersama, pemberian Hak Guna Bangunan atau Hak Pakai atas tanah Hak Milik, serta pemberian Hak Tanggungan. Dengan fungsi tersebut, PPAT menjadi garda terdepan dalam memastikan kepastian hukum, legalitas transaksi pertanahan, serta perlindungan hukum bagi para pihak yang melakukan perjanjian.⁴

Kewenangan PPAT dalam konteks pencegahan praktik mafia tanah dapat dipahami melalui perannya sebagai pejabat publik yang berfungsi melakukan verifikasi, validasi, serta pencatatan dokumen yang berkaitan dengan peralihan hak atas tanah. Pasal 1868 KUH Perdata menegaskan bahwa akta autentik adalah akta yang dibuat oleh pejabat berwenang dalam bentuk yang ditentukan undang-undang. Oleh karena itu, setiap akta yang dibuat oleh PPAT memiliki kekuatan pembuktian sempurna selama tidak terbukti adanya cacat formil maupun materil. Dalam konteks praktik mafia tanah, akta yang dibuat oleh PPAT menjadi instrumen penting dalam menutup ruang terjadinya rekayasa dokumen, pemalsuan identitas, maupun transaksi fiktif. Dengan demikian, kewenangan PPAT bukan hanya sebatas formalitas administratif, melainkan juga instrumen preventif terhadap tindak pidana pertanahan.⁵

Secara yuridis, Undang-Undang Nomor 5 Tahun 1960 tentang Peraturan Dasar Pokok-Pokok Agraria (UUPA) menekankan bahwa setiap hak atas tanah wajib didaftarkan untuk menjamin kepastian hukum bagi pemegangnya.

⁴ Azhar, N. N., & Pria Dharsana, I. (2024). Efektivitas Penggunaan Sertipikat Elektronik dalam Mencegah Pemalsuan Dokumen Tanah. *Jurnal Ilmu Hukum, Humaniora dan Politik (JIHHP)*, 5(2).

⁵ Suprpto, S. 2024. "Peranan dan Perlindungan Hukum yang Diberikan Kepada Pejabat Notaris dalam Menghadapi Tantangan dan Membantu Upaya Pemberantasan Praktik Mafia Tanah di Wilayah Indonesia." *Innovative: Journal of Social Science Research* 4, no. 2: 6079–6090.

Selanjutnya, kewajiban pendaftaran tanah dituangkan lebih lanjut dalam Pasal 37 ayat (1) PP 24/1997, yang menyatakan bahwa peralihan hak atas tanah dan hak milik atas satuan rumah susun melalui jual beli, tukar-menukar, hibah, pemasukan dalam perusahaan, atau perbuatan hukum lain hanya dapat didaftarkan jika dibuktikan dengan akta yang dibuat oleh PPAT. Dari ketentuan ini terlihat bahwa akta PPAT menjadi syarat formil dan materil untuk terjadinya peralihan hak secara sah dan tercatat. Tanpa akta PPAT, peralihan hak tidak dapat dicatat di kantor pertanahan, sehingga kedudukan hukum pemilik baru menjadi lemah. Peran preventif PPAT tampak nyata, karena setiap transaksi yang tidak melalui mekanisme PPAT berpotensi menjadi celah praktik mafia tanah yang mengandalkan surat palsu atau pengakuan sepihak.⁶

Dalam praktiknya, mafia tanah biasanya melakukan manipulasi dokumen seperti memalsukan identitas pemilik, memanfaatkan sertifikat ganda, atau menyalahgunakan celah hukum dalam proses balik nama dan pendaftaran tanah. PPAT memiliki kewajiban untuk mencegah hal ini dengan melakukan verifikasi dokumen kepemilikan, mencocokkan data sertifikat dengan buku tanah di kantor pertanahan, serta memastikan kehadiran para pihak yang melakukan perbuatan hukum. Pasal 22 ayat (1) PP 37/1998 menegaskan bahwa PPAT wajib membacakan akta di hadapan para pihak dan memastikan bahwa para pihak memahami isi akta tersebut. Selain itu, PPAT juga wajib menolak pembuatan akta apabila dokumen yang diajukan tidak memenuhi persyaratan hukum atau terdapat keraguan atas keabsahan dokumen. Dari sisi normatif, kewajiban ini menempatkan PPAT sebagai filter utama dalam mencegah penyalahgunaan dokumen yang sering digunakan mafia tanah untuk menguasai aset masyarakat.⁷

Dari perspektif hukum administrasi negara, kedudukan PPAT sebagai pejabat umum tunduk pada pengawasan dan pembinaan oleh Kementerian Agraria dan Tata Ruang/Badan Pertanahan Nasional (ATR/BPN). Hal ini sejalan dengan Pasal 3 PP 37/1998, yang menyebutkan bahwa PPAT diangkat dan diberhentikan oleh Kepala BPN. Dengan mekanisme pengawasan tersebut, negara berupaya memastikan bahwa setiap tindakan PPAT sesuai dengan asas legalitas, akuntabilitas, serta transparansi. Namun, dalam praktiknya sering ditemukan adanya oknum PPAT yang justru terlibat atau lalai sehingga membuka ruang bagi praktik mafia tanah. Oleh karena itu, fungsi pengawasan menjadi penting untuk menjamin agar kewenangan PPAT benar-benar dijalankan sesuai norma hukum positif dan tidak disalahgunakan.⁸

Selain pengawasan administratif, peran PPAT dalam mencegah praktik mafia tanah juga berkaitan dengan pertanggungjawaban hukum. Apabila PPAT terbukti lalai atau dengan sengaja membuat akta yang tidak sesuai dengan

⁶ Arlina, S., Tanjung, M. H., Milandry, A. D., & Yanti, E. (2025). Sosialisasi Kepastian Hukum Sertifikat Elektronik Sebagai Bukti Hak Atas Tanah di Desa Pangkalan Baru, Kecamatan Siak Hulu, Kabupaten Kampar. *I-Com: Indonesian Community Journal*, 5(1), 605-614.

⁷ Permadi, I. 2024. "Kejahatan Mafia Tanah sebagai Ancaman Penguasaan Tanah yang Berkepastian Hukum." *Perspektif Hukum*, 1-25.

⁸ Rosmidah, R., Hosen, M., & Sasmiar, S. (2023). Penataan struktur hukum hak atas tanah dalam rangka keadilan dan investasi. *Recital Review*, 5(2), 209-244.

ketentuan, maka ia dapat dikenakan sanksi administratif, perdata, bahkan pidana. Sanksi administratif diatur dalam Peraturan Menteri ATR/Kepala BPN Nomor 2 Tahun 2018 tentang Pembinaan dan Pengawasan PPAT, yang mencakup teguran tertulis, pemberhentian sementara, hingga pemberhentian dengan tidak hormat. Dari sisi perdata, kelalaian PPAT dapat digugat ganti rugi berdasarkan Pasal 1365 KUH Perdata tentang perbuatan melawan hukum, apabila tindakannya menimbulkan kerugian bagi para pihak. Sementara dari sisi pidana, keterlibatan PPAT dalam praktik mafia tanah dapat dijerat dengan pasal-pasal pemalsuan dokumen dalam KUHP, seperti Pasal 263 KUHP tentang pemalsuan surat, maupun tindak pidana korupsi apabila terbukti ada kolusi dengan aparat lain.⁹

Dari perspektif teori hukum, peran PPAT dalam mencegah praktik mafia tanah dapat dilihat melalui fungsi hukum sebagai sarana perlindungan kepentingan (*law as a tool of social engineering*) sebagaimana dikemukakan Roscoe Pound. Hukum pertanahan di Indonesia dibentuk untuk memberikan kepastian dan keadilan bagi masyarakat, sehingga PPAT sebagai pejabat yang diberi kewenangan harus menjalankan tugasnya tidak hanya secara administratif tetapi juga substantif. Hal ini sejalan dengan asas kepercayaan dan kehati-hatian (*prudential principle*) yang harus melekat dalam setiap akta yang dibuat oleh PPAT. Dengan prinsip kehati-hatian, PPAT dituntut melakukan pengecekan mendalam terhadap dokumen dan identitas pihak-pihak yang bersangkutan, sehingga dapat menutup celah yang sering dimanfaatkan mafia tanah untuk menguasai tanah secara melawan hukum.

Kedudukan PPAT juga harus dipahami dalam konteks reformasi hukum agraria di Indonesia. Program Pendaftaran Tanah Sistematis Lengkap (PTSL) yang digalakkan oleh pemerintah menjadi bagian dari upaya menekan praktik mafia tanah dengan mendorong percepatan sertifikasi tanah. Dalam program ini, PPAT turut berperan dengan memastikan akta-akta peralihan hak tanah masuk dalam sistem pendaftaran yang tertib dan transparan. Oleh karena itu, sinergi antara PPAT, BPN, dan aparat penegak hukum menjadi kunci untuk meminimalisir potensi kejahatan pertanahan yang merugikan masyarakat luas.¹⁰

Dari analisis tersebut dapat ditegaskan bahwa kewenangan dan peran PPAT dalam mencegah praktik mafia tanah sangat strategis karena berhubungan langsung dengan legalitas peralihan hak atas tanah. Hukum positif di Indonesia telah menempatkan PPAT sebagai pejabat umum yang berfungsi menjamin kepastian hukum, namun efektivitasnya sangat bergantung pada integritas individu PPAT, mekanisme pengawasan, serta penegakan hukum terhadap oknum yang menyalahgunakan kewenangan. Dengan optimalisasi peran PPAT yang dijalankan sesuai aturan, praktik mafia tanah yang selama ini meresahkan

⁹ Noviani, R. N. A. 2023. "Perlindungan Hukum Bagi Pemilik Hak Atas Tanah dari Praktik Mafia Tanah di Indonesia." *Das Sollen: Jurnal Kajian Kontemporer Hukum dan Masyarakat* 1, no. 2.

¹⁰ Rahmiyanti, B. I., Aziz, A. A., & Mulhimmah, B. R. (2025). Dynamics of Land and Building Acquisition Tax Collection in West Lombok Regency: Challenges and Achievements. *JURNAL PENDIDIKAN IPS*, 15(2), 351-355.

masyarakat dapat diminimalisir, sehingga tujuan hukum agraria untuk memberikan kepastian dan keadilan dapat terwujud secara nyata.¹¹

N o	Kasus	Fakta Kasus	Peran/Kewenangan PPAT	Hasil/Implikasi Hukum	Analisis
1	Kasus Mafia Tanah	Mafia tanah memalsukan sertifikat hak milik dan akta jual beli dengan melibatkan oknum PPAT untuk memuluskan pengalihan tanah.	PPAT terlibat dalam pembuatan akta tanpa verifikasi dokumen secara menyeluruh; mengabaikan prosedur legal formal.	Akta dibatalkan melalui pengadilan, PPAT diberhentikan sementara, pelaku mafia tanah dijerat pidana pemalsuan dokumen (Pasal 263 KUHP) dan penipuan.	Menunjukkan celah pengawasan internal; integritas PPAT sangat menentukan efektivitas pencegahan mafia tanah. Perlu penguatan sanksi administratif dan audit rutin akta.
2	Kasus Sertifikat Ganda	Dua pihak mengklaim kepemilikan tanah sama; mafia tanah mencoba memanfaatkan akta PPAT yang dibuat secara prosedural tapi kurang cermat verifikasi dokumen.	PPAT melakukan pembuatan akta sesuai prosedur, tetapi verifikasi identitas dan riwayat sertifikat belum mendalam.	Sengketa tanah diselesaikan melalui pengadilan; akta PPAT tetap sah secara formil, tetapi konflik muncul karena dokumen pendukung kurang diverifikasi.	Menunjukkan batas kewenangan PPAT dalam pencegahan; perlunya mekanisme cross-check tambahan dengan database BPN dan peningkatan kewaspadaan terhadap indikasi sertifikat ganda.

1.2 Se jauh Mana Efektivitas Fungsi Pengawasan Dan Akuntabilitas Jabatan PPAT Dapat Mengoptimalkan Pencegahan Praktik Mafia Tanah, Serta Apa Implikasinya Terhadap Perlindungan Hukum Bagi Masyarakat?

¹¹ Samad, M., M. K. Hidjaz, and A. Arief. 2025. "Efektivitas Penerapan Sertifikat Tanah Elektronik Dalam Mencegah Praktek Mafia Tanah." LEGAL DIALOGICA 1, no. 1.
265 | Equality : Journal of Law and Justice, Vol. 2, No. 2, November, 2025, P. 259-271.

Pejabat Pembuat Akta Tanah (PPAT) memegang peranan penting dalam sistem hukum pertanahan Indonesia. Kewenangan PPAT untuk membuat akta autentik mengenai perbuatan hukum tertentu terkait hak atas tanah dan hak milik atas satuan rumah susun menjadikannya sebagai pejabat publik yang sangat strategis. Namun, di balik kewenangan tersebut terdapat tuntutan akuntabilitas dan pengawasan yang ketat, karena praktik mafia tanah seringkali melibatkan manipulasi dokumen, sertifikat ganda, hingga kolusi dengan pejabat. Tanpa fungsi pengawasan yang efektif, PPAT berpotensi menjadi pintu masuk praktik mafia tanah. Oleh karena itu, penting untuk menelaah sejauh mana efektivitas pengawasan serta akuntabilitas jabatan PPAT dalam upaya pencegahan praktik mafia tanah dan implikasinya bagi perlindungan hukum masyarakat.¹²

Secara normatif, fungsi pengawasan terhadap PPAT diatur dalam Peraturan Menteri Agraria dan Tata Ruang/Kepala BPN Nomor 2 Tahun 2018 tentang Pembinaan dan Pengawasan PPAT. Regulasi ini menegaskan bahwa pengawasan terhadap PPAT dilakukan oleh Menteri melalui Kepala Kantor Wilayah BPN dan Kepala Kantor Pertanahan. Bentuk pengawasan meliputi pembinaan teknis, evaluasi kinerja, pemeriksaan berkala, hingga penjatuhan sanksi administratif apabila PPAT melanggar ketentuan jabatan.¹³ Dalam Pasal 3 ayat (1) Permen tersebut ditegaskan bahwa tujuan pengawasan adalah untuk memastikan PPAT menjalankan jabatannya sesuai dengan ketentuan peraturan perundang-undangan serta kode etik jabatan. Dari perspektif hukum administrasi, pengawasan ini menjadi instrumen untuk mencegah penyalahgunaan kewenangan yang dapat membuka peluang praktik mafia tanah.¹⁴

Efektivitas fungsi pengawasan terhadap PPAT bergantung pada sejauh mana regulasi dijalankan secara konsisten. Dalam praktiknya, sering ditemukan lemahnya mekanisme pengawasan yang bersifat reaktif, yakni hanya dilakukan setelah adanya laporan pelanggaran. Padahal, untuk mencegah mafia tanah, pengawasan harus dilakukan secara proaktif melalui sistem audit berkala terhadap akta-akta yang dibuat PPAT, pengecekan dokumen pendukung, dan integrasi data dengan Kantor Pertanahan. Kelemahan pengawasan yang masih manual dan tidak terintegrasi menyebabkan masih adanya peluang bagi oknum PPAT bekerja sama dengan mafia tanah untuk membuat akta yang tidak sesuai dengan ketentuan. Hal ini menunjukkan bahwa efektivitas pengawasan belum maksimal sehingga masih diperlukan perbaikan regulasi dan teknologi.¹⁵

¹² Sekarmadji, A., & Moechthar, O. (2023). *Alternatif Penyelesaian Sengketa Pemanfaatan Ruang*. Airlangga University Press.

¹³ Pribadi, A. S., O. N. Sari, and M. Z. Alwi. 2024. "Sinergitas Aparat Penegak Hukum Memberantas Mafia Tanah di Balikpapan." *Journal de Facto* 11, no. 1: 121-134.

¹⁴ Rahman, A. K., A. E. Ramadhanty, E. S. Rusli, M. A. P. Purnomo, U. L. Parangga, and W. Dwita. 2024. "Strategi Penegakan Hukum dalam Penyelesaian Praktik Mafia Tanah dengan Instrumen Hukum Perdata di Indonesia." *As-Syar'i: Jurnal Bimbingan & Konseling Keluarga* 6, no. 2: 2000-2012.

¹⁵ Alvina, V. N. (2023). *Penelusuran Aset Perkara Tindak Pidana Korupsi Oleh Komisi Pemberantasan Korupsi (KPK)* (Doctoral dissertation, Universitas Islam Indonesia).

Selain pengawasan administratif, akuntabilitas jabatan PPAT juga menjadi instrumen penting dalam mencegah mafia tanah. Akuntabilitas dalam konteks hukum berarti tanggung jawab PPAT atas segala tindakan yang dilakukan dalam menjalankan kewenangannya. Bentuk akuntabilitas tersebut dapat dilihat dari tiga aspek, yaitu akuntabilitas administratif, perdata, dan pidana. Akuntabilitas administratif tercermin dalam mekanisme pemberian sanksi oleh Menteri ATR/BPN sesuai Pasal 7 Permen ATR/BPN Nomor 2 Tahun 2018, mulai dari teguran tertulis hingga pemberhentian. Akuntabilitas perdata melekat pada prinsip Pasal 1365 KUH Perdata, yang menegaskan bahwa setiap perbuatan melawan hukum yang menimbulkan kerugian wajib diganti. Artinya, PPAT yang lalai atau melakukan kesalahan dalam pembuatan akta dapat digugat ganti rugi oleh pihak yang dirugikan. Sementara itu, akuntabilitas pidana dapat timbul apabila PPAT terlibat langsung dalam tindak pidana pemalsuan dokumen atau penipuan yang berkaitan dengan mafia tanah, misalnya berdasarkan Pasal 263 KUHP tentang pemalsuan surat.

Dari sisi teoretis, efektivitas pengawasan dan akuntabilitas PPAT harus dilihat dalam kerangka teori fungsi hukum yang dikemukakan oleh Lawrence M. Friedman, yang membagi sistem hukum menjadi tiga elemen: struktur, substansi, dan kultur hukum.¹⁶ Struktur hukum mencakup lembaga pengawas seperti BPN, substansi hukum berupa regulasi tentang kewenangan dan pengawasan PPAT, dan kultur hukum berupa integritas serta kesadaran hukum PPAT. Apabila ketiga elemen ini berjalan seimbang, maka pengawasan dan akuntabilitas PPAT dapat efektif dalam mencegah mafia tanah. Namun, jika salah satu elemen lemah, misalnya budaya hukum PPAT yang permisif terhadap praktik manipulasi dokumen, maka fungsi pengawasan menjadi tidak optimal.¹⁷

Efektivitas pengawasan PPAT juga berkaitan erat dengan sistem digitalisasi pertanahan. Dalam beberapa tahun terakhir, Kementerian ATR/BPN meluncurkan program sertifikat tanah elektronik dan Sistem Layanan Informasi Pertanahan (SLIP) untuk meminimalisir praktik mafia tanah. Integrasi data digital ini memungkinkan akta PPAT dapat segera diverifikasi dengan basis data nasional, sehingga mengurangi potensi manipulasi dokumen. Peran PPAT dalam sistem ini semakin transparan karena setiap akta yang dibuat dapat dilacak secara elektronik. Hal ini memperkuat akuntabilitas PPAT sekaligus meningkatkan perlindungan hukum masyarakat, sebab data transaksi tanah lebih aman dan sulit dimanipulasi.

Implikasi dari pengawasan dan akuntabilitas PPAT terhadap perlindungan hukum masyarakat sangat signifikan. Pertama, dengan adanya pengawasan yang efektif, masyarakat terhindar dari risiko transaksi tanah yang cacat hukum atau fiktif. Akta autentik yang dibuat PPAT menjadi jaminan kepastian hukum sebagaimana ditegaskan dalam Pasal 1868 KUH Perdata. Kedua, akuntabilitas PPAT memberikan jaminan keadilan bagi masyarakat. Jika terjadi kerugian akibat kesalahan PPAT, masyarakat memiliki hak untuk menuntut ganti rugi melalui

¹⁶ Sinaga, H. S. R. 2024. "Pencegahan dan Pemberantasan Praktik Mafia Tanah Melalui Pengoptimalan Peran Satgas Anti-Mafia Tanah." *HUKMY: Jurnal Hukum* 4, no. 1: 590-603.

¹⁷ Wahyuni, R. D., and I. Misrah. 2023. "Kebijakan Pemerintah dalam Upaya Pencegahan dan Pemberantasan Mafia Tanah." *Inisiasi*, 25-30.

mekanisme hukum perdata atau melaporkan ke aparat penegak hukum untuk sanksi pidana. Ketiga, pengawasan yang ketat menciptakan iklim kepercayaan publik terhadap sistem pertanahan, sehingga masyarakat merasa terlindungi dalam melakukan transaksi tanah.

Namun, dalam praktiknya terdapat tantangan serius dalam implementasi pengawasan dan akuntabilitas PPAT. Banyak kasus mafia tanah yang mencuat justru melibatkan oknum PPAT. Misalnya, kasus pemalsuan akta jual beli tanah yang melibatkan kolusi antara mafia tanah, oknum aparat desa, dan PPAT. Dalam kasus tersebut, PPAT seharusnya menolak pembuatan akta karena dokumen kepemilikan tidak sah, tetapi karena lemahnya integritas dan minimnya pengawasan, akta tetap dibuat sehingga merugikan masyarakat. Kasus semacam ini menunjukkan bahwa regulasi yang ada belum sepenuhnya efektif tanpa integritas individu dan sistem pengawasan yang transparan.

Dari sudut pandang perlindungan hukum preventif dan represif sebagaimana dikemukakan oleh Philipus M. Hadjon, pengawasan dan akuntabilitas PPAT dapat dikategorikan sebagai bentuk perlindungan hukum preventif. Hal ini karena keberadaan pengawasan bertujuan mencegah masyarakat dirugikan oleh tindakan PPAT yang tidak sesuai aturan.¹⁸ Namun, ketika kerugian telah terjadi, perlindungan hukum represif melalui gugatan perdata atau laporan pidana menjadi jalan untuk memulihkan hak masyarakat. Oleh karena itu, efektivitas fungsi pengawasan dan akuntabilitas PPAT berimplikasi langsung pada realisasi perlindungan hukum masyarakat dalam ranah pertanahan.¹⁹

Efektivitas fungsi pengawasan dan akuntabilitas jabatan PPAT dalam pencegahan praktik mafia tanah sangat bergantung pada konsistensi pelaksanaan regulasi, integritas PPAT, serta dukungan teknologi informasi pertanahan. Jika pengawasan dilakukan secara berkesinambungan dan akuntabilitas PPAT ditegakkan melalui sanksi yang tegas, maka praktik mafia tanah dapat diminimalisir. Implikasinya bagi masyarakat adalah terwujudnya kepastian hukum, keadilan, dan perlindungan hak atas tanah. Dengan demikian, optimalisasi pengawasan dan akuntabilitas PPAT bukan hanya menjadi keharusan yuridis, tetapi juga kebutuhan sosial untuk menjaga kepercayaan masyarakat terhadap sistem hukum pertanahan di Indonesia.²⁰

Penutup

Berdasarkan pembahasan, dapat disimpulkan bahwa kewenangan dan peran PPAT dalam mencegah praktik mafia tanah sangat strategis karena menyangkut legalitas dan kepastian hukum dalam setiap transaksi pertanahan.

¹⁸ Allister, D., and B. Djaja. 2024. "Tanggung Jawab Negara dalam Upaya Pemberantasan Mafia Tanah di Indonesia." *Ranah Research: Journal of Multidisciplinary Research and Development* 7, no. 1: 142-148.

¹⁹ Kusumojati, M. P. 2022. "Pertanggungjawaban Hukum Pidana Terhadap Notaris Sebagai Oknum Mafia Tanah." *Jurnal Education and Development* 11, no. 1: 44-52.

²⁰ Suprpto, S. (2024). Peranan Dan Perlindungan Hukum Yang Diberikan Kepada Pejabat Notaris Dalam Menghadapi Tantangan Dan Membantu Upaya Pemberantasan Praktik Mafia Tanah Di Wilayah Indonesia. *Innovative: Journal Of Social Science Research*, 4(2), 6079-6090.

PPAT sebagai pejabat umum yang diberi kewenangan membuat akta autentik menjadi garda terdepan dalam memastikan bahwa setiap peralihan hak atas tanah berlangsung sesuai ketentuan hukum positif. Fungsi preventif PPAT tampak nyata melalui kewajiban melakukan verifikasi, validasi, serta pencocokan dokumen kepemilikan, sehingga dapat menutup celah bagi mafia tanah yang kerap menggunakan dokumen palsu atau manipulatif. Namun demikian, efektivitas peran PPAT sangat bergantung pada integritas individu, mekanisme pengawasan, serta penegakan akuntabilitas. Fungsi pengawasan dan akuntabilitas jabatan PPAT, baik administratif, perdata, maupun pidana, merupakan instrumen penting untuk meminimalisir penyalahgunaan kewenangan. Implementasi sistem digitalisasi pertanahan juga menjadi terobosan signifikan untuk memperkuat transparansi dan mencegah manipulasi dokumen. Implikasinya, keberadaan PPAT yang berintegritas dan diawasi secara ketat mampu menjamin perlindungan hukum masyarakat, menciptakan kepastian hukum, serta meningkatkan kepercayaan publik terhadap sistem hukum pertanahan.

Adapun saran yang dapat diajukan adalah perlunya penguatan regulasi dan mekanisme pengawasan PPAT secara berkesinambungan, tidak hanya bersifat reaktif tetapi proaktif melalui audit berkala, integrasi data digital, serta pembinaan berjenjang dari Kementerian ATR/BPN. Selain itu, perlu ditegakkan sanksi yang tegas bagi PPAT yang terbukti lalai atau terlibat dalam praktik mafia tanah agar menimbulkan efek jera. Dari sisi substansi hukum, aturan terkait akuntabilitas PPAT perlu lebih diperjelas untuk memastikan kepastian perlindungan hukum bagi masyarakat. Di sisi lain, peningkatan integritas PPAT melalui pendidikan etik dan kode etik profesi juga mutlak dilakukan, sehingga prinsip kehati-hatian dapat dijalankan dalam setiap pembuatan akta. Dengan demikian, optimalisasi peran, pengawasan, dan akuntabilitas PPAT diharapkan mampu menjadi benteng utama dalam pemberantasan mafia tanah sekaligus memperkuat perlindungan hukum bagi masyarakat.

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Enforcement of Business Order by the Municipal Police in Pulogadung District under Jakarta Regional Regulation No. 8 of 2007 on Public Order

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ABSTRACT

This study aims to analyze the implementation of public order enforcement on specific business establishments operating in public spaces by the Municipal Police (Satpol PP) in Pulogadung District, based on Regional Regulation of the Province of DKI Jakarta Number 8 of 2007 concerning Public Order. The research employs a normative-empirical legal method with a qualitative approach. Data were collected through document analysis, in-depth interviews with Satpol PP officers, local government officials, and business actors, as well as field observations. The findings indicate that although Regional Regulation Number 8 of 2007 provides a comprehensive legal framework, its implementation by Satpol PP remains suboptimal. Law enforcement tends to be limited to administrative measures such as warning letters and symbolic fines, without escalation to judicial proceedings. Key obstacles include regulatory overlap, limited personnel and operational resources, economic pressures on the community, and a communication approach that lacks participatory engagement. To improve legal compliance, a holistic strategy is required combining consistent repressive enforcement with preventive efforts such as participatory legal education, provision of affordable legal business locations, licensing reform, and institutional capacity strengthening within Satpol PP.

Keyword: Public Order; Satpol PP; DKI Jakarta Regional Regulation; Law Enforcement, Specific Business Establishments

Introduction

Public order constitutes a fundamental foundation for the creation of a safe, comfortable, and civilized social life. In the urban context, order does not merely concern aspects of traffic and cleanliness, but also encompasses the regulation of business spaces, the use of public facilities, and interactions among citizens within dense and complex social spaces. Jakarta, as the center of national governance and economy, faces significant challenges in maintaining a balance between the dynamics of urbanization and the need for spatial order.¹ Phenomena such as the proliferation of street vendors on sidewalks, unlicensed businesses in green lanes, and violations of urban spatial functions indicate that order is not a naturally occurring condition but rather the result of systematic and consistent legal intervention.²

Normatively, the enforcement of public order has a strong legal foundation within the national legal system. Article 28G paragraph (1) of the 1945 Constitution

¹ Insan Harapan Harahap, "Analisis Ketersediaan Ruang Terbuka Hijau Dan Dampaknya Bagi Warga Kota DKI Jakarta," *Journal of Entrepreneurship, Management and Industry (JEMI)* 4, no. 1 (2021): 18-24, <https://doi.org/10.36782/jemi.v4i1.2134>.

² Augustinus Simanjuntak, *Hukum Bisnis Sebuah Pemahaman Integratif Antara Hukum Dan Praktik Bisnis-Rajawali Pers* (Jakarta: PT. RajaGrafindo Persada, 2019), 39.



of the Republic of Indonesia guarantees every citizen the right to security and protection from threats to public order.³ This provision affirms that public order is not merely an administrative matter but a constitutional right that must be guaranteed by the state.

In its implementation, this principle is elaborated through Law No. 23 of 2014 on Regional Government, which stipulates that peace and public order constitute mandatory governmental affairs under the authority of local governments. This provision has been amended through Law No. 2 of 2015, Law No. 9 of 2015, and Law No. 6 of 2023 concerning the enactment of Government Regulation in Lieu of Law No. 2 of 2022 on Job Creation into Law, which has brought significant implications for the licensing system and business governance at the regional level.

Such authority is further detailed in Government Regulation No. 16 of 2018 on the Civil Service Police Unit, which provides an operational basis for the Civil Service Police Unit (Satpol PP) in enforcing regional regulations and administering public order as well as community protection.⁴ Within the context of the Special Capital Region of Jakarta, Regional Regulation No. 8 of 2007 on Public Order serves as the primary legal instrument comprehensively governing various aspects of urban order. This regulation replaced Regional Regulation No. 11 of 1988, which was deemed no longer relevant to the dynamics of Jakarta's society.⁵ With 16 chapters and 67 articles, the regulation covers order on roads, parks, rivers, the environment, business places, buildings, social and health matters, entertainment, and community participation.

Specifically, the regulation sets forth provisions concerning order in business spaces, including the prohibition of trading on sidewalks, bus shelters, pedestrian bridges, and other public facilities without a license (Article 25 paragraph 2); the obligation to possess a valid business license (Article 24 paragraph 1); the determination of street vendor locations by the Governor (Article 25 paragraph 1); the prohibition of placing business-related objects in green lanes and parks (Article 27); as well as the prohibition of businesses that cause pollution and disturb public order (Article 35). These provisions are not merely administrative in nature but also carry legal force through criminal sanctions. Violations may result in imprisonment of up to 180 days or fines of up to IDR 50 million, underscoring the binding legal character of this regulation beyond mere moral exhortation.⁶

Soerjono Soekanto's theory of law enforcement affirms that norms are only effective when actualized by competent authorities consistently and sustainably.⁷

³ Article 28G paragraph (1) of the 1945 Constitution of the Republic of Indonesia: "Every person shall have the right to protection of their personal self, family, honor, dignity, and property under their control, and shall have the right to security and protection from threats of fear to act or not to act in accordance with their human rights."

⁴ Eko Susdarwanto and E T Susdarwono, *Satpol PP: Organisasi Perangkat Daerah Penegakkan Perda Dan Perkada* (Jakarta: Guepedia, 2022), 76.

⁵ H A M Komnas, *Kajian Komnas HAM Terhadap Peraturan Daerah DKI Jakarta No. 8 Tahun 2007 Tentang Ketertiban Umum* (Jakarta: Komnas HAM, 2019), 11.

⁶ Baca Bab XIV Ketentuan Pidana dalam Peraturan Daerah DKI Jakarta Nomor 8 Tahun 2007 tentang Ketertiban Umum

⁷ Johan Jasin, *Penegakan Hukum Dan Hak Asasi Manusia Di Era Otonomi Daerah* (Yogyakarta: Deepublish, 2019), 217.

Meanwhile, theories on legal effectiveness highlight that the success of a norm is significantly influenced by the content of the regulation, the quality of law enforcers, supporting facilities, public legal awareness, and prevailing legal culture.⁸ Both perspectives reinforce the notion that regional regulations are not simply administrative tools but integral components of the legal system that demand adaptive implementation in response to social and economic dynamic.

The aforementioned normative and theoretical foundations indicate that the enforcement of public order in Jakarta has both strong legitimacy and clear coercive power. However, in practice, the existence of comprehensive regulations does not automatically guarantee the realization of an orderly city. Urban social realities present complex dynamics in which economic necessities frequently clash with the obligation to preserve public space order.⁹ Consequently, the enforcement of public order, particularly against businesses occupying public spaces without authorization, continues to face various implementation challenges.

Nevertheless, violations concerning certain business activities involving public spaces and licensing remain a serious issue across several regions in Indonesia. Based on the Public Order Assessment Report by LBH Masyarakat (2023),¹⁰ local governments in major cities such as Medan, Bandung, and Makassar actively enforce order against certain types of businesses, including illicit nightclubs, unlicensed entertainment establishments, and street vendors operating in public facilities. These enforcement actions are often carried out without transparent legal procedures or accompanied by relocation or economic empowerment solutions, resulting in business actors resuming operations shortly thereafter.¹¹

According to the 2024 Annual Report of CRM (Cepat Respon Masyarakat) of the Jakarta Provincial Civil Service Police Unit, public complaints related to specific business activities remain dominant. Unauthorized street vendors ranked highest with 10,034 complaints or 27.68%, followed by violations of smoke-free zones with 8,159 complaints or 22.51%, noise disturbances with 5,007 complaints or 13.81%, and illegal billboards or banners with 3,778 complaints or 10.42%. Additionally, 119 complaints or 0.33% were related to environmental pollution caused by business activities. This data demonstrates the persistence of business-related violations despite being regulated under Jakarta Regional Regulation No. 8 of 2007.

A similar condition is evident in Pulogadung District, East Jakarta. Based on the 2025 report of operational activities by the East Jakarta Civil Service Police Unit, 32 persons categorized as Social Welfare Problems (PMKS) were apprehended, 136 dispersals were carried out under the Praja Order Development Operation, and 109 yellow cards were issued against public order violators. The most dominant violations included street vendors selling food and beverages near Klender Station and Pulogadung TransJakarta Bus Stop, semi-permanent tent stalls in green lanes

⁸ Serlika Aprita, *Pengantar Ilmu Hukum* (Jakarta: Prenada Media, 2024), 101.

⁹ Tomi Arianto, *Realitas Budaya Masyarakat Urban* (Jakarta: Yayasan Tri Edukasi Ilmiah, 2024), 10.

¹⁰ Albert Wirya, Awaluddin Muzaki, and Novia Puspitasari, "Dalam Rangka Menegakkan TIBUM: Sebuah Asesmen Konsep Dan Implementasi Ketertiban Umum Di Indonesia" (Jakarta, 2023).

¹¹ *Ibid*

within the industrial zone, and unauthorized workshops using public roads as service areas.

Law enforcement through minor criminal proceedings (Tipiring) has also been undertaken: in 2024 there were eight trials with 43 offenders, while in 2025 there were five trials with 25 offenders. Despite regular enforcement, the violation patterns remain temporary and cyclical. Field observations reveal that business actors typically resume operations in the same locations within less than a week after enforcement actions, reflecting weak deterrent effects and suboptimal strategies for restoring public spaces.

From the foregoing description, it is evident that a tangible gap exists between legal norms and social realities. Informal business actors frequently resume activities in the same locations shortly after enforcement, while inter-agency coordination remains suboptimal and public dissemination of regulations insufficient. This gap between norms and realities presents complex legal issues, ranging from enforcement effectiveness and institutional legitimacy to the resilience of regulations in the face of economic pressures and social resistance.

These problems did not emerge suddenly but are the result of structural dynamics occurring gradually. Rapid urbanization, economic pressures, and limited access to business licenses drive residents to utilize public spaces as informal business locations.¹² While local governments through Satpol PP have carried out periodic enforcement, the approach has tended to be reactive rather than systemic. As a result, business actors repeatedly return, and public spaces such as sidewalks, parks, and green lanes experience functional degradation. Conflicts between authorities and communities are inevitable, particularly when enforcement is conducted without relocation solutions or economic empowerment. The resulting impacts are not only aesthetic disruptions to the city but also potential criminality and declining quality of spatial governance.

Previous studies have discussed the implementation of Jakarta Regional Regulation No. 8 of 2007 on Public Order, yet have not specifically examined enforcement against certain business activities in Pulogadung District. Research on street vendor control in Tanah Abang revealed that Satpol PP's approach tends to be repressive and encounters challenges related to relocation and social resistance.¹³ Other studies assessed the effectiveness of enforcement against street vendors who continue operating despite repeated control measures.¹⁴ While these studies are relevant in highlighting the challenges of regulation implementation in Jakarta, they have not specifically addressed particular types of businesses nor integrated legal, spatial, and social approaches into a unified analytical framework. This study seeks

¹² Syamsu Rijal and Thamrin Tahir, "Analisis Faktor Pendorong Terjadinya Urbanisasi Di Wilayah Perkotaan (Studi Kasus Wilayah Kota Makassar)," *Journal of Economic Education and Entrepreneurship Studies* 3, no. 1 (2022): 262–76, <https://doi.org/10.26858/je3s.v3i1.103>.

¹³ Selvia Mutiara Agita, Kadar Pamuji, and Supriyanto Supriyanto, "Penegakan Hukum Terhadap Pedagang Kaki Lima Kawasan Pasar Tanah Abang Provinsi DKI Jakarta Berdasarkan Peraturan Daerah Nomor 8 Tahun 2007 Tentang Ketertiban Umum," *Soedirman Law Review* 2, no. 4 (2020), <https://doi.org/10.20884/1.slr.2020.2.4.105>.

¹⁴ Agus Saputro, Habib Muhsin Syafingi, and Dilli Trisna Noviasari, "Implementasi Perda Tentang Penataan Dan Pemberdayaan Pedagang Kaki Lima Untuk Mewujudkan Ketertiban Umum, Kebersihan Dan Keindahan Lingkungan," *Borobudur Law and Society Journal* 2, no. 2 (2023): 49–55, <https://doi.org/10.31603/10098>.

to fill that gap by focusing on Pulogadung, an area characterized by industrial and transit functions, where violations of business-related public order are complex and recurrent.

In conclusion, the enforcement of business-related public order in public spaces continues to face serious challenges rooted in the disparity between legal norms and social realities. The complexity of these problems underscores the need for an in-depth analysis of how regulations are formulated and enforced, the obstacles faced by law enforcers, and the strategic measures required to address them. Accordingly, this research raises critical questions regarding how the regulation of certain business activities in Pulogadung District is stipulated under Jakarta Regional Regulation No. 8 of 2007 on Public Order, how its implementation and challenges are manifested in practice by the Civil Service Police Unit, and what efforts may be undertaken to enhance public legal compliance in order to create more orderly, structured, and functionally coherent public spaces

Research Method

The research method employed in this study is a normative-empirical legal approach.¹⁵ The normative dimension focuses on examining the prevailing legal norms, particularly the Regional Regulation of the Special Capital Region of Jakarta Number 8 of 2007 on Public Order and other statutory provisions concerning the authority of local governments in enforcing public order. The empirical dimension, on the other hand, explores how these legal norms are implemented by the Civil Service Police Unit (Satpol PP) in Pulogadung District, including challenges in enforcement, community responses, and the compliance level of business actors operating in public spaces.

Data were obtained from three main sources: primary data through in-depth interviews with Satpol PP officials, government representatives, community leaders, and business actors; secondary data in the form of constitutional provisions, laws, government regulations, and relevant regional regulations; as well as tertiary data from legal dictionaries, encyclopedias, and official reports. Data collection was conducted through document analysis and semi-structured interviews, while data analysis combined normative juridical techniques with qualitative analysis to identify gaps between normative provisions (*das sollen*) and empirical realities (*das sein*). This combination allows the study to provide both descriptive and analytical insights into the effectiveness of legal enforcement, the constraints faced in practice, and potential strategies to strengthen the implementation of public order regulations in Pulogadung District.

Result and Discussion

1. Regulatory Enforcement of Specific Business Activities in Public Spaces in Pulogadung District According to Regional Regulation of DKI Jakarta Number 8 of 2007 on Public Order

The regulation of specific business activities in public spaces within Pulogadung District is grounded in the Regional Regulation of the Province of DKI

¹⁵ Zainuddin Ali, *Metode Penelitian Hukum* (Jakarta: Sinar Grafika, 2021), 53.

Jakarta Number 8 of 2007 concerning Public Order. This regulation, particularly Chapter VI, provides a comprehensive framework governing business locations and the types of activities permitted or prohibited, thereby serving as the principal normative instrument for the Civil Service Police Unit (Satpol PP) in exercising its authority.¹⁶ As a product of regional legislation, the existence of this regulation reflects the implementation of the principle of regional autonomy as guaranteed by the 1945 Constitution and the Law on Regional Government.¹⁷ Through this regulation, the Provincial Government of DKI Jakarta possesses a legitimate juridical instrument to maintain public order within its jurisdiction, including at the subdistrict level such as Pulogadung.

From a legal-substantive perspective, the provisions contained in Chapter VI of Regional Regulation No. 8/2007 reveal a layered regulatory structure. Article 24 emphasizes the obligation of any business actor whose activities impact the environment to obtain a business location permit.¹⁸ This requirement not only affirms the principle of legality but also positions the permit as a preventive mechanism to control potential disturbances to public order. Consequently, businesses operating in public spaces are assessed not merely by their physical presence but also by the social, economic, and ecological impacts they generate. This concept aligns with Lawrence M. Friedman's theory of legal substance, which posits that legal norms must offer clarity and preventive instruments to ensure consistent enforcement.¹⁹

Further, Article 25 expands the regulatory scope by authorizing the Governor to designate official locations for street vendors.²⁰ Such designation serves as the initial determinant of whether a business activity in public space is deemed lawful or in violation of the regulation. The prohibition against trading outside designated areas is reinforced by a provision that also forbids the public from purchasing goods from vendors operating in unauthorized locations.²¹ This norm illustrates that the law targets not only the supply side (business actors) but also the

¹⁶ Agita, Pamuji, and Supriyanto, "Penegakan Hukum Terhadap Pedagang Kaki Lima Kawasan Pasar Tanah Abang Provinsi DKI Jakarta Berdasarkan Peraturan Daerah Nomor 8 Tahun 2007 Tentang Ketertiban Umum."

¹⁷ Martin Hadinata and Tatang Ruchimat, "Analisis Terhadap Kebijakan Pemerintah Provinsi DKI Jakarta Tentang Penutupan Jalan Jati Baru Raya Untuk Pedagang Kaki Lima," *Jurnal Hukum Adigama* 1, no. 2 (2018): 1–25, <https://doi.org/10.24912/adigama.v1i2.2744>.

¹⁸ Article 24 paragraph (1) and (2) of Regional Regulation Number 8 of 2007 concerning Public Order reads as follows: "(1) Every person or entity who, in conducting their business activities, causes an impact on the environment shall be required to obtain a business location permit pursuant to the Nuisance Act. (2) The issuance of the permit as referred to in paragraph (1) shall be carried out by the Governor or an appointed official after the fulfillment of the requirements."

¹⁹ Emil El Faisal and Mariyani, *Buku Ajar Filsafat Hukum* (Bekasi: Bening Media Publishing, 2023), 64,

²⁰ Article 24 paragraphs (1), (2), and (3) of Regional Regulation Number 8 of 2007 concerning Public Order reads as follows: "(1) The Governor shall designate parts of roads/sidewalks and other public interest areas as business locations for street vendors. (2) Every person or entity is prohibited from trading or conducting business activities on parts of roads/sidewalks, bus shelters, pedestrian bridges, and other public interest areas outside the provisions referred to in paragraph (1). (3) Every person is prohibited from purchasing goods sold by street vendors as referred to in paragraph (2)."

²¹ Aenida Fatma Pitaloka, A Heru Nuswanto, and Amri Panahatan Sihotang, "Implementasi Penataan Pedagang Kaki Lima Di Kabupaten Semarang," *Semarang Law Review (SLR)* 2, no. 3 (2021): 176–89, <https://doi.org/10.26623/slr.v2i2.3820>.

demand side (consumers).²² Viewed through the lens of Soerjono Soekanto's theory of legal effectiveness, public participation becomes a critical factor in the success of legal norms, as enforcement cannot rely solely on pressure against business actors while ignoring consumer behavior that perpetuates violations.²³

Article 26 introduces a dimension of social responsibility by requiring business actors to maintain cleanliness, order, environmental health, and aesthetic quality in their surroundings. Thus, the law imposes not only prohibitions but also positive obligations on vendors to contribute to the preservation of public space.²⁴ This reflects the dual function of legal norms as both preventive and educative instruments, encouraging economic activities to align with public interests. Such obligations also intersect with the constitutional guarantee of the right to a healthy environment as enshrined in Article 28H paragraph (1) of the 1945 Constitution.²⁵

The subsequent articles in Chapter VI, namely Articles 27 through 35, detail specific types of business activities that are explicitly prohibited. These include touting, operating pedicabs, providing unauthorized transportation services, running unlicensed restaurants without halal certification, slaughtering animals outside official abattoirs, trading non-standard meat, recruiting labor without permits, and operating waste collection businesses that cause pollution. The specificity of these prohibitions demonstrates that Regional Regulation No. 8/2007 does not merely ban business practices in public spaces but selectively identifies activities deemed to pose significant threats to public order, safety, health, and comfort. Accordingly, the norms embedded in the regulation serve preventive, repressive, and regulatory functions.

The legal force of this regulation is reinforced by criminal sanctions stipulated in Article 61. The threat of imprisonment ranging from 10 to 60 days or fines between IDR 100,000 and IDR 20,000,000 for violations of Articles 25 and 27 indicates that the local government does not rely solely on administrative mechanisms but also opens the possibility for penal enforcement. This reflects the principle of *ultimum remedium* in criminal law, whereby penal measures are employed as a last resort when administrative mechanisms fail to produce deterrent effects.²⁶ However, the effectiveness of these sanctions is contingent upon the legal enforcement structure, particularly the role of Satpol PP and Civil Servant Investigators (PPNS).

²² Rizky Putra Riyan Miranda, "Problematika Usaha Dan Kondisi Permintaan Penawaran Industri Kecil Menengah Batu Marmer Di Kecamatan Campurdarat Kabupaten Tulungagung," *Jurnal Ekonomi, Bisnis Dan Pendidikan (JEBP)* 1, no. 11 (2021): 1110–24, <https://doi.org/10.17977/um066v1i112021p1110-1124>.

²³ Edi Saputra Hasibuan, *Hukum Kepolisian Dan Criminal Policy Dalam Penegakan Hukum* (Jakarta: PT. RajaGrafindo Persada-Rajawali Pers, 2021), 83.

²⁴ Maris Gunawan Rukmana, "Peran Satuan Polisi Pamong Praja Dalam Penertiban Pedagang Kaki Lima Di Kota Semarang," *Jurnal Konstituen* 1, no. 2 (2019): 67–78, <https://doi.org/10.33701/jk.v1i2.536>.

²⁵ Sujud Ariono and Feny Windiyastuti, "Hak Asasi Manusia Dalam Konteks Penggusuran: Tinjauan Yuridis Terhadap Perlindungan PKL (Studi Penggusuran PKL Di Puncak Bogor)," *HUMANIORUM* 3, no. 3 (2025): 14–19, <https://doi.org/10.37010/hmr.v3i3.126>.

²⁶ Nur Ainiyah Rahmawati, "Hukum Pidana Indonesia: Ultimum Remedium Atau Primum Remedium," *Recidive: Jurnal Hukum Pidana Dan Penanggulangan Kejahatan* 2, no. 1 (2013), <https://doi.org/10.20961/recidive.v2i1.32002>.

Analyzed through the lens of the rule of law theory, Regional Regulation No. 8/2007 exemplifies legal supremacy that prioritizes public interest.²⁷ The norms articulated in Articles 24 through 35 function as legal boundaries to prevent public spaces from being appropriated for individual gain. Nevertheless, as part of a legal state that also upholds human rights, the implementation of this regulation must not disregard the public's right to a decent livelihood.²⁸ This tension necessitates prudent policy implementation.

Moreover, when examined using Soerjono Soekanto's theory of legal effectiveness, it becomes evident that despite the clarity and comprehensiveness of the legal substance, its success depends on other factors such as law enforcement personnel, infrastructure, public awareness, and cultural context.²⁹ Although the regulation is enacted by a legitimate authority, without the support of professional Satpol PP officers, adequate documentation systems, and legal consciousness among the public, its effectiveness on the ground remains limited. The entrenched culture of informal business in Jakarta, including in Pulogadung, often leads to the perception of legal norms as negotiable bureaucratic obstacles rather than binding moral obligations.³⁰

In conclusion, from a normative standpoint, Regional Regulation No. 8 of 2007 provides a robust legal foundation for enforcing public order in specific business activities within Pulogadung District. Its provisions encompass licensing, location designation, environmental obligations, prohibited business types, and criminal sanctions. The regulation meets the criteria of a legitimate, comprehensive legal instrument aligned with the principles of the rule of law. Nonetheless, its strong legal substance faces significant challenges when confronted with social and cultural realities, making implementation the decisive factor in determining whether the clearly articulated norms can truly establish public order on the ground.

2. Implementation and Challenges in the Enforcement of Public-Space Business Regulation by the Civil Service Police Unit in Pulogadung District Based on Regional Regulation Number 8 of 2007

Implementasi penegakan ketertiban usaha tertentu di ruang publik Kecamatan The enforcement of specific business regulations in public spaces within Pulogadung District is inseparable from the normative framework established by Regional Regulation of DKI Jakarta No. 8 of 2007 concerning Public Order. While the regulation is substantively clear, its translation into field practice reveals a more complex reality. The Civil Service Police Unit (Satpol PP), as the mandated

²⁷ La Januru et al., *Pengantar Ilmu Hukum Dan Tata Hukum Indonesia* (Jakarta: Yayasan Tri Edukasi Ilmiah, 2025), 170.

²⁸ Jayyidan Falakhi Mawaza and Zaenuddin Zaenuddin, "Dilema Kebijakan Penanganan Gelandangan Dan Pengemis Di Yogyakarta (Studi Kasus Perda Diy No. 1 Tahun 2014)," *Spirit Publik: Jurnal Administrasi Publik* 15, no. 2 (2020): 131–45, <https://doi.org/10.20961/sp.v15i2.39754>.

²⁹ Hasibuan, *Hukum Kepolisian Dan Criminal Policy Dalam Penegakan Hukum*, 90.

³⁰ Prince Daffa Shodiq Muhammad, "Involution of Informal Sector Street Vendors in Jakarta's Secondary Areas," *SASKARA: Indonesian Journal of Society Studies* 5, no. 01 (2025): 357–82, <https://doi.org/10.21009/Saskara.051.05>.

enforcement body, faces a range of operational dynamics from planning and execution to evaluation.³¹ These dynamics expose a gap between legal idealism and practical implementation, a phenomenon that, in Lawrence M. Friedman's framework, reflects a disjunction among legal substance, legal structure, and legal culture.³²

The enforcement process begins with the preparatory phase. According to Ministry of Home Affairs Regulation No. 16 of 2023 on Satpol PP Standard Operating Procedures, every enforcement action must be preceded by thorough planning, violation mapping, and inter-agency coordination.³³ In Pulogadung, Satpol PP officials report that operational plans are routinely developed based on patrol findings, community reports, and input from subdistrict and village heads. Frequently mapped locations include sidewalks along Jalan Pemuda used by street vendors, green zones on Jalan Bekasi Timur Raya occupied by illicit stalls, and the vicinity of Rawamangun Terminal repurposed for illegal parking. These facts indicate a systematic approach to enforcement planning. From Soerjono Soekanto's theory of legal effectiveness, this preparatory phase reflects efforts to fulfill the criteria of professional and organized law enforcement, though it remains constrained by limited resources.³⁴

The next phase is implementation. Initially, Satpol PP adopts a persuasive approach, issuing verbal warnings and conducting community-based outreach, often involving neighborhood leaders to enhance acceptance. Field observations show that this method can be effective; for instance, a street vendor selling chicken noodles on Jalan Balai Pustaka Timur relocated his cart following a brief dialogue with officers. This aligns with Friedman's emphasis on legal culture, where persuasive communication resonates more effectively with communities that resist direct coercion.³⁵ However, such success is often temporary, as vendors tend to return to prohibited locations once enforcement subsides.

When persuasive measures fail, Satpol PP proceeds to non-judicial enforcement. Offenders are asked to sign a statement pledging compliance within a specified timeframe. If violated, a series of written warnings ranging from Warning I to Warning III is issued. While this reflects procedural continuity, enforcement often stalls at the administrative level. Interviews with business actors reveal that many perceive these warnings as mere formalities, resuming operations once enforcement pressure eases. Administrative fines, ranging from IDR 50,000 to IDR 200,000, are insufficient to deter violations. Legally, this illustrates a weakness in legal substance, which should impose firm sanctions but is undermined by a legal structure reluctant to escalate cases to judicial proceedings.³⁶

³¹ Sapto Wahyono, "Perspektif Hukum Atas Peran Satuan Polisi Pamong Praja Dalam Penegakan Peraturan Daerah Dan Peraturan Kepala Daerah," *Jurnal Yustitia* 20, no. 2 (2019), <https://doi.org/10.53712>.

³² Emil El Faisal and Mariyani, *Buku Ajar Filsafat Hukum* (Bekasi: Bening Media Publishing, 2023), 26,

³³ Darmini Roza and Zennis Helen, "Kewenangan Penindakan Yustisial Satuan Polisi Pamong Praja Kota Bukittinggi Dalam Penegakan Peraturan Daerah," *Jurnal Sakato Ekasakti Law Review* 3, no. 1 (2024): 1-9, <https://doi.org/10.31933/vffwyw90>.

³⁴ Hasanul Mulkan, *Kapita Selekta Hukum Pidana* (Jakarta: Prenada Media, 2023), 23.

³⁵ Novita Angraeni et al., *Hukum Pidana: Teori Komprehensif* (Jakarta: PT. Sonpedia Publishing Indonesia, 2024), 43.

³⁶ *Ibid*

The final stage is judicial enforcement, wherein Satpol PP collaborates with Civil Servant Investigators (PPNS) to pursue criminal charges. However, research findings indicate that such cases are virtually nonexistent in Pulogadung. PPNS officers acknowledge that judicial processes are rarely pursued due to evidentiary burdens, high operational costs, and potential social conflict. As a result, the criminal sanctions outlined in Article 61 of the regulation remain unenforced. From the perspective of rule-of-law theory, this reluctance to utilize judicial instruments diminishes the authority of law and erodes its normative force.³⁷

Beyond implementation, structural and inter-agency coordination challenges persist. The Pulogadung subdistrict head notes that Satpol PP personnel are insufficient relative to the district's size and number of violation hotspots.³⁸ Ideally, each village should have its own enforcement team, but in practice, a small unit must oversee the entire district. Field observations reveal that only 15 officers manage operations across three villages simultaneously. This results in uneven oversight and many violations going unaddressed. According to Soekanto, inadequate facilities and infrastructure are key factors undermining legal effectiveness, even when legal substance is robust.³⁹

Another challenge arises from regulatory disharmony. Business actors often possess permits from technical agencies, yet operate in zones that violate spatial provisions under the regulation. This creates ambiguity for Satpol PP in determining whether enforcement is warranted. Without integrated licensing data across agencies, officers are frequently caught in legal uncertainty. Here, Friedman's emphasis on legal structure becomes salient, as weak institutional coordination undermines the function of otherwise clear legal norms.⁴⁰

From the community perspective, economic necessity is a primary driver of violations. Many small vendors cannot afford formal business premises and resort to occupying sidewalks or green zones. For them, paying minor administrative fines is more economical than renting legal kiosks. This reflects low legal awareness, which Friedman identifies as a component of legal culture. As long as violations are viewed as rational survival strategies, legal norms will struggle to gain consistent compliance.⁴¹

The entrenched culture of informal enterprise further reinforces this tendency. Residents often perceive public spaces as legitimate venues for livelihood, rendering enforcement efforts as socially unjust. Consequently, when Satpol PP conducts operations without adequate communication, resistance and horizontal conflict emerge. Observations of enforcement on Jalan Pemuda revealed community backlash due to the absence of consultation with neighborhood leaders. This underscores the importance of cultural sensitivity in legal effectiveness theory,

³⁷ Sugeng Hariyanto, *Dasar-Dasar Penerjemahan Teks Hukum* (Yogyakarta: Sugeng Hariyanto, 2022), 37.

³⁸ Randy Ramadhany, "Peran Satuan Polisi Pamong Praja Dalam Menyelenggarakan Ketentraman Dan Ketertiban Umum Di Kabupaten Bengkalis," *Journal of Social Contemplativa* 1, no. 2 (2023): 113-28, <https://doi.org/10.61183/jsc.v1i2.40>.

³⁹ *Ibid*

⁴⁰ E D Poespasari and O Moechthar, *Buku Ajar Pengantar Hukum Indonesia* (Surabaya: Airlangga University Press, 2019), 31, <https://books.google.co.id/books?id=FSOWDwAAQBAJ>.

⁴¹ *Ibid*

as norms lacking alignment with community values are likely to be rejected, regardless of formal legitimacy.⁴²

Administrative limitations also pose significant obstacles. Enforcement procedures require comprehensive documentation in accordance with Ministry Regulation No. 16 of 2023, yet limited equipment often results in legally deficient reports. This opens the possibility of counter-litigation from affected business actors. Thus, law intended to provide certainty may lose legitimacy due to technical shortcomings.

Taken together, these challenges demonstrate that enforcement of specific business regulations in Pulogadung District remains far from ideal. From Friedman's perspective,⁴³ the legal substance of Regional Regulation No. 8/2007 is sufficiently comprehensive, but the legal structure represented by Satpol PP lacks optimal capacity, while legal culture perpetuates violations. Similarly, under Soekanto's framework of legal effectiveness, nearly all influencing factors law enforcers, infrastructure, public awareness, and cultural norms remain impediments, rendering the regulation ineffective in practice.⁴⁴

In conclusion, while the implementation of Regional Regulation No. 8 of 2007 in Pulogadung District formally adheres to procedural stages from planning to reporting, enforcement tends to stall at the administrative level, with minimal deterrent effect. Challenges include regulatory disharmony, personnel and infrastructure limitations, low public legal awareness, and cultural resistance to enforcement. Therefore, the effectiveness of legal enforcement in this context is shaped more by non-legal factors than by the substantive adequacy of the regulation itself.

3. Enhancing Legal Compliance in the Enforcement of Public-Space Business Regulation in Pulogadung District

Efforts to improve public compliance with the enforcement of specific business regulations in public spaces within Pulogadung District must be understood as a strategic undertaking that cannot rely solely on repressive sanctions. Field experience indicates that despite the clarity of Regional Regulation No. 8 of 2007, its implementation continues to face significant challenges due to low legal awareness, limited enforcement capacity, and regulatory disharmony. Accordingly, strategies to enhance compliance must be multidimensional, integrating legal, social, economic, and cultural considerations.⁴⁵

⁴² Mulkan, *Kapita Selektta Hukum Pidana*, 23.

⁴³ Suyatno Suyatno Suyatno, "Kelemahan Teori Sistem Hukum Menurut Lawrence M. Friedman Dalam Hukum Indonesia," *IUS FACTI: Jurnal Berkala Fakultas Hukum Universitas Bung Karno* 2, no. 1 Juni (2023): 197–205, <https://doi.org/10.61802/if.v2i1%20Juni.447>.

⁴⁴ Yulika Putri Santoso, Toni Toni, and Rio Armanda Agustian, "Efektivitas Peraturan Daerah Kota Pangkalpinang Nomor 7 Tahun 2019 Tentang Penyelenggaraan Ketertiban Umum Dan Ketentraman Masyarakat (Studi Kasus Terhadap Penertiban Pedagang Kaki Lima)," *JURNAL PENELITIAN SERAMBI HUKUM* 18, no. 02 (2025): 81–91, <https://doi.org/10.59582/sh.v18i02.1298>.

⁴⁵ Hasibuan, *Hukum Kepolisian Dan Criminal Policy Dalam Penegakan Hukum*, 90.

One primary strategy is the adoption of preventive measures through legal education. Public dissemination of the regulation should not be limited to banners or formal notices but must be conducted intensively and continuously using communication methods tailored to the community's characteristics. In Pulogadung, many small and medium-sized business actors are only partially aware of the rules, with some entirely unaware that trading on sidewalks constitutes a violation.⁴⁶ This reflects a deficiency in legal awareness that must be addressed systematically. According to Soerjono Soekanto, public legal consciousness is a key determinant of legal effectiveness.⁴⁷ When citizens understand that regulations are not merely prohibitions but mechanisms to protect collective interests, compliance arises not from fear of sanctions but from intrinsic awareness.⁴⁸

Another strategy involves providing realistic alternatives for business actors. Many street vendors in Pulogadung continue to operate in prohibited areas due to the absence of officially designated locations that are accessible to consumers. Within the framework of the rule of law, the government is obligated not only to enforce regulations but also to ensure the availability of facilities that enable lawful compliance. Therefore, the provision of affordable, well-organized vendor centers with adequate market access is a strategic step toward reducing violations.⁴⁹ Experiences from other areas in Jakarta demonstrate that relocation efforts succeed only when the new sites offer economic opportunities equal to or better than the original locations. Otherwise, vendors tend to return to the streets despite forced removal.

In addition to alternative locations, strengthening collaborative mechanisms among enforcement officers, communities, and business actors is essential. Top-down enforcement often provokes resistance, especially when officers dismantle stalls without prior notice.⁵⁰ In contrast, collaborative enforcement fosters a sense of ownership over the rules. For example, involving community leaders and neighborhood representatives (RT/RW) in pre-enforcement dialogues can reduce the potential for conflict.⁵¹ Within Friedman's legal system theory, such collaborative approaches engage the cultural dimension of law, recognizing that legal norms become effective only when embraced as part of community values.⁵² In other words, collaboration transforms enforcement from coercion into collective stewardship.

⁴⁶ Ibrahim Ahmad, "Rencana Dan Strategi Peningkatan Kesadaran Hukum Masyarakat," *Gorontalo Law Review* 1, no. 1 (2018): 15–24, <https://doi.org/10.32662/golrev.v1i1.94>.

⁴⁷ Elly Rosana, "Kepatuhan Hukum Sebagai Wujud Kesadaran Hukum Masyarakat," *Journal Tapis: Journal Teropong Aspirasi Politik Islam* 10, no. 1 (2014): 61–84, <https://doi.org/10.24042/tps.v10i1.1600>.

⁴⁸ Syamsarina Syamsarina et al., "Kesadaran Hukum Dan Kepatuhan Hukum Masyarakat: Analisis Faktor Yang Mempengaruhi Kesadaran Hukum Dan Kepatuhan Hukum Masyarakat," *Jurnal Selat* 10, no. 1 (2022): 81–90, <https://doi.org/10.35796/les.v7i7.26840>.

⁴⁹ Siti Zikrina Farahdiba et al., "Tinjauan Pelanggaran Hak Dan Peningkaran Kewajiban Warga Negara Berdasarkan UUD 1945," *Jurnal Kewarganegaraan* 5, no. 2 (2021): 837–45, <https://doi.org/10.31316/jk.v5i2.2044>.

⁵⁰ Bok Rok Su, "Dari Teori Ke Praktik: Strategi Responsivitas Hukum Terhadap Tantangan Ekonomi Dan Sosial," *Jurnal Hukum Lex Generalis* 5, no. 10 (2024), <https://doi.org/10.56370/jhlg.v5i10.1017>.

⁵¹ Abiezer Manora Purba et al., "Optimalisasi Peran Polisi Dalam Penegakan Hukum Berbasis Humanis Dan Profesionalisme," *Jurnal Hukum Lex Generalis* 5, no. 12 (2024), <https://doi.org/10.56370/jhlg.v5i12.836>.

⁵² Suyatno, "Kelemahan Teori Sistem Hukum Menurut Lawrence M. Friedman Dalam Hukum Indonesia."

Another solution-oriented strategy is regulatory refinement to eliminate ambiguity. The lack of harmony between permits issued by technical agencies and zoning provisions under Regional Regulation No. 8/2007 often confuses business actors and undermines Satpol PP's authority. Regulatory harmonization is therefore necessary, either through the issuance of a Governor's Regulation integrating business location permits or by developing a unified digital licensing system. This bureaucratic reform aligns with the national agenda for licensing simplification via the Online Single Submission (OSS) system. If licensing data can be accessed in real time by Satpol PP, business actors will no longer be able to claim compliance while violating zoning provisions.

Compliance efforts can also be reinforced through economic empowerment. Economic necessity is often the primary driver of violations, as individuals resort to trading in public spaces as a means of survival. Thus, empowerment programs such as entrepreneurship training, access to capital, and marketing facilitation can serve as positive incentives for transitioning to formal enterprises. Soerjono Soekanto's theory of legal effectiveness emphasizes that law cannot function independently of economic and social factors.⁵³ By offering economic incentives, local governments not only enforce the law but also provide humane alternatives for those who violate it.

Equally important is the enhancement of Satpol PP's institutional capacity. Limited personnel and inadequate resources often render enforcement operations suboptimal. Training in persuasive communication, conflict management, and surveillance technology can improve the professionalism of enforcement officers. Greater professionalism fosters public trust in law enforcement. This trust is crucial, as the concept of compliance based on legitimacy posits that sustainable legal compliance occurs only when the public perceives law enforcement as a legitimate and fair authority, rather than a mere instrument of repression.⁵⁴

Efforts to improve compliance must also include consistent sanction mechanisms. To date, administrative fines have been too low to serve as effective deterrents. Therefore, sanction provisions should be revised to reflect the severity of violations more proportionally. For instance, progressive fines for repeat offenses or the imposition of community service as an alternative penalty can reinforce the reality of legal consequences while providing educational value. This approach aligns with the principles of restorative justice, which are increasingly embraced in Indonesian legal reform, emphasizing rehabilitation and behavioral correction over punitive measure.⁵⁵

Finally, compliance strategies must be embedded within a cultural framework. In many parts of Jakarta, including Pulogadung, there is a longstanding tradition of utilizing public spaces for economic activity. This cultural practice cannot be eliminated solely through regulation but must be redirected to align with

⁵³ Bagus Armanda, "Parkir Liar Dalam Perspektif Teori Efektifitas Hukum," *Jurnal Pelita Nusantara* 1, no. 4 (2024): 477–81, <https://doi.org/10.59996/jurnalpelitanusantara.v1i4.351>.

⁵⁴ Didit Santoso, "Tax Compliance in Indonesia: A Legitimacy Perspective," *The Scientia Law and Economics Review* 2, no. 2 (2023): 99–105, <https://doi.org/doi.org/10.56282/sler.v2i2.477>.

⁵⁵ T Gavrielides, *Restorative Justice Theory and Practice: Addressing the Discrepancy*, Restorative Justice Series (England: Restorative Justice for All (RJ4All), 2020), <https://books.google.co.id/books?id=9AAJEQAQBAJ>.

public interest. Through formal culinary festivals, organized night markets, or the legalization of designated zones for limited business activity, the tradition of street vending can be preserved within a clear legal framework. Culturally grounded approaches are essential because laws that disregard social values are easily rejected, whereas those that resonate with community norms are more likely to be followed.⁵⁶

In conclusion, efforts to enhance legal compliance in the enforcement of public-space business regulation in Pulogadung District must involve a combination of preventive, solution-oriented, collaborative, and empowerment-based strategies. Legal education, alternative location provision, regulatory harmonization, economic empowerment, institutional capacity building, consistent sanctions, and culturally sensitive approaches are mutually reinforcing components. Within Friedman's legal system theory, these strategies encompass all elements of the legal system: substance, structure, and culture. Likewise, in Soerjono Soekanto's framework of legal effectiveness, they address all determining factors law itself, enforcement agents, infrastructure, society, and cultural context. As such, the potential to foster sustainable legal compliance is significantly enhanced, transforming the normative text of Regional Regulation No. 8 of 2007 into a lived reality within the community of Pulogadung.

Conclusion

The regulatory framework governing business activities in public spaces within Pulogadung District, as articulated in Regional Regulation of DKI Jakarta No. 8 of 2007 on Public Order, meets both formal and substantive legal standards. It clearly prohibits unauthorized commercial use of public areas, delineates permissible zones, and imposes criminal sanctions for violations, thereby aligning with principles of legal certainty, enforcement theory, and regulatory effectiveness.

While enforcement by the Civil Service Police Unit (Satpol PP) follows the procedural stages outlined in Ministry of Home Affairs Regulation No. 16 of 2023, its practical impact remains constrained. Enforcement often halts at the administrative level, with limited escalation to judicial proceedings. Contributing factors include regulatory overlap, personnel shortages, inadequate documentation, limited legal capacity, economic vulnerability, and insufficient participatory communication strategies.

Enhancing legal compliance requires an integrated approach that combines repressive, preventive, and educative measures. Key strategies include participatory legal education through community forums, provision of accessible and legally sanctioned business locations, digitized licensing reforms, and institutional capacity-building for Satpol PP. Community empowerment through digital reporting platforms and sustained enforcement efforts are also essential to foster a culture of compliance and ensure that public order regulation is both legally robust and socially legitimate.

⁵⁶ M Yusuf DM et al., "Transformasi Budaya Hukum: Membangun Kesadaran Hukum Di Masyarakat Multikultural," *UNES Law Review* 7, no. 2 (2024): 675–82, <https://doi.org/10.31933/unesrev.v7i2.2349>.

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**Kewenangan Dan Pertanggungjawaban Notaris Dalam Pembuatan
Perjanjian Pengikatan Jual Beli Tanah
(Implikasi Terhadap Kepastian Hukum Dan Perlindungan Hukum Para Pihak)
The Authority and Responsibilities of Notaries in Drafting Land Purchase and
Sale Agreements**

(Implications for Legal Certainty and Legal Protection of the Parties)

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ABSTRACT

*This study examines the authority and legal liability of Notaries in drafting the Sale and Purchase Binding Agreement (PPJB) for land and its implications for legal certainty and the protection of the parties involved. The main issue addressed is the inaccurate understanding of a Notary's authority in practice (*dassein*), which is often equated with that of the Land Deed Official (PPAT), whereas normatively (*dassolen*) both have distinct boundaries as stipulated in the Law on Notary Positions and regulations on land rights transfer. The purpose of this research is to analyze the scope of a Notary's authority, the forms of legal responsibility, and their contribution to ensuring legal certainty in land sale and purchase transactions. The research employs a **normative juridical method** with a statutory and conceptual approach through an examination of doctrines, legislation, and relevant court decisions. The results show that Notaries are authorized to prepare PPJBs as authentic deeds that provide perfect evidentiary value and secure the principal agreement between the seller and the buyer. However, the authority to transfer ownership rights remains with the PPAT through the Sale and Purchase Deed (AJB). A Notary's legal liability covers civil, criminal, and administrative aspects, playing an essential role in preventive and repressive legal protection to ensure legal certainty in land transactions.*

Keyword: Authority, Notary, Legal Certainty

ABSTRAK

Penelitian ini mengkaji kewenangan dan pertanggungjawaban hukum Notaris dalam pembuatan Perjanjian Pengikatan Jual Beli (PPJB) tanah serta implikasinya terhadap kepastian dan perlindungan hukum para pihak. Permasalahan utama yang diangkat adalah ketidaktepatan pemahaman kewenangan Notaris dalam praktik (*dassein*), yang sering disamakan dengan kewenangan Pejabat Pembuat Akta Tanah (PPAT), padahal secara normatif (*dassolen*) keduanya memiliki batas yang jelas berdasarkan Undang-Undang Jabatan Notaris dan peraturan peralihan hak atas tanah. Tujuan penelitian ini adalah untuk menganalisis batas kewenangan Notaris, bentuk pertanggungjawaban hukumnya, serta kontribusinya terhadap kepastian hukum dalam transaksi jual beli tanah. Metode yang digunakan ialah **yuridis normatif** dengan pendekatan perundang-undangan dan konseptual melalui kajian doktrin, regulasi, dan putusan pengadilan. Hasil penelitian menunjukkan bahwa Notaris berwenang membuat PPJB sebagai akta autentik yang memberikan kekuatan pembuktian sempurna dan menjamin kesepakatan pokok antara penjual dan pembeli. Namun, kewenangan peralihan hak tetap berada pada PPAT melalui Akta Jual Beli (AJB). Pertanggungjawaban hukum Notaris meliputi aspek perdata, pidana, dan administratif, yang berperan penting dalam memberikan perlindungan hukum preventif dan represif bagi para pihak dalam mewujudkan kepastian hukum dalam jual beli tanah.

Kata Kunci: Kewenangan, Notaris, Kepastian Hukum.

Pendahuluan

Tanah merupakan salah satu aset yang memiliki nilai sosial, ekonomi, dan hukum yang sangat penting dalam kehidupan masyarakat Indonesia. Tidak hanya sebagai tempat tinggal atau lahan usaha, tanah juga menjadi objek investasi serta sarana pembangunan yang memiliki keterkaitan erat dengan aspek kesejahteraan masyarakat. Oleh karena itu, pengaturan hukum mengenai tanah di Indonesia mendapat perhatian serius, khususnya melalui Undang-Undang Nomor 5 Tahun 1960 tentang Peraturan Dasar Pokok-Pokok Agraria (UUPA) yang menjadi dasar hukum dalam mengatur hak-hak atas tanah dan mekanisme peralihannya. Dalam praktiknya, transaksi jual beli tanah sebagai bentuk peralihan hak atas tanah harus dilaksanakan sesuai ketentuan hukum yang berlaku untuk memberikan kepastian hukum dan perlindungan hukum bagi para pihak yang terlibat. Hal inilah yang menjadikan keberadaan pejabat publik seperti Notaris memiliki peran sentral dalam mengawal jalannya transaksi pertanahan. Sebagai pejabat umum yang diberi kewenangan oleh negara, Notaris tidak hanya berfungsi sebagai pembuat akta autentik, tetapi juga sebagai penjaga kepastian hukum dalam setiap hubungan keperdataan, termasuk dalam transaksi jual beli tanah. Dalam konteks ini, peran Notaris menjadi sangat penting karena akta yang dibuat olehnya memiliki kekuatan pembuktian sempurna di mata hukum.¹

Salah satu bentuk akta yang sering dibuat oleh Notaris adalah Perjanjian Pengikatan Jual Beli (PPJB) tanah, yang merupakan perjanjian pendahuluan sebelum dilaksanakannya Akta Jual Beli (AJB) di hadapan Pejabat Pembuat Akta Tanah (PPAT). PPJB berfungsi untuk mengikat para pihak dalam kesepakatan pokok jual beli sebelum semua syarat administratif terpenuhi. Dengan demikian, hubungan hukum antara Notaris, PPJB, dan PPAT membentuk suatu rangkaian sistem yang saling berkaitan dalam proses peralihan hak atas tanah. Keterkaitan tersebut menunjukkan bahwa kewenangan dan tanggung jawab Notaris tidak dapat dipisahkan dari prinsip kepastian dan perlindungan hukum bagi para pihak. Oleh karena itu, pemahaman yang tepat mengenai batas kewenangan Notaris dalam pembuatan PPJB menjadi kunci untuk mencegah terjadinya penyalahgunaan wewenang dan sengketa hukum di kemudian hari. PPJB pada dasarnya adalah perjanjian pendahuluan yang mengikat para pihak, biasanya dibuat ketika syarat-syarat administratif atau keuangan untuk pelaksanaan AJB belum terpenuhi. Dalam konteks hukum perdata, perjanjian ini sah dan mengikat sepanjang memenuhi syarat-syarat sah perjanjian sebagaimana diatur dalam Pasal 1320 Kitab Undang-Undang Hukum Perdata (KUH Perdata), yaitu adanya

1 Deni, F., & Fauziah, D. (2023). Tanggung jawab notaris terhadap tindak pidana penipuan dalam pembuatan akta perjanjian pengikatan jual beli. *Jurnal Hukum Kenotariatan Otentik's*, 5(1), 39-60.

kesepakatan, kecakapan, objek tertentu, dan sebab yang halal. Notaris sebagai pejabat umum berwenang membuat akta autentik termasuk PPJB, sehingga akta tersebut memiliki kekuatan pembuktian yang sempurna. Sementara itu, PPAT sebagai pejabat yang secara khusus diberikan kewenangan oleh pemerintah hanya berwenang membuat AJB yang menjadi bukti sah peralihan hak atas tanah.

Kewenangan Notaris dalam pembuatan PPJB didasarkan pada Undang-Undang Nomor 2 Tahun 2014 tentang Perubahan Atas Undang-Undang Nomor 30 Tahun 2004 tentang Jabatan Notaris (UUJN). Undang-undang ini menegaskan bahwa Notaris berwenang membuat akta autentik mengenai semua perbuatan, perjanjian, dan ketetapan yang diwajibkan oleh peraturan perundang-undangan atau yang dikehendaki oleh para pihak. Oleh karena itu, PPJB termasuk dalam lingkup kewenangan Notaris. Sedangkan kewenangan PPAT diatur dalam Peraturan Pemerintah Nomor 24 Tahun 1997 tentang Pendaftaran Tanah dan Peraturan Kepala Badan Pertanahan Nasional (BPN) yang menegaskan tugas PPAT dalam membuat akta-akta autentik mengenai perbuatan hukum tertentu mengenai hak atas tanah atau hak milik atas satuan rumah susun, salah satunya adalah AJB. Dengan demikian, terdapat perbedaan mendasar antara kewenangan Notaris dan PPAT yang saling melengkapi dalam rangkaian transaksi jual beli tanah.²

Meskipun PPJB memberikan kepastian hukum awal karena dituangkan dalam bentuk akta otentik, namun pelaksanaannya sering kali menimbulkan permasalahan hukum. Permasalahan ini muncul, misalnya, ketika salah satu pihak wanprestasi atau ketika objek tanah ternyata masih bermasalah secara hukum, seperti adanya sengketa kepemilikan atau status tanah yang belum bersertifikat. Dalam kondisi demikian, pertanggungjawaban hukum Notaris menjadi hal yang krusial untuk dikaji, mengingat perannya sebagai pejabat publik yang memiliki kewenangan negara dalam menjamin keabsahan akta autentik. Secara normatif, Undang-Undang Nomor 2 Tahun 2014 tentang Jabatan Notaris (UUJN) telah memberikan batasan yang jelas mengenai kewenangan dan tanggung jawab Notaris, termasuk kewajiban untuk bertindak independen, cermat, dan berdasarkan hukum dalam pembuatan akta. Namun, secara empiris, praktik di lapangan masih menunjukkan adanya kesenjangan antara norma hukum yang ideal (*dassolen*) dan realitas praktik (*dassein*), terutama ketika Notaris tidak menjalankan prinsip kehati-hatian dalam verifikasi data atau dalam memberikan penjelasan hukum kepada para pihak. Sebagai ilustrasi, kasus fiktif dapat digambarkan pada Notaris "A" di Kota Semarang yang membuat Perjanjian

2 Kamila, R. T. Urgensi Pengaturan Sanksi Bagi Notaris Pengganti Terhadap Kesalahan Dalam Pembuatan Perjanjian Pengikatan Jual Beli (Ppjb)(Studi Putusan Majelis Pengawas Wilayah Notaris Provinsi Dki Jakarta NOMOR: 13/PTS/MJ. PWN. PROV. DKI JAKARTA/V/2024). *Indonesian Notary*, 7(1), 8.

Pengikatan Jual Beli (PPJB) antara pihak penjual dan pembeli tanpa melakukan verifikasi status sertifikat tanah secara menyeluruh. Beberapa bulan kemudian diketahui bahwa tanah tersebut sedang dalam sengketa perdata di pengadilan, sehingga pembeli mengalami kerugian karena tidak dapat melanjutkan proses balik nama melalui Akta Jual Beli (AJB). Dalam kasus tersebut, Notaris "A" dapat dimintai pertanggungjawaban hukum, baik secara perdata karena kelalaiannya menimbulkan kerugian, secara pidana apabila terbukti mengetahui adanya sengketa namun tetap membuat akta, maupun secara administratif karena melanggar kewajiban jabatan yang diatur dalam UUJN dan Kode Etik Notaris. Kesenjangan inilah yang membentuk ruang diskusi akademik (*state of the art*), bahwa meskipun secara normatif aturan pertanggungjawaban Notaris telah lengkap, implementasinya belum sepenuhnya efektif dalam menjamin kepastian hukum. Banyak penelitian sebelumnya hanya menyoroti tanggung jawab Notaris dari aspek normatif atau formal, sementara kajian mengenai efektivitas penerapan tanggung jawab hukum dalam praktik masih terbatas. Oleh karena itu, penelitian ini berupaya mengisi kekosongan tersebut dengan mengkaji secara komprehensif bagaimana kewenangan dan pertanggungjawaban hukum Notaris dalam pembuatan PPJB tanah dapat berimplikasi terhadap kepastian hukum dan perlindungan hukum para pihak.

Implikasi pertanggungjawaban hukum ini erat kaitannya dengan perlindungan hukum bagi para pihak yang terikat dalam PPJB. Perlindungan hukum yang bersifat preventif diwujudkan melalui kewajiban Notaris untuk melakukan pengecekan keabsahan dokumen, memberikan penjelasan mengenai isi perjanjian, serta memastikan bahwa perjanjian yang dibuat tidak bertentangan dengan hukum. Sementara itu, perlindungan hukum yang bersifat represif terlihat dalam kedudukan akta autentik sebagai alat bukti yang memiliki kekuatan hukum di pengadilan apabila terjadi sengketa. Dengan demikian, Notaris tidak hanya berfungsi sebagai pejabat pembuat akta, tetapi juga sebagai pihak yang menjamin terciptanya kepastian hukum sekaligus perlindungan hak-hak para pihak yang melakukan transaksi jual beli tanah.

Urgensi penelitian mengenai kewenangan dan pertanggungjawaban hukum Notaris dalam pembuatan PPJB tanah ini terletak pada kenyataan bahwa transaksi jual beli tanah sering kali menimbulkan sengketa akibat ketidakseimbangan informasi, lemahnya kehati-hatian, atau penyalahgunaan kewenangan. Dalam praktiknya, masih banyak masyarakat yang belum memahami perbedaan antara PPJB dan AJB serta akibat hukum yang timbul dari keduanya. Akibatnya, tidak jarang terjadi kesalahpahaman yang berujung pada kerugian salah satu pihak. Oleh karena itu, penting untuk memberikan penjelasan yang komprehensif mengenai kewenangan Notaris dan PPAT, ruang lingkup tanggung jawab hukumnya, serta

bagaimana implikasi kewenangan tersebut terhadap kepastian hukum dan perlindungan hukum para pihak.³

Selain itu, perkembangan teknologi informasi dan kebutuhan akan efisiensi juga menuntut adanya transformasi dalam praktik kenotariatan dan ke-PPAT-an. Digitalisasi dokumen dan keterbukaan akses data pertanahan melalui sistem elektronik yang terintegrasi dapat memperkuat fungsi pengawasan sekaligus mencegah terjadinya sengketa. Hal ini sekaligus mendukung peran Notaris dalam menjalankan fungsi mereka secara profesional, akuntabel, dan transparan. Dengan demikian, penelitian mengenai topik ini diharapkan dapat memberikan kontribusi terhadap penguatan sistem hukum pertanahan di Indonesia, baik dari aspek regulasi, praktik, maupun pengawasan profesi.

Berdasarkan uraian di atas, penelitian ini berfokus pada dua hal pokok, yaitu: pertama, kewenangan Notaris dalam pembuatan Perjanjian Pengikatan Jual Beli tanah dan sejauh mana kewenangan tersebut memberikan kepastian hukum bagi para pihak yang melakukan transaksi; kedua, bentuk pertanggungjawaban hukum Notaris apabila terjadi permasalahan atau sengketa terkait PPJB serta implikasinya terhadap perlindungan hukum bagi para pihak yang terikat dalam perjanjian tersebut. Kajian ini penting untuk memastikan bahwa peran Notaris tidak hanya sebatas memenuhi aspek formal pembuatan akta, melainkan juga benar-benar menjadi instrumen hukum yang melindungi kepentingan masyarakat dalam setiap transaksi jual beli tanah.

Metode Penelitian

Metode penelitian yang digunakan dalam kajian ini adalah penelitian hukum normatif, yaitu penelitian yang berfokus pada norma-norma hukum positif, asas-asas hukum, dan doktrin hukum yang relevan dengan permasalahan yang dikaji. Penelitian hukum normatif dipilih karena bertujuan untuk menganalisis bagaimana kewenangan dan pertanggungjawaban hukum Notaris dalam pembuatan Perjanjian Pengikatan Jual Beli (PPJB) tanah diatur dalam sistem hukum positif, serta bagaimana penerapannya dapat memberikan kepastian hukum dan perlindungan hukum bagi para pihak yang bertransaksi. Dalam penelitian ini digunakan tiga pendekatan utama, yaitu pendekatan perundang-undangan (statute approach), pendekatan konseptual (conceptual approach), dan pendekatan kasus (case approach). Pendekatan perundang-undangan digunakan untuk mengkaji ketentuan dalam Kitab Undang-Undang Hukum Perdata (KUH Perdata), Undang-Undang Nomor 2 Tahun 2014 tentang Jabatan Notaris (UUJN),

3 Ainayah, A., Lasmadi, S., & Rosmidah, R. (2022). Perlindungan Hukum Terhadap Pemilik Hak Atas Tanah dalam Perjanjian Pengikatan Jual Beli (PPJB) Yang Mengandung Klausula Kuasa Mutlak. *Selodang Mayang: Jurnal Ilmiah Badan Perencanaan Pembangunan Daerah Kabupaten Indragiri Hilir*, 8(3), 196-208.

serta Peraturan Pemerintah Nomor 24 Tahun 1997 tentang Pendaftaran Tanah. Pendekatan konseptual digunakan untuk memahami teori dan doktrin hukum mengenai kewenangan pejabat publik, konsep akta autentik, dan asas kehati-hatian dalam praktik kenotariatan. Sementara itu, pendekatan kasus digunakan untuk menelaah kasus fiktif maupun putusan pengadilan yang berkaitan dengan sengketa akibat kelalaian Notaris dalam pembuatan PPJB tanah, guna melihat sejauh mana penerapan norma hukum berjalan dalam praktik.

Jenis data yang digunakan dalam penelitian ini adalah data sekunder, yang terdiri dari bahan hukum primer, sekunder, dan tersier. Bahan hukum primer mencakup peraturan perundang-undangan, putusan pengadilan, dan dokumen resmi lainnya; bahan hukum sekunder berupa buku, jurnal ilmiah, hasil penelitian, serta pendapat para ahli hukum; sedangkan bahan hukum tersier meliputi kamus hukum dan ensiklopedia yang membantu memperjelas istilah serta konsep hukum yang digunakan. Pengumpulan data dilakukan melalui studi kepustakaan (*library research*), dengan cara menginventarisasi, membaca, dan mengkaji berbagai literatur hukum yang relevan dengan topik penelitian. Setelah bahan hukum terkumpul, dilakukan proses klasifikasi dan sistematisasi untuk memisahkan data berdasarkan relevansinya terhadap isu kewenangan dan pertanggungjawaban Notaris.

Analisis bahan hukum dalam penelitian ini dilakukan secara deskriptif kualitatif melalui beberapa tahapan. Pertama, dilakukan analisis interpretatif, yaitu menafsirkan makna dan tujuan norma hukum yang diatur dalam peraturan perundang-undangan dan doktrin hukum. Kedua, dilakukan analisis preskriptif, yakni menilai kesesuaian antara hukum positif dengan prinsip keadilan, kemanfaatan, dan kepastian hukum dalam praktik kenotariatan. Ketiga, dilakukan analisis komparatif antara ketentuan hukum yang ideal (*dassolen*) dan praktik hukum yang terjadi di lapangan (*dassein*) untuk menemukan kesenjangan dan kelemahan dalam penerapannya. Hasil dari keseluruhan proses analisis ini disusun dalam bentuk argumentasi hukum yang bersifat deduktif, yakni menarik kesimpulan dari prinsip umum menuju kasus konkret. Melalui metode ini, penelitian diharapkan mampu memberikan gambaran komprehensif mengenai peran, kewenangan, dan tanggung jawab hukum Notaris dalam menjamin kepastian hukum dan perlindungan hukum bagi para pihak dalam transaksi jual beli tanah.

Hasil dan pembahasan

1.1 Kewenangan Notaris Dalam Pembuatan Perjanjian Pengikatan Jual Beli Tanah, Dan Sejauh Mana Kewenangan Tersebut Memberikan Kepastian Hukum Bagi Para Pihak Yang Melakukan Transaksi

Kewenangan Notaris dan Pejabat Pembuat Akta Tanah (PPAT) dalam praktik hukum di Indonesia memiliki posisi yang sangat penting, khususnya dalam konteks perjanjian yang berkaitan dengan transaksi tanah. Salah satu instrumen yang sering digunakan dalam transaksi jual beli tanah adalah Perjanjian Pengikatan

Jual Beli (PPJB). PPJB pada dasarnya merupakan bentuk kesepakatan pendahuluan antara penjual dan pembeli sebelum dilakukannya peralihan hak melalui Akta Jual Beli (AJB) di hadapan.

Keberadaan PPJB sering kali dibutuhkan karena adanya kondisi tertentu, misalnya pembayaran harga tanah dilakukan secara bertahap, status tanah masih dalam proses sertifikasi, atau adanya syarat administratif yang belum terpenuhi. Oleh karena itu, pembahasan mengenai kewenangan Notaris dalam pembuatan PPJB menjadi relevan, terutama dalam kaitannya dengan pemberian kepastian hukum bagi para pihak.⁴

Secara normatif, Notaris memiliki kewenangan umum untuk membuat akta autentik sebagaimana diatur dalam Pasal 15 ayat (1) Undang-Undang Nomor 2 Tahun 2014 tentang Perubahan atas Undang-Undang Nomor 30 Tahun 2004 tentang Jabatan Notaris (UUJN). Pasal tersebut menegaskan bahwa Notaris berwenang membuat akta autentik sepanjang pembuatan akta tersebut tidak dikecualikan kepada pejabat lain atau oleh undang-undang ditetapkan sebagai kewenangan pihak lain. Dengan demikian, PPJB sebagai salah satu bentuk perjanjian perdata termasuk dalam ranah kewenangan Notaris untuk dituangkan dalam akta otentik. Keberadaan akta autentik ini menjadi jaminan kepastian hukum karena memberikan kekuatan pembuktian yang sempurna sebagaimana ditegaskan dalam Pasal 1870 Kitab Undang-Undang Hukum Perdata (KUHPerdata), di mana akta autentik mempunyai kekuatan pembuktian yang mengikat bagi para pihak, ahli waris, serta pihak ketiga.⁵

Berbeda dengan Notaris, PPAT memiliki kewenangan khusus dalam membuat akta yang berkaitan dengan peralihan hak atas tanah dan hak tanggungan sebagaimana diatur dalam Pasal 2 Peraturan Pemerintah Nomor 37 Tahun 1998 jo. Peraturan Pemerintah Nomor 24 Tahun 2016 tentang Peraturan Jabatan PPAT. PPAT berwenang untuk membuat akta autentik mengenai perbuatan hukum tertentu mengenai hak atas tanah atau Hak Milik atas Satuan Rumah Susun (HMSRS). Salah satu akta utama yang menjadi kewenangan PPAT adalah Akta Jual Beli (AJB) sebagai bukti autentik terjadinya peralihan hak. Namun, dalam konteks PPJB, kewenangan lebih melekat pada Notaris, bukan PPAT, karena PPJB bukanlah perbuatan hukum peralihan hak, melainkan perjanjian pendahuluan. Meskipun demikian, banyak PPAT yang juga merangkap jabatan sebagai Notaris, sehingga dalam praktiknya sering kali masyarakat menganggap PPAT juga berwenang membuat PPJB. Perbedaan kewenangan ini penting dipahami agar tidak menimbulkan kerancuan. PPJB yang dibuat dalam bentuk akta di bawah tangan tetap sah sepanjang memenuhi syarat sahnya perjanjian menurut Pasal 1320 KUHPerdata, namun memiliki kelemahan dari sisi kekuatan pembuktian. Sebaliknya, PPJB yang dibuat dalam bentuk akta autentik oleh

4 Aulia, A. (2022). Prinsip Kehati-hatian PPAT Dalam Proses Pengikatan Jual Beli Tanah Sebagai Perwujudan Kepastian Hukum. *Recital Review*, 4(1), 244-278.

5 Nafisha, R. Z., Abubakar, L., & Rukmana, Y. Y. (2024). Tanggung Jawab Notaris terhadap Kerugian yang Timbul Akibat Praktik Pembuatan PPJB yang Tidak Sesuai UUJN. *Innovative: Journal Of Social Science Research*, 4(5), 4020-4038.

Notaris memberikan kepastian hukum yang lebih kuat karena akta tersebut mempunyai kekuatan pembuktian sempurna. Dengan demikian, pembuatan PPJB di hadapan Notaris memberikan perlindungan hukum lebih optimal kepada para pihak.

Kepastian hukum dalam konteks perjanjian jual beli tanah melalui PPJB dapat dilihat dari beberapa aspek. Pertama, dari aspek formil, akta autentik yang dibuat Notaris menjamin bahwa isi dan bentuk akta sesuai dengan ketentuan hukum yang berlaku. Notaris berkewajiban membaca akta, menjelaskan isi dan maksudnya, serta memastikan bahwa para pihak memahami dan menyetujui klausul-klausul yang tercantum. Hal ini memberikan jaminan bahwa perjanjian yang dibuat benar-benar mencerminkan kehendak para pihak. Kedua, dari aspek materiil, PPJB memberikan kepastian bahwa para pihak telah sepakat mengenai hal-hal pokok jual beli, misalnya harga, objek tanah, mekanisme pembayaran, jangka waktu, hingga kewajiban untuk melanjutkan ke AJB. Hal ini dapat mencegah sengketa di kemudian hari karena sudah ada landasan hukum yang jelas. Ketiga, dari aspek pembuktian, akta Notaris mempunyai kekuatan pembuktian yang sempurna di muka pengadilan, sehingga apabila terjadi sengketa, akta tersebut dapat menjadi alat bukti yang menentukan.⁶

Selain itu, asas kepastian hukum merupakan salah satu asas fundamental dalam hukum agraria maupun hukum perdata di Indonesia. Pasal 3 Undang-Undang Nomor 5 Tahun 1960 tentang Peraturan Dasar Pokok-Pokok Agraria (UUPA) menegaskan pentingnya kepastian hukum dalam bidang pertanahan. Begitu juga Pasal 19 UUPA yang memandatkan adanya pendaftaran tanah guna menjamin kepastian hukum. Dalam konteks PPJB, meskipun perjanjian ini belum berakibat pada peralihan hak, keberadaannya memberikan kepastian hukum sementara bagi para pihak, terutama pembeli, agar haknya terlindungi sebelum dilakukan AJB. Tanpa adanya PPJB, pembeli berpotensi dirugikan jika penjual mengingkari janji atau melakukan transaksi ganda dengan pihak lain. Namun, kewenangan Notaris dalam membuat PPJB tidak dapat dipisahkan dari tanggung jawab moral dan hukum. Notaris wajib bertindak independen, tidak berpihak, serta memastikan bahwa perjanjian tidak bertentangan dengan hukum, ketertiban umum, dan kesusilaan. Pasal 16 UUJN menegaskan kewajiban Notaris untuk bertindak amanah, jujur, saksama, mandiri, tidak berpihak, dan menjaga kepentingan para pihak. Apabila Notaris lalai atau dengan sengaja membuat akta yang tidak sesuai dengan prosedur, hal ini dapat menimbulkan sengketa dan mengurangi kepastian hukum. Dalam praktiknya, terdapat kasus di mana PPJB batal atau tidak dapat dilaksanakan karena objek tanah ternyata bermasalah, misalnya masih dalam sengketa atau tidak memiliki sertifikat yang sah. Dalam hal ini, peran Notaris sangat krusial untuk melakukan verifikasi dokumen dan memberikan nasihat hukum yang memadai kepada para pihak.⁷

6 Sarapi, V. V., Hutomo, P., & Ismed, M. (2024). Tanggung Jawab PPAT Dalam Akta Jual Beli Tanah Terkait Adanya Utang Piutang. *Themis: Jurnal Ilmu Hukum*, 2(1), 49-59.

⁷ Suwardiyati, R., & Rustam, R. (2022). Urgensi Reformulasi Pengaturan Penyerahan Protokol Notaris untuk Mewujudkan Kepastian Hukum. *Peradaban Journal of Law and Society*, 1(2), 119-132.

Lebih jauh, kepastian hukum yang lahir dari PPJB di hadapan Notaris juga terkait dengan asas pacta sunt servanda dalam Pasal 1338 KUHPdata yang menyatakan bahwa semua perjanjian yang dibuat secara sah berlaku sebagai undang-undang bagi mereka yang membuatnya. Artinya, PPJB yang dibuat secara autentik mengikat secara hukum dan harus dilaksanakan dengan itikad baik. Apabila salah satu pihak ingkar janji (wanprestasi), pihak lainnya dapat menuntut pemenuhan perjanjian atau ganti rugi melalui jalur litigasi maupun non-litigasi. Dengan adanya akta otentik, posisi hukum pihak yang dirugikan menjadi lebih kuat. Meskipun demikian, masih terdapat perdebatan dalam praktik hukum mengenai batas kewenangan Notaris dalam PPJB, khususnya apakah Notaris berwenang membuat klausul-klausul yang bersifat menyerupai AJB, seperti pengalihan hak yang bersifat langsung. Hal ini menimbulkan potensi tumpang tindih dengan kewenangan PPAT. Untuk menghindari hal tersebut, Notaris sebaiknya menegaskan bahwa PPJB bukan merupakan alat peralihan hak, melainkan hanya perjanjian pendahuluan. Akta pengalihan hak yang sah tetap harus dibuat oleh PPAT melalui AJB dan didaftarkan ke kantor pertanahan. Kewenangan Notaris dalam pembuatan PPJB merupakan bagian dari kewenangan umum untuk membuat akta otentik. PPJB yang dibuat Notaris memberikan kepastian hukum yang lebih tinggi dibandingkan PPJB di bawah tangan karena memenuhi aspek formil, materiil, dan pembuktian. Sementara itu, kewenangan PPAT baru relevan ketika peralihan hak dilakukan melalui AJB. Oleh karena itu, pemahaman yang jelas mengenai kewenangan masing-masing pejabat sangat penting agar PPJB dapat memberikan perlindungan hukum yang optimal bagi para pihak dalam transaksi jual beli tanah.⁸

1.2 Bentuk Pertanggungjawaban Hukum Notaris Apabila Terjadi Permasalahan Atau Sengketa Terkait Perjanjian Pengikatan Jual Beli Tanah, Serta Implikasinya Terhadap Perlindungan Hukum Para Pihak Yang Terikat Dalam Perjanjian tersebut

Pertanggungjawaban hukum Notaris merupakan aspek yang tidak dapat dipisahkan dari kewenangan mereka sebagai pejabat umum dalam membuat akta otentik. Dalam praktik jual beli tanah, Perjanjian Pengikatan Jual Beli (PPJB) sering dijadikan instrumen perantara sebelum dilaksanakannya peralihan hak melalui Akta Jual Beli (AJB). PPJB berfungsi sebagai perjanjian pendahuluan yang memuat kesepakatan pokok antara penjual dan pembeli mengenai objek tanah, harga, jangka waktu, dan kewajiban untuk melanjutkan transaksi ke AJB. Namun, karena sifatnya yang mendahului peralihan hak, PPJB sering menimbulkan persoalan hukum, terutama apabila salah satu pihak ingkar janji (wanprestasi), atau apabila tanah yang menjadi objek perjanjian bermasalah, misalnya masih dalam sengketa, dijaminkan kepada pihak ketiga, atau belum bersertifikat. Dalam kondisi demikian, peran dan pertanggungjawaban hukum Notaris menjadi krusial karena akta PPJB

8 Widarto, J. (2025). Kekuatan Hukum Akta Notaris dan Ppat dalam Peralihan Hak Atas Tanah Belum Terdaftar pada Akta Jual Beli dan Perjanjian Pengikatan Jual Beli. *Almufi Jurnal Sosial dan Humaniora*, 2(2), 240-252.

yang dibuat seharusnya menjamin kepastian hukum dan perlindungan bagi para pihak.⁹

Pertanggungjawaban hukum Notaris diatur secara tegas dalam Undang-Undang Nomor 2 Tahun 2014 tentang Perubahan atas Undang-Undang Nomor 30 Tahun 2004 tentang Jabatan Notaris (UUJN). Pasal 16 UUJN menyatakan bahwa Notaris wajib bertindak amanah, jujur, saksama, mandiri, tidak berpihak, serta menjaga kepentingan pihak yang terkait dalam perbuatan hukum. Apabila Notaris melanggar kewajiban ini, maka ia dapat dimintai pertanggungjawaban baik secara perdata, pidana, maupun administratif. Dalam konteks PPJB, tanggung jawab Notaris mencakup memastikan keabsahan dokumen yang diserahkan, menjelaskan akibat hukum dari isi perjanjian, serta memastikan para pihak benar-benar memahami dan menyetujui klausul-klausul yang dituangkan. Jika Notaris lalai, misalnya membuat akta tanpa verifikasi status tanah, dan kemudian tanah tersebut ternyata bermasalah, maka Notaris dapat dimintai pertanggungjawaban.¹⁰

Dari sisi hukum perdata, pertanggungjawaban Notaris dapat dikaitkan dengan Pasal 1365 KUHPerdata mengenai perbuatan melawan hukum. Apabila kelalaian atau kesalahan Notaris menyebabkan kerugian bagi salah satu pihak, maka pihak yang dirugikan dapat menggugat Notaris untuk meminta ganti rugi. Selain itu, berdasarkan Pasal 84 UUJN, akta Notaris yang tidak memenuhi syarat formil dapat turun derajat menjadi akta di bawah tangan, sehingga mengurangi nilai pembuktiannya. Hal ini jelas merugikan para pihak karena mereka kehilangan jaminan kepastian hukum yang seharusnya melekat pada akta otentik. Dalam konteks PPJB, apabila Notaris tidak teliti dalam memeriksa status objek tanah dan ternyata objek tersebut tidak dapat dialihkan, maka pembeli yang sudah melakukan pembayaran akan mengalami kerugian. Situasi seperti ini membuka ruang bagi pembeli untuk menggugat Notaris berdasarkan wanprestasi atau perbuatan melawan hukum.¹¹

Dari sisi hukum pidana, Notaris dapat dimintai pertanggungjawaban apabila terbukti secara sengaja membuat akta palsu atau memalsukan keterangan di dalam akta. Pasal 264 Kitab Undang-Undang Hukum Pidana (KUHP) mengatur bahwa pemalsuan surat autentik yang dilakukan oleh pejabat berwenang dapat dipidana dengan pidana penjara hingga delapan tahun. Dalam praktik PPJB, misalnya Notaris dengan sengaja memasukkan data tanah yang tidak benar, atau memalsukan tanda tangan salah satu pihak, maka perbuatan tersebut dapat dikategorikan sebagai tindak pidana. Konsekuensinya tidak hanya berupa sanksi

9 Aisyah, I., Azheri, B., & Hasbi, M. (2023). Kedudukan Notaris Dalam Penyimpanan Sertipikat Pada Masa Pelaksanaan Perjanjian Pengikatan Jual Beli Di Kota Padang. *UNES Law Review*, 6(1), 183-205.

¹⁰ Addinur, A., & Djajaputra, G. (2025). Kepastian Hukum Perjanjian Perkawinan Secara Otentik Yang Tidak Di daftarkan Oleh Notaris. *Ranah Research: Journal of Multidisciplinary Research and Development*, 7(2), 702-710.

11 Sari, N. K. M. (2021). Pertanggungjawaban Penerima Kuasa Menjual Sekaligus Sebagai Pembeli dalam Perjanjian Pengikatan Jual Beli (PPJB) Tidak Lunas dengan Akta Notaril (Doctoral dissertation, Universitas Hasanuddin).

pidana, tetapi juga dapat menghilangkan kepercayaan publik terhadap profesi Notaris sebagai pejabat umum.

Sementara itu, pertanggungjawaban administratif Notaris diatur dalam Pasal 85–88 UUN. Notaris yang melanggar ketentuan UUN atau Kode Etik Notaris dapat dikenakan sanksi berupa teguran lisan, teguran tertulis, pemberhentian sementara, hingga pemberhentian dengan tidak hormat. Misalnya, apabila Notaris terbukti berpihak kepada salah satu pihak dalam PPJB, atau membuat akta tanpa kehadiran para pihak yang bersangkutan, maka Majelis Pengawas Notaris dapat menjatuhkan sanksi administratif. Hal ini penting sebagai mekanisme kontrol agar Notaris menjalankan kewenangannya secara profesional dan bertanggung jawab.¹²

Selain Notaris, PPAT juga memiliki bentuk pertanggungjawaban hukum. Berdasarkan Peraturan Pemerintah Nomor 37 Tahun 1998 jo. Peraturan Pemerintah Nomor 24 Tahun 2016, PPAT wajib melaksanakan tugas dengan jujur, seksama, tidak berpihak, dan bertanggung jawab sesuai peraturan perundang-undangan. Meskipun PPJB pada dasarnya bukan ranah kewenangan PPAT, namun ketika PPAT merangkap sebagai Notaris, sering kali PPJB tetap dibuat di hadapannya. Dalam konteks AJB, apabila PPAT membuat akta tanpa memeriksa status tanah, misalnya ternyata tanah tersebut masih dalam sengketa atau tidak bisa dialihkan, maka PPAT dapat dimintai pertanggungjawaban. Bahkan, Pasal 62 PP 24/1997 tentang Pendaftaran Tanah memberi kewenangan kepada Badan Pertanahan Nasional (BPN) untuk menjatuhkan sanksi kepada PPAT yang melanggar ketentuan, mulai dari teguran hingga pemberhentian.¹³

Implikasi pertanggungjawaban hukum Notaris terhadap perlindungan hukum para pihak sangat signifikan. Perlindungan hukum di sini dapat bersifat preventif maupun represif. Perlindungan hukum preventif diwujudkan melalui kewajiban Notaris untuk melakukan verifikasi dokumen dan memberikan penjelasan hukum sebelum akta ditandatangani. Dengan cara ini, para pihak terlindungi dari potensi sengketa sejak awal. Misalnya, Notaris wajib memastikan bahwa tanah yang menjadi objek PPJB tidak sedang diagunkan atau bersengketa, serta memberikan nasihat hukum tentang risiko-risiko yang mungkin timbul. Sementara perlindungan hukum represif muncul ketika sengketa sudah terjadi, di mana keberadaan akta autentik dapat digunakan sebagai alat bukti yang kuat di pengadilan. Dengan demikian, para pihak masih memperoleh perlindungan hukum karena memiliki dokumen resmi yang sah.

Dalam praktiknya, banyak sengketa PPJB muncul akibat kelalaian para pihak sendiri, misalnya pembeli yang tidak teliti memeriksa status tanah, atau penjual yang tidak jujur mengenai kondisi tanah. Namun, apabila Notaris tidak menjalankan tugas secara benar, maka mereka juga turut bertanggung jawab. Contoh konkret dapat dilihat dalam berbagai putusan pengadilan, di mana pihak

¹² Wahyudi, R. (2024). Tanggung jawab notaris dalam pembuatan akta take over rumah dalam menjamin kepastian hukum. JPPI (Jurnal Penelitian Pendidikan Indonesia), 10(4), 37-42.

¹³ Cahayani, D. (2024). Kewenangan Notaris Dalam Pembuatan Akta Otentik Berdasarkan Undang-Undang Nomor 2 Tahun 2014 Tentang Jabatan Notaris. Jurnal Pendidikan Dasar dan Sosial Humaniora, 3(10), 853-860.

yang dirugikan menggugat Notaris karena akta yang dibuat tidak sesuai prosedur. Hal ini menunjukkan bahwa pertanggungjawaban Notaris bukan sekadar formalitas, tetapi berfungsi nyata dalam melindungi hak-hak para pihak. Dari perspektif asas kepastian hukum, pertanggungjawaban Notaris memastikan bahwa setiap akta yang dibuat tidak hanya sah secara formal, tetapi juga dapat ditegakkan secara materiil. Pasal 1338 KUHPerdara tentang asas pacta sunt servanda memberikan dasar bahwa setiap perjanjian yang dibuat secara sah mengikat para pihak. Namun, jika akta dibuat tanpa kehati-hatian, asas tersebut tidak dapat berjalan efektif karena perjanjian justru menimbulkan kerugian. Oleh karena itu, keberadaan Notaris sebagai pejabat publik yang dapat dimintai pertanggungjawaban berfungsi sebagai mekanisme pengawasan agar asas kepastian hukum benar-benar terwujud.¹⁴

Selain itu, dari perspektif perlindungan konsumen, posisi pembeli dalam PPJB sering kali lebih lemah dibandingkan penjual. Pembeli umumnya sudah mengeluarkan sejumlah uang di muka, sementara kepemilikan tanah baru bisa dialihkan setelah AJB. Dalam kondisi ini, Notaris berperan sebagai pihak netral yang menjamin agar kepentingan pembeli terlindungi. Apabila Notaris lalai, maka perlindungan hukum pembeli tercederai. Oleh karena itu, pertanggungjawaban hukum Notaris bukan hanya menyangkut aspek profesionalitas, tetapi juga terkait dengan perlindungan hak masyarakat secara lebih luas. Bentuk pertanggungjawaban hukum Notaris dalam sengketa PPJB meliputi pertanggungjawaban perdata, pidana, dan administratif. Pertanggungjawaban ini memiliki implikasi langsung terhadap perlindungan hukum para pihak. Jika Notaris melaksanakan kewenangannya dengan benar, maka PPJB dapat menjadi instrumen hukum yang memberikan kepastian dan perlindungan maksimal. Sebaliknya, apabila Notaris lalai, maka akta yang seharusnya menjadi jaminan kepastian hukum justru menimbulkan masalah baru. Oleh karena itu, penting bagi Notaris untuk senantiasa berpegang pada asas kehati-hatian, profesionalitas, dan integritas dalam menjalankan tugasnya.¹⁵

Penutup

Dari hasil pembahasan mengenai kewenangan dan pertanggungjawaban hukum Notaris dalam pembuatan Perjanjian Pengikatan Jual Beli (PPJB) tanah, dapat disintesis bahwa fungsi Notaris tidak hanya sebatas pembuat akta otentik, tetapi juga sebagai pengawal integritas hukum transaksi pertanahan. Kewenangan Notaris dalam membuat PPJB menjadi bagian dari upaya negara mewujudkan kepastian hukum preventif, yakni menciptakan jaminan hukum sebelum peralihan hak atas tanah terjadi melalui Akta Jual Beli (AJB). Dalam konteks ini, kontribusi utama penelitian ini adalah menegaskan bahwa keabsahan

¹⁴ Ramalus, A. (2023). Kepastian Hukum Cyber Notary dalam Kaedah Pembuatan Akta Notaris dan PPAT Terkait Berhadapan Oleh Para Pihak. JHK: Jurnal Hukum dan Keadilan, 1(1), 13-20.

¹⁵ Mulyana, D., & Abdughani, R. K. (2021). Tanggung jawab notaris/ppat terhadap akta jual beli tanah yang batal demi hukum. Juris and Society: Jurnal Ilmiah Sosial dan Humaniora, 1(1), 106-118.

PPJB tidak hanya diukur dari aspek formal akta autentik, tetapi juga dari fungsi substantif Notaris sebagai penjaga keseimbangan hak dan kewajiban para pihak. Dengan demikian, peran Notaris perlu dimaknai sebagai bentuk tanggung jawab profesional dan moral dalam menjamin legalitas serta keadilan dalam setiap transaksi keperdataan. Selain itu, penelitian ini menemukan adanya kesenjangan normatif antara kewenangan Notaris dan PPAT yang berpotensi menimbulkan tumpang tindih praktik di lapangan. Oleh karena itu, perlu dilakukan harmonisasi regulasi antara UU Jabatan Notaris (UUJN) dan Peraturan Jabatan PPAT agar batas kewenangan kedua pejabat tersebut lebih tegas.

Adapun rekomendasi yang dapat diajukan meliputi empat hal. Pertama, perlunya standardisasi protokol pemeriksaan dokumen tanah oleh Notaris sebelum pembuatan PPJB untuk mencegah sengketa akibat data yang tidak valid. Kedua, penerapan sistem digitalisasi data pertanahan agar proses verifikasi lebih efisien dan transparan. Ketiga, penguatan etika profesi dan mekanisme pengawasan terhadap Notaris agar setiap tindakan profesional selalu berorientasi pada prinsip kehati-hatian dan keadilan. Keempat, penegakan norma hukum dalam revisi UUJN agar mencakup batas tanggung jawab hukum Notaris secara eksplisit terhadap kesalahan administratif maupun substansial dalam akta. Dengan langkah-langkah ini, peran Notaris tidak hanya memberikan kepastian hukum formal, tetapi juga mewujudkan keadilan substantif dalam praktik transaksi jual beli tanah di Indonesia.

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