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Discriminatory Policies and Laws Target Indian Muslim minorities in the Recent Time: A Socio-Legal Study

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Abstract
The article gives a short overview of targeted discrimination against Muslims as minorities in India and the apathy of legal and political agencies to protect them. It suggests that neither of these two perspectives adequately capture the Indian Government's attention nor cease sufficiently the attention of the international legal order, which has a normative architecture unto its own. This article focuses on the uncertain effect of religious autonomy in India and democracy. The Indian constitution guarantees autonomy to its religious minorities and promises the minorities freedoms but there is a huge gap between constitutional rights and political reality for minorities, especially Muslims. Indian democracy has been weakened by the rise of xenophobic nationalism and threats to religious minorities. Even their safety and religious freedom have been compromised. Muslim women are abused and targeted publicly online. These trends were evident in the last few decades but have dramatically increased in recent years, and the administration has turned a blind eye. In response, the present Union Government of India and its political party attempt to engineer a Hindutva version of lebensraum in India. The radical Bhartia Janta Party government passed discriminatory laws that are eroding the democratic nature of India and undermining its religious freedoms.

Keywords: Love Jihad, South Asia, India, Religious Nationalism, Hate Speech, Indian Muslim

1. Introduction

In recent years, religiously inspired nationalist movements and rightist political parties have gained prominence in several countries worldwide, especially in India. As the world's largest democracy, India is home to one-quarter of the world's voters, one-sixth of humanity, (Vaishnav, 2017), and the second-largest Muslim population in the World, it also has the largest religious minority in the world. (MAM & RB, 2021) Therefore, political developments in India are likely to have broader repercussions throughout South Asia and Southeast Asia. India is not alone in facing the challenges that accompany religious nationalism based on hatred: many democracies worldwide are witnessing a rise in such political movements. Such as Latin America, Western Europe, and the post-Soviet states, including Russia. (DeHanas & Shterin, 2018) Most religious nationalist parties possess a puritanical line that colors their electoral platforms and subsequent methods of governance with a religious, moral tone. Religious politics often adopt a majoritarian nationalism, which seeks to redefine the basis of national identity to exclude or marginalize religious minorities. (Friedlander, 2016)

Indian society has been suffering the violence of different nature. The most common communal violence that began during the colonial period has assumed the form of majoritarian violence directed against religious minorities. After Independence, gradually majoritarian violence has come to dominate the fore and is tormenting religious minorities with increasing intensity. The justice delivery system has so evolved that most of the culprits of violence belong to the majority community getaway without any severe punishment. (Punniyani, 7 March 2022) India's old philosophy of multicultural and multireligious society remained threatened by an increasingly exclusionary conception of national identity based on religion Hindutava.[1] (Devare, 2013) During recent years, religious freedom conditions in India experienced a drastic downward turn, with religious minorities, especially Muslims, under increasing assault, after the re-election of the present rightist government of 'Bhartia Janta Party (BJP)' in May 2019. (USCIRF, 2018) The Union government of BJP used its strengthened parliamentary majority to establish national-level policies violating religious freedom for the Muslims as a minority community throughout India. The Union government allowed violence against Muslim minorities and allowed hate speech and incitement to violence. (USCIRF, 2020) The Universal Periodic Review (UPR)[2] attributes anti-minority violence to the Indian Government, including the present governing political party. The rise of xenophobic discrimination and threats to religious freedom of minorities was evident in the past, primarily targeting Muslims, Christians, and other minorities but has dramatically increased now.

Threats and hate speech against religious minorities have escalated drastically over the last few years since 2014. Killing or lynching in the name of "cow protection/vigilantism" is treated as a heroic deed. Even after the outbreak of COVID-19, physical, verbal, and psychological warfare is being waged against them, pushing further their ostracisation in Indian society. Regrettably, ideological hatred has been practiced in the garb of patriotism and nationalism. Though the Indian constitution guarantees autonomy to its religious minorities and promises the freedom to manage their religious affairs independently, Article 15, which encapsulates one of the fundamental rights of India's constitution, explicitly prohibits discrimination on the grounds of religion, besides race, caste, sex, or place of birth. (Kidwai & Sahar, 2020)

In the recent past, COVID-19 and choice of dress practices relating to the Hijab issue of Muslim women have simply added a new dimension to the hate speech and disinformation circulated by national media against the Indian Muslim community. (Regan, Sur, & Sud, 2020) At the same time, political leaders were busy aggravating tensions between religious groups. Official actions were not aimed at fighting the virus but were busy restricting Muslims' religious practices and legal rights.

Videos of Hindu religious leaders calling for mass killings (Genocide) during 'Dharma Sansad' or 'Religious Parliament in Haridwar' and for the use of weapons against Muslims that went viral on social media on 22 December 2021 prompted the Supreme Court to order an investigation into hate speech in Uttarakhand state. (AL-Jazeera, 2021) At the concluded Dharam Sansad in Hardwar, Sadhvi Annapurna aka Pooja Shakun Pandey, a Mahabaleshwar of the Niranjani Akhara and general secretary of the Hindu Mahasabha, also gave a call to arms and incitement to genocide, "ready to die or kill." Several recent cases of atrocities against Muslims encouraged by supporters of the ruling BJP party, such as a government minister who garlanded eight Hindus convicted for lynching a Muslim, and the country's new broadcasting minister who was seen last year in a viral video inciting the Hindu crowd to "shoot Muslims." This is an attempt at ethnic cleansing, systematically forced removal of Muslims, with the intent of making them ethnically homogeneous by forced conversion. Along indirect methods aimed at forced migration by coercing the victim group to flee such as murder, rape, and property destruction.

India's BJP-led government has stripped Article 370, the autonomy of Jammu and Kashmir August 2019, the only Muslim majority state after seven decades, characterizing it as the correction of a "historical blunder" (Pandey G. , What Happened with Kashmir and why it matters?, 2019) Indian constitution under Article 370 guaranteed notional autonomy to the state. Article 370 included a special provision that said only permanent residents could own and buy land in Jammu and Kashmir and gave them special privileges in education and jobs. The Union government divides the state into two parts (union territory). They are to be ruled directly from Delhi, Union Government. (The Times of India, 2019) The proclamation was accompanied by a curfew in the state that included the house arrest of prominent Kashmiri leaders, the severing of all internet, cellphone, and landline connections for almost a year, and the deployment of thousands of additional troops in what is already, with nearly a million

soldiers, one of the most militarized regions in the world. (Mundi, 2019) The Armed Forces Special Powers Act (AFSPA), a piece of colonial-era legislation still in effect in Kashmir, offers virtual immunity to security forces for all acts of violence. India's military in Kashmir has unfolded apace under this law, spurring massacres, disappearances, torture, rape, and the deliberate blinding of protesters. (Ganai, 2021) The authorities detained many of these people without informing their families about their whereabouts; several were even transferred to jails outside the state. Hundreds of habeas corpus petitions were filed by families seeking information about those detained in the courts. Courts delayed hearing the petitions for over a year in the majority of cases. Out of the 554 habeas corpus petitions filed in the Jammu and Kashmir High Court after August 5, 2019, the court had passed judgment in only 29 cases by September 2020. (Narla & Rajagopalan, 2020)

Muslim women are bullied, harassed, humiliated, and denied entry into educational institutions. A dispute over the hijab, a headscarf worn by Muslim women who were not allowed to enter college, has caused a deadlock at a women's college in the southern Indian state of Karnataka. It's not uncommon to wear hijabs and burkas in India, but denial has created a feeling of threat in an increasingly polarised and charged atmosphere.

Hindutva[3] forces recently decided to haunt the prominent Muslim women by "auctioning" them online on apps such as '*Bulli Bai'* and '*Sulli Deals*,' ~~the~~ Indian Muslim women up for sale. The app pretended to offer users the chance to buy a "*Bulli and Sulli*" - a derogatory slang term used by right-wing Hindu trolls for Muslim women. There was no actual sale of any kind. The purpose of the app was to degrade and humiliate them. (Pandey G. , Sulli Deals: The Indian Muslim women 'up for sale on an app', 2021) These acts of online abuse have the power to "belittle, demean, intimidate and eventually silence Muslim women." This targeted and planned attack is an attempt to take away the voice ~~from~~ of the educated Muslim women who express their opinion and speak out against Islamophobia.

The article gives a short overview of targeted discrimination against minorities in India and the apathy from legal and political agencies to protect them. It suggests that neither of these two perspectives adequately capture the Government's attention nor cease sufficiently the attention of the international legal order. This article focuses on the uncertain effect of religious autonomy in India and democracy. The Indian constitution guarantees autonomy to its religious minorities and promises the minorities freedoms. Indian democracy has been weakened by the rise of xenophobic nationalism and threats to religious minorities. Even their safety and religious freedom have been compromised. Muslim women are abused and targeted publicly online. These trends were evident in the last few decades but have dramatically increased in recent years, and the administration has turned a blind eye. In response, the present Government and its political party are attempting to engineer a Hindutva version of *lebensraum* in India.

2. Muslim Minority in India

It is essential to remember that the Indian minority has not migrated to India from the outside. Instead, they lived there from generation to generation. According to last census conducted in 2011, in India minority generally consists of Christians (2.5%), Sikhs (2%), Jain (1%), (Times, 2014) and Muslims (14%), which is the world's third-largest population. In India majority consist of Hindus; their population includes 80% of India's population. (Firstpost, 2015) India is a secular state, but it's a utopian concept in a virtual sense. In a country where more than 80% of the population consists of one religion, it's challenging to provide equal status to the minority. So, to provide equal status to these minorities, special privileges are being accorded to them in the Indian constitution. An example of Muslims in India has a poverty rate of 43%, whereas the national average is 39% (National Sample Survey Organisation, 1999-2000). In rural areas, Muslim landlessness is 51% compared to 40% for Hindus. (Majumdar, 2018)

Literacy rates are substantially lower among Muslims, leading to deprivation of jobs in higher positions in government offices and skilled professions in the service sector. In urban areas, 60% of the Muslims have never gone to schools against the national average of 20%. Only 5%of Muslim women have completed high school education, and the income of the average Muslim is 11 % less than the national average. To this may be added the Kashmiri Muslim community, with its distinct political history and its guaranteed status of self-rule in the past, is

a testimony to the betrayal of rights and the denial of justice to the Muslim population. (Majumdar, 2018) So, there is still a need to further implement new laws to meet their drowning standards.

A report commissioned by the Congress government, the Justice (Retd) Rajinder Sachar Committee Report, brings out the issues of income, education, and employment related to Indian Muslims. The Prime Minister set up the Committee as a High-Level Committee under the Chairmanship of Justice (retd) Rajinder Sachar to examine the social, economic, and education status of the Indian Muslim community as standing in 2006. The findings of the Sachar Committee in 2006 have indicated certain levels and forms of systemic discrimination and official prejudice operating in Indian society at almost all levels against Muslims, and some of the results have shocked the whole country. The Committee used data tabulated indices for levels of education (matriculation, graduates and above), employment (workers and formal sector), economic (poverty and land holdings) between Hindu and Muslim. (Parvez & Hasan, 2015)

On the education front, only about 3.6 percent of Muslims above the age of twenty are college graduates, according to recent data collected in 2006 from the National Sample Survey Organisation (NSSO). 54.6 percent of Muslims in villages and 60 percent in urban areas have never attended schools. 3.1 percent of the Muslim community in urban areas are graduates, and 1.2 percent are post-graduates. Only 0.8 percent of Muslims in rural areas are graduates. The Committee also found an inadequate number of government schools in the Muslim-dominated areas contributing to the low number of Muslim boys and girls attending the schools. (Parvez & Hasan, 2015)

2.1. Brief Historical background of Muslims as a Minority in India

The first mosque was built in India 629 AD, Cheramaan Jumma Mosque, Thrissur Kerala. Islam was introduced in India by the Arab invasion of Sind in CE 712 and subsequent invasions of Muslims in the eleventh and twelfth centuries. In the sixteenth century, Islam firmly established itself as a force through the Mughal empires. The Mughals generally refrained from forcible conversions to Islam, and the great Mughal Emperor Akbar granted a remarkable measure of tolerance and autonomy to non-Muslims. Although soldiers and officials came with the Mughals from Central Asia, the bulk of the Muslim population is descended from peoples of India, mainly from members of lower castes who converted to Islam to escape from persecution and repression at the hands of the caste Hindus. (Chand, 1972) While the concentration of Muslims was in the northwest of India (present-day Pakistan) and the east (present-day Bangladesh), there were also substantial numbers throughout the north and east. The decline of Muslim domination of India and the ultimate dispossession of the Mughal empire had several consequences. While bitterly resenting the loss of the kingdom, Muslims had to bear the brunt of the retaliatory policies at the hands of the new colonial masters after the failed uprising of 1857. (Chand, 1972)

The Muslim League came in time to represent the aspirations of the Muslim masses in India during 1906. It ultimately spearheaded the Pakistan movement in 1940, led by Mohammed Ali Jinnah and Liaquat Ali Khan. The conflict between the Muslim League and the Indian National Congress, at the helm of the movement for independence from Britain, eventually resulted in the decision to partition India and create Pakistan, 14 August 1947. (Mujahid, 2007)

The division of India along communal lines could not wholly eradicate the religious minorities; instead, it contributed to exacerbating the already existing tensions and divisions. The tragedy that ensued at the partition with Muslims, Sikhs, and Hindus, all victims of brutal and widespread conflict, remains one of the great catastrophes of human history.

So far as India's Muslims were concerned, the creation of Pakistan as a homeland for Muslims resulted in a new minority problem for now independent state of India. Muslim-majority regions (except Kashmir) separated to form the state of Pakistan. Muslim inhabitants of India now felt more insecure. (Jalal, Self and Sovereignty: Individual and Community in South Asian Islam since 1850., 2002) The numerical strength of Muslims in India also decreased, from over 26 percent of the population during 1941 (Jalal, The Sole Spokesman: Jinnah, the Muslim League and the Demand for Pakistan, 1994) to about 14.4 percent according to the 2011 census.

Indian Muslims are not granted the same constitutional safeguards as the scheduled castes and scheduled tribes and they are not entitled to reservations in employment and education. Muslims are strikingly underrepresented in civil service, military, and higher education institutions.

2.1.2. Rise of Hindutva forces – a new development

The assassination of Mahatma Gandhi, the founder of the nation, brought special attention to the Hindu nationalist movement Rashtriya Sewak Sangh RSS, a religious and political revivalist movement that seeks to make Hinduism the dominant and exclusive source of Indian culture and identity and ultimately make India a Hindu Rashtra (Hindu state). (Mukherjee, Mukherjee, & Mahajan, 2008) India was ruled by Muslim emperors and kings for over eight hundred years hence RSS projects Islam and Muslims as "foreigners " hostile and inimical to the Hindu essence (Hindutva) of India. (Sahgal, 2020) Because of political compulsion, RSS has created a political wing, Jan Sangh, and later changed its name to Bharatiya Janata Party (BJP). BJP has mastered electoral victories in the 2014 and 2019 national elections in the overwhelming majority. Now they look into the possibility of achieving their dream, India as a Hindu Rashtra (Hindu state). (Shani, 2021)

In 1990, the BJP leader, L. K. Advani, began a mass movement to demolish the Babri Mosque in Ayodhya and replace it with a temple for Hindu gods, Ram. The movement started as a transportable rally from Somnath in Gujarat to Ayodhya in Uttar Pradesh. This Ram Rath Yatra, (a chariot journey), has become a symbol of revivalism in Indian culture and radicalized the population. Ultimately, the Babri Masjid was demolished on 6 December 1992 by Hindu forces backed by RSS in an act of shocking vandalism. (Parthasarathy, 2016) This was allowed to happen while India was still governed by political parties that were supposedly secular at large. The point of highlighting this epic act of religious vandalism is to underscore the fact that even before Hindu nationalists came to power in 2014, India's political environment and culture, despite its secular constitution, had become Islamophobic and infused with Hindutva ideology. (MAM & RB, 2021)

In the general elections of 2014, the Hindu nationalist party came to power, and it heralded the beginning of an era of state-sponsored Islamophobia in India. Hindutva is an ideology that equates Indianness with being exclusively Hindu. It seeks to subvert the secular and pluralistic aspirations of India and is trying to set it on a path that will eventually make it a Hindu state with the Hindu ethos as the dominant feature of the national culture. (MAM & RB, 2021)

Islam is the second largest religion of India and Muslim culture has deep historical roots in India's heritage. Its existence remains a barrier to the Hindutava dream, and the Sangh Parivar (an Ambarella cluster of Hindutva-advocating organizations, movements, and parties) are determined to erase or at least marginalize Islam in India. (Redding, 2021) After gaining a majority in the parliament in the 2014 elections, the political branch of the Hindutva family, the BJP, began an accelerated process of alienating Muslims and adopted strategies to undermine the legal framework that protects Muslims. They adopted the policy of undermining the secular nature of the Indian constitution and eliminating the non-constitutional sources of minority rights.

2.2 Constitutional rights accorded to Minorities and their protection. (India T. C., 2020)

Article 14 of the constitution recognizes the equality of all before the law.
Article 15 underscores the prohibition of discrimination based on "religion, race, caste, sex or place of birth."
Article 25 of the Indian constitution gives its citizens the freedom to profess, practice, and propagate their religion. This is a constitutional right of Muslims. They should be able to say they are Muslims, fast, pray, celebrate their festivals, and promote and propagate their faith (in other words, exercise Da'wah).
Article 16 acknowledges equal opportunity for public employment.
Article 26: It permits religious minorities to manage their religious affairs. However, this right has to be exercised in a manner that conforms with public order, morality, and health.
Article 27: Freedom as to payment of taxes to promote any particular religion. No person shall be compelled to pay any taxes, the proceeds of which are specifically appropriated in payment of expenses for promoting or maintaining any particular religion.

Article 28: No one can be compelled to attend any religious instruction or worship at a state or state-supported institution.
Article 29 ensures the right of minorities to preserve their language, culture, and heritage.
Article 30 Right of a minority to establish educational institutions. (Pandey J. , 2006)
Article – 30(1) gives the linguistic or religious minorities the following two rights:
(a) The right to establish, and
(b) The right to administer educational institutions of their choice.

Article – 30(2) bars the state, while granting aid to educational institutions, from discriminating against any educational institution because it is under the management of a linguistic or a religious minority. It mandates that in granting aid to educational institutions, the state shall not discriminate against any educational institution because it is under the management of a minority, whether based on religion or language. (Jain, 2006)

The minorities have been given protection under article 30 to preserve and strengthen the integrity and unity of the country. The sphere of general secular education will develop the commonness of boys and girls of India. This is in the true spirit of liberty, equality, and fraternity through the medium of education. (Jain, 2006) The Supreme Court has pointed out in Ahmedabad St. Xaviers College v. the State of Gujarat that the spirit behind article 30(1) is the conscience of the nation that the minorities, religious as well as linguistic, are not prohibited from establishing and administering educational institutions of their choice. (Ahemdabad St. Xavier's College v. State of Guajrat, SC 1389, 1974)

The founder of Indian constitution has framed a liberal progressive, secular form of constitution, and grant much autonomy and freedom to religious minorities. It permits religious minorities to manage their religious affairs. (Singh P. , 2005) According to the case of (A.S.E Trust v. Director, Education, Delhi Adm., Del 207, 1976), the term 'minority based on religion should be restricted only to those religious minorities, e.g., Muslims, Christians, Jains, Buddhists, Sikhs, etc., which have kept their identity separate from the majority, namely, the Hindus. Muslim Personal Law (MPL), based on the Shariat Act of 1937, was enacted ten years before India's independence and remains operative.

3. Discriminatory laws and violence against Muslim minorities in recent years

More multifarious targeted forms of violence started against minorities in India. A few such laws and incidents of violence against Muslim Minorities are discussed here.

3.1. National Register of Citizens: Discrimination and denial of nationality

Relevant ICCPR provisions: Art 2 (non-discrimination), 7 (freedom from inhuman treatment), 14 (right to a fair trial and independent judiciary) are violated as below.

The complete draft National Register of Citizens (NRC) in Assam was published on 30th July 2018, raising fears that, contrary to international law, it risked arbitrarily depriving the nationality of over 4 million persons and rendering them stateless. The populations at risk are overwhelmingly from minority ethnic, religious, and linguistic groups consisting of Muslims and Hindus of Bengali descent and Nepali-speaking people with high percentages of women, children, and daily wage workers, all among the most marginalized and excluded communities. (Saldanha & Madhavapeddi, 2018) Three days of violence erupted in Delhi with mobs attacking Muslim neighborhoods during February 2020, the aftermath of NRC agitation, (Act, 2019) after Lok Sabha (one of the houses of Parliament) cleared Citizenship Amendment Bill in December 2019. (Tiwary & Dastidar, 2019) There were reports of Delhi police operating under the Home Ministry's authority, failing to halt attacks and even directly participating in the violence. At least 50 people were killed. (Gentleman, 2020)

3.1.1. Hate speech and incitement (Art 20 of ICCPR)

Generally, the law to deal with hate speech and prohibition of incitement to hatred is contained in sections 153,153a, 295a, and 505 of the Indian Penal Code. Section 123 (3A) of the Representation of People Act, 1951, is also applicable to political candidates during elections. These are weak. The state's record of enforcement of the laws is still poorer. According to an NDTV report of 2018, high-ranking politicians' hateful and divisive language increased almost 500 % in the previous four years. Of the 45 leaders responsible for hate speech since April 2014, only 6 cases were evidence of the accused being reprimanded or cautioned or issuing a public apology. At least 21 political leaders (or 48 %) had recorded more than one instance of hate speech. (Jaiswal & Jain, NDTV19, 2018)

3.1.2. Extrajudicial killings (called 'encounter killings' or 'fake encounters' in India)

State (province) police have also targeted Muslim youth, with Muslims killed disproportionately in extrajudicial killings, what is called 'fake encounter killings in India, in Uttar Pradesh and Haryana. (Citizens Against Hate, 2018) Northern Uttar Pradesh state has seen a spate of encounter killings by the local police since March 2017. (Citizen Against Hate, 2019)

According to the state government of Uttar Pradesh (UP), there were 3,026 'encounters' in UP from March 2017 to July 2018. Seventy-eight criminals were killed in these encounters, 7,182 were arrested, and 838 sustained injuries. In the six months between January 2018 and July 2018, 61 criminals have killed an average of more than eight persons per month in the encounters. (Indian Express, 2018) Fact-finding reports by civil society and media reports have stated that several victim families are being continuously harassed, threatened, arrested in fabricated cases. The five UN human rights experts expressed alarm about allegations of at least 59 extrajudicial killings by police in UP since March 2017 and the pattern of events in the cases of individuals allegedly being abducted or arrested before their killing and their bodies bearing injuries indicative of torture. (The Hindu, 2018)

According to 2015 statistics from the National Crimes Records Bureau, more than 67% of those in India's jails are defendants under trial, 25% of whom were in prison for over one year. Muslims, Dalits, and Adivasis make up 55% of India's population, but only a combined 39% of the country's total population. Overrepresentation of minorities in India's prisons reflects a more profound institutional bias against minorities about law enforcement, with severe manifestations including cases of "encounter killings" and physical abuse by authorities. (Viray, 2016)

The extra-judicial killings show that the National Human Rights Commission and the Supreme Court guidelines need a reworking. The only way to stem the rising tide of extra-judicial killings is to end the culture of impunity and punish police officers who resort to such extra-legal means.

3.1.3. Anti-cow slaughter' laws

Mob lynching has become today's way of life in the northern part of India. On 22nd June 2019, a viral video did the rounds on social media in India in which a young Muslim man tied up, bleeding profusely all over his body, hands folded, was being lynched by a mob that forced him to chant Glory to Lord. (Ayub, 2019) Saberin (Saberin, 2018) added that the man, later identified as 24-year-old Tabrez Ansari, was beaten for hours until he died at the hands of a mob in the eastern state of Jharkhand. It was a hate crime. According to Abraham and Rao (Abraham & Rao, 2017), this phenomenon has continued, and 30 Indians were killed in 63 incidents from 2014 to 2017, and according to an India Spend content analysis of the English media. In the wake of several well-publicised lynching and mob violence incidents, most of them related to issues surrounding cattle trade or beef consumption. (Subramanya, 2017)

In May 2018, a Muslim tailor, Siraj Khan, was beaten to death by a cow vigilante mob in Madhya Pradesh following accusations of slaughtering a bull. (Ghtawai, 2018) 'Anti-cow slaughter' laws exist in 21 states in India, with differences in state legislations ranging from a total ban on slaughter to punishments for transportation of cows. (Frayer, 2019)

Gujarat increased its punishment for cow slaughter to life imprisonment, becoming the country's most severe. Discriminatory impacts are felt directly by religious minority groups, particularly Muslims and Christians, but also lower-caste Hindus, including Dalits, many of whom consume beef. Nearly 30 Muslims have been lynched in India over suspicions of cow slaughter, possession, and consumption of beef, since 2015. (Giri, 2018)

In 2018, the Supreme Court urged (Gowen, 2018) the Union and state governments to combat lynching with stricter laws. But the Union government and ten states had failed to take appropriate action by July 2020, the Supreme Court again directed them to do so. (USCIRF, 2020) However, instead of complying, the Home Minister called existing laws are sufficient and denied lynching had increased. (Shah, 2019) At the same time, the Home Ministry instructed the National Crime Records Bureau to omit lynching from the 2019 crime data report. (Singh V. , 2020)

The U.S. Commission on International Religious Freedom (USCIRF) chairman, Mr. Tony Perkins, called for the Indian government to take action to prevent further violence. "We condemn in the strongest terms this brutal murder, in which the perpetrators reportedly forced Tabrez Ansari to say Hindu chants as they beat him for hours." (Ayub, 2019)

3.1.4. Anti-conversion' Laws (officially called Freedom of Religion Act)

These laws that are now being hoisted by Hindu radicals reflect the widening gap between secularism and religious freedom that is enshrined in the Indian constitution. (Sinha, 2021) Anti-conversion laws are in force in six states (provinces), with recent efforts to introduce laws to other remaining states. The controversial law was enacted to "provide freedom of religion by prohibiting conversion from one religion to another by misrepresentation, allurement, use of threat or force, undue influence, coercion, marriage or any fraudulent means. While these laws expressly prohibit conversions where fraud, force, are involved, in practice, the legislation has been used by right extremists to discourage or prevent conversion from Hinduism to other religions, particularly Islam and Christianity. Interfaith couples have faced harassment, with lynching carried out against so-called 'love Jihad' – a purported Muslim conspiracy to lure Hindu women into marriage. The concept of love jihad largely means love is strategically used by male Muslims to trick unaware Hindu girls into marriage, marry them, convert them to Islam. (Malji & Raza, 2021)

The law stipulates a jail term between one and five years for religious conversion in violation of section 3, which prohibits conversion, or an attempt to conversion by misrepresentation, allurement, threat, or force. If the conversion involves women, minors, or people from the scheduled castes and tribes, the punishment is two to 10 years in prison. While crimes registered under the law are cognizable and non-bailable, the burden of proof lies on the accused. "The law has been designed in a way that it doesn't need much evidence to register a case. The complainant and their family can file a complaint, and the onus of proof lies on the accused." When a Hindu man marries a Muslim woman, Hindu organizations always portray it as romance and love, while when the reverse happens, it is depicted as coercion.

Since the law came into effect, Utter Pradesh (North Province) authorities have filed cases against 86 people, 79 of whom are Muslims, accusing them of "enticing a woman" and forcing her to convert to Islam. Seven others are accused of coercing women to convert them to Christianity. These statistics are part of the state government's affidavit presented before a high court bench Allahabad, in response to a batch of public interest litigations (PILs) that claimed the law violated several constitutional rights. (Anand, 2021)

The famous jewelry brand Tanishq, owned by the Tatas, India's biggest companies, withdrew an advertisement featuring an interfaith couple after a right-wing backlash on social media. The ad showed a baby shower organized for a Hindu mum-to-be by her Muslim in-laws. Rightist Hindu groups said the advert promoted "love jihad" - an Islamophobic term that implies Muslim men preying on Hindu women to seduce them and marry them. (Pandey G. , India Love Project: The Instagram account telling tales of 'forbidden' love, 2020) According to official data, a total of 107 people has been booked, of whom 78 were Muslims, and 29 were Christians. (The Hindu, 2020)

3.1.5. International Response on Discriminatory Citizenship (Amendment) Act (CAA)

The CAA drew international condemnation and prompted protests around the world. The Office of the UN High Commissioner for Human Rights called the law "fundamentally discriminatory." (UN Human Rights Office, 2019) In February 2020, the UN secretary-general said he was concerned over the future of religious minorities in India after the enactment of the CAA, saying "there is a risk of statelessness." (The Hindu, 2020) In January 2020, the United States Congress held a hearing on global religious persecution and raised concerns over the citizenship law and citizenship verification processes. (Lakshman, 2020) The same month, the European Parliament debated a joint motion on the law that described it as "discriminatory in nature and dangerously divisive." (India P. T., 2020) The US Commission on International Religious Freedom said the US government "should consider sanctions against the home minister and other principal leadership" and held a hearing in March during which one commissioner raised concerns that the law "in conjunction with a planned National Population Register and a potential nation-wide National Register of Citizens, or NRC, could result in the wide-scale disenfranchisement of Indian Muslims." (USCIRF, 2019)

3.1.6. Delhi Riots

The government's citizenship policies sparked weeks of nationwide protests beginning December 2019. During the protests, BJP-affiliated groups attacked protesters then police did not intervene in several cases. Police used excessive and unnecessary lethal force, in at least three BJP-governed states, killing at least 30 people during protests and injuring more. An independent investigation by the Delhi Minorities Commission found that the violence was "planned and targeted" and that some policemen actively participated in the attacks on Muslims seen in a video on February 24 2020. In that video several policemen are seen beating five grievously injured Muslim men lying on the street, forcing them to sing the Indian national anthem to prove their patriotism. (The Guardian, 2020) The situation was aggravated as Hindu mobs armed with swords, sticks, metal pipes, and bottles filled with gasoline, targeted Muslims in several neighborhoods in northeast Delhi. While most of the 53 people killed were Muslim, a policeman and government official were among the Hindus who also died. (The Hindu , 2020) In contrast, the Delhi police have filed politically motivated charges, including terrorism and sedition, against 18 activists, students, opposition politicians, and residents – 16 of them Muslim. (The Hindu , 2020)

3.2. Sponsored Religious Discrimination

At the height of the Black Death in the 14th century, rumors circulated throughout Europe that Jews were deliberately transmitting the plague by poisoning wells. Rather than quell these rumors, some governments effectively endorsed them and incorporated them into official policy. In 1349, the city fathers of Brandenburg passed a law that preemptively condemned the Jewish community for spreading the disease. (Zahler, 2009)

Similarly, the new pandemic Covid -19, a barrage of disinformation blaming Muslims for deliberately spreading coronavirus flared up across the country, posing further threat to India's Muslim minority. (Regan, Sur, & Sud, 2020) The health crisis has provided both motivation and cover for increased persecution of minority faith groups. Muslims in India are facing attacks and boycotts amid the coronavirus crisis. Muslims are being blamed for what some locals are calling "corona jihad." (Jaiswal, India Covid19 Crisis used to fuel religous hatred, 2020) The Indian administration has also used the pandemic as an opportunity to crack down on political dissidents. Lockdown measures during Covid -19 in the country have also led to the sudden displacement of migrant workers from large urban centers. (Menon G. L., 2020)

3.2.1. Slander campaign against Muslims

Xenophobic tropes are evident from the manner in which the spread of COVID-19 in the country has been framed along religious lines. India's 201 million Muslim citizens now find themselves blamed for the country's COVID-19 outbreak. Many Muslims have also been reportedly turned away from testing centres and health clinics due to such fears. (Ketchell, 2020)

A congregation had taken place in the headquarter of Tablighi Jamat[4] (Ahmed, 2020) at New Delhi in March 3rd, 2020, drawing hundreds (1,306) of foreign nationals from 41 countries such as Thailand, Nepal, Myanmar, Indonesia, Bangladesh, Malaysia, Sri Lanka and Kyrgyzstan. As the COVID-19 lockdown came into force on 25 March 2020, that time around 1,000 were left stranded in its headquarter at New Delhi. (IANS, 2020)

The Indian government has been criticized for its poor preparation for the nationwide lockdown imposed in March 25 ,2020, and instead turned all its attention toward the three-day Tablighi Jamaat[5] gathering held in Delhi in early March that has been vilified on local media and social media outlets. The right-wing nationalists have deemed the meeting a sinister plot by Indian Muslims to deliberately infect the rest of the population instead of the virus spreading organically across the country. (Desai & Amarasingam, 2020) The Tablighi Jamaat congregation became the ultimate punching bag of the right-wing agenda. Members of the ruling party such as Chief Minister of Uttar Pradesh (The Economic Times, 2020) and Health Minister of Assam and many have made biased comments against Tablighi Jamat and muslim in general. They are smelling Corona Jihad behind all this" in reference to the gathering. (The Hindu, 2020). The event has been linked to 1,023 cases across 17 states - believed to have been spread by infected foreign attendees. The search for scapegoats during the coronavirus pandemic has focused squarely on the country's sizable Muslim minority, a community of 200 million that felt under threat even before the advent of covid-19. (Slater & Masih, 2020)

Speaking at a press conference, Joint Secretary in the Health Ministry said 4,291 or about 30% of Coronavirus cases in the country have been traced to Tablighi Jamaat congregation in Delhi out of 14,378 cases in the country. In Delhi, 63% of the reported 1,707 cases are linked to the same gathering. (The Wire, 2020)

On 2 April, the Home Ministry identified 960 foreigners who took part in the event and blacklisted their visas for violation of The Foreigners Act, 1946 (by violating visa norms by entering India with a tourist visa and indulging illegally in missionary work) and the Disaster Management Act, 2005, and asked the Director General Police of respective states and union territories to initiate legal action against them. (India Today, 2020). Over 3000 members of the Tablighi Jamaat subsequently spent more than 40 days in quarantine, with government authorities refusing to discharge them. (PTI, 2020) The Indian government leveled charges of culpable homicide at Tablighi Jamaat chief. (Bhardwaj, 2020)

The Tablighi Jamaat phase saw hate speech directed against one entire community-Muslims-with obvious impact on the ground such as calls for economic and social boycott and physical violence against Muslims. In some instances, hate speech in this period was clear incitement to genocide and sought to reduce Muslims to second-class citizenship. (Menon S. , 2020)

3.2.2. Attacks on Muslims and Segregation

The government administration blocked Muslim vegetable vendors from selling their produce. Many Muslims were barred from entering the hospital before taking the corona test. Muslims all across India were attacked in the name of the COVID-19 surge. (Menon A. , 2020) Tamil Nadu became the first Indian state to set up detention centers for 129 foreign nationals who had stayed in Tablighi Center at New Delhi. All cases were based on anti-Muslim sentiments rather than facts or evidence. (The Wire, 2020)

In the Una district in Himachal Pradesh, a man hanged himself due to taunts from fellow villagers for having come in contact with Tablighi Jamaat missionaries. (Mohan L. , 2020) Several truckers belonging to the Muslim community were allegedly beaten up in Arunachal Pradesh, following which they fled to neighboring Assam, leaving their vehicles behind, on 5 April 2020. (PTI, 2020) A Muslim man in Delhi was beaten up by a mob that accused him of spreading coronavirus. (Petersen & Rahman, 2020) Both private and government-run hospitals have been accused of providing Muslim COVID-19 patients with lower-quality care. In Gujarat, a government hospital is placing Muslim and Hindu coronavirus patients in separate wards, prompting accusations of apartheid. (The Hindu, 2020) A bakery owner in the southern city of Chennai advertised that it did not employ any Muslims.

3.2.3. Rumors and misinformation on media

Mainstream Indian media propagated a conspiracy of Muslims deliberately spreading coronavirus called "Corona Jihad". this went viral on social media. Human rights watch condemned this Islamophobic campaign. (Bajoria, 2020)

The Star of Mysore newspaper went to incite genocide/ethnic cleansing of Muslims in India. The hate speech was soon followed by calls from across the country for Muslims' social and economic boycott. (Afeef, 2020)This hate speech is then supplemented with fake news and tangible action in terms of direct attacks on Muslim relief volunteers and socio-economic boycott of Muslims in public spaces. Divisive debates on television and xenophobic social media trends and hashtags have added fuel to the fire.

3.3. Supreme Court intervention

The Jamiat Ulema-Hind had filed a petition in the Supreme court drawing attention to the fake news blaming the community for the spike in COVID infection. The court was dealing with a petition complaining of how TV channels had demonized the Tablighi Jamaat amid the corona lockdown. (Rautya, 2020)

A bench headed by Chief Justice of India, which was hearing pleas of Jamaat Ulama- Hind and others alleging that a section of media was spreading communal hatred over Tablighi Jamaat congregation during the onset of COVID-19 pandemic, pulled up the Centre for its "evasive" and "brazen" affidavit on the issue. News channels have misused the right to free speech, Chief Justice of India has asked the Centre to explain if it had taken any steps to curb the trend. "Freedom of speech is one of the most abused rights in recent times," the CJI said. (Rautray, 2020)

3.3.1. Judicial Proceedings

The court had on August 24 framed charges against the foreigners under sections 188 (disobedience to order duly promulgated by public servant), 269 (negligent act likely to spread infection of disease dangerous to life) of the Indian Penal Code, and Section 3 (disobeying regulation) of Epidemic Act, 1897. (Mohan A. , 2020) Dozens of cases were filed against the non-Indian Tablighi Jamaat members by various Indian states, and hundreds of them were blacklisted from traveling to India for 10 years. (Kuchay, 2020) Several countries have expressed concern over the continued custody of their national and has become a diplomatic headache for the government. (Haidar, 2020)

On 15 December 2020, the court of Chief Metropolitan Magistrate, Delhi, dismissed all cases against detained foreigners observing utter lack of evidence. Court noted that the accused were not present at the site and were picked up from different places and maliciously prosecuted under the directions of controversial order from the ministry of home affairs. (Haidar, 2020)

Criminal justice has its own logic at present and its discrepancies are not matching with the democratic ethos of India's secular constitution. Relief and rehabilitation are another sore point after the violence and our society needs serious introspection. The biases and hate against minorities do seem to have seriously distorted the justice delivery system. (Punniyani, 7 March 2022)

4. The Issue of Hijab and online Sexual Violence against Muslim Women

In a recent incident in Karnataka, India, which sparked a debate, female students were not permitted to enter the class. In a government-run college in Udupi, Karnataka, India, seven female students were denied access to classes because of wearing hijab. (Qureshi, 2022)

The freedom to practice one's religion is a fundamental right granted by India's constitution, with certain limitations. Wearing Hijab is a constitutional Right Under Art. 14 & 25 Of the Indian Constitution. Article 25(1)

of the Constitution says that there is a "Freedom of conscience and the right to freely profess, practice, and propagate religion." But like any other fundamental right, this also is not fixed. It can be regulated on the basis of other fundamental rights granted by the Constitution. (Bhiwgade, 2020)

The Supreme Court has ruled that the Constitution will exclusively protect "essential religious practices." Before granting any protections, courts will evaluate whether a practice is vital or integral for religion after studying religious texts and consulting the experts and religious heads. Courts will also consider the reasonableness of the restrictive measure in question while determining the legitimacy of any restriction put on fundamental rights under the provision of Article 14 (right to equality).

The Kerala high court considered the question of hijab is an essential religious practice in *Amnah Bint Basheer vs. Central Board of Secondary Education*, wherein the prescribed dress code for All India Pre-Medical Entrance Test-2016 was challenged by petitioners. The rationale for prescribing a dress code by the Board is to avoid malpractices in the examination.

The court relied on chapter 33 of the Quran, which holds:
"O Prophet, tell your wives and your daughters and the women of the believers to lower over them a portion of their jilbabs. That is more suitable that they will be known and not be harmed. And even Allah Forgiving and Merciful."

A ban on hijabs is contrary to almost every fundamental right that the constitution of India guarantees to all its citizens. It flies in the face of the right to freedom and equality. Refusing permission to hijab-wearing girls to enter school premises is a direct violation of cultural and educational rights. Article 29 of the constitution grants citizens who have a different language, script, and culture, the right to conserve and develop the same. (Pasha, 2022)

4.1. Online Sexual Violence

India's radical Hindu nationalists have unleashed a vicious online onslaught targeting Muslim women that is laced with sexual slurs, rape threats, explicit imagery and malicious objectification. Most of the women on the receiving end of this Islamophobic and misogynistic bullying. (Taskin, 2022) Over the New Year's weekend, photographs of more than 100 Muslim women with their identities appeared on a fake auction app that listed them "for sale" with the phrase "Your Bulli Bai of the day is." (Arya & Khare, 2022) It urged users to bid on the women in a fake auction. *Bulli bai* is a derogatory Hindi term that right-wing Hindu nationalists use for Muslim women. The women listed on the app included journalists, activists, film stars and artists as well as the aged mother of a missing Indian student. (Jafri & Aafaq, 2021) This is not the first time Muslim women in India have been "auctioned off" on the internet. A similar web application named Sulli Deals was placed on Github in July 2021 and remained available for weeks before being taken down. S*ulli* is also an insulting term used for Muslim women. In August 2018, the Akhil Bhartiya Hindu Yuva Morcha, a Hindutva organisation, announced a reward to any Hindu man who married a Muslim woman. In the same year, militant Hindu organisation Vishwa Hindu Parishad called on Hindu men to marry Muslim women and convert them. (Zargar, 2022)

The origins of Muslim women's sexualisation can be linked to Hindutva ideologues' ethnocentric and Islamophobic doctrine that sought to project Muslim men and women as aggressors. The Hindutva ideologue and revered by BJP Veer Savarkar justified rape as a legitimate political tool in his book 'Six Glorious Epochs of Indian History", (Para 451-455),which he wrote in Marathi a few years before his death in 1966. (Varma, 2018)

Conclusion

The Union government were silent on violence against minorities and allowed hate speech. (Varma, 2018) Even during COVID -19 pandemic, the search for scapegoats has focused squarely on the country's sizable minority, a community of 200 million that felt under threat even before the advent of covid-19. (Slater & Masih, 2020) Religious freedom conditions in India experienced a drastic turn downward, with religious minorities under increasing assault; after the re-election of the right-wing government in 2019. (USCIRF, 2020) These measures

by the Hindutava elements is an attempt of ethnic cleansing of Muslims in India towards the conversion of India as Hindu Rashtra (a hindu state). (Devare, 2013)

It is shown that the Muslims of India has been provided the fundamental rights as available to other Indian citizens but over the period of times the government has failed to protect those rights. It was also shown that how after the rise of Bharatiya Janata Party (BJP) to power through elections victories of 2014 and 2019, there has been a clear trend of state-sponsored downgrading of Indian Muslims. Several constitutional provisions and laws fuel anti-minority sentiment, including anti-conversion and cow protection legislation. Communalism is heightened and lynch mobs are set in motion to divide and intimidate the working class and poor society for political reasons, although India is described as a secular and democratic nation.

The Government should enact a special 'witness protection' law to protect the lives of witnesses associated with cases of communal incidents. Across the country, a large number of witnesses turn hostile in courts and conviction rates for communal crimes are low. Therefore, there is a need to create legal provisions for witnesses to feel secure so that justice is not compromised. More effective protection for human rights defenders to be provided by removing the legal obstacles and societal repression undermining their legitimate activities to promote and protect human rights. (Christian Solidarity Worldwide, 2016) Through human rights education, confidence-building measures, and dialogue, tolerance, mutual understanding, and pluralism should be nurtured and fostered.

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[1] Hindutva (transl. Hinduness) is the predominant form of Hindu nationalism in India.

[2] The Universal Periodic Review (UPR) is a unique process that involves a periodic review of the human rights records of all 193 UN Member States. The UPR was established when the Human Rights Council was created on 15 March 2006 by the UN General Assembly in resolution 60/251. This mandated the Council to "undertake a universal periodic review, based on objective and reliable information, of the fulfillment by each State of its human rights obligations and commitments in a manner which ensures universality of coverage and equal treatment with respect to all State.

[3] **Hindutva** (transl. Hinduness) is the predominant form of Hindu nationalism in India.

[4] An Islamic reformist movement. The Tablighi Jamaat is an Islamic reformist movement formed in 1927 whose members travel around the world on proselytizing missions. It held a big gathering at its mosque headquarters in Delhi from March 13 to 15, in which members from over 40 countries participated.

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Study of *Ashab Al-Kahf's* Story in the Book of *Fadhâ'il al-Khamsah min al-Shihahi al-Sittah*: A Naturalistic Hermeneutical Perspective

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Abstract
This study discusses the story of *Ashab al-Kahf in* the book of *Fadhâ'il al-Khamsah min al-Shihahi al-Sittah* by As-Sayyid Murtadha Al-Huseiny Fairuzabadi in which there are interesting and intelligent dialogues between Ali bin Abi Talib and a Jewish priest. Ali bin Abi Talib was one of the Prophet Muhammad's companions who was smart and very trusted. The story of *Ashabul-Kahf* contains many lessons and life's wisdom for humans who consistently maintain their faith and stay away from the power oppressive center to their people. The formal object of this research is the story of *Ashabul-Kahf* which is very popular in Islamic society, both in the Arab world and outside the Arab world. The material object uses *Fadhâ'il al-Khamsah min al-Shihahi al-Sittah* Book. This study uses the naturalistic hermeneutic theory by Mantzavinos. The results showed that the actions of seven young men who fled to the cave due to they were being chased by the tyrannical King Dikyanus and they did not feel like sleeping in the cave for 309 years. This research reveals a series of material events since they fled from the kingdom and were chased by King Dikyanu's army and finally they fell asleep in the cave for more than three centuries until they woke up from their long sleep and were again killed by God. Between one event material with others each other has a relationship of interrelated meaning. In this study, it is proven that the use of naturalistic hermeneutic theory can guide researchers in revealing the hidden actions meaning of the seven young men from the pursuit of King Dikyanus in the cave. The meaning revealed is that there is a causal relationship between the story of *Ashabul-Kahf* text and its readers (researchers). The story complexity in the story's text is later explained through the nexus concept, which essentially looks for material that occurs in the historical reality area and expresses it through an exclusive causal relationship. Therefore, through this nexus, the problematic meaning of *Ashabul-Kahf* story can be revealed.

Keywords: Naturalistic Hermeneutics, *Ashabul-Khafi, Fadhâ'il al-Khamsah min al-Shihahi al-Sittah* Book, Incident Material

1. Introduction

Academically, the study of the story of *Ashabul-Kahf* has not been widely carried out by academics. Fewer studies use a naturalistic hermeneutic approach. Indeed, there are many studies on the interpretation of Qur'an letter Al-Kahf, where there is the story of *Ashabul Kahf* according to the Qur'an version. However, studies on the story of *Ashabul Kahf* are not widely found. Studies of the Qur'an Surah Al-Kahf have been carried out from

various perspectives and approaches. Fadlilah and Mahfudhexamine Al-Kahf's letter using the perspective of Ian Richarde Netton's structural-semiotic theory (Fadllillah & Mahfudh, 2019). Toorawastudy from the translation point of view Tottolifocuses on the features and peculiarities of Arabic text Sūrat al-Kahf in the Qur'anic manuscripts (Toorawa, 2021; Tottoli, 2018). Aljarah, Alkofahi, and Aiqdah studied the pronouns antecedent of Surah al-Kahf from a functional textual perspective to highlight its influence in forming cohesive and communicative bonds of the Qur'anic text (Aljarah, Alkofahi, & Aiqdah, 2008). Using a structural approach, Fatahizadeh and Zakeri conclude that the structuralist approach to the Qur'an verses is a modern and influential attitude in the science of interpretation (Fatahizadeh & Zakeri, 2016). According to both, the principles in this approach include the fact that Qur'an cannot be distorted and is always based on three principles, namely unity of purpose, diversity of subjects, and harmony. Each Surah, including Al-Kahf, is considered a structure and a system that includes two structural units: a formal structure and a meaning structure. Each of these two units consists of surface structure and inner structure of the former is discrete whereas consequence of the latter is distance. The formal surface structure of the Surah contains the lexicon, syntax and harmony of the verses. The formal inner structure includes the Surah artistic aspects. The Surah semantic surface's structure is the collection of its verses, and finally, the Surah semantic's structure in which connects the different parts of the Surah to each other in the form of distances.

A study of the few stories of *Ashabul Kahfi* was carried out, among others, by Iqbal who attempted to analyze the impact of the Dead Sea Scrolls discovery in 1947 that substantially changed the ideas surrounding Second Temple Judaism and early Christianity (Iqbal, 2017). According to Iqbal, Islamic scholars paid little attention to the Dead Sea Scrolls discovery, mainly due to the perception that it was exclusively Judeo-Christian matters. However, scientific dynamics compel Muslim scholars to respond to certain unanswered questions. Iqbal uses a new perspective in explaining the story of *Ashabul Kahfi* by referring to the Dead Sea Scrolls discovery. Elassal which investigates the influence of the story of *Ashabul Kahf* on the miniaturists artistic thinking in medieval and 17th century Islamic manuscripts (Elassal, 2018). Hadi uses literary theory (*al-manhaj al-adabi*) to study the story of *Ashabul Kahf* (Hadi, 2021). According to Hadi, the story of *Ashabul Kahf* proves that the stories in the Qur'an are not just historical data. Since in this story historical elements such as characters, place and time tend to be omitted. The Qur'an does not clearly state the number of young *Ashabul Kahf* and the time they lived in the cave. The story of *Ashabul Kahf* narration which is intended to prove Muhammad's apostolate and as an answer to some of the Mecca polytheists' questions asked Muhammad when testing the veracity of his apostolate and teachings. For Hadi, such narrative has a psychological impact on the listener so that it can reveal the message stored in it.

Sidik states that there is an intertextual relationship between the drama script and the Qur'anic text and its interpretation as a hypogram (Sidik, 2016). The approach used in his research is reception/transformation, while the analysis technique is carried out by comparing, aligning, and contrasting drama texts of *Ahlul Kahf* and the Qur'an as a hypogram. The results obtained from research conducted by Sidik are that the drama script *Ahlul Kahfi* is an absorption, copying, innovation, and transformation of the Qur'an. (Sidik, 2016, p. 11) There is a close relationship between the story of *Ashabul Kahfi* and *Ahlul Kahf* as a result of innovation and transformation. The drama *Ahlul Kahfi* emerged due to the story *Ashabul Kahfi*. Jumini states that according to Al-Kindy's relativity, any object that moves faster than the speed of light will experience length and time dilation (Jumini, 2017). In addition, the seven youths of Aṣḥâbul Kahf who were put to sleep by Allah for 309 years only felt half a day or a day. Their bodies in the cave by Allah were turned over and moved beyond the speed of light so that they experienced a long dilatation and a very fast time. Wildan, Yusuf and Rifiyal state that the plots contained in the tale of Eelia Tujoh and Surah Al-Kahfi in Ibn Kathir's Sahih Tafsir have similarities and differences (Wildan et al. , 2017). The data that has been grouped is 12 data similarities and differences which include six similarities in events and seven differences in events. Three similarities and differences in conflict and two similarities and differences in the climax. Meanwhile, Rahmansyah connects the story of *Ashabul Kahf* with education, therefore according to him the values of Islamic education in the story of Aṣḥābul Kahf in the Qur'an are (1) belief in signs of God's power who has sent youths in the cave, (2) belief in the protection that Allah gives to his servants, (3) belief in Allah's promise regarding the Day of Judgment and the Day of Resurrection, (4) strive and put your trust in Allah, (5) instill the nature of *tawadhu*, *tasamuh* (tolerance), *istiqamah*, *siddiq*, and *zuhud* in social life, (6) always *tafakkur* in taking actions, (7) fearing Allah and always

being careful heart in every action, and (8) prioritizing the interests of others, and always introspecting oneself (Rahmansyah, 2020).

2. Method

This study uses naturalistic hermeneutic method that emphasizes the researcher's ability to understand all the text meanings. Researchers when reading a text must know whether there is a relationship between the text and its meaning. If it is found that there is a complex text, it is necessary to know in advance which type of nexus is in the reality area and how the exclusive causal relationship is. What is meant by reality area is the reality in the story of *Ashabul-Kahf*'s text. What is meant by an exclusive causal relationship is a special relationship between one reality and another reality in the story.

Naturalistic hermeneutic theory deals with human actions and texts with a hypothetical-deductive method, the standard method used in the natural sciences. The hermeneutic method is a method for interpreting human actions and texts so that they have meaning. The central thesis advocated by Mantzavinos is that there are no fundamental methodological differences between the natural sciences, social sciences, and humanities (Mantzavinos, 2005, p. 2). In naturalistic hermeneutic theory perspective, it is said that human actions and the texts they produce are seen as meaningful. According to this theory, human actions and all meaningful matter can be dealt with scientifically using natural sciences methods. Thus, in naturalistic hermeneutics theory, there is no fundamental methodological difference between the natural sciences, on the one hand, and the social sciences and humanities, on the other. Naturalistic hermeneutic theory is basically oriented to how to guide readers or researchers in highlighting and overcoming problems of meaning in a naturalistic way. This theory also explains, for example, how to understand a sketch in a naturalistic way and how to express the problem of meaning in the sketch and understand the relationship between one another with an integrated approach. That is, human actions are generally above all texts and can be understood by a unified method. In the context of meaning, if someone reads a text, is there a relationship between meaning and cause and effect. If there is complexity in the text, what kind of nexus occurs in the reality area?, or is it possible only a nexus of meaning or an exclusive causal relationship (Mantzavinos, 2005, p. 73).

There are three concepts related to this problem of meaning, namely that (a) there is a causal relationship or only a relationship of meaning in all reality areas, (b) there are certain reality areas that allow only the meaning nexus to appear, and (c) in other places only a causal nexus appears. Therefore, this nexus works to reveal the problem of meaning (Mantzavinos, 2005, p. 74). From these three concepts, there are two methods of understanding and expressing meaning as follows. First, in strong version, when the problematic of meaning is exaggerated, the thesis is that the world consists only of a nexus of meaning. In other words, all the facts found in the world have meanings that must be understood. This radical thesis implies that there are only relationships of meaning to be discovered or experienced, not only in socio-historical reality, but also in nature. According to this strong version, even when the natural scientific way of thinking usually tries to determine causal relationships, the relationships of meaning must be sought. The metaphorical text is applied to the world as a whole, and the text model is considered to be generally accepted. The problem of meaning dramatization in a strong version implies that the knowledge totality from the empirical sciences no longer has a legitimate place. In accordance with this position, the knowledge produced by the sciences aiming to study causal relationships is almost useless, due to it does not provide any information concerning the relations of meaning that are supposed to be constitutive for the facts of the world. Second, in its weak version, the problem of meaning usually develops to recognize causal relationships for nature. However, only the relation of meaning is considered important for the socio-historical world. This view is thus a variation of the old dualism between man and nature: It is expressed mainly in the fact that the social sciences and humanities data involve phenomena with internal meanings that cannot be understood by natural scientific methods which Gellner calls negative or defensive variations of anthropomorphism (Mantzavinos, 2005, pp. 74–75).

3. The Story of *Ashabul-Kahf* in *Fadhâ'il al-Khamsah min al-Shihahi al-Sittah* Book

Fadhâ'il al-Khamsah min al-Shihahi al-Sittah Book (hereinafter abbreviated as FKSS) is Murtadla al-Husaini Fairuzabadi (Fairuzabadi, 1963c). This book contains the story of *Ashabul Kahf* which is sourced from the stories of the Prophets (*qishash al-anbiya*). In addition, the FKSS book also uses authoritative sources from the Qur'an, particularly Surah Al-Kahf verse 10, to discuss the story of *Ashabul Kahf*.

In FKSS, Fairuzabadi recounted that when Umar Ibn al-Khattab took position as a caliph, several Jewish priests had come to him. They said to him: "O Caliph Umar, you are the ruler after Muhammad and his companion, Abu Bakr. We would like to ask you some important questions. If you can give us the answers, then we will understand that Islam is the true religion and Muhammad is truly a prophet. On the other hand, if you cannot give the answers, it means that Islam is false and Muhammad is not a prophet". "Please ask about anything you want," said Caliph Umar. "Explain to us about the master lock (padlock) that locks the sky, what is it?" Asked the priests, starting their questions. "Explain to us about the existence of a grave that walks with its inhabitants, what is it? Show us about a creature who can warn his people, but he is neither human nor *jinn*? Tell us about the five types of creatures that can walk on the surface of the earth, but these creatures are not born from the womb of the mother? Tell us what does the quail (fat bird) said when it was chirping? What does the rooster say when it is crowing? What does a horse say when it is neighing? What does the frog say when it is making a sound? What does the donkey say when it is neighing? What does the sparrow say when he is chirping?"(Fairuzabadi, 1963c). Caliph Umar bowed his head to think for a moment, then said: "For Umar, if he answered 'don't know' to questions for which he did not know the answer, it's not something to be ashamed of! "(Fairuzabadi, 1963c). Hearing Caliph Umar's answer like that, the Jewish priests who asked the question stood up and down with joy, saying: "Now we testify that Muhammad was not a prophet, and the religion of Islam it is vanity!"

Realizing the unfavorable situation, Salman al-Farisi, who was in their midst at that time, immediately got up and said to the Jewish priests: "You wait a moment!" He quickly went to Ali bin Abi Talib's house. After meeting, Salman said: "O Aba al-Hasan, save the religion of Islam!" Ali was confused, then asked: "Why?" Salman then told what was being faced by Caliph Umar Ibn al-Khattab. Ali immediately went to the house of Caliph Umar, walking leisurely wearing a *burdah* (a piece of cloth covering the back or neck) left by the Prophet Muhammad. When Umar saw Ali bin Abi Talib coming, he got up from his seat and hurriedly hugged him, saying: "O Aba al-Hasan, whenever there is a big problem, I always call you!" After confronting the priests who were waiting for the answer, Ali bin Abi Talib said: "Please ask about anything you want. Muhammad has taught me a thousand kinds of knowledge, and each type of science has a thousand kinds of branches of knowledge!" The Jewish priests then repeated their questions. Before answering, Ali bin Abi Talib said: "I want to put a condition to you, namely if it turns out that I later have answered your questions according to what is in the Torah, you are willing to embrace our religion and believe!" "Yes fine!" they replied. "Now ask one by one," said Ali bin Abi Talib (Fairuzabadi, 1963c).

They began to ask: "What is the master key (padlock) that locked the doors of heaven?" "The master key," replied Ali bin Abi Talib, "is *shirk* to Allah. For all the servants of Allah, both male and female, if he *shirks* in Allah, his deeds will not be able to rise to the presence of Allah!" (Fairuzabadi, 1963c).

The Jewish priests asked again: "What key can open the doors of heaven?" Ali ibn Abi Talib replied: "The key is a testimony (*shahada*) that there is no god but Allah and Muhammad is Allah's Prophet! The Jewish priests were exchanged glances between them, saying: "That person is right too!". They asked again: "Explain to us about the existence of a grave that can walk with its inhabitants!" Ali answered: "The grave is the shark (*al-hut*) that swallowed the Prophet Yunus ibn Matta. " "The prophet Yunus was carried around the seven oceans!" (Fairuzabadi, 1963c). The priests continued their question again: "Explain to us about a creature that can warn its people, but that creature is not human and not a *jinn*!" Ali bin Abi Talib replied: "That creature is the ant of Prophet Sulaiman, son of Prophet Dawud. The ant said to his people: "O ants, go into your dwellings, so as not to be trampled by Sulaiman and his troops while they are unconscious!" (Fairuzabadi, 1963c).

The Jewish priests continued their fifth question: "Tell us about five kinds of creatures that walk on the surface of the earth, but not one of them is born from the womb of its mother!". Ali bin Abi Talib replied: "The five creatures are, Adam, Eve, the camel of Prophet Salih, the lamb of Prophet Abraham, and the stave of Prophet Moses (which transformed into a snake)" (Fairuzabadi, 1963c, p. 328).

Two of the three Jewish priests after hearing the answers and explanations given by Imam Ali r. a. then said: "We bear witness that there is no god but Allah and Muhammad is Allah's Prophet!". But another priest, stood up and said to Ali bin Abi Talib: "O Ali, the hearts of my friends have been seized by something similar to faith and belief in the truth of the religion of Islam. Now there is one more thing I want to ask you. " "Ask whatever you want," said Imam Ali. "Tell me about some people who in ancient times had been dead for 309 years, then were brought back to life by God. What's the story about them?" asked the priest. Ali bin Abi Talib replied: "O Jewish priest, they are cave dwellers. The story about them has been told by Allah to His Messenger. If you want, I will read their story. " The Jewish priest replied: "I have heard a lot about your Qur'an!" (Fairuzabadi, 1963c, p. 330).

The Jewish priest continued, "If you really know, try to mention their names, the names of their fathers, the names of their cities, the names of their kings, the names of their dogs, the names of their mountains and caves, and all their stories from beginning to end!" Ali ibn Abi Talib then adjusted his seat, bent his knees in front of his stomach, then supported him with a *burdah* tied to his waist. Then he said: "O Jewish brother, my beloved Muhammad has told me that the story took place in the land of Rome, in a city called Aphesus, or also known as Tharsus. But the name of the city in ancient times was Aphesus (Ephese). Only after Islam came, the city changed its name to Tharsus (Tarse, now located within the territory of Turkey). The people of the land used to have a good king. After the king died, the news of his death was heard by a Persian king named Diqyanius. He was a pagan king who was very arrogant and tyrannical. He came to invade the land with the strength of his army, and finally succeeded in capturing the city of Aphesus. Therefore the city was made the capital of the kingdom, then a palace was built" (Fairuzabadi, 1963a, p. 331).

Ali was brilliantly able to answer all the questions of the Jewish priests, until then all the Jewish priests converted to Islam. With a discussion full of admiration, the Jewish priests said, "O Aba al-Hasan, you do not add and do not subtract, not even a single letter! Now do not call me a Jew, for I testify that there is no god but Allah and that Muhammad is the servant of Allah and His Messenger. I also testify that you are the most knowledgeable person among this ummah!" (Fairuzabadi, 1963b, p. 334).

4. Naturalistic Hermeneutic Perspective on the Story of *Ashabul-Kahf* in *Fadhâ'il al-Khamsah min al-Shihahi al-Sittah* Book

Observing the story of Ashabul Kahf in FKSS, it seems that the strength of this story is intended to show the greatness and superiority of Ali ibn Abi Talib compared to other companions of the Prophet Muhammad, including Umar ibn al-Khattab. This makes a lot of sense, since Fairuzabadi himself is one of the Shia scholars, who placed Ali as the best and most noble companion of the Prophet Muhammad. The FKSS book itself for the most part contains Fairuzabadi's respect and praise for Ali ibn Abi Talib. The first part up to one third of the 1st volume of the FKSS book contains the praise and majesty of the Prophet Muhammad (Fairuzabadi, 1963a). The final part of the 1st volume and the entire 2nd volume of this book contains the story of the greatness, excellence, and majesty of Ali ibn Abi Talib (Fairuzabadi, 1963c). Meanwhile, the third volume of the FKSS book contains stories about the advantages of Ali's family members, starting from Fatimah ibn Muhammad, Hasan ibn Ali, and Husein ibn Ali (Fairuzabadi, 1963c).

An interesting aspect of the story of *Ashabul-Kahf* is that this story is only written in the Qur'an and in the Torah, but not in the Bible, either the New Testament or the Old Testament. Historically, above the cave (*al-kahf*) there was a Byzantine-style place of worship; the currency found around it indicates that the place was built during the reign of Justinius 1 who reigned between 418-427 AD. It is stated that the rulers who oppressed the followers of the Prophet Jesus, among others, were those who ruled from 98 to 117, or about 112. In those years, the rulers of that era decreed that anyone who refused to worship the gods was punished as a traitor. It is also stated that the seven youths who took refuge in the cave evaded the ruling issued in 112, and they slept for 309 years. That is, they woke up from sleep around the year 412, which is when the ruling government had freed Christians from oppression.

From naturalistic hermeneutics perspective, the stories abstraction mentioned by Fairuzabadi confirms that the story fragments show a picture of the nexus or actual entity network of Ali's character who is superior to other companions of Prophet Muhammad. This is the main naturalistic hermeneutics perspective which emphasizes the effort to understand all the meanings of the text so that it can produce a general picture of the story of *Ashabul Kahf* as told by Ali ibn Abi Talib (Mantzavinos, 2005).

When presenting the story of Ali in dialogue with the Jewish priests, Fairuzabadi himself seems to be trying to make a connection between the text (Ali's narrative) and its meaning (Mantzavinos, 2005). Fairuzabadi's narration of Ali's story about the request of a Jewish priest to describe the palace in the era of *Ashabul Kahf*, for example, shows a relationship between the text and its meaning, which can be seen in the depiction of the Jewish priest's gestures when he heard Ali's answer, as shown in the following story: only half of Ali explained, the Jewish priest who asked the question stood up, then asked: "If you really know, please explain to me the shape of the palace, how the porch and rooms are!" Ali bin Abi Talib explained: "O Jewish brother, the king built a palace that very majestic, made of marble. The length is one *farsakh* (± 8 km) and the width is one *farsakh*. Its pillars, which numbered a thousand, were all made of gold, and the lamps, which numbered a thousand, were also all made of gold. The lamps hung from silver chains. Every night the fire is lit with a kind of fragrant oil. On the east side of the porch were made a hundred light holes, as well as on the west side. So that the sun from sunrise to sunset can always illuminate the porch. The king also made a throne of gold that sized of 80 cubits long and 40 cubits wide. To his right are 80 chairs, all made of gold. That's where the commanders sat. On his left there are also 80 chairs made of gold, to sit on *pepatih* and other high rulers. The king sits on a throne with a crown on his head. (Fairuzabadi, 1963c).

In the story about the Jewish priest's request to Ali to mention the material used to make the crown, there seems to be a complex narrative, so that in the naturalistic hermeneutics perspective it is necessary to know in advance which type of nexus is in the reality area of the story and how the exclusive causal relationship is (Mantzavinos, 2005). The complexity was seen when Ali answered the Jewish's question approach about the raw material for the crown. Ali replied, "O Jewish brother," said Imam Ali explaining, "the king's crown is made of gold pieces, has nine legs, and each leg is studded with pearls that reflect light like stars illuminating the darkness of the night. The king also had 50 servants, consisting of the children of the elders. All of them wore red silk sashes and clothes. Their pants are also made of green silk. All of them are decorated with very beautiful anklets. Each was given a stick made of gold. They had to stand behind the king. In addition to them, the king also appointed six people, consisting of the children of scholars, to be ministers or assistants. The king did not take any decision without consulting them first. The six servants were always on either side of the king, three on the right and the other three on the left." (Fairuzabadi, 1963c).

By using naturalistic hermeneutics, we come to know that the interpretation of actions and texts is directed at finding meaning and mystery (Mantzavinos, 2005). The mention of the youths's names of *Ashabul Kahfi* proves that Fairuzabadi is trying to uncover the meanings and mysteries that surround the story of *Ashabul Kahfi*. When the Jewish priest asked, "O Ali, if what you say is true, please state the names of the six people who were the king's assistants!" According to Fairuzabadi, Ali replied, "My beloved Muhammad told me that the three people standing at the right hand of the king, named Tamlikha, Miksalmina, and Michaslimina respectively. As for the three assistants standing on the left, one named Martelius, Casitius and Sidemius. The king always consulted with them on all matters. Every day after the king sat down in the verandah of the palace surrounded by all the elders and courtiers, three servants came in before the king. One of them carried a golden goblet filled with pure fragrance. Another was carrying a silver cup full of flower juice. While the other one brought a bird. The person who brought this bird then made a signal sound, then the bird flew over the goblet filled with flower juice. The bird dabbled in it and after that it fluttered its wings and feathers, until the essence of the flowers was sprinkled all over the place around it. Then the bird bearer made another sound. The bird flew too. Then alighted on the chalice containing the pure fragrance. While dabbling in it, the bird fluttered its wings and feathers, until the pure fragrance contained in the chalice was splashed all over the place. The bird-bearer gave another sound signal. The bird then flew and landed on the king's crown, spreading its two fragrant wings over the king's head. Thus the king was on the throne of power for thirty years. During that time he had never been attacked by any disease, never had a headache, stomach ache, fever, drooling, spit or runny nose (Fairuzabadi, 1963c).

As a writer, scholar, and also a Shia figure, Fairuzabadi seeks to build and present stories concerning human actions through texts that he produced (Mantzavinos, 2005) so as to produce a meaningful story of *Ashabul-Kahf*, as well as strengthen the majesty and nobility of Ali ibn Abi Talib who told this story in front of the Jewish priests. This can be seen, for example, in Fairuzabadi's description of Ali's explanation of changes in the behavior and actions of the arrogant, disobedient and oppressive king. He claimed to be "god" and did not want to acknowledge the existence of God. The king then summoned the leading people of his people. Whoever is obedient and submissive to him, is given clothes and various other gifts. However, whoever does not want to obey or is not willing to follow his will, he will be killed immediately. Therefore, everyone was forced to agree to his will. For a long time, everyone obeyed the king, until he was worshiped and revered. They no longer worship and revere Allah. On the day of his birthday celebration, the king was sitting on a throne wearing a crown on his head, suddenly a commander came in telling him that a foreign army had invaded into his kingdom, with the intention of waging war against the king.

Fairuzabadi's explanation of Ali's explanation of the king's arrogance but not in accordance with his actually weak mentality shows that Fairuzabadi tries to emphasize Ali's prowess in argumentation, so that in the end the Jewish approachers gave up and followed Ali's invitation to become a Muslim. Ali continued to answer at length, the king was so sad and confused that the crown he was wearing fell from his head without realizing it. Then the king himself fell from the throne. One of the maids standing on the right—an intelligent man named Tamlikha—was watching the king's condition with all his heart. He thought, then said to himself: If Diqyanius is really a god as he claims, he certainly will not be sad, he will not sleep, he will not urinate or defecate. These are not the attributes of God. " The six servants of the king held a meeting at the place of one of them every day in turns. One day it was Tamlikha's turn to receive a visit from five of his friends. They gathered at Tamlikha's house to eat and drink, but Tamlikha himself did not eat and drink. His friends asked: "O Tamlikha, why don't you want to eat and don't want to drink?" "Friends," said Tamlikha, "my heart is being troubled by something that makes me not want to eat and not want to drink, nor do I want to sleep. His friends chased: "What is troubling your heart, O Tamlikha?" "I've been thinking about the sky for a long time," Tamlikha explained "I then asked myself: 'who raised it up as a roof that is always safe and maintained, without hanging from above and without pillars supporting it from below? Who runs the sun and moon in the sky? Who adorned the sky with scattered stars? Then I thought of this earth too: Who stretches out and spreads it across the firmament? Who is holding it with the giant mountains so that it does not wobble, does not wobble and does not tilt?' I also thought to myself for a long time: "Who brought me out as a baby from my mother's belly? Who nourishes my life and feeds me? Everything must have been made, and certainly not Diqyanius" (Fairuzabadi, 1963c).

Up to this point, Fairuzabadi tries to guide the reader to highlight and overcome the problem of meaning in a naturalistic way (Mantzavinos, 2005). He gave a picture or personification of the youths of *Ashabul Kahf* in facing a dilemmatic atmosphere, as said by Ali, "Tamlikha's friends then bowed knee in front of him. Tamlikha's two feet were kissed while saying: "O Tamlikha in our hearts now feels something like the one in yours. Therefore, please show us a way out for all of us!" "Brothers," answered Tamlikha, "Neither I nor you find any sense other than having to run away from the tyrannical king, go to the King who created the heavens and the earth!" "We agree with your opinion," said his friends. Tamlikha then stood up, continued to go to sell dates, and finally managed to get 3 dirhams of money. The money was then tucked into a shirt pocket. Then set off on a horse ride with five of his friends. After walking 3 miles away from the city, Tamlikha said to her friends: "Brothers, we are now separated from the king of the world and from his dominion. Now get off your horses and let's go on foot. Hopefully Allah will ease our affairs and provide a way out (Fairuzabadi, 1963c).

Fairuzabadi's efforts to describe the characters actions in the story of *Ashabul Kahf* have succeeded in creating a deep image of how these characters view and believe in religion and religiosity. Fairuzabadi successfully presented the religious beliefs and religiosity of the youth leaders through the texts of Ali's explanation in front of the Jewish priests, as explained by Ali, they got off their horses. Then walk 7 *farsakhs*, until their feet are swollen with blood since they are not used to walking that far. Suddenly a shepherd came to greet them. To the shepherd they asked: "O shepherd, do you have water or milk to drink?" "I have everything you want," said the shepherd. "But I see your faces are all like nobles. I assumed you must have run away. Please tell me how the story of your journey was!" "Ah…, how difficult this person is," they answered. "We have embraced a religion,

we cannot lie. Will we survive if we tell the truth?" "Yes," answered the shepherd. Tamlikha and his friends then told everything that had happened to them. Hearing their story, the shepherd immediately knelt before them, and kissing their feet, he said: "In my heart now feels something like the one in your heart. You just stop right here. I want to return the goats to their owners. I will come back to you soon. " Tamlikha and his friends stopped. The shepherd immediately went to return his flock of goats. Soon he came again on foot, followed by his dog (Fairuzabadi, 1963a).

Ali's explanation in front of the Jewish priests about the youths of *Ashabul Kahf* shows that there is a causal relationship or only a relationship of meaning in all areas of reality (Mantzavinos, 2005). In addition, the Jewish priests' curiosity over Ali's explanation suggests that there is a certain area of reality in which only a nexus of meaning emerges. The Jewish's curiosity approaches was followed by a question and answer session as explained by Fairuzabadi as follows.

Hearing Ali's story, the Jewish priest who asked jumped to his feet again saying: "O Ali, if you really know, please tell me what color the dog is and what is its name?" "O Jewish brother," said Ali bin Abi Talib informing him, "My lover Muhammad told me that the dog was black in color and his name was Qithmir." (Fairuzabadi, 1963b) Ali continued his explanation, - when the six runaways saw a dog, each one said to his friend: we are worried that the dog will reveal our secret later! They asked the shepherd to drive the dog away with a stone. The dog looked at Tamlikha and his companions, then sat on two hind legs, stretched, and spoke the words fluently and clearly: "O people, why do you want to expel me, even though I bear witness that there is no god but Allah? , there is no allies whatsoever for Him. Let me guard you from the enemy, and in doing so I draw myself closer to Allah" (Fairuzabadi, 1963c).

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It is very clear that the Jewish experienced an inner conflict between belief and unbelief. They believed due to what Ali said about the story of *Ashabul Kahf* was in accordance with the holy instructions contained in their holy book. However, it is hard to believe since Ali can give true and correct answer. In naturalistic hermeneutics perspective, the Jewish priests were faced with a nexus that worked to reveal the problem of meaning (Mantzavinos, 2005). This can be seen in the following Fairuzabadi explanation. The Jewish priest who asked the question got up again from his seat saying: "What is the name of the mountain and what is the name of the cave?" Imam Ali explained: "The mountain is called Naglus and the name of the cave is Washid, or also called Kheram!" Ali ibn Abi Talib continued his story: "Suddenly in front of the cave there were growing trees bearing fruit and springs were gushing very fast. They eat fruit and drink water available in the place. When night came, they took refuge in the cave. Meanwhile, the dog that had been following them for a long time, was on guard, and stuck out two front paws to block the cave door. Then Allah ordered the Angel of Death to take their lives. To each of them Allah represented two Angels to turn their bodies from right to left. Allah then ordered the sun to incline when it rises to shine its light into the cave from the right, and when it is about to set so that its light begins to leave them from the left. Once upon a time when King Diqyanius had just finished his party he asked about six of his servants. He got the answer, that they had run away. King Diqyanius was very angry. Together with 80,000 cavalry he quickly set out on the trail of the six escaped helpers. He climbed up the hill, then approached the cave. He saw his six helpers who had run away were sleeping lying in the cave. He did not hesitate and confirmed that the six people were really sleeping. To his followers he said: "If I wanted to punish them, I would not inflict a harsher punishment on those who tortured themselves in the cave. Call the stonemasons so that they come here immediately!" After the stonemasons arrived, they were ordered to close the cave door tightly with stones and *jish* (a material like cement). When the work was done, the king said to his followers: "Tell those who are in the cave, if they really don't lie to ask their Lord who is in the sky for help, so that they are brought out of that place. " After that, they lived for 309 years. After a very long period of time passed, Allah returned their lives again.

If we use a strong version of naturalistic hermeneutics, when the problematic meaning of *Ashabul Kahf*'s story is exaggerated, the thesis is that the real world consists only of a nexus of meaning (Mantzavinos, 2005). In other words, all text facts have meanings that can and must be understood. This radical thesis implies that there are only relationships of meaning to be discovered or experienced, not only in socio-historical reality, but also in nature. According to this version of strong naturalistic hermeneutics, metaphorical texts are sometimes applied to the world as a whole and the text's model is seen as generally accepted. The problem dramatization of

meaning in this strong version implies that the story totality of *Ashabul Kahf* empirically no longer has a legitimate place. In accordance with this position, the meaning generated from the story of *Ashabul Kahf* which aims to study causal relationships is almost useless, since it does not provide any information about the relationship of meaning that should be constitutive to the facts in the world. Fairuzabadi's metaphorical depiction of *Ashabul Kahfi*'s story reinforces this naturalistic hermeneutical perspective, as told by Fairuzabadi: When the sun has started to shine, they feel as if they have just woken up from their respective sleep. One said to the other: "Last night we forgot to worship Allah, let's go to the spring!" After they were outside the cave, suddenly they saw that the spring had dried up again and the trees had become dry. God made them start to feel hungry. They asked each other: "Which of us is able and willing to go to the city with money to get food?, but who will go to the city later so be careful not to buy food cooked with lard. " Tamlikha then said: "O brothers, I alone went to get food, but, O shepherd, give me your clothes and take my clothes!" After Tamlikha put on the shepherd's clothes, he went to the city. Along the way he passed places he had never known, through roads he had never known. Arriving near the city gate, he saw a green flag flying in the sky that read: "There is no god but Allah and Jesus is the Spirit of Allah. " Tamlikha paused for a moment to look at the flag while rubbing his eyes, then said to himself: "I thought I was still sleeping!" After looking at and observing the flag for a while, he continued on his way into the city. He saw many people reading the Bible. He meets people he has never known. Arriving at a market he asked a baker: "O bakers, what is the name of your city?" "Aphesus," replied the baker. "What is the name of your king?" asked Tamlikha again. "Abdurrahman," replied the baker. "If what you say is true," said Tamlikha, "this business of mine is very strange! Take this money and give me food!" Seeing the money, the baker was astonished. Since the money Tamlikha brought was ancient money, which was bigger and heavier.

The presentation of the question and answer or examination of the Jewish priests to Ali is in fact Fairuzabadi's attempt to highlight the components of meaningful facts and events, and to classify the possible interrelationships and causal processes between the parts of *Ashabul Kahf*'s story, going hand in hand with the spread of the idea that understanding is the adequate way to access these meaningful components (Mantzavinos, 2005, p. 87). In the strong naturalistic version of hermeneutics, understanding serves to identify meaning without being a concrete mental operation. Rather, it is interpreted as a concrete way of being in the world or as a way of human existence in general. The story of *Ashabul Kahf*'s meaning existentially serves to identify and understand the meaning of events (Zabala, 2009).

In a weak version of naturalistic hermeneutics, understanding serves to identify meaning, however is usually interpreted as a mental operation. Holding the nexus of meaning is directly contrasted with grasping the causal nexus, and understanding is maintained as a sufficient means to penetrate the nexus of the meaning of the story of *Ashabul Kahf*'s nexus. The characteristic ambivalence of the understanding 'process' must once again be kept in mind and is sometimes understood as a type of knowledge and sometimes as a method (Sperber, 1996).

This story of *Ashabul Kahf* fundamental analysis according to Fairuzabadi sometimes leads to a series of trivial descriptions of everyday phenomena. The overload of transcendental understanding only paved the way for producing a relationship of meaning description with certain aesthetic values but with little informative content. The metaphorical transfer of the text of *Ashabul Kahf*'s story to the world as a whole and the universalization that accompanies the meaning problem is sometimes difficult to digest by common sense (Shimony, 2019). In the conception that places a weak version of the story of *Ashabul Kahf* problematic meaning, understanding is generally recognized as having a major role, but unfortunately, its logical status is not explained more precisely. This lack of clarity is compounded by the fact that various writers of the story of *Ashabul Kahf* used the concept of 'understanding' differently, and thus the writers of these stories often speak of different purposes when discussing understanding.

The term understanding to understand the story of *Ashabul Kahf* is also a broad term, the meaning of which overlaps more with *verstehen*. However, we can tolerate the terms diversity used and different conceptions are possible, if one distinguishes between two very common uses of understanding concept (*verstehen*) namely, understanding as a type of knowledge and understanding as a method (Maddy, 2007). Both types of understanding are concerned with meaningful objects, and thus, with human actions and the results of those

actions. Understanding as a type of knowledge is an understanding of meaningful material and is a special type of knowledge aimed at human actions and the results of those actions. From the history of ideas, the understanding concept explanation emphasizes feelings and experiences, we often comprehend understanding as intuition or direct empathy, particularly empathy built by religious ties (Gollnick, 1999; Tamdgidi, 2009) as in this story of *Ashabul Kahf*. This view is based on thoughts, feelings, reasons, emotions, and cognitions that describe different and even contradictory cognitive abilities in understanding the story. From a contemporary point of view, this strict separation between cognition and emotion seems untenable. This suggests that the cognitive and emotional systems, although in principle analytically separable and neurophysiologically distinct, are complementary and in constant interaction. In the story of *Ashabul Kahf* context, it seems that most people comprehend understanding as an act of direct intuition or empathy therefore it seems reasonable to us today since in the current perspective, understanding as a type of knowledge is seen as a mental process (subjective) that involves cognitive and emotional components (Ormiston & Schrift, 1989).

In understanding perspective as a method, understanding is coupled by agreement in such a way that the impossibility of a strict separation between questions of meaning and questions of validity can be postulated and normative consequences can be drawn from it. Fairuzabadi's efforts to highlight Ali's figure who was brilliantly able to answer all the questions from the Jewish priest showed that he was trying to present Ali's figure greatness through the story of *Ashabul Kahf*, due to all the Jewish priest's questions were answered in detail by him including the question of how much the old money was compared to the new money, the story of Tamlikha's meeting with the shepherd, the king, the king's dialogue with the people who brought Tamlikha, to the meeting of the new king with the youths of *Ashabul Kahf*. Until Ali bin Abi Talib stopped telling the story of the cave dwellers. Then said to the Jewish priest who asked the story: "That is, O Jews, what has happened in their story. By Allah, now I want to ask you, what are all what I tell you according to what is written in your Torah?" The Jewish priest replied: "Yes Abal Hasan, you did not add or subtract, even one letter! Now do not call me a Jew, for I testify that there is no god but Allah and that Muhammad is the servant of Allah and His Messenger. I also testify that you are the most knowledgeable person among this ummah!"(Fairuzabadi, 1963c, p. 339).

From the naturalistic hermeneutics perspective, we can understand the meaning of an action by identifying the motive for the action (Mantzavinos, 2005, p. 88). Therefore, it can be assumed that the meaning relationship of an action is understood if the motive that drives the writer to perform the action is determined. In other words, the story of *Ashabul Kahf*'s meaning can be revealed if the author's intentions are understood. This perspective postulates a conceptual distinction between purpose and intention in a broad sense, wherein a goal is something that is seen as constitutive for an action. Thus it is often maintained that there is a conceptual and logical relationship between goals and actions, and that statements concerning certain actions goals only provide as much information as indicated (Girma, 2012).

Regardless of the descriptive approach and method used to understand the story of *Ashabul Kahf*'s meaning, in principle there is always the possibility that this relationship basic elements of meaning will also occur in connection with other actions of the same or other authors. The fundamental elements in question are all relevant mental states of the actor and all relevant mechanisms that work when an action is performed. Whenever one manages to identify the same fundamental element of a nexus of meaning in another nexus as well, it is possible to see the nexus of meaning as a causal nexus. The key to turning a meaning nexus into a causal nexus is to demonstrate invariance in the appearance of the fundamental elements in the various meaning nexuses. Here we can trace Fairuzabadi's motives or intentions in constructing Ali as a great figure who can answer the details of all the stories of *Ashabul Kahf*. In cases where such motives transformation is possible, the relation of meaning can be understood nomologically, and thus its repeated occurrence can be explained. From literary researchers point of view, the meaning of Ashabul Kahf's story relationship that appears in relation to linguistic expressions can be understood by being explained externally and, if necessary, explained nomologically.

5. Conclusion

Based on the discussion results as has been done above, the following conclusions are presented for this study. The story of *Ashabul-Kahf* is seen as a prophetic Arabic literary work since its content reveals the factual incident of seven young men who fled from a country ruled by a cruel and sadistic king, later they hid in a cave to avoid the pursuit of the king's soldiers. There are two reasons they fled from the violence and cruelty of the king. First, they ponder and think hard about who created man, the sky, the earth, the moon, the sun, and other creatures; they do not believe that the one who created all of them is their king. Second, they protested strongly to the king since many people were killed on the orders of the king due to they did not want to recognize him as a god.

The advantages and uniqueness of the story of *Ashabul-Kahf* is that the story material comes from the holy book, the Qur'an, which later undergoes reception and transformation in the cultural life of people in various countries, particularly in Arab countries and Muslim countries. This story is an important inspiration for people who seek the truth of the faith they believe in and dare to risk death threats from the ruling regime.

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Evaluation and Comparison of the Electronic Contract in the Context of Legislations in Egypt and Saudi Arabia: An Explanatory Study

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Abstract
The pace of technological development today is such that the law simply cannot keep up. The reason not only being that legislating new technology requires an understanding of it to legislate it, but because the full potential and implications of new technology cannot be fully surmised without first observing its full applications. Legislation of technology is necessary to protect the public from various scams, frauds, and illegal activities, so that they may be financially and personally safeguarded. There is little evidence on how Arab countries address the challenges and risks inherent in e-commerce. The purpose of this paper is to examine the laws and regulations currently in place in Egypt and Saudi Arabia regarding electronics and associated properties. More specifically, the study examines the e-contract laws in Egypt and Saudi Arabia to construct an explanatory theory regarding the legislative process relating to online transactions. The study presents original ideas that are sequential within the suggested framework that will assist in and contribute to knowledge and policy development.

Keywords: Electronic Contract, E-Contract, Egypt E-Contract Laws, Saudi Arabia E-Contract Laws

1. Introduction

Technological development and its wide application in various fields have likely become part of daily life, to which this progress, its use among people in general and commerce. Furthermore, these developments have led to the need to legislate on such uses and to develop conditions and guidelines to prevent customers from becoming victims of electronic fraud and scams, to condemn such activities, and to set out clear terms and conditions to make them legal. The electronic contract does not differ in its structure, summary, nature, and content from an ordinary contract, so its guiding principles are intended to establish the general contractual scenario's principles.

The Internet creates Click-wrap contracts (some of which are called "click-through"; "click and acknowledge"; and "web-wrap"). Sometimes an end-user can download a product or an electronic substance simply by "clicking and acknowledging" the perpetual license. In many cases, it is necessary to know this term to ask for online help or buy a distinctive product. Online customers are familiar with screens that show reasonable terms and conditions and require the click of the "Confirm" button before they can organize those goods, make administrative purchases, or obtain data. The online customer must accept the offer's details by directly mentioning it - regularly clicking

the "Accept" or "Confirm" button. It is generally impossible to register in paper form, and an online customer ID (electronic or paper) is not usually required (Ali, 2015).

The research provides original knowledge regarding the state of e-contract laws in Egypt and Saudi Arabia. The study aims to explore the current legal framework regarding electronic contracts to identify the weaknesses and offer suggestions for improvement. The findings of the paper will prove useful for government policymakers in Arab countries to improve the e-contract laws to promote electronic transactions in the respective countries.

2. Research Problem

According to Grove, Gray, and Burns (2014), a research problem refers to an area of concern regarding which there is a gap in the literature.(Burns, Grove, 2010) After reviewing the literature, it was found that there is no current literature that comprehensively examines and critiques the nature of e-contract laws in Arab countries.

3. Research Purpose

Grove et al. (2014) state that the research purpose often follows the problem statement that is developed based on the research problem. The purpose of the research studies is to critically examine the nature of e-contract laws in Egypt and Saudi Arabia. The paper explores the epistemological basis of an electronic contract in Arab countries with traditional ruling regimes. It aims to not just describe the current e-contract laws but also make recommendations on how the legislative framework regarding electronic contracts can be improved in Arab countries.

According to Hesse-Biber (2012), our values and beliefs affect the interpretation and understanding of the research. (Hesse,2012) In this respect, the main aim of the research study is to objectively reflect reality without any biases in interpreting the laws.

4. Methods and Analysis

Selecting the right research design is important to create the necessary foundation for scientifically based research (Henson, Wiliams, 2010). The qualitative research method has been used that looks at the big picture in an attempt to explain the context of the study (Dobrovolny, Fuentes, 2010). The explanatory theory has been used as a framework for qualitative analysis to understand the legislation regarding e-contracts in Arab countries. This methodology is selected for the study since there is little information about the topic and thereby the aim is to uncover the inherent process related to the substantive area of inquiry.

5. Discussion

5.1. Section I: Definitions of E-contract

As stated in the second article of the "*UNCITRAL Model Law on Electronic Commerce, Electronic Data Interchange (EDI)*" (Richter, 2010), electronic contract (or e-contract) is the electronic exchange of data from one computer to another using an appropriate data structuring standard. The "*UNCITRAL Model Law on Electronic Commerce"* provides that the above-mentioned separation tests may be used for all electronic data, including data on orders and various business transactions, where the identifier of the electronic contract for this law is an agreement assigning joint recognition among the parties using the predefined strategies set out in Articles 2 and 2b (Richter, 2010). Many legal advisers have condemned the Single Law on Electronic Commerce adopted by the United Nations Commission on International Trade Law because it does not distinguish between contracts concluded by electronic means but recognizes the methods used in them.

The Electronic Transactions Protection Law of 2007 (1428H) in Saudi Arabia defines an e-contract in the first article as, "Any exchange, communication, contracting or other procedure, performed or executed, wholly or

partially, by electronic means." Electronic technology is defined as one based on electromagnetic, electrical, optical, or similar capabilities.

The purpose of the Electronic Transactions Protection Law of 2007 as stated in Article 2 is to create a unified legislative framework for e-transactions and the related e-signatures. The legislation was passed to assist the public and private sectors in the verification and authentication of e-contracts to ensure the integrity and credibility of digital signatures, records, and transactions. Another aim of the Saudi e-contract law is to promote electronic transactions and the use of signatures both locally and internationally in different sectors of the economy including medicine, commerce, government, education, and e-payments. The introduction of the law also aims to remove challenges related to the implementation of electronic transactions by preventing abuse and fraud.

In comparison, there is no definition of an e-contract in Egyptian law, but an electronic signature could prevent this lack of definition. Article 147 of the Civil Code has been stating: "*A contract is a right of the parties to the contract, the so-called sunt servanda"* (Metwally, 2013) As the electronic contract is considered to be a kind of contract; it will be governed by the article mentioned above. However, as we can see, this article has been defined to ensure legal certainty and follows a global approach, since the electronic contract has won one of the most important agreements, both at the level of neighbouring countries and worldwide.

Some lawyers in Egypt have defined the electronic contract as "a contract in which a joint offer and acceptance is reflected in an international network of open correspondence at a distance and by visual and hearing means as a result of the interaction between the offeror and the offeree of the offer", but this definition is incomplete, as it does not reveal the effects of the offer and acceptance, the legal consequences, the creation of contractual obligations and the concrete form in which the contract should be audible and visible. This definition defines the identity of an electronic contract when the form in which the contract is concluded by agreement is similar to that of an ordinary contract and produces legal effects but differs from the form in which an electronic contract is essentially concluded by computer or other means of communication, unlike an ordinary contract which is essentially based on an agreement.

5.2. Section II: Contracts Excluded from E-Contracts Laws

The Saudi Arabian Electronic Transactions Protection Law of 2007 identifies contracts that cannot be concluded electronically. Article 3 of the e-contract specifically states that transactions related to real estate property deeds and personal status law such as wills are excluded from the e-contract law. But it is also stated that such transactions will be allowed if the authorities that oversee these transactions approve of the electronic form of these contracts subject to the fulfilment of conditions laid by the said authority in coordination with the Ministry of Communications and Information Technology in Saudi Arabia.

The Egyptian legislator, in "Law No 15 of 2004" (Blythe, 2014) on electronic signatures unlike the Electronic Transactions Protection Law of 2007, does not specify which contracts may be concluded by electronic means. The legislator states that electronic documents have the same evidential value as ordinary documents, in accordance with Article 15 of that law: "*Both electronic works and electronic documents shall have the same authenticity and the same degree of authenticity," provided that the technical and professional standards are met."* (Gebba, Roshday, Mohamed, 2012)

In any case, with the functional application of the above-mentioned articles, we will, unfortunately, find that some agreements cannot be agreed upon electronically, as they have enormous legal consequences. Contracts that cannot be negotiated electronically include marriage contracts, acts of donation, wills and adoptions, maritime mortgages, rights of registration and seizure of property, judgments, and court orders, and trial documents.

5.3. Section III: E-Contract Authentication

As per Article (14) of Chapter Four: Electronic Signature of the Saudi Arabian Electronic Transactions Protection Law of 2007, the users of the contract must exercise due diligence in verifying the authenticity of the electronic

signature through electronic signature verification data. Article 1 of the Saudi law regarding e-contracts specifies that the electronic signature date verifies the identity and confirms the approval of the electronic transaction, and also detects any changes in the transaction after signing by the parties involved in the said transaction.

Article 1 of The Saudi Arabian Electronic Transactions Protection Law of 2007 also clarifies that a digital certificate provided by a certification service provider verifies the signature verification data that authenticates the identity of the person electronically signing the contract.

The Digital Certification is carried out by the Saudi National Center for Digital Certification. The organization carries out electronic certification services in conformance with the Model Law on Electronic Signatures 2001. The center goals include managing public key infrastructure (PKI) for electronic signatures and ensuring data integrity related to digital signatures (Gov.SA). The national center for digital certification is part of the Ministry of Communications and Information Technology.

In Article 10 of the Saudi Electronic Transactions Law, offer and acceptance of e-contracts are allowed through the electronic medium that makes the contract valid and the enforceability of the contract cannot be denied. Moreover, the law allows the contract to be carried out through automated electronic data systems. While the law has not specifically defined automated electronic data systems, an automated system refers to a system that can manage tasks automatically (IGI Global) i.e. without human interaction.

Article 6 of the Saudi Arabian Electronic Transaction Law specifically states that electronic records should be stored in a form that was generated so long as the identity of the person can be verified. Moreover, the law also states that the electronic transaction record should be stored in a manner that will allow future reference and use. The condition for the electronic record to be considered valid and original, the document should include the date and time of the document has been sent and received.

In contrast, there is no clear definition of electronic authentication of contracts in Egyptian law, but this definition is considered from a different perspective, which can be defined as the authentication of an electronic signature, meaning that the signature is electronic if the electronic method is used. An electronic signature, as defined in Law No. 15 of 2004, Electronic signature is a letter, number, character, or another form that is unique and easily identifiable by the applicant. In order for an electronic signature to be duly authenticated, it must meet all the conditions established in article 18 of the aforementioned law:

- Must be uniquely formed, which can be easily distinguished and determined from multiple signatures. The signer must be then identified easily to avoid more confusion;
- The signer must be dominant over the electronic mean of signature; the e-signature should be clear, easy to change, amend or modify the electric document

Egyptian law regulated electronic contracts and signatures in 2004 under the "*Electronic Signature Law No. 15 of 2004"* and its implementing "*regulation No. 109 of 2005"*. This law provides that the "*ITIDA (Information Technology Industry Development Agency)"* is in charge of all matters related to electronic agreements in Egypt, among others:

- Issuance and renewal of the necessary licenses to provide electronic signature services and other electronic exchange and information technology activities in accordance with the applicable laws.
- Establishment of electronic signature standards/criteria to verify the technical characteristics of electronic signatures.
- Receive complaints related to electronic signatures, electronic exchange, and information technology activities; take the necessary measures in this respect.

The Act applies essentially the same rules on material documents and signatures to electronic types of such documents and signatures, as Article 14 states that "in the context of commercial and administrative trade, electronic signatures are as decisive as signatures as "*Evidence Law in the civil and commercial articles*" (Hemdani, 2003), the same is stated in "*Article 15"* with respect to composition and written electronic

communications having the same conclusive effect as composition, formal and informal communications, the law and its implementing rules have the same conclusive effect on the burden of proof as to the following:

As set out in Article 18, it must be accepted that electronic signatures, typing and written, electronic communications are accompanied by electronic signatures (Marathe, 2012):

- The electronic signature belongs solely to the signatory
- The electronic medium is exclusive to the signatory.
- The possibility of detecting changes or exchanging data in an electronic message or an electronic signature

However, appropriate technical checks will be carried out in accordance with Article 8 of the implementing rules:
(a) The date and time of the electronic components or formal and informal electronic documents must be technically accessible. Such availability must be achieved by means of a separate electronic storage system that is not subject to the control of the compiler of these repositories or documents or collections (Alsahouly, Ibrahim, Rashid,2012).
(b) The identification of the source of an official or unofficial deposit or document in electronic form and the extent to which its author has control over that source and the means used to produce it should be technically accessible
(c) If the official or unofficial electronic compilation or documents are created and supplied without human intervention, most, or all of the documents are completed after a period of time and date of their creation and if they have not been compromised

The Egyptian *Electronic Signature Act* states that a customary signature is not required for the conclusion of a legal contract, contracts are considered essential if persons have the legal capacity to conclude a contract (this can be done by oral, electronic, or de facto summons, Articles 89 and 90 of the Egyptian Civil Code and Article 69 of the Egyptian Commercial Code). In addition, article 14 of the Egyptian Electronic Signature Law states that contracts cannot be refused because they are essentially electronic. However, these contracts may require additional evidence to be confirmed in court and certified by local authorities. According to articles 14 and 15 of the Electronic Signature Law, electronic signature agreements can be used to transmit such documents in electronic form.

Despite the existence of the "*Electronic Signature Act"* (Ghoneim, 2011) and the rules governing its implementation, there are gaps in the Act with regard to specific aspects of the electronic exchange, decisions on the subject, the obligation to collect data, the burden and methods of proof, data protection and certain other specifications that need to be regulated. This required the adoption of a new law regulating the aspects discussed and examined from 2018, as announced by the "*Minister of Communications and Information Technology and the President of the Central Telecommunications Offi*ce (Blythe, Stephen, 2014). The law requires the cooperation of many agencies, including the Ministry of Finance, Ministry of Trade and Industry, the Customs Office, the Consumer Protection Office, the National Association of Postal Organizations, commercial banks, the Central Bank, etc.

In addition, thanks to Russian-Egyptian cooperation, the Egyptian legislation is working on a new "*Cyber Security Law*" (Blythe, Stephen,2014). This law describes the obligations of persons who control data and information and establishes rules to ensure the security of their information space and the data, systems, projects, and networks it contains. In 2020 March, the Egyptian Court of Cassation presented a new rule on the use of electronic evidence. In this context, the Court decided that electronic evidence must be challenged and rejected for forgery, as served for in "*Egyptian law 25/1968* ("*Evidence Law"*).

There is no doubt that the use of technology in business has increased significantly in recent decades. The negotiation, implementation, and enforcement of contracts have been facilitated by the simple exchange of electronic messages, video conferences, electronic signatures, or the conclusion of electronic contracts.

However, a major problem for parties who conclude contracts in electronic form or who use electronic compositions or documents during the term of the contract is the extent to which these electronic means guarantee their rights in the same way as traditional written documents. In particular, parties may have doubts about the evidential value of electronic documents and designs in the courts of Egypt (Marathe, 2012).

Many legal systems have already fully controlled the use of electronic evidence and are constantly updating their rules to reflect the constant evolution of technology and the needs of users. Other countries, such as Egypt, are gradually trying to regulate this issue.

In 2004, "*Law 15/2004"* on Electronic Signature ("*Electronic Signature Law"*) was enacted, which, inter alia, introduces and regulates the use of electronic signatures. Most importantly, the Electronic Signature Act provides that electronic compositions and documents have the same evidentiary value as an official or private composition if they meet the conditions set out in article 18 of the Act. Thus, Article 16 of the Electronic Signature Act provides that a rewritten copy of a public administration electronic document is conclusive evidence, provided that the rewritten copy is the same as a public administration electronic document and that the public administration electronic document and the electronic signature are present in an electronic medium.

The wording of Article 16 is somewhat questionable and does not explain when "copies" of electronic documents would have evidential value (Ghoneim, 2011). This article seems to be more applicable to electronically signed documents than to electronic documents in general. To this uncertainty can also be added the amount of work done by agencies to facilitate the implementation of the Electronic Signature Act, in particular the Information and Communications Industry Development Agency (ITIDA).

Subsequently, in 2016, the Egyptian Court of Cassation issued a ruling interpreting "*articles 1 (b) and 15 of the Electronic Signature Law*" (Ghoneim, 2011). The Court concluded that all data created, recorded, stored, transmitted, or obtained by electronic or other comparable means must be treated as a relevant compilation having the same evidential value as any official or private compilation used in ordinary commercial or administrative transactions.

Based on this premise, the Court considered that the complaint submitted to the High Electoral Commission by electronic communication (pursuant to "*Article 45 of the Law on the Exercise of Political Rights No. 45/2014"*) is justified because the wording of this paragraph is so broad that it covers a wide range of compilations, whether they are traditional written documents, including the electronic correspondence.

6. Legislative Frameworks of E-Contract Laws in Egypt and Saudi Arabia

An important aspect that needs to be highlighted regarding the Saudi Arabian Electronic Transactions Rule does not mention any element related to sharia. Saudi Arabian government is one of the few Muslim countries to enact sharia (Islamic) law[1]. But the Saudi Arabian Electronic Transactions Rule of 2007 does not mention anything about the permissibility of the transactions in terms of sharia law.

Saudi Arabian laws are derived from *Al-Quran* (Muslim holy book) and *Sunnah* (prophetic sayings)[2]. But the electronic contracts were not in vogue during the advent of Islam. It is noteworthy to note that while the laws mentioned in *Al-Quran* and *Sunnah* are comprehensive covering various aspects of public and private life, they are not exhaustive in that they don't cover every aspect of life, particularly that have evolved later. The concepts of *Ijmah* (consensus) and *qiyas* (logical analysis) apply in a situation where there is no clear law in the main sources of Islamic laws. Indeed, that may be the reason that the Saudi Arabian Electronic Transactions Rule does not mention sharia or Islamic law in any of the Articles. The concept of *maslah* (public interest) also applies to

[1] Article 1 of the Basic Regulation of the Kingdom of Saudi Arabia (1992). https://www.constituteproject.org/constitution/Saudi_Arabia_2013.pdf?lang=en.
[2] Article 1 of the Basic Regulation of the Kingdom of Saudi Arabia (1992). https://www.constituteproject.org/constitution/Saudi_Arabia_2013.pdf?lang=en.

electronic transaction law formulation in Saudi Arabia. According to Islamic scholar Al-Ghazali, the aim of *maslah* is fivefold that includes protecting the five critical values viz religion, life, lineage, intellect, and property (Kamali, 2005). The Saudi Arabian e-contract law considers the protection of public interest in formulating the rules. Still, the sharia law in the country that applies to traditional commercial contracts also applies to e-transaction laws.

Contract laws in Egypt can be surmised for recent court rulings. In 2011 the Cairo Court of Appeal ruled that the Electronic Signature Law expressly provides that electronic works and documents have the same evidentiary value as other private or authoritative works and documents (as defined in the Evidence Law) if those electronic works and documents meet the requirements of the Electronic Signature Law and its implementing regulations. (Hemdani, 2003)

In addition, in 2015 the Cairo Commercial Court made use of an e-mail that was sent by the defendant to the plaintiff to establish the existence of a contractual relationship between the two parties. The Court held that the e-mail was legal and admissible evidence in electronic form and rejected the defendant's claims that the e-mail could not constitute admissible evidence of the existence of a business relationship. (Alsahouly, Ibrahim, Rashid, 2012).

The Cairo Commercial Court based its judgment depending on the fact that (I) article 2(1) of the Egyptian Commercial Law No. 17/1999 ("the Egyptian Commercial Law") provides that commercial practices and customs must be applied in the absence of a legal text. Furthermore, article 69 of the Egyptian Commercial Law provides that commercial obligations may be proved by any means and not necessarily by a written [traditional] document; and (ii) the e-mail in question is a legitimate means of proof, as it meets all the requirements of article 8 of the old implementing rules (article 9 of the new implementing rules), since the defendant has never denied that the e-mail address used to send the e-mail belonged to the defendant's business operations.

Subsequently, in 2016, the Egyptian Court of Cassation issued a ruling interpreting articles 1(b) and 15 of the Electronic Signature Law. The Court ruled that any data created, recorded, stored, sent, or received by electronic or other similar means must be considered a legal document with the same evidential value as any official or private document used in a general, commercial or administrative communication. Based on this premise, the court considered that the scandalous submission in the form of electronic communication to the High Electoral Commission (under Article 45 of Law No. 45/2014 on Political Rights (law: Exercise of Rights)) is important because the wording of this paragraph is broad enough to cover a wide range of compositions, whether in the form of ordinary written documents or otherwise, including electronic communications (Ghoneim, 2011).

Recently, however, in 2019, Egyptian courts have taken several steps in the opposite direction. While the Evidence Act still does not mention the evidentiary value of correspondence between the parties, including the exchange of electronic correspondence, the Electronic Signature Act defines an electronic document and regulates its evidentiary value. The Court added that the Electronic Signature Act expressly provides that an electronic document cannot be admissible as material evidence if the requirements of the Electronic Signature Act and its implementing regulations are not met (Marathe, 2012).

7. Conclusion and Recommendations

The fact is technology is constantly evolving. The right time to initiate legislative reform is in the infancy of the technology. Trying to develop legislations when the technology has expanded can be a challenging task. The paper has shown that the current regulations regarding electronic contracts in Egypt and Saudi Arabia are not sufficient. The main shortcoming of the law is that they don't cover all aspects of the legality of electronic contracts. This creates uncertainty for the parties carrying out the electronic transactions. It seems that the e-contract laws in the respective countries are general statements regarding electronic contracts. They define the framework but don't go into sufficient detail regarding cryptography and other technologies that underlie digital transactions. The laws do not specifically describe what represents an offer in terms of electronic contracts. Moreover, they are unclear about the revocation of an offer. The location where the contract has been formed has also not been discussed in

detail. In addition, there is no mention of the security-related aspects such as using a secure medium, password protection, and other measures.

The laws regarding electronic contracts in Saudi Arabia are clearer and more specific as compared to Egyptian law. Egyptian law doesn't define an electronic contract at all. One way to rectify this lapse is to classify documents signed through a digital or electronic signature as electronic contracts. But there are no provisions According to Egyptian Law regarding authentication, verification, and storage of electronic contracts. Contrarily, the Saudi Arabian Electronic Transactions Protection Law of 2007 covers important aspects of the electronic contract including identity verification, authentication, and excluded contracts. The law requires a digital signature for authentication of the identity and approval of the electronic contract, and the signature can be verified by the digital certificate issued by a certification service provider. The law also clearly specifies that transactions related to personal status law and real property deeds are excluded unless the authority overseeing the legality of electronic contract in coordination with the Ministry. However, despite the Saudi e-contract law being more comprehensive as compared to the Egyptian law regarding electronic transactions, the Saudi Arabian laws don't cover many important security-related issues that arise due to the inherent risks of the internet.

The political and economic structure in some developing countries plays an influential role in the development of a comprehensive electronic contract law. The apparent difference between developing countries and modern industrial countries can be seen in dealing with electronic contract laws. The legal structure in Arab countries is conservative and slow in dealing with technological development, unlike modern industrial countries. Creating a law that encompasses every detail regarding electronic contracts requires coordination with the electronic trade bodies. It requires the government bodies to consult with international IT firms and security experts to develop a comprehensive framework for the legality and security of electronic contracts. Although the regulations regarding e-contract in Saudi Arabia was a big step, a lot more is needed to be done to remove uncertainties and risk regarding electronic contracts. There is a need for reforms to address the issues in both Egypt and Saudi Arabia regarding electronic contract legislation.

The legislative framework in the countries for electronic contracts needs to be strengthened as well. It is also important to consult with businesses to know about the uncertainties and risks in carrying your electronic transactions. The involvement of the government, IT sector, and businesses are critical for the development of a comprehensive framework for electronic contracts. The laws must be detailed that formulate rules for both Business to Business (B2B) and Business to Consumer (B2C) contracts.

The electronic contract laws in Arab countries particularly Saudi Arabia and Egypt are not reliable due to being insufficient. They are not consistent with the needs of the parties involved in electronic commerce. In exploring the Egyptian and Saudi Arabian laws, the thesis has shown that the lack of comprehensiveness of e-contract laws leads to uncertainty regarding transactions that are carried out through electronic means. The study has shown that there is inconsistency particularly in Saudi Arabian e-contract laws regarding the traditional contract laws that are based on Islamic principles and the electronic contract laws that seem to be secular in wording. Formulation of robust and consistent laws in Arab countries can bolster confidence regarding electronic transactions that will accelerate the rate of e-commerce in the respective regions.

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Improving the Morals and Ethics of Law Enforcement in Indonesia

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Abstract
The reason for the reform in 1998 was that the law did not demonstrate its role in achieving justice in the community. After 22 years of legal reform in Indonesia, the situation is not much different; there are already many legal norms that are considered incompatible with human rights and justice, but the state of Indonesian law has not changed much. Formalization of topics to be explored in relation to law enforcement, ethics, and morality of law enforcement officers. In accordance with the problem, empirical normative research methodologies using legal materials are derived from laws and regulations, as well as other scientific works. Based on the discussion, the study's findings revealed the occurrence of a multidimensional crisis in which the law's inability to show its presence in the middle of people's social lives, owing to the fact that most law enforcement agencies have failed to do so, particularly in terms of ethics and morality. As a result, other than redesigning legal standards, no other effort can be made to realize the law as commander in chief in the country of Indonesian law save by strengthening the ethics and morality of law enforcement personnel.

Keywords: Ethics, Morals, Law Enforcement, Law Enforcement

1. Introduction

1.1. Background

The ancient imperial saying of Rome says *Quid leges sine moribus*, meaning the law does not mean much, if not imbued by morality. This saying describes that the law cannot be separated from morals, the law must contain moral values, in other languages it is said that the law is the credibility of moral values. According to Van Apeldorn, the law is not enough to be interpreted as a rule that binds its citizens only, but must have aspects of justice and other principles that are useful for protecting their citizens fairly and ensuring legal certainty for every citizen, without exception (Juanda, 2017). One of the important means to realize justice in the community, is a legal norm formulated from the values that prevail in the community which *includes* ethical and moral values, therefore law enforcement in the community must also be carried out with the accompaniment of ethical and moral values (Suadi & SH, 2018).

Social reality reveals a very paradoxical condition between *das seins* and *das sollin*, where we can no longer turn a blind eye to hide the fact that many incidents of law enforcement officers who commit blatant law enforcement violations under the pretext of law enforcement that sometimes the violation is even greater than the alleged error (Gultom & SH, 2017). Corruption should be processed legally in order to realize justice not infrequently even giving birth to new crimes in the form of extortion, bribery and buying and selling cases, as well as police officers sexually harassing people who need to be ordered, PP police who commit destruction and violence under the pretext of prohibition, judges who accept bribes in prosecuting corruption cases. The case of the Prosecutor in the case — Gaius Tambunan, the tax mafia, and many more cases of bribery, extortion, collusion involving law enforcement officials under the pretext of law enforcement (Syahroni & Sujarwadi, 2018).

If then in society there are many anarchist actions in responding to social phenomena, such as vigilante society against pickpockets, thieves or on a larger scale protests in the form of demonstrations, fights by communities, social institutions, students, workers, it is a logical result that must be understood and addressed wisely, because that attitude is an overflow of the community's a priori sense towards law enforcement officials, where people's trust in law enforcement officials has been reduced, so that in carrying out these actions/protests they carry out actions that actually violate the law in the name of law enforcement efforts, this is a portrait of Indonesian law today (Maruapey, 2017).

Allegedly the reality has occurred so far, among others, because there has been a shallowing of philosophical understanding of the law, where it should be all parties, law enforcement and society including government officials and legislators, understand the value of morality that accompanies legal norms, because simply at the beginning of studying legal science it has been explained that the law is a credibility of social values that grow in a society that contains a load of moral values. high (Ghozali, 2019). H.L.A. Hart said that to create justice, the law must include three elements of value: duty, morals and rules. Therefore, the law cannot be separated from the moral dimension (Tanuwijaya, 2014). According to Murphy & Coelman, in *The Philosophy of Law*, so if you want to create justice in society, the moral element must be fulfilled (Murphy, 2013). It is highly unlikely that the law will give meaning in people's lives when it is enforced by people who do not understand the value of morality (Peffer, 2014). Philosophers say that the moral law will give meaning to people's lives if it is enforced by an apparatus that has good moral values. There has not been a sense of law enforcement justice in society due to the incomplete moral escort for law enforcement officials in law enforcement (Dedek, 2016).

1.2. Research Questions

Previous research by Subiharta (2015), examining the morality of law enforcement and justice of society, and discussing also the morality of society, the results of research between law and morals are interrelated, so good law is a moral law, if the law is immoral then it is appropriate for the law to be replaced, so this study is different from the research that will be the author wrapped, where the author examines the ethics and morality of law enforcement itself (Subiharta, 2015). Cecep Wiharma's research (2017), still researching the ethics and morality of law enforcement and community compliance with the law, research results, ethics and morality of law enforcement are influenced by the environment, because society (environment) affects the legal apparatus. Here there are still differences in research that will be done, which does not focus on law enforcement. (Wiharma, 2017). Emma Ellyani's research (2018), her research discusses the ethics and morality of law enforcement influenced by integrity and ethics and religion, the results of research on judges' decisions or law enforcement are based on integrity, ethics and faith and piety. The difference in research that the author will be wrapped up with Ellyani lies in morality and religion (Ellyani, 2018).

1.3. Research Methods

Research is carried out by empirical normative methods, by examining concepts and *behaviors of real (actual behavior*), where this shows social symptoms that are not real or unwritten, experienced by society or individuals in social relations in community life (Sabri & Nasfi, 2020). Where the research method is in the form of sociological or empirical legal research, which includes research on what is the law enforcement's own level and legal identity, as well as research on the effectiveness of the application of the law (Fajar & Yulianto, 2010). Where

the source of research data by reviewing literature and literature and legislation related to research and references in accordance with research studies.

2. Results and Discussion

2.1. Morals and Ethics as Law Enforcement Guidelines

According to Muchtar Samad (2016), the word moral comes from Latin *mores* with the origin of the word *mos* which means decency, character and behavior thus the word moral can be given the meaning of decency, while morality means everything related to decency, so said Muchtar Samad, moral is the soul that underlies the behavior of a person or society that is more emphasized to social provisions (Samad, 2016). Dian Ibung defines morals as a belief that underlies actions or thoughts that are in accordance with social agreements, good morals will make individual capital in social innovation (Dian Ibung, 2013).

The Indonesian legal system is used as *the ground norm* of the basic norm of Pancasila, which is the rule and norm that is the basis for legality in Indonesia. So the thinnest Indonesian law is the view of life, awareness, and moral ideals of the character of the Indonesian nation covering religious life that is virtuous in upholding the value of justice. Thus, the requirements of law enforcement must be honest, fair and have integrity and moral. So according to Prof. Agus Santoso moral is a psychiatric atmosphere and the character and religion of the community or individuals who uphold the values of justice in socializing in community life (Agus Santoso, 2015). According to Haryatmoko morals are normative and imperative discourses expressed in the framework of good or bad, right/wrong which is considered absolute or transcendent value, while ethics is understood as a philosophical reflection on morals, and more a normative discourse (Haryatmoko, 2011).

According to Van Hooft in his book, defining ethics is the values, character and ethos of individuals and groups in acting openly and honestly without hiding the truth (Van Hooft, 2014). According to Stanwick ethics are values that a person uses to interpret whether a particular action or behavior is acceptable and in accordance with the norms and methods prevailing (Stanwick & Stanwick, 2013). In the research of Silke Schiktanz et al (2012), ethics is considered a symptom of recent social trends in government crises, where ethics serves as a social practice and a power play by law enforcement. Silke defines ethics as a moral issue in everyday life situations that relies on subjective views and feelings that guide individual life and what social interactions are important, right and just (Schicktanz et al., 2012).

Thus, from the understanding of the above experts can be drawn conclusions about the understanding of ethics, namely: (1) Values and norms about what is good and what is bad in action; (2) A group of principles or values relating to morals and social trends in action; and (3) Social trends and behavioral principles that guide good or bad. From the above understanding can be defined ethics is an understanding of the norms and values of what is good and bad in everyday life that becomes a social trend, whether individuals or society act right and fair.

According to Dewantara, the meaning of the word moral is simply between moral and ethics can be distinguished, although there are also those who equate moral meaning with ethics in technical so that the terminology of both is the same and must be in accordance with the context (Dewantara, 2017). The terms moral and ethical have the same understanding, although the origin of the word is different. Morals come from the language Latin *mores*, while ethics comes from the Greek, *ethos*. Both have the understanding *of customs* related to human activities that are considered good or right, fair and honest actions. While the understanding that distinguishes between morals and ethics gives an understanding where morals are a value embedded in the human psyche that is abstract as a control tool for humans to behave, while ethics is a form of moral values that appear in the form of human behavior with other meanings ethics are concrete, but between the two cannot be separated and is a unity where morals as the compass while ethics as In his movement, then morals will play a role if there is an ethic otherwise ethics will mean when guided by moral values, for example if a police officer who investigates suspects is said to be immoral meaning that the police's actions violate moral values that apply in their professional groups (Dewantara, 2017).

Thus the definition of morality is the guideline that each individual or group has regarding what is right and wrong based on moral standards that apply in society. Ethics does not question the human condition, but rather questions how man should act, based on values and norms. Questionable morality appears (*tangible*) in behavior and dishonest and invisible (*intangible*) in the mind that is contrary to conscience in planning, implementation and reporting. Morality that deliberately defies conscience is a matter of integrity that is the determination to be opinionated while maintaining standard values. According to Sopirman Rahman & Nurul Qomar, ethics is a conception of the good or bad temperament or behavior of a person. Morals are good or bad behavior. Ethics are ideas, ideals about the desire for the good of human actions or behavior. Ethics always provides good examples, while morals always assess the implementation of the examples given by ethics. Therefore, ethical people are people who exemplify the behavior of transparency, while morals are the ones who carry out the transparency (Sopirman Rahman, 2014). In simple language we can also mean ethics with all its contributions can be seen as a means to build an orientation for humans who want to be good in their lives, besides ethics can be used to help humans in answering the most basic question, namely how should humans/I live and act as human beings and humanely? Although in fact the answer to that question can be found in various institutions for example in religious institutions, indigenous institutions, but the view in terms of ethics remains the most trusted, because the ethical view is based on scientific studies (Djoko & Warsito, 2018).

Anshori explained that ethics is a critical and rational reflection of the values and norms that concern how humans should live both as human beings and deal with the problems of human life by basing themselves on commonly accepted values and norms (Anshori, 2018). If we look at it from this side, it seems that ethics and morality have the same meaning, namely as a value system about how humans should behave so that they can maintain life together well, which is manifested in a pattern of constant behavior and deviations rather than it is considered as something wrong. Frans Magnis Suseno (1997) revealed that the similarity of the two things can also be proven in many studies on morals cannot be separated from the ethics of support for the statement, that ethics is a philosophy or critical and fundamental thinking about moral teachings and views (Harahap, 2015).

Ethics according to William I. Sauser, Jr. in Falah (2018), ethics is an act that is a behavior, especially a moral behavior related to society, broadly where a person's behavior is measured by community standards in measuring one's ethics. William argues that the law includes regulations, administration and cases of punishment as an important thing and a source of shah (Falah, 2018), of course as an ethical guideline for a person manifested in a moral consciousness that contains the belief of right and not something' the feeling that arises that he will do wrongly do something that he believes is not right departs from moral norms and self-respect if he leaves it (Chairunnisa, 2018).

Ethics is a normative field, because it determines and suggests what people should do or avoid. In this sense, people's decision to do something or not is solely because of moral direction and considerations, so that when someone does an act that is not right it means that the deed is not asked for ethical and moral considerations (Salim, 2014). A term that is almost the same as ethics and is always juxtaposed is the word *etiquette*, which although many people interpret the same two words, but actually both have very different meanings, if ethics speaks of morals (good and bad), then *etiquette* speaks of manners. In general, these two words are recognized to have several similarities as well as differences. Yusuf (2017) noted some similarities and differences in the meaning of the two words. The similarities are: 1) ethics and etiquette concern human behavior, so that animals do not know ethics and etiquette and 2) both ethics and etiquette regulate human behavior normatively, meaning to give norms for human behavior so that it knows what to do and what not to do. The difference is: 1) etiquette concerns the way an action must be done, while ethics is not limited to the way an action must be done, while ethics is not limited to the way an action is done. Ethics concerns the issue of whether an action is permissible or not; 2) etiquette only applies in association, while ethics always applies and does not depend on the presence or absence of others; 3) etiquette is relative, while ethics is more absolute; and 4) etiquette looks at man in terms of outward only, while ethics looks at humans more deeply (Joseph, 2017). Thus, from several studies and exposures to existing sources, an understanding of ethics can theoretically be drawn consisting of:

1. Descriptive ethics is to provide an overview and illustration of human behavior reviewed from good and bad values and which things can be done in accordance with the ethics embraced by society.

2. Normative Ethics that discusses and examines the good, bad measures of human actions are usually grouped into the following:
    a. General ethics that addresses a wide range of relationships with the human condition to act ethically in taking a wide variety of policies based on theories as well as moral principles.
    b. Special ethics consisting of:
        1) Social Ethics is an ethic that emphasizes social responsibility and relationships between human beings in the activities they carry out.
        2) Individual ethics is ethics that emphasizes more human obligations as a person.
        3) Applied Ethics is ethics applied to a profession.

In the context of law enforcement, ethics can be interpreted as a set of moral principles that distinguish what is right and what is wrong, what is appropriate and inappropriate for a law enforcement officer to do. This ethic must be a handle, for law enforcement officials both when he carries out his duties and functions as law enforcement and in daily activities as a citizen.

2.2. Law and Justice Enforcement in Society

Since the introduction of the term law, jurists have sought to provide a definition of what the meaning or definition of the law itself is. However, none of the definitions given by these experts can be satisfactory and accepted by all jurists, because the definition given by jurists is very dependent on their respective points of view, so that from the various definitions given by jurists there is nothing wrong, because indeed the law itself is a very broad social phenomenon, So it is not wrong when Van Apeldoorn (Apeldoorn, 1982) once said that no jurist can give a definite definition of the law, because the law is very broad. However, it is also something that is not possible, when we want to study the law further without having a handle on the meaning of the law itself, therefore we also need to provide definitions or use definitions that have been given by experts before (Juanda, 2017). According to J. van Kan as affirmed by S. Subekti said the law is as a whole provision of life that is coercive, protecting the interests of people in society (Subekti, 2015). Law deals with efforts to realize certain values (Samsudin, 2012). From the diverse opinions of experts on what is a law that can be ascertained is that legal norms as social norms, born from the realization of norms that grow and develop in society, so that although on the one hand there is a difference between legal norms and social norms (non-legal norms) but on the other hand the two norms cannot be separated, because the two norms have the same function, namely both regulate social life and strengthen each other.

In principle, the law has existence because it is solely to regulate various aspects of people's lives, both physical and non-physical, with the sole purpose of achieving justice. Plato defined the law as the best order for dealing with a world of phenomena filled with injustice. Socrates interprets the law in accordance with human nature, then the law is defined as the order of virtue, which is an order that prioritizes virtue and justice for the public (Rahardjo, 2010). According to Socrates the law is not a rule made to perpetuate the lust of the strong (*counter-philosophers of lonia*), nor the rule to fulfill the instincts of self-hedonism (*counter-sophists*), the law is actually an objective order to achieve virtue and general justice (Widagdo, 2018). While Austin defines the law as a rule held to provide guidance to intelligent beings by creatures who rule over it (Islamiyati, 2018). The law is the order of those who hold the highest power or from those who hold sovereignty. He regarded the law as a logical, fixed and closed system. If closely observed Austin's teachings do not concern the good or bad of the law at all, because the judgment is considered a different matter outside the law.

E. Utrecht in his book "*Algemeen Deel*" states that the law is a guide to what is worth doing and what is not, so it is a commandment (Nugroho, 2017). Bellefroid, the law that applies in one community aims to regulate the order of that society and is based on the power that exists in that society (Adam, 2017). Hugo de Grotius defined the law as an act of morals that ensures justice. Law is the regulation of moral actions that ensure justice to the rule of law on independence.

From the many opinions of experts from classical times to modern times, it can simply be concluded that the law is at least a manifestation of the values of truth that grow and develop in society, which will be used as a means to ensure order in society, because as Aristotle said man as *a zoon oliticon* creature. who cannot live without anyone else, so that humans in their lives at all times require social interaction (*social interaction*), while on the other hand

as said by Thomas Hobbes, humans have the nature of *Homo Homuni Lupus*, namely wolves from other humans or in other words humans have egos that cannot be avoided often conflict of interest (*conflict of interest*).) between people with each other. Therefore, it is very important for the role of the law to maintain the balance of the two human natures to achieve order and peace. The Huijbers in Harafa, said that since the beginning of jurists always juxtaposed the concept of law with justice, although it was later discovered that not every legal norm made was able to lead to the ideals of justice, especially because there is always a dichotomy (Harefa, 2016), there are two mores to signify the law, namely:

1. Law in the sense of justice (*iustitia*) or *ius/recht* (from *regere* = lead). In this context the law signifies a just peerage of people's lives, as aspired;
2. Law in the sense of law or *lex* or *wet*. These methods of requiring it are seen as a means of creating such just rules.

From huijbers's thinking, there is a clear difference, where the term law contains the demands for justice, while the term law/*lex*/*wet*, signifies *de facto* norms used as a means to realize the desired justice. Understanding justice in a context often embraced by most jurists and law enforcement officials; Philosophically, justice is the main purpose of law, not looking at law in the meaning *of ius/recht* or law in the meaning *of lex* or *wet*. To understand the meaning of justice in a comprehensive manner in the characteristics of Indonesian law, jurists are primarily contemporary legal philosophers using the philosophy of *hermeneutics*, which examines the meaning of justice as the basic essence of law enforcement, which Josef Bluecher in Agus Budi Susilohermeneutik consequentially is bound to two things of study, namely ensuring the content and meaning of a word, sentence, text and so on and find the instructions contained in symbolic forms (Susilo, 2011).

In the review of various aspects, schools and streams of law cannot be separated from justice, all thinkers/philosophers when discussing the law always juxtapose it with the concept of justice. This is in line with the view of nature law that identifies law with justice (*ius quia iustum*). This teaching is of good view whether or not legal norms are very dependent on the alignment of legal norms with moral values, especially the value of justice. So according to the teachings of the nature law of a norm cannot be said to be a law, if it does not contain the values of justice. Although the truth about the meaning of justice itself is also no definite definition that can be given by jurists and philosophers themselves. However, at least it can be given a simple understanding that is something related to the feeling that a person can accept such a situation with a spacious chest (private justice) or society can accept such a reality also with a broad chest (public justice). As stated by Nani Nurrachman in Agus Budi Susilo, said *Justice or fair treatment* (justice is a concept that identifies the existence of a sense of justice in treatment) (Susilo, 2011).

This means that justice is very closely related to the feelings of a person/public therefore the law (in the form of norms) must be able to respond to individual/public feelings if the law is to be used as a tool to realize justice, so it is certain to uphold legal norms that have responded to the feelings of individual/public justice it must be a person who also understands the sense of justice, because it is very unlikely when we expect the enforcement of legal norms that are just to those who do not understand the meaning of justice itself. In line with the concept of justice according to Plato in Kelik Wardiono, which states that justice in a country can be learned from good rules and souls. Where he himself divides the human soul into three parts consisting of (Kelik Wardiono & Saepul Rochman, 2020): 1) Part of thought (*logistics*), 2) part of feelings and passions, both physical and physical (*ephithumetikon*) and 3) part of good and evil (*thumoedes*). According to him, one's soul will be well organized, while the three parts mentioned above, walk in harmonious unity, for example when the condition of feelings and desires is controlled by reason and mind through good and evil, then justice (*dikaiosune*) lies within a balanced boundary between the three parts of the soul, according to their respective forms. For Plato justice, it is a right course of action, not enough just as a obedience to the rule of law. The sense of justice is the nature of every human being as a creature given by god as a balancing tool between fellow humans and other natural creatures, so that there is harmony and harmony among god's created creatures.

Plato further said that the law is the result of a reasonable human thought (*reason thought, logismus*) formulated in a certain form by the ruler. Therefore, Plato rejects the idea that legal authority rests solely on the wishes of the ruler (Kelik Wardiono & Saepul Rochman, 2020). Plato's opinion is supported by Socrates who states that if you

want to measure what is good and what is not good, beautiful and not beautiful, entitled and not entitled, do not be left solely to individuals or to those who have *zolim* power or rulers, but should be sought an objective measure to judge it, because the matter of justice is not only useful for those who are strong/powerful, but it is also useful for the whole community.

We can draw the conclusion that law as a means of realizing the justice that is aspired, man in his formation must contain ethical values not only on external values but also includes inner values. Because the ultimate goal of the law is to realize justice through state institutions, the state through its apparatus is responsible for ensuring the realization of community justice both individually and in groups. Therefore, it can also be said that something is wrong where when someone says that injustice is not synonymous with lawlessness, deviation, incompatible with the norms of written law, because real justice does not always follow the understanding of positivism that places written law (law) as the only reference, where this understanding puts human mind as the foundation and principled all legal problems can be solved by logic. Syllogism and mechanical. Theo Huijbers in Agus Budi Susilo, he said the subject of legal philosophy is not *quid iuris*, but *quid ius*, because *as a quid iuris* law is only oriented to positive law (*ius constitutum*) so that the meaning of justice is only limited to the logic of lawmakers, while *quid ius* Law oriented to the basic substance of justice (Susilo, 2011). Justice itself depends heavily on space and time, so that the feeling of fairness according to the logic of the past (at the time the law was made), is not necessarily the same as the feeling of fairness according to logic at the time when the law was then applied and justice in the sense of judge often influenced by elements of human subjectivity that sometimes justice can only be enjoyed by a group of people, because what is considered fair by certain people is not necessarily fair according to the other party. The law is the framework of the body, while justice is the spirit, the skeleton will not function when the spirit does not exist and even the skeleton will only make a burden for others (otherwise it is said to be troublesome). Thus the legal norm that does not contain the spirit of justice will sometimes only contain injustice.

2.3. Revamping The Morals and Ethics of Law Enforcement in Indonesia

One of the theories known in the science of law is utilitarianist theory, popularized by Bentham, among which in the theory we can see Bentham's opinion that states, the good bad of the law does not lie in the good bad content of the norm made, but the good bad of the law must be measured from the good and bad consequences produced by the application of the law. Bentham further said that a new legal norm can be judged well, if the resulting from the application of the norm is good, on the contrary, the legal norm will be said not good when the consequences of applying the norm actually give birth to injustice and suffering, regardless of whether the norm itself leads to injustice and suffering or the wrong enforcement of the law resulting in injustice and suffering.

In line with the above theory, in law enforcement theory since long ago has been known the principle of *Equality before the law* as manifested in Article 27 paragraph (1) amendments to the 1945 Constitution, this article is used as a basis for law enforcement officials, to treat all citizens equally before law and government, this principle is even a joint of the law (*rechtstaat).*), this principle in the Indonesian legal system has also been accepted in line with the acceptance of Dutch colonial law with the principle *of concordantie*, meaning that the principle of equality of community position before the law is something that cannot be bargained and violated this is intended to achieve fair law enforcement both procedurally and substantially from law enforcement officials.

The equality of human degrees in social life is intended as a means to realize environmental harmony, both between humans and between humans and environmental creatures, maintaining the balance of rights and obligations between individuals and individuals, individual with government and state. In state law the existence of law is something that is very important to regulate the balance between the rights and obligations of both individuals and communities/states. Therefore, the enactment of laws without exception for everyone with the principle of equality of degrees is a necessity. According to Shant Dellyana as affirmed by Hasadizohu Moho law enforcement is an effort to realize the ideas of justice, legal certainty and social benefits into reality (Moho, 2019). Dardji Darmodihardjo in his book The Principles of Philosophy of Law, What and how the Philosophy of Law. Expressing (Zulkarnaen, 2019), to realize the function of law as a means of protecting human interests, law enforcement must be oriented to 4 elements, namely:

1. Legal certainty (*rechtssicherkeit*)

2. Legal expediency (*zewechmassigkeit*)
3. Legal justice (*gerechtigkeit*)
4. Legal guarantee (*doelmatigkeit*)

To realize the four orientations as mentioned above, it is necessary to have a complete idealism for a law enforcement officer, and legal norms that contain ethical values and justice. Furthermore, according to Soerjono Soekamto in Sitompul et al (Sitompul et al., 2020), ideal law enforcement is only possible when supported by four important elements, namely:

1. Good legal norms
2. Good law enforcement apparatus
3. A good legal society
4. Good legal facilities and infrastructure

Thus, for the realization of ideal law enforcement it is at least necessary harmonization of the elements mentioned above. Harmonization of the four elements is believed that law enforcement will be able to realize orientation ideal, but of all that the orientation of justice is the main orientation in law enforcement. The diversity of cultures and cultural values of the Indonesian nation is substantially certain to greatly affect the value of formal justice of legal norms, so that sometimes the value of formal justice of legal norms is not the same as the values of justice of certain people's cultures, under these conditions it is certain that the law must return to the basic essence of justice, namely justice, where the law as a tool to realize justice must be in favor of justice, by not ignoring certainty and usefulness (*utility*). Expediency as one of the orientations of law enforcement can be used as a benchmark for the success of law enforcement. as we understand in the utility teachings of law enforcement (criminal) not only for revenge on the perpetrators of criminal acts, but the punishment will provide benefits not only to the perpetrators of the criminal act itself, as an effort to improve their behavior, but also to other parties so as not to do the same act, and more importantly the community feels safe from the interference of criminal acts, This is what law enforcement says provides benefits/happiness/*happiness* to both the perpetrator and the community.

Although sometimes in social reality we often see, law enforcement in Indonesia actually prioritizes legal certainty rather than justice, for example the case of Kediri Regency in the case of theft of one watermelon, in the trial is demanded by Jalasa Public Prosecutor with a prison sentence of 2 months 10 days, which then by the panel of judges is sentenced to 15 days in prison, on charges of the defendant's actions in violation of Article 362 paragraph (1) of the Criminal Code. At the time of the hearing the reading of the demands was colored by the peaceful action of the Kediri Student Movement Alliance, which voiced that the actions of the public prosecutor who brought this case to the Court trial were unfair. Both cases of Minah's grandmother, a resident of Porwokerto, Banyumas Regency, Central Java who also claimed the same thing stole 3 cocoa beans, so she was satisfied guilty and sentenced to 15 days in prison with one month's probation.

The two cases mentioned above had shocked the legal universe in Indonesia, because many ordinary people judged that the law in Indonesia was very unfair by comparing the number of major corruption cases even disappeared without due process and even if the punishment is very light, this phenomenon in a country of law that adheres to *the continental European* system (understand *positivism).*) with the principle of legality, it is only natural that there is a conflict between legal certainty and the principle of justice, as once said by Moho Hasiziduhu justice and legal certainty are two legal goals that are often not in line with each other and difficult to avoid in the practice of law (Moho, 2019). Further said by Moho Hasiziduhu, a rule of law that more meets the demands of legal certainty, the more likely the aspect of justice is pressed.

In the context of the above case, it shows that there is a conflict of the value of justice that grows in society and the value of justice contained in legal norms, in both cases there is nothing wrong, on the one hand both the public prosecutor and the panel of judges are correct in the context of law enforcement where the public prosecutor and the panel of judges enforce the law with the principle of legal certainty, justice (formal), expediency and assurance of certainty. While on the other hand, society is also right because the community sees justice in the context of reality in society. That the orientation of law enforcement cannot be focused on one orientation alternatively, but oriented colloquially means that law enforcement cannot only be oriented to the value of justice by excluding the

value of expediency, certainty and legal guarantees. Similarly, law enforcement cannot only be oriented to benefit and so on. Thus, a question arises how to enforce the ideal law so that the four orientations can run together which in the end the law can provide complete benefits. Simply to find the answer to that question we return to the foundation of law, namely *the philosophical*, *juridical* and *sociological foundations*, in the context of the philosophy of legal norms that are born must not lack these three foundations as well as in its enforcement, because the fusion of these three foundations is believed to be the legal norms that were born will be able to realize the essence of the law itself. The skill of combining the three basic foundations of law in the law enforcement process is not an easy one, this requires a comprehensive understanding of the law, especially the understanding of legal philosophy where the understanding of law as *a social engineering*, will always develop along with the development of social itself, where classical legal justice emphasizes more on normative justice and legal certainty, while modern legal justice emphasizes more on Empirically-rationalistic, such a thing can be interpreted that the meaning of justice in the context of modern law is wider and comprehensive when compared to the meaning of justice in classical law.

Law enforcement is a social subsystem, so its enforcement is influenced by very complex environments such as political, economic, social, cultural, security defense, science and technology, education and so on (Nurudin, 2016). Law enforcement must be based as expressed in the 1945 Constitution and the legal principles that apply in the civilized nation environment, so that law enforcement can avoid negative practices due to the very complex environmental community. Therefore, the responsibility of law enforcement officials is to strive to uphold justice not only to enforce written rules/norms, thus law enforcement officials should understand really the spirit of law (*legal spirit*) that underlies the rule of law that must be enforced, related to various dynamics that occur in the process of making legislation (*law making process*).

3. Conclusion

One of the main causes of the multi-dimensional crisis in Indonesia in particular, allegedly because of the inability of the law to show its existence in the midst of social life, because the law that is expected to provide social justice in the community is sometimes the opposite, often showing injustice in the community. This is not only because existing legal norms have not been able to respond to the value of social justice of society, but rather in the unsustainable of most law enforcement officials, especially from the aspect of ethics and morality. Efforts must be made so that the law really serves as commander in the country of Indonesian law, then there is no other way but to try to fix law enforcement officials in a comprehensive manner, especially aspects of ethics and morality.

Therefore, the responsibility of law enforcement officials is to strive to uphold justice not only to enforce written rules/norms, thus law enforcement officials should understand really the spirit of law (*legal spirit*) that underlies the rule of law that must be enforced, related to various dynamics that occur in the process of making legislation (*law making process*).

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The Russia-Ukraine War and the Hidden Agenda of the United States

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Abstract
During the Biden Presidency, NATO exhibited in stark form two trends that have long portrayed its policies: open-door policies towards the East, and subordination to the American administration. Despite signs of American indifference towards the alliance during Trump's term, however, Biden decided to reverse Trump's policy and return to reviving this alliance, indeed, NATO remains important to the Biden administration, as long as the alliance is committed to implementing American interests, in other words, it values in so far as its conformity with the US foreign policy targets. Within NATO's open-door policies, Including the joining of Ukraine to the alliance, the long-festering skirmishes in the Donbas region Eastern of Ukraine had been unresolved for eight years. by January 2022, these were by no means small problems. But they were more readily manageable than the 24 February developments, given the U.S rejects to discuss the Russian security demands. In essence, it seems the U.S seeks to leave a lasting state of confrontation between Russia and Ukraine, regardless of the high costs on the Ukrainian people, as well as pressure on European partners in NATO to cut or reduce any relationship with the Russian federation. However, this paper argues that the US has huge interests in the Russia-Ukraine crisis, therefore, Washington plays a pivotal role through push the continuation of the war in Ukraine on many tracks.

Keywords: Russia, Ukraine, US Hidden Agenda, NATO, Donbas Region

1. Introduction

To begin with, on February 7, 2010, Yanukovych took the presidency. Won 48.95 percent of the vote—a narrow lead over Timoshenko's 45.47 percent, international observers determined that the poll had been fair, here, when Ukraine abandoned its goal of joining NATO in June 2010, the relations with Russia further improved, while the Europe Union (EU) leaders had expressed concern. *According to Britannica web*. later, Mr. Yanukovych announced in November 2013, He halted preparations for signing an association agreement with the EU, Ukraine cannot sacrifice trade with Russia, which opposes the agreement (BBC,2013). However, the president's decision sparked mass protests, Thousands of demonstrations that gave way to rioting in January 2014. The EU leaders stepped up the pressure on Ukraine's government, as Kyiv witnessed one of the most violent days in its history. the EU agreed on sanctions against the Yanukovych government. and the US government announced further punitive actions (Oltermann & Lewis, 2014).

As opposition forces occupied police stations and government offices in western Ukraine, government control weakened. Russia backed Yanukovych in the crisis, while the US and EU supported the protesters. By February 2014, anti-government protests toppled the government and forced Yanukovych out of Kyiv (Fisher,2014). Relying on the Council on Foreign Relations Web, Ukraine has carved out its own path as a sovereign state over the past two decades, while also seeking more ties with Western institutions, such as the EU and NATO. A majority of Ukrainian speakers in the west of the country favor closer ties with Europe, while a majority of Russian speakers in the east favor closer ties with Russia.

2. The Conflict in Eastern Ukraine (Donbas Region)

Midst the 2014 Ukrainian revolution, which overthrew previous Ukrainian President Yanukovych's Russian-friendly rule, Russia retaliated by annexing Ukraine's Crimean Peninsula and supporting an insurgency in Donbas (Hutchinson& Reevell,2022). Hence, the military confrontation in Eastern Ukraine began in 2014. It had already killed around 14,000 people between then and early 2022. Ukrainian government forces fought Russian-backed separatists for control of Donetsk and Luhansk, often known as Donbas, for eight years. Ukraine's intense clashes in 2014-2015 resulted in the loss of one-third of the region's land, the self-proclaimed Donetsk and Luhansk People's Republics maintained their independence, according to International Crisis Group.

As part of creating conditions for sustainable peace in the region, in September 2014, Russia, Ukraine, and the fighters on Donbas reached an agreement in Minsk, Belarus, known as the Minsk (I) accord. The arrangement immediately fell apart, with both parties breaking it. In spite of that, the potential of creating peace was never broken, Delegates from Russia, Ukraine, the Organization for Security and Cooperation in Europe (OSCE), and the leaders of the Donbas area signed a new deal, known as the Minsk Agreement (II), in February 2015, Based on Reuters web (2022). However, the map shows the areas of confrontation in the Donbas (Luhansk and Donetsk), between the Ukrainian army and the fighters in the Donbas.

Figure 1: Donbas Region in Ukraine

Source: ABC news web

Among other things, in line with Ukrainian law, the Minsk agreement asks for the start of discourse on temporary self-government for the Donetsk and Luhansk regions, as well as recognition of their special status by a resolution of parliament. this agreement, however, lead definitely brought about a cease-fire, but seven years later, Kyiv's new government claims that meeting all of its conditions is unpleasant and politically impossible (Gongadze,2022). Thus, the situation took a turn for the worse in early July 2021, when Ukrainian President Volodymyr Zelenskyy ordered an attack to finally destroy the Donbas separatists. whereas, to defend Russians in Donbas, Russia began sending troops and military equipment to the border with Ukraine, With the escalation of the crisis, Zelenskyy announced he would subjugate the Donbas region by military force and he insisted on his country's application to join NATO alliances. Henceforth, The Russian administration firmly rejected this.

at the same time, Russia's foreign ministry released a series of official demands in mid-Dec. 2021, requesting that the US and NATO suspend all military activities in Eastern Europe and Central Asia, pledge to oppose further NATO expansion against Russia, and prevent Ukraine from joining NATO in the future. Regrettably, not only the US and NATO partners sent out bad signals. but also, the US supplies Ukraine with extra military weapons and another defensive armament (Council on Foreign Relations,2022). While President Putin has stated that NATO is a threat to Russia's national security and that adding Ukraine and Georgia will further exacerbate that worry, however, following a virtual meeting with allied foreign ministers, NATO Secretary-General Jens Stoltenberg stated that NATO's open-door policy is unbreakable (Mahshie,2022).

Despite the fact that Russian and American officials met in Geneva on January 9-10, followed by sessions of the NATO-Russia Council on January 12 and the OSCE on January 13, to hear Moscow's concerns about NATO's open-door policy, regrettable, they did not reach to the solution, because NATO US-led refuses to discuss Russian security guarantees. Basically, Russia seeks assurances that NATO will cease its eastward expansion, rule out Ukraine's membership, and reduce military deployments in other former Soviet republics, as well as Central and Eastern Europe, based on the former agreements between parties.

There is no other choice. Moscow's demands had basically been ignored, on February 21, Russian President Vladimir Putin issued a proclamation recognizing the self-proclaimed “Donetsk People's Republic” (DPR) and “Luhansk People's Republic” (LPR) as independent states, as well as the signing agreements on mutual cooperation between Russia and the two separatist regions. However, following that, on February 24, the Russian President launched a Special Military Operation in Donbas to halt the genocide against the millions of people who have lived in the region since 2014.

> *“I am referring to the expansion of the NATO to the east, moving its military infrastructure closer to Russian borders. It is well known that for 30 years we have persistently and patiently tried to reach an agreement with the leading NATO countries on the principles of equal and inviolable security in Europe. In response to our proposals, we constantly faced either cynical deception and lies, or attempts to pressure and blackmail, while NATO, despite all our protests and concerns, continued to steadily expand. The war machine is moving and, I repeat, it is coming close to our borders.”*
> President Putin. 24Feb,2022

3. America's Agenda

To understand the US policy, Kimmage (2022) explains that, the cold war doctrine of containment is relevant to current U.S. foreign policy. Kimmage says, containment was explicitly a doctrine created for the nuclear age, in which we are still living. a recommitment containment can contribute to U.S. Russia's policy, added, the primary meaning of containment was the ambition to contain the Soviet Union, the well-known meaning of the word applied against Putin’s Russia now.

In this regard, based on this strategy, the White House (2021), announced that “the bonds between the US and Ukraine are stronger than ever. Our shared values and commitment to a Europe that is whole, free, democratic, and at peace provide the basis for our strategic partnership. We are working together to address shared global challenges”. Nevertheless, when the operations in Ukraine started, Biden was quick to assure the American society

that they would not have to fight Russia, as one observer commented sardonically, "America is about to fight Russia until the last Ukrainian soldier."

However, in developing the US response to Russia's operation in Donbas, Colby (2022) wrote. The US must face and adapt to this reality. America has to take a far more pragmatic and strategic approach to the international situation, rather than ignoring or wishing away the unpleasant truths. Above all, our reaction must be strategic—it must be tailored to the challenges we confront in light of our resources and willingness to take risks. In this case, the U.S Department of State claimed that since January 2021, the danger Russia poses, including to our NATO allies, is now very clear. therefore, the US has invested more than 4 billion USD in security assistance to demonstrate its enduring and steadfast commitment to Ukraine's sovereignty and territorial integrity. This includes more than 3.4 billion USD since Russia's launched its war against Ukraine on February 24, the Department statement revealed that, since 2014, the US has contributed more than 6.1 billion USD in security aid for training and equipment to assist Ukraine in maintaining its territorial integrity, safeguarding its borders, and strengthening NATO interoperability.

Not only that, but also, another statement was released by the US Department of Defence on 21 April 2022, As Russian forces started the second onslaught in eastern Ukraine, President Biden ordered a Presidential Drawdown of security aid worth up to 800 million USD to support vital Ukrainian requirements for today's struggle. however, this is the sixth withdrawal of materiel from DoD stocks for Ukraine since August 2021, increasing the US commitment to moreover 4 billion USD in security assistance to Ukraine since the Biden Administration began. However, rather than seeking to resolve the conflict, Wendy Sherman, the deputy secretary of state, renewed a challenge, saying "we will not slam the door shut on NATO's open-door policy" (US department of state, Jan 12, 2022).

Whereas, President Biden is adamant that Moscow will not be able to derail Ukraine's desire to join NATO, at the same time he announced that he has no immediate plans to help bring Ukraine into the alliance. In another word, the Position of the US administration obviously revealed that Mr. Biden has insisted that he needed to be a Proxy war with Russia on the Ukrainian territory. It follows that Ukraine is not a vital interest of the US and its European allies, this position is confirmed what the analysts say, Mr. Biden wants to fight Russia through Ukraine's military. As can be seen, the U.S. prepares its citizens for a war that could last for the years, President Biden and NATO allies are trying to support a proxy war in Ukraine against Russia- but not so much that Russia will revenge militarily against them, According to John Mearsheimer- *the influential University of Chicago political scientist most associated with the vital interest's approach*, "Ukraine is not a vital strategic interest for the US. It is a vital strategic interest for the Russians, they have made that perfectly clear, and not just Putin." This means that the US has hidden objectives and agendas.

For further explanations to understand the US hidden agenda, you have to go back to the Cold War to explain the US's strong interest in the dispute, according to Craig Albert - an associate professor of political science and the head of Augusta University's Intelligence and Security Studies, who spoke to ABC News on February 25, 2022. In 1949, the US aided in the formation of NATO, to resist the Soviet menace in Europe. Since the Soviet collapse in 1991, NATO has expanded several times, Albert adds, Ukraine is a former Soviet republic that is bordered by Russia in the East. Therefore, if Ukraine becomes a member of NATO, it would have NATO backing and protection -that means simply the NATO forces will be at the gates of the Moscow.

However, from the author's viewpoint, the US prefers war to hold on, for many objectives:
Firstly, the US strategy aims to make the war costly enough that Putin will look for some kind of exit for forces, the US wants to see Russia's military capabilities weakened, by arming Ukraine, with anti-tanks (including Javelins), anti-aircraft missiles, and training its troops, Drones, missile defence system (S300) …etc, for more Russia military suffered extraordinary losses in troops and equipment. the US believes, through greater weapons support, Ukraine is confident that it will, at the very least, halt Russia's onslaught in the east, and be in a strong position when negotiations on the conditions of the war's termination begin.
Secondly, The White House seeks to push the Kremlin into Ukraine quagmires similar to Soviet failure in Afghanistan, which could last several months or more, they are aiming to weaken Russia's ability as a superpower,

including the destruction of the Russian military arsenal, the demolition of the Russian economy, and thus the destabilization on the Russian territory... etc, thus, a war that Moscow has seen as an occasion to boast its force, became instead a bloody and embarrassing display of weakens - one that threatens the stability of its deeply entrenched regime. for that, America hopes that there will be a revolution inside Russia to overthrow President Putin.

Thirdly, driven by the competition and global leadership, the US has another objective: to weaken Russia's ability to project power by isolating it diplomatically, at least the US allies expelled Hundreds of Russian diplomats, by this foreign policy, the US wants a breakdown all of the diplomatic channels of communication between Europe and Russia. In particular the channel between Germany, France, and Russia. In order to stifle the diplomatic effort that German Chancellor Olaf Scholz and French President Emmanuel Macron have sought since the beginning of the crisis, and most importantly, to ensure the closure of the new energy channel between Russia and Germany called "Nord Stream2." Thus, the Russians become isolated, or at least, what the US called an outcast state.

Fourthly, the extreme sanctions the US and its allies have imposed against Russia's economy include an American prohibition on Russian energy imports, wealthy individuals, and Russian fossil fuels, the Closure of foreign companies and financial institutions operating in Russia, withdrawal of financial investments, a boycott of Russian companies. Etc. However, the US is still pressing its European allies to boycott Russian oil and gas, which is a major resource for the Russian treasury. These punitive measures are the most restrictive ever imposed against a major economic power. Approaching all-out war against the Russian economy and financial system. be that as it may, the US will make it impossible to conduct normal business in Russia, in other words, the US wants to crush Russia's economy.

Fifthly. The US demanded China, India, and Brazil (the biggest economies in the world) Cut their relationship with Russia, in this strategy, the US official revealed that there is direct communication to Beijing that there will definitely consequence for far-reaching sanctions elusion efforts or, any weapons support to Russia, such statements are directed at other poor economic countries, in order to terrorise them, all of those efforts are to tightening the noose around Russia federation.

Sixth, it should be mentioned that during the Ukraine war, US arms sales increased, however, the US defence contractors find more benefits in Ukraine, US arms manufacturers are cashing directly from the thousands of military equipment, like (missiles, drones, Tanks, individual weapons... etc). they also do stand to profit trillions of US dollars over the long run by supplying Eastern NATO wing countries (Estonia, Latvia, Lithuania, Poland... eager to boost their defences against Russia, however, because the NATO states rush to arm, the bill for US companies will be more obese. Such military equipment sales, aim to improve the US economy, while it tends to break down.

However, Cordesman (2022) argues that the war in Ukraine appears to be setting the stage for a long-term conflict between Russia and the US, as well as NATO's European allies. he added, even if Russia does not aggressively threaten the Baltic nations, intimidate another European country, or completely implement its more frightening nuclear threat, the possibilities for any sort of Russian collaboration with the rest of Europe and the US are minimal at best. and that is what the US exactly wants.

4. Discussion

Since the end of the cold war, the American concern nested sustained in the minds of Americans, after 1991 was to encircle and bring down Russia after their success in bringing down the Soviet Union, which is the main strategic objective. The Americans insisted on establishing final bases for American hegemony over the world, including the Russian Federation, which had just emerged from that crisis of collapse. Although the main competitor to the US was and still is China, but, the worry about Russia did not leave the American memory. The Russian empire's obsession with all its stages and developments constituted the US core strategy to contain and crush Russia.

As we mentioned above, the US gets unlimited interests from the war in Ukraine, therefore, Washington adds too much oil to the fire in Ukraine to rage war for a longer time. as well, Washington played a vital role to undermine any attempt to hold negotiations between Kyiv and Moscow to stop the war. However, from our perspective, Putin's statement that "Russia had no option but to begin the operation" is correct. Indeed, the purpose of Russia's

special military operation is to protect civilians in the Donbas region controlled by Moscow-backed revolutionary, as well as to ensure Russia's own national security.

For Now, the map of the military operations, In addition to the liberation of the Donbas region within the administrative borders recognized before the year 2014, Russian troops will continue in their push toward the East of the Dnieper River, as well as, rush from the south to free all the cities, Including Mariupol city on the north coast of the Sea of Azov, Kherson city in the Donbas region, and we believe the second goal of operation will be to Odesa the most important port city in the Black sea. Within this situation, military strategists believe that Russia's local support, direct logistics, and the terrain in the Eastern region support its larger, better-armed military, essentially allowing Russia to finally win the war. Henceforth, President Putin will tell President Biden the game is over. Figure 2 shows a map of Russian operations.

Figure 2: area of the Russian military operations

Source: CNN web, 23 April 2022.

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Legal Actions of Terrorism Case in Central Sulawesi

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Abstract
This study focused on the legal action of terrorism cases in Poso, Central Sulawesi. The focus of the analysis is to accentuate the contents of the legislation related to the legal handling of terrorism cases in Central Sulawesi. Thus, the study was carried out through statute, comparative law and conceptual approach, as well as using qualitative data analysis method. Data were processed by first describing all the legal materials that had been collected through inventory, identification, classification and systematization according to the problems in this study. Material reconstruction was next, including rearranging legal materials sequentially and logically. The last step was analyzing legal materials systematically based on the sequence of problems. National and global scale terrorism groups have well understood the consequences and legal actions of terror acts. The maximum, multiple layers of punishment have been stated in Law No. 15 of 2003 concerning the Eradication of Criminal Acts of Terrorism as an effort by the Indonesian government to suppress the movement of terrorism groups. The legal action process, especially in the Santoso' Group, is based on Law no. 15 of 2003 with a sentence of 6 to 15 years in prison and a 6 (six) months subsidiary confinement with reference to the Theory of Retribution and Prevention.

Keywords: Law, Terrorism, Poso, Retribution and Incapacitation, Prevention, Rehabilitation

1. Introduction

The global terrorism phenomenon originated in the 20th century where terrorism has become a part and characteristic of political movements from the extreme right and left groups within the spectrum of a country's political ideology. Terrorism has even become one of the threats and challenges for the international community in the 21st century which requires effective, efficient and reasonable collective security. In the Poso area, the development of radical ideology is rapid because of a mutualism symbiosis that has occurred since the communal conflict. For the Muslims of Poso, the arrival of jihadists was warmly welcomed because they came to strengthen the Muslim ranks of Poso. More than that, Muslims receive a new injection of enthusiasm with a radical ideology that allows them to fight non-Muslims as part of jihad, and the guarantee of heaven by death in jihad (Ali, 2016; Khairil, 2017b).

The conflict and violence that took place in Poso were ended marked by the Malino Declaration. But, it does not necessarily make the people of Poso live side by side safely and peacefully. The Poso conflict which has claimed thousands of lives and material damages makes it difficult for the people of Poso to trust each other and live in

prolonged trauma (Karnavian, 2008; McRae, 2016). Social reality in the community shows a situation that still requires attention and hard work from various parties to realise a peaceful Poso. After the Malino Declaration, or better known as the reconciliation phase, various incidents still occurred but were different from the time of the Poso conflict. Generally, the forms of terror that occur post-conflict are bombings, murders, mutilations, and various other forms of terror (Khairil, Yusaputra, et al., 2020).

The act of terrorism in Poso has a complex problem that cannot be separated from the Poso conflict. Psychological trauma and grudges against each group cannot immediately be abolished by the Malino Declaration. Complexity and uncertainty of the problem increased parallel to the disappointment of the Muslim group over the conflict resolution which was considered to have been engineered to protect the interests of the Christian group. The accumulated disappointment was finally vented in acts of terror.

The word *terrorism* is often synonymous with *Muslims* (Fenton, 2014; West & Lloyd, 2017). Unfortunately, the image of *Muslim terrorism* has been constructed as part of social reality. The image produced an impression of *Islam is a terrorist* and *terrorists are Muslims*. But, the fact is that acts of terrorism were not only carried out by Muslim groups, but also by other religious or non-religious extremist groups. For example, the murder case of a fish seller in Taripa, East Pamona District, revealed that there were 17 terrorists from Christian groups who were then placed in Luwuk Prison (Ali, 2016; Karnavian, 2008).

Normatively, the mass media must be neutral (Creech, 2007; Feintuck & Varney, 2006; Masum & Desa, 2014). But, ideological interests, religions and beliefs often unavoidably influence the production and presentation of news (Istriyani, 2016; West & Lloyd, 2017). In conditions like this, the mass media opens up wide opportunities for the entry of various interests of the communicator (Hornle, 2018; Kurt, 2015). This has been stated by Mc Quail that the mass media at this time is not just a tool to convey information without any content of interest in it (McQuail, 2010). Today's mass media is believed to always represent certain interests whether it be economic, political, cultural, ideological or religious (Basit, 2016; Istriyani, 2016).

Various accusations, slander, and speculations that are often premature and sometimes difficult to justify the validity and truth are developed by the media from the United States to Indonesia itself lead to or are identical to the hard-line radical Islamic movements or fundamental Islamic movements (Khairil, Yusaputra, et al., 2020). The arrests of several Islamic movement figures, such as JUT, HRS, ABB, ADS, M Dg L, and AH, as well as the verdicts on various Islamic movements, such as Jamaah Islamiyah, are news packages that had the nuances of terrorism and are identical to the movement of Islamic organizations (Khairil, 2018; Khairil et al., 2017).

Debates about the perpetrators and motives of terrorism often lead to the ideological or religious identification of terrorist actors, because ideology or religion is a source of legitimacy for their actions (Alexander, 2013; Rokhmad, 2017; Triandis, 2013). The state gets the legitimacy of violence or terror because of its constitutional sovereignty or authority, while community groups usually get legitimacy from the ideology or religion they want to fight for (Al-zewairi & Naymat, 2017; Rokhmad, 2017). The issue of *Islamic terrorism* needs to be understood and emphasized further, whether Islam legitimizes terror or terrorist actors, Islamic state or not, and those who have hijacked Islam (Arifin, 2017; Khairil, 2017b; Sinaulan, 2016). The biased perception of terrorism from some circles in the Western world and non-Muslim communities in Indonesia has placed Islam as a threat (Al-zewairi & Naymat, 2017; Törnberg & Törnberg, 2016; Warren, 2019). The impact of this perception seems to be stronger since the terrorist attacks on World Trade Center and Bali were broadcast by the mass media. Thus, resulting in many countries and Islamic community groups becoming targets in the war against terrorism (Khairil et al., 2017).

Law enforcement policies against perpetrators of terrorism are based on a set of laws and regulations. Law enforcement against terror convicts consists of various stages, namely; investigation, arrest, detention, a trial of the accused and ending with the prison of the convict (Nasution, 2018). The international community recognizes that law enforcement against suspected perpetrators of acts of terrorism has had many successes (Tehrani et al., 2013). In the field of arrests and investigations to date, more than a thousand of the suspects have been arrested, brought to court and imprisoned. More than 700 terrorism convicts have finished serving prison and returned, 226 are still being placed in 19 correctional institutions (Khairil, 2018, 2019; Sukabdi, 2015). Our judicial process is

also considered to be following democratic standards because it is conducted openly and transparently (Sukabdi, 2015).

In the Criminal Code (Kitab Undang-Undang Hukum Pidana, KUHP) of Indonesia, the type of crime (*strafsoort*) is divided into two, namely the main crime and the additional crime. The main punishments include capital punishment, imprisonment, confinement, fines, and imprisonment. Meanwhile, additional punishment is in the form of revocation of certain rights, confiscation of certain goods, and announcement of judge's decision. In the Law on the Eradication of Criminal Acts of Terrorism, the types of punishments that are threatened against perpetrators who commit criminal acts are capital punishment, life imprisonment, imprisonment, confinement and fines. The death penalty is presented in Article 6, Article 8, Article 9, Article 10, Article 14, Article 15, and Article 16. Life imprisonment is presented in Article 6, Article 7, Article 8, Article 9, Article 10, Article 14, Article 15, and Article 16. While imprisonment is presented in Article 6, Article 8, Article 9, Article 10, Article 11, Article 12, Article 13, Article 15, Article 16, Article! 20, Article 21, and Article 22, imprisonment is only presented in Article 23, Likewise with fines which are only presented in Article 18 (Republik Indonesia, n.d.).

In addition to the main criminal offences above, Law no. 15 of 2003 concerning the Eradication of Criminal Acts of Terrorism (Republik Indonesia, 2003) also recognizes other types of crime in the form of freezing or revocation of corporate licenses as referred to in Article 18 paragraph (3). In the explanation of this law, it is stated that the suspension or revocation of permits is an administrative sanction, although it must be admitted that among experts there are still differences of opinion whether the freezing or revocation of corporate license is an administrative sanction or an action sanction (*maatregel*). However, it should be noted that administrative sanctions are essentially lighter than criminal sanctions. Thus, it is a mistake to categorise the suspension or revocation of a corporate license as an administrative sanction. When a corporation commits a crime and its operating license is revoked, this condition is the same as imposing a death penalty on the corporation. Because with the revocation of the corporation's license, the corporation is ceased to exist or is dead. Suspension or revocation of corporate licenses is more appropriate if they are categorized as action sanctions, not administrative sanctions. The imposition of sanctions in the form of freezing or revocation of corporate licenses in the terrorism law can only be imposed on corporations that are identified and registered with the Ministry of Law and Human Rights. For corporations that are part of a transnational crime, such sanctions cannot be imposed.

2. Methods

This study focused on the legal action of terrorism cases in Central Sulawesi. Thus, we utilised a conceptual-normative approach. The normative legal research explored the nature and scope of legal discipline which was defined as a system of teachings about reality and included within the scope of analytical disciplines and prescriptive disciplines. Legal disciplines are usually included in prescriptive disciplines if the law is seen to only cover the normative aspect. Normative legal research tends to image law as a prescriptive discipline by only looking at law from the point of view of its norms (Irwansyah, 2020; Ishaq, 2017; Kusuma, 2013).

Therefore, this study emphasised document study for data collection and disclosure of the meaning of a positive legal norm. The focus of the analysis is to accentuate the contents of the legislation related to the legal handling of terrorism cases in Central Sulawesi. Thus, the study was carried out through statute, comparative law and conceptual approach, as well as using qualitative data analysis method. In this study, we provide a problem solving and analytical point of view seen from the aspects of the legal concepts and values contained in the norming of law concerning the concepts used. The case approach will also be used in this study where we build legal arguments from the perspective of a concrete case (Putman, 2018). The main aspect that was studied in each of these decisions is the judge's consideration of the decision itself.

The sources of materials used in this study are as follows: (1) primary materials in the form of laws and regulations that contain rules regarding the provision of legal aid to the poor, including Law No. 15 of 2003 concerning the Eradication of Criminal Acts of Terrorism; (2) secondary materials in the form of books, journals, research results and papers that are relevant to the research problem; and (3) tertiary materials, in the form of legal materials that provide instructions and explanations of primary and secondary materials, such as dictionaries and encyclopedias.

In this study, data were processed by first describing all the legal materials that had been collected through inventory, identification, classification and systematization according to the problems in this study. Material reconstruction was next, including rearranging legal materials sequentially and logically. The last step was analysing legal materials systematically based on the sequence of problems.

3. Results and Discussion

This study focuses on the results of the court decision Number: 487/Pid.Sus/2013/PN.JKT.TIM.; 970/Pid.Sus/2014/PN.JKT.TIM.; 629/PID/Sus/PN.JKT. TIM.; 859/PID.SUS/2014/PN.JKT.TIM.; and 1047/Pid. Sus/2015/PN.JKT.TIM. All these decisions were handed down to the terrorist groups of Santoso who at the time of the trial process for all of the defendants were still hunted by the anti-terror Detachment 88. The sanctions imposed on the defendants were relatively diverse.

First, the court decision number 487/Pid.Sus/2013/PN.JKT.TIM. focued on defendant JOKO SANTOSO alias SANTO. The panel of judges stated that the defendant, JOKO SANTOSO or also known as SANTOSO or SANTO, had been legally and convincingly proven guilty of committing the Criminal Acts of Terrorism as regulated in Article 15 in conjunction with Article 9 of Law No. 15 of 2003 concerning Stipulation of Government Regulations in Lieu of Law of the Republic of Indonesia Number 1 of 2002 concerning the Eradication of Criminal Acts of Terrorism became a law in the Second Indictment. In the end, the panel of judges sentenced the defendant JOKO SANTOSO or also known as SANTOSO or SANTO in the form of six years imprisonment with a reduction as long as the temporary detention with the order that the defendant remained in custody.

The court decision number 970/Pid.Sus/2014/PN.JKT.TIM. focused on defendant WIKRA WARDHANA or also known as ACO or OCHA or ABU FAHRI. The panel of judges stated that the defendant was guilty of committing a crime of terrorism as regulated and threatened with a crime in Article 15 in conjunction with Article 7 of Government Regulation in Lieu of Law no. 1 of 2002 which was enacted into law following Law No. 15 of 2003 concerning the Eradication of Criminal Acts of Terrorism. Thus imposing a criminal sentence in the form of imprisonment for six years with a reduction as long as the temporary detention, with the order that the defendant remains detained.

The court decision number 629/PID/Sus/PN.JKT.TIM. focused on defendant RIYANTO or also known as ATO MARGONO or ABU ULYA. The panel of judges decided and declared that the defendant was legally and convincingly proven guilty of committing a criminal act of terrorism as regulated and was subject to criminal sanctions in Article 15 in conjunction with Article 9 Government Regulation in Lieu of Law Number 1 of 2002 concerning Eradication of Criminal Acts of Terrorism as has been stipulated as a law based on Law Number 15 of 2003. In its decision, the panel of judges sentenced the defendant RIYANTO or also known as ATO MARGONO or ABU ULYA to a criminal sentence of fifteen years imprisonment and is reduced as long as the temporary detention, with an order that the defendant remains in custody and a fine of Rp. 50,000,000,- subsidiary of six months in confinement. The defendant had caused the loss of lives of innocent people. Noldi Ambolando was targeted for being drunk. The suspect attacked the victim by pretending to approach the victim. When the victim was seen off guard, Ato alias Abu Ulya pointed a gun and opened fire at the victim. Two bullets pierced the victim's head and resulted in his death.

The murder cases by the terrorist group of Santoso seems very trivial. Santoso as the *imam* and the highest leader of this group wanted a gift for his marriage. This inhumane reason hurt the victim's family, especially because the victim was not the focus of the Santoso group's target where it was known that the Police and TNI were the main targets of the Santoso group's terror. The bombing incidents and the disappearance of innocent human lives in a series of terror acts by Santoso's group had also become a phenomenon of anonymity. Because, people, especially those within the movement radius of Santoso's group, can become the next victim regardless of their gender, religion, and profession.

The court decision number 859/PID.SUS/2014/PN.JKT.TIM. focused on defendant MUHADI or also known as SUAIB or ADI. The panel of judges stated that the defendant was guilty of committing a crime of terrorism as

regulated and threatened with a crime in Article 15 in conjunction with Article 7 of Government Regulation in Lieu of Law no. 1 of 2002 which was enacted into law following Law No. 15 of 2003 concerning the Eradication of Criminal Acts of Terrorism. Thus, imposing a criminal sentence in the form of imprisonment for six years with a reduction as long as the temporary detention, with the order that the defendant remains detained.

Court decision number 1047/Pid.Sus/2015/PN.JKT.TIM. focused on defendant BUSRON ABU BAKAR or also known as BUSRAH or ATIF or DAN. The panel of judges decided and declared that the defendant was legally and convincingly proven guilty of committing a criminal act of terrorism as regulated and was subject to criminal sanctions in Article 15 in conjunction with Article 9 Government Regulation in Lieu of Law Number 1 of 2002 concerning Eradication of Criminal Acts of Terrorism as has been stipulated as a law based on Law Number 15 of 2003. Thus, imposing a criminal sentence in the form of imprisonment for six years with a reduction as long as the temporary detention, with the order that the defendant remains detained.

2. The Retribution and Incapacitation: The Case of Santoso's Group

G. Peter Hoefnagels stated that retribution is the oldest criminal theory in the history of human civilization which is based on giving recompense to people who violate the provisions of criminal law. The earliest idea of retribution used the concept of private revenge in which the victim or his family gave the same actions to the perpetrator or his family for the loss suffered by the victim or his family. The subjective beginning of this theory is an *eye for an eye and a tooth for a tooth* (Kain & Recinella, 2017; Luthan, 2009). For the next development, *personal revenge* turns into *social revenge*, and again into *state revenge* (Jackson et al., 2019). Even though the victims are individuals, it is the state that bears the responsibility to punish the perpetrators (Wahyuni, 2019).

The purpose of punishment according to the theory of retribution is *to satisfy the claims of justice*, while its beneficial effects are secondary (Makarao, 2005). This absolute demand for justice is seen in Immanuel Kant's that punishments are never solely done as a means to promote other goals, but in all cases must be imposed only because the person concerned has committed a crime (Byrd, 1989). This must be done because everyone should receive retribution for their actions. The urge for revenge should not remain with the members of the community. Otherwise, they could all be viewed as people who took part in the killing which was a violation of public justice. It should be noted that the theory of retribution basically does not attempt to *eliminate all criminal actions* (Herszenbaun, 2019). It is more of an effort to create a fair distribution of good and bad between criminals and law-abiding individuals, by limiting the freedom of the perpetrators with relatively proportional penalties (Luna, 2002; Skaret, 2002). In connection with the principle of proportionality, John Finnis stated that the presence of criminal law is to create a quality of life for the community (Alexy, 1998; Hon, 2000). This aspect of proportionality indicates that there must be a balance between the law-breaking actions of the perpetrators with the losses caused by said actions.

The theory of incapacitation is the act of making a person incapable of committing a crime (Pereboom, 2020). If a criminal is put in prison for committing a crime, it means that the community is protected from the next crime that the offender may commit for the period of time (Arief, 1996; Euston & Neilson, 1993; Kaiser & Hagan, 2018). Thus, it is said that incapacitation has been practised in various societies. Thieves' hands are cut off to prevent further theft and sex offenders are castrated so they don't commit more sexual crimes. On this note, castration as an alternative to prison is no longer practised (Luthan, 2009). Now incapacitation takes the form of detention or imprisonment, therefore, theoretically, the offenders cannot harm society (Cavadino & Dignan, 2007). This theory is also known as *isolation*, *separation*, *restriction*, and *confinement*. The theory of incapacitation is also similar to the theory of prevention, although prevention in incapacitation theory is narrower in meaning than prevention theory, as it only leads to specific deterrence (Cotton, 2000; Kaiser & Hagan, 2018).

The handling of terrorism cases, in Central Sulawesi in particular and in Indonesia in general, is focused on the perpetrators and how to eradicate the group more resulting in the lack of attention from the government towards the victims of terrorism and their families. The government as well as the media seem to see victims only as secondary subjects. In the terrorism case of Santoso's group, the victim's family felt did not accept the loss of their family members' lives as a result of this group's acts of terrorism. The tragedy is proof that terrorism is a sadistic

act, does not take into account and heed universal human values (Khairil, 2017a). Because humans are God's most noble creatures and have the right to live, even in any religious teaching, killing one soul is a major sin. Innocent people become victims of the savagery of a group of people who suppress acts of terror as the truth of their group.

The court's decision for the terrorism case of Santoso shows that with the inclusion of imprisonment of the perpetrators, this terrorist group power was getting weaker. The National Police have set up nature-based prisons or barricades for terrorists. Their presence in the vicinity of Gunung Biru or around the Tambarana village has been known thanks to the information from the community and various statements from Santoso's members who were caught and tried. The defendants of the terrorist group were cooperative in explaining in detail the pattern of the Santoso group's guerrilla movement, which was named *the guerrilla pattern of the Anoa*. The movement of this group is increasingly being pushed deep into the forest and far from settlements. Although the movement pattern of this group is relatively reduced due to the location of their guerrillas being identified by the National Police. Still, the people around the base location of this terrorist group feel disturbed and have not been able to feel a peaceful life as before. The imprisonment of the members of the terrorist group also proved to have a deterrent effect.

The results of the revision of Law No. 15 of 2003 concerning the Eradication of Criminal Acts of Terrorism (Republik Indonesia, 2003) also have pros and cons. Moreover, one of the decisions was the death penalty for the defendants in terrorism cases. Considering that their actions are classified in the criminal case of premeditated and systematic murder. Thus, the death penalty is considered appropriate for the defendants. But on the other hand, the death penalty also cannot fundamentally solve the problem. The death penalty is considered to only cause endless grudges between the perpetrators and law enforcement officers.

For example, in the Bali Bombing terrorism case, one of the defendants was Ali Imron. In an interview session with the media, it was stated that it only takes two hours for someone to be recruited to carry out an act of terror (Erdianto, 2017). Thus, if the perpetrators of lower-class terrorism are sentenced to death, it will result in their family, colleagues and society having the potential to hold grudges against the police and this can lead to the future seeds of terrorism.

However, the act of putting the defendants in prison is indeed considered commensurate with the results of their actions. Life imprisonment is considered sufficient to have a deterrent effect on the defendants (Bove & Böhmelt, 2020). At the same time, it is considered to provide an opportunity for the defendants to repent and regret their actions. The families will not feel too disappointed with the decision. This life imprisonment sentence is also considered to be able to distance the defendants from the influence of the outside world and make them unable to commit crimes within the community. The judge has used the punishment based on the theory of incapacitation by placing the members of Santoso's terrorism group in prison. Thus, it can be said that if the judge imposes a sentence of imprisonment or confinement, in essence, the judge has stripped the possibility of future criminal actions done by the defendant for a certain period.

Barda Nawawi Arief stated that the nature of imprisonment, especially in terms of controlling crime, is a deprivation of liberty. With the deprivation of the perpetrator's freedom, the space for committing a crime can be limited. On the other hand, it also means that the community feels safe from being disturbed by criminal acts as long as the perpetrator is deprived of his freedom (Arief, 1996). Van Bemmelen once stated that the deprivation of liberty is more secure in society. The power to secure, according to Van Bemmelen, is one of the goals that can be included in the relative theory in addition to specific prevention and general prevention (van Bemmelen, 1987).

3. Prevention and The Possibility of Rehabilitation for Terrorists

Prevention theory has an assumption that humans are always rational and always think before acting to take maximum rational benefit. In this case, the prospects for profit and loss are weighed against calculative decisions and choices (Luthan, 2009). Each individual chooses whether to or not to commit a crime. If the individual chooses to commit a crime, the punishment is imposed on that person, provided that the perpetrator is arrested (Kessler & Levitt, 1999). The perpetrators of national and even global terrorism groups have well understood the

consequences of their activities and the legal punishment that threaten them. All acts of terror, either to the public or to the nation's institutions, have been calculated carefully and in detail by the perpetrators.

Another assumption of the preventive theory is that criminal acts can be prevented if people are afraid of punishment. Punishment for certain criminals, or specific deterrence, may be related to physical restrictions or incapacity, such as confinement or the death penalty. The preventive theory also assumes that members of the community may be deterred from choosing to participate in criminal acts. Prevention of terror acts is expected to serve as an example to potential perpetrators (Luthan, 2009). The perspective of prevention theory in particular also refers to the perpetrator as a rational actor who can weigh the pros and cons of committing a crime and the imposition of a criminal offence (such as imprisonment) will make potential candidates think about how much it will cost if proven guilty.

The multiple layers of punishment had been stated in Law No. 15 of 2003 concerning the Eradication of Criminal Acts of Terrorism as an effort by the Indonesian government to suppress the movement of terrorist groups. Article 1 paragraph 1 of Law no. 15 of 2003 concerning the Eradication of Criminal Acts of Terrorism reveals various criminal elements to ensnare the perpetrators, including action against the law, carried out in a structured and systematic manner, aims to destroy the sovereignty of the Indonesian nation by spreading terror, threats of violence or creating fear in civil society and resulting in casualties on a large scale, and or depriving the liberty or intentionally taking people's lives, and destroying vital and strategic objects or disturbing the living environment or public facilities (Republik Indonesia, 2003). The terrorism group led by Santoso has been deemed to have fulfilled the criminal aspects mentioned above, wherein its various actions this group spread terror to the wider community, carried out murders of innocent people, damaged public facilities and their actions disrupted the ecosystem by displaying his actions of killing and eating the Anoa, an endemic and protected animal of Sulawesi.

Prevention theory is influenced by Cesare Beccaria and Jeremy Bentham. Cesare Beccaria viewed that if the same sentence were imposed for two different crimes, people would not have a stronger deterrent against a more dangerous crime if they found it worthwhile to do (Beccaria et al., 2017; Varkey & Nair, 2021). Meanwhile, Jeremy Bentham viewed the purpose of a sanction as to persuade someone to always choose the lightest crimes (Katyal, 1997; Quinn, 2017; Riley, 2018; Rossmo & Summers, 2021).

The two judges' decisions, in this case, look different. One of the defendants was sentenced to 15 years in prison (court decision number 629/PID/Sus/PN.JKT.TIM), while the other defendants were only sentenced to 6 years in prison (court decision number 487/Pid.Sus/2013/PN.JKT.TIM., 970/Pid.Sus/2014/PN.JKT.TIM., 859/PID.SUS/2014/ PN.JKT.TIM., and 1047/PID.SUS/2014/PN.JKT.TIM.), each with a reduced term of detention. This is in line with Cesare Beccaria and Jeremy Bentham by having a different level of punishment for each different kind of crime that the members of Santoso's group did. This way, terrorists or people who are tempted to join terrorist groups should think and consider. In addition to criminal threats for the defendants, social sanctions also await the families of the accused. Their wife, children and other families members will suffer the consequences of the terror acts.

However, another case of the murder of the victim by ex-members of Santoso's group occurred at a traditional gold mining location of Parigi Moutong, Central Sulawesi. On the afternoon of 30th December 2018, two residents in Salubanga village of Sausu District, Parigi Moutong, a human corpse was found. The victim of the terrorism violence was found by residents in a pathetic condition where the victim's body was mutilated and the victim's head and body were found separately. The victim was identified as one of the traditional mining workers in the village. It was confirmed that the body was a victim of the terrorism group because when the victim was about to be evacuated by security officers, a series of gunfire from an unknown direction rained down on officers and residents. Thus, there was a shootout between the security officers and the terror group (Jurnaliston, 2018; Santoso & Gua, 2019).

Louis Michael Seidman stated that the main premise of prevention theory is that the criminal justice system should minimize the amount of harm caused by crime and there should be efforts to prevent crime. Since the meaning of social calculation also includes the welfare of each individual, the cost of preventing crime is not only the cost of

law enforcement by the police and the cost of the judicial process but also the punishment of the criminals (Seidman, 1984).

For sentencing to optimally run, two steps need to be taken. First, create total prevention costs at a level that minimizes the sum of the costs of crime and prevention efforts. This level can only be realized when additional prevention costs are brought into a situation where the cost of prevention is equal to the cost of the crime to be tackled. Second, achieve a proportional balance between the following two components: punishment and law enforcement costs (Tonry, 2006). It must be decided whether it is more efficient to add police personnel and judges who are capable of arresting and processing a greater number of criminals while reducing the sentences handed down to each criminal caught, or to achieve the level of punishment that is expected to be commensurate with the imposition of heavier penalties (Damayanti, 2021; Fantrov et al., 2021).

The emergence of rehabilitation theory begins with the view that corporal punishment is no longer relevant to be applied. The provision of corporal punishment often causes the perpetrators of crimes to become disabled to prevent future violations of the law (Luthan, 2009). The rehabilitation theory is also often referred to as the reparation theory. This theory assumes that criminals are sick people who need treatment. Like a doctor who prescribes medicine, the judge must administer the punishment that is predicted to be most effective to turn criminals into a good citizens. The imposed sentence must match the conditions of the criminal instead of the nature of the crime. This means that sentencing refers to criminal individualization.

Seeing the results of the judges' decision on court decision number 487/Pid.Sus/2013/PN.JKT.TIM., 970/Pid.Sus/2014/PN.JKT.TIM., 859/PID.SUS/2014/ PN.JKT.TIM. and 1047/PID.SUS/2014/PN.JKT.TIM. related to the rehabilitation theory, it can be analyzed that the six-year prison sentence for terrorists is still considered relatively light, compared to the consequences or predictions of possible losses that will result from this group's acts of terrorism. Thus, it is hoped that within six years of imprisonment, when returned to society, the defendant will get valuable lessons and awareness to no longer carry out terror acts.

One of the goals of the rehabilitation theory is for the process of reintegrating perpetrators after serving a period of detention back into society. Through proper treatment and good coaching programs, a criminal is expected to turn into a good citizen. This theory emerged as a reaction to cruel criminal practices against convicts in various countries. Thus, the rehabilitation theory is the antithesis of the retributive theory which considers criminals to be worthy of punishment for violating the law (Damayanti, 2021; Luthan, 2009; Sukabdi, 2015). For the rehabilitation program to be able to reduce the crime rate, the sentencing policy should not be rigid. The rigidness of the sentence will become a barrier to the efforts of rehabilitation. For example, drug addicts treatment programs must be directed at the characteristics and needs which require individualization (Widiasyam et al., 2020). That is, if the perpetrator of a terror act needs to be imposed with a criminal sanction, the criminal sanction should be adjusted to the condition of the perpetrator and the characteristics of the committed crime (Hettiarachchi, 2018; Horgan & Braddock, 2010).

In the case of the members of Santoso’s group, the best step for terrorism defendants is to provide them with the right religious understanding (Hettiarachchi, 2018; Khairil, Alatas, et al., 2020). Because terrorists, like Santoso for example, usually cite verses from the Quran to brainwash potential perpetrators by providing and embedding a wrong understanding of jihad in the minds of the new cadres. Santoso's shrewdness in processing words and reference sources in the form of fragments of Qur'anic Verses and Hadith became the justification for each of his actions (Khairil, 2017b; Khairil, Yusaputra, et al., 2020). Even though the teachings of any religion, especially Islam in correlation to Santoso’s case, killing a human soul is a major sin and it is difficult to get forgiveness from God. This proves that the perpetrators of the crime of terrorism are a group of people who are victims of the inappropriate indoctrination process of religious beliefs (Khairil et al., 2021).

Michele Cotton states that the theory of rehabilitation is also called *reform*. According to this theory, the state system should be used as a means to provide training in skills that are physically and psychologically beneficial such as dealing with problems and drug addiction, or even as a means of self-reflection. Rehabilitation theory also justifies short imprisonment terms or diversion to non-imprisoning programs that are held outside the prison

building (Cotton, 2000). In this instance, one of the examples is Basri, one of the ex-leader of the group after Santoso, who surrendered himself to the authorities and persuaded other members who are still being hunted to also surrender themselves (Jbr & Idh, 2021; Khairil et al., 2021).

The theory of rehabilitation has currently undergone a radical change. Evidence from research, studies and practical experience by experts shows that good management and programs can reduce the possibility of repeating crimes. Programs that are widely accepted that could decrease repeating crimes include but are not limited to: training for drug addicts, cognitive skills programs, and training for sexual criminals (Cullen et al., 2000). However, these positive findings do not mean that said programs are easy to enrol in. That is, the results are not automatically used as a new official program by the state (Tonry, 2006). Despite the positive side of the rehabilitation theory, Hart reminded that rehabilitation is a healing measure that only has the opportunity to be used when criminal law has failed in its main task which is defending society from criminals who violate the law. Society can at any time be divided into two classes: (1) those who break the law; and (2) those who have not. Placing rehabilitation as the dominant goal means giving up hope of influencing the second group (Solehuddin, 2003).

4. Conclusion

Indonesian government gave legal actions as retribution and incapacitation of the terrorist group as an example to deter future terrorism seeds, arrested terrorists are also being given rehabilitation opportunities to redeem themselves. The essence of prevention of future terrorism acts in the court decisions regarding Santoso's group is apparent on the different levels of the sentence, considering the weight of each crime done. While the decisions are constructed to deter and decrease future terrorism acts, the terrorism case of Santoso's group in Poso, Central Sulawesi certainly didn't stop with the imprisonment of the leaders of the group. The root of these problems can be traced back to the time of the communal conflict of Poso where grudges are still present today. Sympathizers of Santoso's group are extant and its ex-members are still being hunted as of the time of this study. Thus, there is still present the opportunity for radicalism to grow in Poso and the surrounding areas.

Based on this study, we would like to recommend future studies which focus on the deradicalisation model and application; the counter-terrorism model; and the development of the law on terrorism in Indonesia. A comparative study between red zones and hotspots of terrorism in Indonesia is also recommended, as it would provide a deeper understanding of terrorism in Indonesia.

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Improving Criminal Justice System Responses to Crime Victims with Disabilities in India

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Abstract
In the past three decades, significant progress has been made in advancing victims' rights, ensuring comprehensive services for crime victims, and restoring victims as active participants in the criminal justice system in India. However, some victims, particularly those with disabilities, often remain marginalised. This paper examines how prejudices, stereotypes, and misconceptions contribute to the lack of participation of people with disabilities in the criminal justice process in India and how they are often compounded by societal assumptions, stereotyping, and misconceptions. It is argued that for too long, the criminal justice system has failed to adequately address the unique circumstances of people with disabilities. Specifically, this paper explores ways to assist crime victims with disabilities in accessing the criminal justice system, exercising their rights as victims of crime (some of which have legal standing, while others do not), and maximizing their participation in the criminal justice process. Finally, it is concluded that there must be a widespread cultural change among the police, the legal profession, the judiciary, the disability sector, and the general public to better assist victims with disabilities in the aftermath of crime.

Keywords: Victim, Disability, Victims' Rights, Access to Justice, Responses to Victims, Victim Participation

1. Introduction

Since the 1970s, there has been a "renewed recognition" of victims' needs and interests and concerted efforts to reinstate victims as "active" participants in criminal justice processes (Parsonage, 1979, p.8). Significant progress has been made in advancing victims' rights and providing comprehensive services to victims of crime in the past three to four decades (O'Connell & Hayes, 2009). This paper demonstrates that victims' rights are not accessible to all victims of crime and that some victims, such as those with disabilities, often remain marginalised. It argues that it is necessary to improve responses to victims of crime with disabilities in India to exercise their rights as

victims of crime and participate in the criminal justice system if they so choose. Finally, this paper argues that improved responses to victims with disability will minimise the risk of secondary injury (Kirchhoff, 2005).

The international community asserted its collective will to restore the rights and interests of victims when it adopted the United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (UN ODCCP, 1999). The Declaration aims to ensure that victims are adequately recognised, treated equitably, and offered assistance to deal with the consequences of victimisation. Several other international instruments complement the UN Declaration (O'Connell, 2011). The existence of these instruments is indicative of the global recognition that victims deserve courtesy, dignity, and respect regardless of their nationality, ethnicity, or cultural beliefs and, significantly in the context of this paper, disability (O'Connell, 2011; UN Declaration, 1985; UN Convention on the Rights of Persons with Disabilities, 2006).

However, the United Nations Convention on the Rights of Persons with Disabilities expresses concern that "persons with disabilities continue to face barriers in their participation as equal members of society" (United Nations, 2006a, p.2). Similarly, article 12 affirms the right of people with disabilities to equal recognition before the law and the state's responsibility to ensure that they have access to the assistance they need to exercise their legal capacity (United Nations, 2006a, Article 12, p.10). This applies to both victims and defendants with disabilities.

1.1. Disability Defined

People with disabilities are not a homogenous group, and extreme care must be taken to avoid making any generalisations (Murray & Powell, 2008). A "person with disability" is defined under the Rights of Persons with Disabilities Act (2016) of India as a person who suffers from a long-term physical, mental, intellectual, or sensory impairment that, when coupled with barriers, prevents his full and effective participation in society equally with others (Ministry of Social Justice & Empowerment, 2016). Thus, it is a broad term encompassing people with developmental disabilities, traumatic brain injury, severe physical disabilities, major mental disorders, degenerative brain diseases, permanent brain injury due to a stroke, and organic brain injury (Sorensen, 2002). Compared to the Persons with Disabilities Act, 1995, the Rights of Persons with Disabilities Act represents a paradigm shift. In accordance with the CRPD, the legislation defines persons with disabilities to include 21 "impairments," also known as "benchmark disabilities," which are legally determinable and eligible for government benefits. The number of "impairments" is much higher than the seven impairments listed in the 1995 legislation. The number has tripled (Ministry of Social Justice & Empowerment, 2016).

1.2. Victims' Rights Defined

It should be noted that the term 'rights' concerning victims of crime is indeed contested. According to some, the term 'rights' in this context is more symbolic. In general, such rights are simply rhetorical platitudes that do not have much practical impact, as they are not enforceable (O'Connell, 2015).

There is no doubt that the term 'rights' concerning victims is used not only in reference to enforceable rights but also to aspirational law. In addition, O'Connell (2015) states that "a right may be guaranteed by law, recognized by an international treaty, or rooted in social morality".

A political commitment can be discerned from the United Nations Declaration of the Basic Principles of Justice for Victims of Crime and Abuse of Power (UN ODCCP, 1999). While it serves as a guide for member states, they are not obligated to implement or comply with the standards it establishes (Groenhuijsen, 2014). Despite some advocating the adoption of a legally binding document, caution must be exercised to avoid creating inequities where member states with fewer resources cannot comply with the requirements (Hilf, 2014).

Regardless of whether victims' 'rights' are aspirational or legally enforceable, it is a moral imperative that these 'rights' be accessible to all victims regardless of their abilities or disabilities (O'Connell, 2015).

Despite being entitled to the same criminal and civil protections as all Indian citizens, crime victims with disabilities face significant barriers to accessing the legal system and seeking justice (Human Rights Watch, 2018). People with disabilities are more likely than others to be victimized by interpersonal violence yet receive less assistance in the aftermath of the abuse and prevent it from reoccurring (Dillon, 2010). Historically, victimology has failed to consider the social characteristics and individual experiences of "people with disabilities as a unique category of victim," as well as the reactions to them as victims (Edwards, Harold & Kilcommins, 2012, p. 17; Kirchhoff, 2005).

2. Increased Risk of Victimisation for People with Disabilities

According to some studies (Dillon, 2010; Hughes et al., 2012; Jones et al., 2012; Sorensen, 2002), both children and adults with disabilities are at heightened risk of serious and violent crime and sexual assault. Jones et al. (2012) conducted a systematic review and meta-analysis that found that disabled children are almost four times more likely than non-disabled peers to experience violence. It appears that children with mental or intellectual disabilities are also more vulnerable to violence, especially sexual violence (Jones, 2012). Adults with disabilities are 1.5 times more likely to become victims of violence than those without disabilities. Victims with mental health conditions are four times more likely to become victims of violence (Hughes et al., 2012). Moreover, people with disabilities are also particularly vulnerable to repeat victimization (Office for Victims of Crime (OVC), 2002; Robinson, 2012).

People with disabilities are at an increased risk of victimisation (Sparkes, 1982; Fattah, 2014). There is evidence that people with disabilities may have had limited access to preventative education, making them less likely to recognize and avoid abusive and criminal situations (Robinson, 2012; Dillon, 2010; Murray & Powell, 2008). Robinson (2012) reports that young people with disabilities often accept inappropriate sexual behavior (such as coerced and forced sex and forced viewing of pornography) as the norm. Moreover, research shows that people with disabilities face an elevated risk of violence due to their living arrangements (Victorian Equal Opportunity & Human Rights Commission, 2014). For example, people with intellectual disabilities who live in shared residential care or institutional settings are most vulnerable to abuse (Murray & Powell, 2008). It is difficult to determine the 'true' extent of crime against people with disabilities, given that many crimes are committed by carers and not reported to the authorities. And, disability data is not necessarily captured by police when incidents are reported (Victorian Equal Opportunity and Human Rights Commission, 2014). The remainder of this paper focuses on post-victimisation interventions.

Turman (2001 in Tyiska, 2001) notes that many victims of crime with disabilities have never participated in the criminal justice system despite high levels of victimisation. People with disabilities report much fewer crimes, and far fewer cases are prosecuted and convicted (Sorensen, 2002). The National Crime Records Bureau (NCRB) collects and analyses crime data in India. NCRB data on the rape of women with mental and physical disabilities show 87, 116, and 94 cases, respectively, for 2018, 2019, and 2020 (NCRB, 2019; NCRB, 2020; NCRB, 2021). There is criticism that NCRB does not provide disaggregated data on victims with disabilities in its report (Pandit, 2021).

Moreover, in its conclusions to the Government of India, the Committee on the Rights of Persons with Disabilities expressed concern over the lack of disaggregated data in the NCRB on intimate partner violence and gender-based violence against women and girls with disabilities (Bhateja, 2019). In addition, it is estimated that 71% of crime committed against people with severe mental retardation goes unreported. When it is reported, it is claimed that people with disabilities are less likely to receive police intervention, legal protection, or preventative services (UN, 2006b, p.2). Indeed, the failure of the police to respond to and act on reports of abuse against people with disabilities is under scrutiny internationally (Edwards, Harold & Kilcommins, 2012). However, this may not necessarily be due to a lack of desire or disregard for people with disabilities but rather a lack of awareness of how to facilitate and assist participation.

3. Barriers Faced by People with Disabilities in Accessing Support

People with disabilities experience significant barriers to accessing the legal system and obtaining justice (Robinson, 2012; Murray & Powell, 2008). One could argue that the criminal justice system is one of the last social institutions to adequately adapt to the needs of people with disabilities and respond to their unique circumstances (Luckasson, 2001).

All victims face barriers to reporting and disclosing victimization, such as the feeling of shame, confusion, or fear that they will not be believed. However, it would appear that the barriers for victims with disabilities are compounded by a range of additional and complex factors. Some of these may include mobility restrictions, communication barriers, physical and social isolation, fear of retribution, feelings of shame and self-blame, a high propensity to acquiesce, ignorance of the justice system, and normalisation of violence within some residential facilities and services (Tyiska, 2001; Victorian Equal Opportunity & Human Rights Commission, 2014; Woodward, 2013). Further, the victim may be reluctant to report abuse if dependent on the perpetrator, such as family members or primary caregivers (Tyiska, 2001). The majority of these factors impact the willingness and ability of victims to report crimes (Tyiska, 2001; Tollefson, 2014). In other words, just as it is with other vulnerable groups, many of the crimes committed against people with disabilities go unpunished (Tollefson, 2014).

Tyiska (2001) indicates that in the case of a police report, legal and ethical practices concerning competence and consent can impede participation in the criminal justice process. According to the Victorian Equal Opportunity and Human Rights Commission's (2014) report, 'Beyond Doubt', the police ignore or fail to take seriously reports made by victims with acquired brain injuries, visual and verbal impairments, or mobility issues. In one case, police dismissed a blind victim of an assault because she could not give a visual description of the attacker (Victorian Equal Opportunity and Human Rights Commission, 2014). The possibility that the victim might have provided other valuable information, such as the sounds she heard or that there may have been other witnesses, was not taken into account. The police, instead of investigating, told the victim, "don't bother calling us". In turn, the responses of those charged with helping may further impede a victim's ability to report crime and exercise their rights.

People with disabilities also often encounter barriers due to societal assumptions and misconceptions, especially as victims of sexual assault. Among these are beliefs that people with disabilities are asexual or promiscuous, lie and/or exaggerate, and are unlikely to be sexually assaulted (Murray & Powell, 2008). In the worst case, it may be assumed that the assault did not psychologically harm them due to their cognitive impairment.

In addition, people with disabilities tend to be viewed as less than human and are often perceived as damaged (Robinson, 2012). As a result, these prevailing myths and attitudes can impact how family, friends, carers, and professionals respond to disclosures of victimization and may ultimately impact the willingness of the victim to reach out for assistance in the future (Murray & Powell, 2008). Negative responses may discourage a victim with disability from reporting abuse, assault, neglect, and other crime incidents, making them vulnerable to future victimization.

Criminal justice professionals and the victim support community also lack a comprehensive understanding of the individual characteristics and needs of victims with disabilities, making it challenging to provide assistance. Despite knowing these individual characteristics, there may be a lack of awareness of how to accommodate these characteristics and needs and receive support. In some cases, professionals have reported inadequate support to develop and maintain the skills needed to assist victims and witnesses with disabilities. Additionally, people with disabilities may lack access to communication aids to facilitate disclosure. As Murray & Powell (2008) note, "for people who use augmentative communication, the symbols or words for genitalia or rape are rarely found on communication boards." Hence, these victims have no way to describe their abuse.

People tend to consider cases that involve victims and/or witnesses with disabilities to be inherently difficult to investigate and prosecute. It is a false assumption that such victims almost always make incompetent witnesses or lack credibility (Sorensen, 2002; Victorian Equal Opportunity & Human Rights Commission, 2014). According to

Sobsey & Varnhaggen (1991 cited in Sorensen, 2002), 65% of cases reported to the police did not proceed because the victim was considered an incompetent witness. Victorian Equal Opportunity & Human Rights Commission (2014) revealed that police reach conclusions about a persons' credibility very early. As a result, cases may not be thoroughly investigated and prosecuted.

Although people with disabilities process and communicate differently, many can still provide reliable and credible accounts of their experiences. Akbas et al. (2009; cited in Robinson, 2012, p.15) examined 20 children with learning disabilities who had been sexually abused and found that these children could "consistently recall a thorough history of their experiences". Methods of questioning a victim with a disability can either enhance or diminish their ability to provide an accurate account of their victimisation. When cognitively disabled victims are questioned in a non-leading manner, provided with opportunities for free recall, and are not subjected to double negatives and rapid-fire questions, they give better accounts of their victimisation (Woodward, 2013). Therefore, changes to interviewing techniques may significantly improve the quality of evidence provided by people with disabilities.

In short, individuals and organisations' poor responses to help crime victims with disabilities may result in a secondary injury. Negative responses, such as not being listened to or believed, may discourage victims from making subsequent reports (Victorian Equal Opportunity and Human Rights Commission, 2014).

4. Indian Reforms in Aid of Crime Victims with Disabilities

The legislation governing the rights of people with disabilities in India has made significant progress in general and even more so in the case of crime victims with disabilities. There are three significant legal reforms in India ensuring special legal provisions for victims with disabilities: the Criminal Law Amendments, 2013, the Protection of Children from Sexual Offences (POCSO) Act, 2012, and the Rights of Persons with Disabilities Act, 2016. Additionally, India has some obligations under international law to protect the rights and interests of people with disabilities.

4.1. Accommodations under the Criminal Law Amendments, 2013

In India, the 2013 criminal law amendments provide accommodations to ensure that women with disabilities access the criminal justice system (Ministry of Law and Justice, 2013). These accommodations include:

- The right to record their statement with police at home or any other place of their choice ensures safety and comfort.
- Their right to videotape their statements to police and examinations.
- The right to assistance from a "special educator" or interpreter when recording a complaint or during the trial.
- Subject to cross-examination, exemption from the requirement to repeat their statement during the trial.

Despite these important legal provisions, there are still gaps in the protection of victims with disabilities. According to Human Rights Watch, the 2013 Amendments do not include adequate provisions for counselling and rehabilitation of victims with disabilities, specifically women and girls; equipping law enforcement officials and judges with the adequate skills to address the unique needs of women and girls with disabilities; and categorizing data by disability and gender (Human Rights Watch, 2018).

4.2. Accommodations under the Protection of Children from Sexual Offences (POCSO) Act, 2012

For children with disabilities, the POCSO act introduced specific accommodations. A child has the right to give his or her statement in the presence of a translator or interpreter. To record the statement and evidence of a child who has a disability, the Special Court shall seek the assistance of a special educator, a person familiar with the child's communication style, or an expert in the area (Human Rights Watch, 2018). POCSO act mandates police officers to record statements from all children, including children with disabilities, by Judicial Magistrate, following section 154(c) of the Criminal Procedure Code (Human Rights Watch, 2018).

4.3. Protections under the Rights of Persons with Disabilities (RPwD) Act, 2016

The issue of sexual violence against women and girls with disabilities is taken up seriously under the 2016 RPwD law. It mandates imprisonment and fines for violators who "offend the modesty of a woman with a disability." Also, it protects people with disabilities from any form of abuse, violence, or exploitation with measures that need to be taken by appropriate governments, police authorities, and executive magistrates (Ministry of Social Justice and Empowerment, 2016).

The measures include establishing a reporting procedure for violence against people with disabilities, enhancing public awareness, and ensuring that people with disabilities have access to protection, free legal assistance, and connections with organizations that assist disabled people (Human Rights Watch, 2018).

4.4. India's Obligations under International Law

India is a signatory to the Convention on the Rights of Persons with Disabilities (CRPD), Convention on the Rights of the Child (CRC), Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), International Covenant on Civil and Political Rights (ICCPR), and International Covenant on Economic, Social, and Cultural Rights (ICESCR), among others (Human Rights Watch, 2018).

Although these are essential steps, much more is yet to be accomplished to strengthen our responses to victims of crime with disabilities, including strengthening victim support services and reforming the criminal justice system in India.

5. Case Studies Highlighting the Challenges of Victims with Disabilities

In India, several cases involving victims with disabilities highlight how challenging it is for the victims and their families to get answers from the police, receive medical care, navigate the criminal justice system, and obtain victim compensation, among other challenges. We examine some cases in this section to illustrate the challenges faced by disabled victims regardless of existing laws supporting them.

5.1. Difficulties Interacting with Police and Accessing Medical Care

Human Rights Watch found that women and girls were excluded from accommodations in some cases because they couldn't certify their disabilities. Even though women and girls had visible physical disabilities, police failed to include the details in the First Information Report (FIR), the document that initiates the criminal justice process. The lack of specific documentation in police reports makes it difficult for women and girls with disabilities to receive the assistance they need from police and court systems (Human Rights Watch, 2018). Maneka's case illustrates this.

15-year-old Maneka, both mentally and physically disabled, reported being raped by two neighbours in October 2015 (Yadavar, 2018). Although Maneka's family informed police of her age and disability, the FIR noted her age as over 18 and did not mention her disability. Therefore, she did not receive protection under the POCSO or 2013 criminal law amendments. The police's failure to record Maneka's physical and intellectual disabilities also undermined the evidence collection process.

Maneka's lawyer said that the officer who recorded her statement did not give her any accommodations required by the law, for example, support from a special educator. Maneka's lawyer also stated that the police's failure to video record her statement, a measure meant to alleviate the trauma of repeated testimony, contributed to the challenges she faced in litigating her case (Yadavar, 2018).

Maneka's mother, Soumya, said that Maneka was isolated from her family at the hospital and subjected to tests she did not understand. She was prescribed medicines, but no one explained what they were for. Medical professionals' failure to properly explain medical tests and procedures to women and girls with disabilities, and their families, may contribute to the trauma of sexual assault (Human Rights Watch, 2018).

5.2. Difficulties Navigating the Criminal Justice System

In 2013, Kanchana, a 19-year-old intellectually disabled woman from a village in Hooghly, West Bengal, was raped multiple times by a man in her neighborhood. Kanchana wasn't aware that she should report the rape; it was only discovered after she found out she was five months pregnant. It was still hard for her to explain what had happened (Human Rights Watch, 2018). Kanchana and her mother, Diya, have been to court five times since August 2013. They were not adequately informed of the court proceedings. Kanchana was asked to wait in the plaintiff's witness box in the courtroom, which Diya recalls as deeply traumatizing for her (Human Rights Watch, 2018).

Crime victims in India experience a slow and traumatic judicial process. However, for women and girls with disabilities, unfamiliar and stressful court environments are particularly challenging, especially during lengthy court cases. Women and girls with disabilities, as well as their families, often lack knowledge about their legal rights, including the right to legal representation (Human Rights Watch, 2018). It prevents them from advocating for their needs.

5.3. Difficulties Obtaining Compensation

As per victim compensation laws in India, every state government must facilitate compensation, including interim relief, where no trial can be held due to the lack of traceability or identification of the alleged offender (National Legal Services Authority, 2018). However, women and girls with disabilities face difficulty receiving compensation from the court or the Criminal Injuries Compensation Board, even in severe cases of violence, trauma, and economic hardship caused by childbirth (Human Rights Watch, 2018).

Compensation may never reach the person in need, even when awarded. Razia, a 13-year-old with an intellectual disability and difficulty speaking, was raped by her younger brother's 17-year-old tutor in Herbertpur, Uttarakhand, in August 2014. Razia and her family pursued justice through the courts with the support of the Latika Roy Foundation, an organization that supports children and adults with disabilities. The court granted Razia two lakh rupees as compensation (USD 3,100). However, the family has not yet received the money (Human Rights Watch, 2018).

The cases discussed here are not isolated or unique but rather highlight some of the systemic issues faced by crime victims with disabilities in India. It is essential to provide victims with disabilities access to the criminal justice system to exercise their rights as victims and participate fully in the criminal justice system if they wish (Murray and Powell, 2008; Robinson, 2012). In addition to demonstrating respect and dignity for victims with disabilities, such attention is also required to comply with national and international obligations.

6. Optimising the Capacity of People with Disability to Participate in the Criminal Justice System

The police are the gateway to the criminal justice system. They play a crucial role in improving access to justice for victims by identifying victims' unique abilities and disabilities, and needs at the earliest possible (Ministry of Justice 2011). The police should create an environment that promotes and supports disclosures of victimization by persons with disabilities. Police must ensure that the victims are treated with dignity and respect. Then they are more likely to have confidence in the criminal justice system and provide better evidence in court as witnesses (Ministry of Justice 2011; Murray & Powell 2008). In all cases, the autonomy of the victim is paramount. It is the police's responsibility to support victims in making their own decisions, including not making a formal report or withdrawing a report (Attorney-General's Department, 2014).

The criminal justice system must offer equal opportunities to participate to victims with disabilities (Ministry of Justice, 2011). Participation in this process is facilitated or inhibited by responses from those tasked with assisting crime victims and people with disabilities. Those who are first to interact with victims have a unique opportunity to help them cope with the trauma of crime and regain a sense of control over their lives, as "the ways victims cope with their victimisation depend largely on their experiences following the crime" (Office for Crime Victims, 2002, p.1). Police, advocates, medical officers, and judges should receive appropriate training regarding the rights

of sexual violence victims, particularly women and girls with disabilities. Police and courts need access to special educators who can identify disabilities accurately and provide support and suitable accommodation (Human Rights Watch, 2018). In addition, victims with disabilities need access to specially trained people who can explain their rights as victims of crime, assist them in exercising those rights, and allow them to give an accurate and complete account of their victimisation experiences (Ministry of Justice, 2011).

The provision of effective services to people with disabilities requires specialized knowledge about victims' needs, their different levels of ability/disability, potential difficulties they may have in communicating what has happened, and the additional power issues that may exist if the perpetrator is a caregiver (Dillon, 2010; Victorian Equal Opportunity & Human Rights Commission, 2014). To accommodate the needs of victims with disabilities, those helping them, especially the police, must be equipped with specialized knowledge and skills (Victorian Equal Opportunity & Human Rights Commission, 2014; Ministry of Justice, 2011). It is important to consider the physical environment, communication aids, independent third-party support, as well as the timing, duration, and location of any interviews with the victim (Victorian Equal Opportunity & Human Rights Commission, 2014). Police investigators must tailor their approach based on a victim's capabilities and needs (Ministry of Justice, 2011).

Woodward (2013) argues that, in England and Wales, intermediaries are the best method of assisting victims with complex communication needs. Using intermediaries can help vulnerable victims, such as those with disabilities, give their best evidence in court by focusing on their specific communication needs and making sure that they understand questions and communicate their answers (Woodward, 2013).

An intermediary is likely to be involved throughout the criminal proceedings and has several key responsibilities, including assessing the communication needs of the victim/witness. After the assessment, the intermediary should advise the police and courts on how the victim/witness communicates and his/her level of understanding. Also, the intermediary can suggest to the police and/or court how to phrase questions to the witness to obtain the best evidence from the victim/witness (Woodward, 2013). A victim/witness intermediary is not an advocate and must remain impartial at all times when assisting them. In other words, an intermediary cannot protect a victim/witness from distressing questions and cannot change the substance of their testimony (Woodward, 2013). Although intermediaries are appealing, it must be noted that this model is a resource-intensive one that requires a significant amount of resources to recruit, train, and employ appropriate personnel. When adopting a model from another jurisdiction, it is important to carefully compare societal, political, and economic factors.

Many of the barriers faced by victims with a disability can also be mitigated by making the criminal justice system more accessible and transparent by providing information in appropriate formats (Edwards et al., 2012). Such information should explain criminal justice processes and procedures, how to report a crime, and access support (Edwards et al., 2012).

All state and local health department functionaries must adopt and implement the *Guidelines and Protocols for Medico-Legal Care for Survivors/Victims of Sexual Violence* (2014) formulated by the Ministry of Health and Family Welfare. All medical professionals must be trained according to these guidelines. In addition, there must be a uniform victim compensation scheme across all Indian states for providing compensation to victims of sexual violence and other serious crimes, including women and girls with disabilities. The compensation awarded must also take into account the additional costs incurred and the urgent needs of victims with disabilities (Human Rights Watch, 2018).

Key strategies for optimising the capacity of victims with disabilities to participate in the criminal justice system

- Treat victims with disabilities with dignity and respect their autonomy
- Provide information in various formats that explain criminal justice processes and procedures, how to report a crime, and seek support.
- Provide assistance from specially trained personnel
- Create an environment that encourages and supports people with disabilities to report victimisation
- Provide victims with disabilities with every opportunity to provide a complete and accurate account of their victimisation
- Assess and accommodate the different needs of people with disabilities, particularly during the interviewing process
- The physical environment, timing, duration, and location of interviews should be considered to enhance disclosure
- Consider using communication aids and/or seeking independent support from third parties
- Encourage the police investigator to tailor his/her approaches according to the victim's abilities and needs
- Make objective decisions without being influenced by stereotypes and false assumptions
- Design and provide specialized training for criminal justice professionals
- Train staff from the disability sector about responding to alleged criminal incidents

7. Conclusion

The evidence indicates that both children and adults with disabilities are disproportionately at risk of being victimised and re-victimised by offenders. Additionally, crimes against people with disabilities are reported at lower rates and result in fewer prosecutions, concluding that disabled victims are denied access to justice.

In this paper, we have explored several ways to improve the responses to disabled crime victims. In determining the most appropriate ways to assist victims with disabilities, it is important to consider the current social, political, and economic environment in India. As part of this, we should consider whether additional obligations could be placed on criminal justice professionals, such as the police. There is a risk that other obligations to accommodate the needs of individuals with disabilities can result in obligation fatigue, which could ultimately result in unintended and unwanted consequences such as a call to roll back victims' rights in general (Groenhuijsen, 2014). Nevertheless, efforts need to be made in India and many other countries to ensure that victims with disability can fully participate in the criminal justice system, exercise their rights as victims of crime, and receive appropriate assistance in the aftermath of a crime. Furthermore, steps must be taken to ensure that India complies with the United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power and the United Nations Convention on the Rights of Persons with Disabilities and national obligations.

Ultimately, for people with disabilities to have greater access to justice, it needs to be widely accepted amongst the police, the legal profession, the judiciary, the disability sector, and the general public that people with disabilities can, in many instances, provide credible and reliable accounts of their experiences if supported to do so. This cultural shift sends a clear message to those who take advantage of people with disabilities that such crimes will be pursued and prosecuted successfully (Sorensen, 2002).

To enhance the participation of victims with disabilities in the criminal justice system, we must be careful not to set unrealistic expectations. Despite all legislative and/or cultural changes, there will always be victims with disabilities who are unable to participate in the criminal justice system. Whenever such circumstances arise, the emphasis should be on maximizing victims' access to appropriate victim assistance programs.

Before implementing any new strategies, victims with disabilities must be consulted to precisely determine what they need instead of constructing solutions based on academic and professional opinions (Victorian Equal Opportunity & Human Rights Commission, 2014). Furthermore, monitoring and evaluating such solutions is

crucial to ensure they meet their intended objectives and do not generally cause unintended consequences for people with disabilities or victims.

Finally, victimology must begin to see people with disabilities as a special category of victims to assist them better in the aftermath of crime. This may help shatter the silence surrounding crimes against people with disabilities (Tollefson, 2014).

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Conflict of Interest

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The Management and Development of Tista Rural Tourism as Alternative Tourism in Tabanan, Bali Indonesia

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Abstract
The development of rural tourism as alternative tourism arises from the concept of sustainable tourism development, where the development of rural tourism is expected to be able to preserve nature, the environment, culture, and all other resources in accordance with their carrying capacity. The people of Tista Village strongly support the management and development of rural tourism because the various benefits felt by the community are related to the harmonization of community life, quality of community life, environmental quality, cultural and spiritual quality which are increasingly becoming real benefits of developing rural tourism. These situations and phenomena make rural tourism an alternative in creating and supporting quality community-based tourism towards responsible tourism. Quantitative descriptive methods with Likert Scale Analysis and Importance Performance Analysis (IPA) were used to find the development of the Tista Rural Tourism as alternative tourism in Tabanan Regency and to create a quality and sustainable rural tourism. The results of the analysis of community responses related to Tista Rural Tourism as alternative tourism in Tabanan Regency, the overall average value of the importance level is 4,72 (very important) and the overall average value of the performance level is 4,10 (good), where the results grouping of 36 indicators in each quadrant, namely: the main priority quadrant as many as 7 indicators, the superiority quadrant as many as 16 indicators, the low priority quadrant as many as 9 indicators, and the excess resources quadrant as many as 4 indicators.

Keywords: Rural Tourism Development, Alternative Tourism, Community-Based Rural Tourism, Sustainable Rural Tourism

1. Introduction

1.1. Background

The development of the tourism sector which is in line with the bottom up planning model is the resource community base management model or community-based tourism (Korten, 1986). One of the community-based tourism developments is the development of rural tourism. The community-based tourism paradigm has long been an alternative paradigm to conventional tourism which has many weaknesses due to the tendency towards physical development and lack of attention to socio-cultural problems of the community, so that villages that have their own uniqueness and distinctiveness are starting to be looked at to become rural tourism or village tourism by the government and tourism actors.

A rural tourism is a village area that offers an overall atmosphere that reflects the authenticity of the countryside, both from socio-economic life, socio-culture, daily customs, building architecture and typical village spatial structures or unique and interesting economic activities and has the potential to develop various types of tourism component (attractions, accommodation, food, beverages, etc.). The characteristics of a rural tourism are the authenticity, uniqueness, local taste, and regional pride, as well as the quality of life of the people. (Nasikum, 1997; Fagence, 1997 in Antara & Arida, 2015).

The development of rural tourism as alternative tourism arises from the concept of sustainable tourism development, where the development of rural tourism is expected to be able to preserve nature, the environment, culture, and all other resources in accordance with their carrying capacity. In the last decade, many developing countries have paid special attention to the tourism industry, it is only a pity that many programs are planned but not carefully considered, whether the benefits to be gained are greater than the damage that may be caused.

Matters related to the success of tourism development can be divided into three main factors, namely: 1) Internal factors, classified as: regional potential, environmental preservation, and participation of local residents; 2) External factors are key factors, such as: the concern of tourists for environmental sustainability, research activities in alternative tourism development areas, as well as local communities; and 3) Structural factors are institutions and policies in alternative tourism development areas at local, national and international levels. Inaccuracies in managing and planning tourism resources can affect their quality and sustainability as well as benefits for the community, which will not be in accordance with the goals and targets.

Approaches in developing rural tourism which are friendly to nature, social, culture, and people's economy, are: 1) *Holistic Approach*, which sees holistically the dimensions of development that integrates development elements in an integrated manner whose problem solving is carried out collectively and participatively; 2) *Participatory Learning*, where the learning or education process in the management and development of rural tourism is local actors in this case are the community and supported by the local government because the people who understand the problems related to the development of rural tourism are themselves; 3) *Empowerment of Management*, where strengthening empowerment through strong institutions will provide improved performance in the management and development of rural tourism; 4) *Action Research*, where real action is needed in its management and development, so that it can provide benefits to the environment. Applied research is needed in assisting the quality and capacity improvement of rural tourism management; and 5) *Synergy and Network*, where the willingness to open a network to realize the duties and responsibilities in facing the challenges of management and development together to create a balance, so that trust is built among the actors of rural tourism development (Baiquni, 2010).

One of the rural tourisms whose management and development receives support from the community is Tista Rural Tourism, which is located in Kerambitan District, Tabanan Regency. Tista Village consists of four hamlets/banjars, namely: Dangin Pangkung Hamlet, Dauh Pangkung Hamlet, Carik Hamlet, and Lebah Hamlet. It is located in a slightly undulating lowland area, especially in the southern and western part of the village. Tista Village is an agricultural area where most of the population consists of farmers working in rice fields. The communities strongly maintain the traditions of their ancestors, respect their natural environment, as well as their culture, so that the harmonization of people's lives is seen as very prominent in social life. Tista Rural Tourism was used as a research location because it is one of the Advanced Rural Tourism in Tabanan Regency, with excellent level of tourism awareness and community enthusiasm in building and developing their village, on the other hand the area of Tista Village is very vulnerable to property development, where the location is very strategic close to urban areas.

The diverse tourism potential in the Tista Rural Tourism can be developed into tourist attractions, such as: natural potential (rice fields, natural scenery with the background of Mount Batukaru, sunset and sunrise), cultural potential (Andir Dance which only exists in Tista Village), culinary potential (*kaliadrem* snacks, purple sweet potato steamed *apem* cake, rice mixed with Balinese spices and filled with side dishes such as tempeh, tofu, egg, and sambal which is called *nasi bejek*, lemongrass jamu/herb), spiritual potential (Beji Temple with its spring which is believed to cure disease, Celagi Temple which is also believed to be a place to ask for healing, Batu Gede which is believed to be the centre power of Tista Village). These potentials can be enjoyed by tourists when

traveling in Tista Rural Tourism. This village was designated as a rural tourism by the Regent of Tabanan Number: 180/319/03/HK & HAM/2016, 26 October 2016, where previously the Pokdarwis of Tista Rural Tourism was also established by the Regent of Tabanan Number: 180/27403/HK & HAM/2016, 19 September 2016.

The people of Tista Village strongly support the management and development of their village into a rural tourism because the various benefits felt by the community are related to the harmonization of community life, cleanliness and orderliness of the village face, road infrastructure as community economic access is concerned by the government, chance to receive various training related to tourism, growth of community activity and entrepreneurial spirit. With the development of the Tista Rural Tourism, the quality of community life, environmental quality, cultural and spiritual quality is increasing which is a real benefit of developing a rural tourism. These situations and phenomena make rural tourism an alternative to creating and supporting quality community-based tourism towards responsible tourism. So that, the research question of the study is what is the community's response to the Tista tourist village as an alternative tourism in Tabanan Regency.

1.2. Literature Review

1.2.1. Development Rural Tourism

According to Pitana (2005), rural tourism is a village area with an atmosphere that overall reflects the authenticity of the village atmosphere in the spatial structure, building architecture, as well as the socio-cultural life of the community, and is able to provide components of basic needs such as accommodation, food and beverages, souvenirs, and tourist attractions for tourists.

Based on Legislation Number 10 of 2009 concerning Tourism, people who are in tourism areas get roles and priorities to become workers or laborers, share as well as carry out the management. In the development of a rural tourism, the role of the community is needed so that the implementation of the development is sustainable so that the rural tourism can be developed. The rural tourism is an alternative tourism which uses community life as an attraction, so that the level of involvement of the local community is high and can be accounted for from social and environmental aspects.

According to Pearce (1995) in Aliyah, et al. (2020), it is stated that the development of rural tourism is defined as efforts to complete and improve tourism facilities to meet the needs of tourists. In the development of rural tourism, there are two approaches that need to be considered, namely: 1) Community-based tourism development, where tourism development focuses on improving the welfare of the community, where these activities are carried out, operated, managed, and coordinated by the community. Community empowerment needs to be based on the following things: improving people's living standards, increasing the level of income economically as well as equitable distribution of local people's income, developing small and medium scale businesses, developing a competitive and cooperative spirit, utilizing tourism as optimally as possible as an agent that contributes to tradition and culture by minimal impact and 2) Sustainable tourism development, where tourism development balances three aspects, namely: economy, environment, and society. Sustainable tourism development has main objective of improving the quality of life, strengthening values and society, and providing added value to the community's economy.

1.2.2. Alternative Tourism Concept

Based on the destination life cycle introduced by Butler (1980), the polarized debate revolves around “impact” which initiates the search for lower-impact forms of tourism that are more inclusive and appropriate. Finally, alternative tourism forms of mass tourism were found which were interpreted as tourism that was more authentic, least dangerous, community focused, and developmental balance based. Alternative tourism has a pedigree in the global movement of the 1980s that aimed to bring the “environment” to the centre of the development dialogue.

The alternative development approach is considered as a response to the failure of conventional development patterns in solving the problem of poverty. Poverty is considered as a condition of relative disempowerment in

relation to the opportunities of each household as the basis of social power. It is further assumed that the occurrence of underdevelopment of a community is not caused by the ignorance and incompetence of the community but is the result of the inability of the community to the structural pressures caused by the growth development model that ignores human rights. In addition, efforts are needed to change the structure that makes people powerless and build a development model with the principles of democracy, economic growth that guarantees the interests of the community (appropriate economic growth), gender equality, and intergeneration equity (Suparjan) and Hempri Suyatno, 2003: 4).

In more detail, Midgley defines social development as an alternative development: *"...to result in the fulfilment of people's aspirations for personal achievement and happiness, to promote a proper adjustment between individuals and their communities, to foster freedom and security and to engender a sense of belonging and social propose*", which means: "social development is a development activity that results in the fulfilment of citizens' desires for individual happiness and achievement, develops appropriate self-adjustment between individuals and their communities, creates freedom and security and creates a sense of belonging and social planning" (James Midgley, 1995).

Thus, alternative tourism is a form of tourism whose development is small in scale, all of its activities involve the community, which does not damage the environment, is consistent with the values of nature conservation, social, and cultural values of the community, and makes it possible for local communities and tourists to enjoy a positive and natural interaction that is carried out in an area that is not developing too quickly and gains depth of meaning and the beauty of various experiences.

Some of the characteristics of alternative tourism, namely: small scale, local ownership, low density, under local communities control, long term orientation, harmonization and welfare of local communities emphasis, no dominant market, complementing existing activities, tourists with individual or small group arrangements , low leakage rate, multiplier effect (Butler, 1992 and Weaver, 1993).

1.2.3. Community-Based Tourism Concept

The quality tourism model emphasizes the importance of community-based development, bottom-up development and locality, which is based on a motivation to develop and encourage community structures to strengthen empowerment, local level development, and integrate with local culture. Development policies must be able to create harmonization of society with the environment which has long been fused with ecological values. In this context, society becomes the subject of development while maintaining rooted values, social structures and cultural traditions of the community.

Alternative development models emphasize participatory and fulfilment of basic needs and human rights. Participatory development emphasizes broad participation, accessibility, community representation in the planning and decision-making processes that affect their fate, while development emphasizes the fulfilment of basic needs and human rights emphasizes development to meet three basic needs of society, namely: welfare, freedom, and identity (Johan Galtung, 1980).

According to Murphy (1988), community empowerment in tourism development views that the development of tourism activities is a community-based activity, where physical and non-physical elements (tradition and culture) are always attached to the community which is the main driving element of tourism activity itself. The principles of community empowerment, namely: 1) Enabling: creating an atmosphere or climate that allows the potential of the community to develop; 2) Empowering: strengthening the potential or power possessed by the community; and 3) Protecting: preventing unequal competition and exploitation of the strong against the weak.

1.3. Research Methodology

The research method used in this research is quantitative descriptive method. The sampling technique was proportionate stratified random sampling, that is: a sampling technique by taking into account a level (class) in the

population element in this case the people of Tista Village, Tabanan Regency. Researchers have determined to get a sample of 100 respondents. Data collection methods used in this study were observation, questionnaires, and literature study.

To analyse the data, Likert Scale was used to measure the attitude or opinion of the Tista community towards an alternative tourism phenomenon. The answer to each instrument item had a scale from very good to very bad. With Likert Scale, the variables to be measured are defined into indicators and then used as a starting point for compiling instrument items which can be in the form of statements or questions. The following is the scale used in this study: a. Very Bad, b. Not Good, c. Fairly Good, d. Good, e. Very Good (Sugiyono, 2013).

Importance Performance Analysis (IPA) is also used to measure the attributes of importance and performance levels that are useful for the development of Tista Rural Tourism as alternative tourism in Tabanan Regency. The total assessment of the level of importance and the level of performance of each indicator is obtained by adding up the results by multiplying the scores of each scale with the number of respondents who chose on Likert Scale, then the average value of the level of importance and performance is analysed on the Importance-Performance Matrix, which The X axis represents activity, while the Y axis represents expectations (Rahardipha et al., 2016). Then there will be results in the form of four quadrants according to Table 1.

Table 1: the Form of four quadrants

A = Top Priority	B = Maintain Achievement
C = Low Priority	D = Excessive

Picture. *Importance Performance Analysis* (IPA) Quadrant

The interpretation of each of these quadrants are:

Top Priority

In this quadrant there are factors that are considered important and expected but the performance or activity is not satisfying, so concentration is needed to allocate resources to improve performance in this quadrant.

Maintain Achievement

In this quadrant there are factors that are considered important and expected by the community as alternative tourism, so it is mandatory to maintain these performance achievements.

Low Priority

In this quadrant there are factors that are considered to have low performance or activity and are also not very important, so there is no need to prioritize or pay more attention to these factors.

Excessive

In this quadrant there are factors that are considered not too important by the community but the resulting performance is very good. Therefore, the level of importance is small and the activity is very good, so this quadrant is considered as an excessive group in terms of resources.

Table 2: Alternative tourism variables and indicators used in this study

Variables	Indicators	
Small Scale	A1	Limited number of tourists

Variables	Indicators	
	A2	Specific area settings
	A3	Type of attraction set
	A4	Time duration set
	A5	Provided an understanding of the area visited
Involving the Community	B1	Provided Local Guide
	B2	Community Training
	B3	Socialization in the Community
	B4	The community is involved in the management of the rural tourism
	B5	The community prepare homestay
	B6	The community concern about rural tourism
Nature, Social, Culture Conservation	C1	Long Term Orientation
	C2	Harmonization of Community Life
	C3	The contribution of tourism to socio-culture
	C4	Tourism's contribution to nature
	C5	Environmental hygiene and sanitation
	C6	Waste management
	C7	Maintaining clean water sources
	C8	Maintaining community sources of livelihood
	C9	Safety and security in the rural tourism
Positive Interaction Between Community and Tourist	D1	Quality of relationship between host and guest
	D2	Tourists stay on homestay
	D3	People feel comfortable with tourist arrivals
	D4	Tourists respect customs in rural tourism
	D5	Communities benefit from tourist arrivals
Reasonable Development	E1	Complementing existing facilities
	E2	Using local materials in the construction of tourism facilities
	E3	Building with local labour and simple equipment
	E4	The development carried out through planning process
	E5	The development carried out is socialized in the community
	E6	The development carried out is beneficial to the community
	E7	The development carried out does not damage nature and the environment
Meaning and Experience	F1	Tourists are considered as friends and relatives
	F2	Tourists are introduced to the local life of the community
	F3	Local tourism activities offered to tourists
	F4	Local menu offered to tourists

Source: Research Questionnaire (2022)

2. Results and Discussions

This research will describe the Imnportance Level Analysis, Performance Level Analysis, and IPA Analysis related to the development of alternative tourism in Tista Rural Tourism, Kerambitan District, Tabanan Regency. The following is the explanation of each of these analyses.

2.1 Importance Level Analysis of Alternative Tourism in Tista Rural

Based on the data collected from the responses of the people of Tista Rural Tourism and through analytical calculations, it was found that the average level of importance of Tista Rural Tourism as alternative tourism in Tabanan Regency was 4.72 which could be categorized as very important, which means that the community's response regarding the importance level of Tista Rural Tourism as alternative tourism is categorized as very important. In detail, the highest to lowest average results are related to the importance level, namely: Positive interaction between the community and tourists (4.87; very important), Reasonable development (4.80; very important), Nature, social, and cultural preservation (4 .78; very important), Involving the community (4.76; very important), Small scale (4.58; very important), and Meaning and experience (4.51; very important).

These results can also be interpreted that, of the 6 (six) factors used to assess the importance level aspect, it turns out that there are 4 (four) factors that are above the average and 2 (two) other factors below the average. The four factors that are above the average aspect of interest are positive interaction between the community and tourists, reasonable development, nature conservation, social, culture, and community involvement.

When referring to the goal of developing the Tista Rural Tourism as alternative tourism in Tabanan Regency, the most important thing to focus on is "positive interaction between the community and tourists." Real efforts that can be implemented are to improve the quality of the familial relationship between hosts and tourists, tourists are expected to stay at homestays, people feel comfortable with tourist arrivals, tourists respect customs in rural tourism, and people benefit from tourist arrivals in rural tourism. This is very necessary for increasing tourist satisfaction in Tista Rural Tourism because tourists and hosts will feel that they need each other, so that the services provided are the best services same as serving relatives or close relatives. Psychologically, tourists will feel like at home and with their own families which will have a positive effect on the impression and information given by tourists to their families, relatives, or friends which will be an effective promotion tool for Tista Rural Tourism, while on the community side, they will certainly be very supportive in the development of Tista Rural Tourism by actively participating in providing the best service and preserving the Tista Rural Tourism.

The second factor that is very important according to the community and above the average value of importance level is “Reasonable development.” There are several concrete steps that can be taken, such as complementing existing facilities, building tourist facilities by utilizing local materials, building with local labour and simple equipment, the development carried out through the planning process, the development carried out previously disseminated to the community, the development carried out beneficial for the community, and the development carried out does not damage nature and the environment. The development in rural tourism is expected to be beneficial for the community by not sacrificing existing and productive lands, so that the community still has land to be processed as their livelihood which in its implementation requires planning and through an open process involving the whole community in its planning and implementation to minimize negative impact.

The third factor which is also very important for the community is “Natural, social, cultural preservation.” The concrete efforts made are the harmonization of community life, the contribution of tourism to socio-culture, the contribution of tourism to nature, environmental hygiene and sanitation, waste and waste management, maintaining clean water sources, maintaining community livelihood sources, safety and security in a rural tourism. The management and development of the Tista Rural Tourism will strengthen the preservation of nature, social and culture of the community. The customs and traditions in society which are inherited from the Ancestors become the unifier and binder of the Tista people's social life which until now has been strongly intertwined, so that the harmonization and kinship of community life are very high.

The fourth factor that becomes very important is "Involving the community." This is done with some efforts, such as: preparing local guides, training for the community, socialization to the community, the community is involved in managing the rural tourism, the community prepare homestay, and the community concern about the rural tourism. The essence of the management and development of the Tista Rural Tourism is the involvement and active participation of the Tista community. This can be proven by the full support of the Tista community for the development of the Tista Rural Tourism, where the result is that Tista Rural Tourism becomes one of the "advanced category" rural tourism in Tabanan Regency. Community businesses and activities are very active in carrying out the work programs of the Tista Rural Tourism. The community principle is if the village is clean, healthy, safe, beautiful, then the community will be happy and peaceful living in it, so that tourists who come to visit will feel the same way.

2.2 Performance Level Analysis of Alternative Tourism in Tista Rural Tourism

From the results of the questionnaire related to the responses of the Tista community, in general, the average performance of Tista Rural Tourism as alternative tourism in Tabanan Regency is 4.10 which can be categorized as good, which means this number is lower than the results of the importance level of Tista Rural Tourism as alternative tourism. in Tabanan Regency. In general, it can be seen that each factor the average value is in the good category. As for the 6 (six) factors used to measure the performance results, there is an average value, such as: Participating in the community (4.18; good), Reasonable development (4.18; good), Conservation of nature, social, culture (4.13; good), Meaning and experience (4.10; good), Positive interaction between the community and tourists (4.03; good), and Small scale (3.92; good).

It can also be explained that there are 4 (four) factors that score above the overall average and 2 (two) factors that score below the overall average. Factor values that are above the overall average value, namely: Involving the community, reasonable development, nature, social, culture conservation, and meaning and experience. The interpretation that can be analysed from these findings, it turns out that small-scale factors and positive interaction factors of the community and tourists are still below the overall average value, which means that Tista Rural Tourism activities are still oriented on a large scale in receiving tourist visits but there has not been a positive interaction between the community and tourists, so it is necessary to arrange visits and tourist activities as well as improve the hospitality of the community in providing services to tourists who come to the Tista Rural Tourism. In this way, the quality or benefits of community interaction with tourists can be obtained, so that the quality of management and development of the Tista Rural Tourism is also better.

Table 3: Analysis of the Level of Performance and Level of Interest of Tista Rural Tourism as Alternative Tourism in Tabanan Regency

Variables	Indicators		Rural Tourism Performance	Importance	Performance Category	Importance Category
Small Scale	A1	Limited number of tourists	3,76	4,26	Good	Very Important
	A2	Specific area settings	4,10	4,44	Good	Very Important
	A3	Type of attraction set	3,92	4,64	Good	Very Important
	A4	Time duration set	3,72	4,58	Good	Very Important
	A5	Provided an understanding of the area visited	4,08	5,00	Good	Very Important
	Average		3,92	4,58	Good	Very Important
Involving the Community	B1	Provided Local Guide	4,40	4,58	Very Good	Very Important
	B2	Community Training	4,26	4,88	Very Good	Very Important
	B3	Socialization to the Community	4,34	4,88	Very Good	Very Important

Variables	Indicators		Rural Tourism Performance	Importance	Performance Category	Importance Category
	B4	The community is involved in the management of the rural tourism	4,22	4,78	Very Good	Very Important
	B5	The community prepare homestay	3,72	4,50	Good	Very Important
	B6	The community concern about rural tourism	4,14	4,92	Good	Very Important
	Average		4,18	4,76	Good	Very Important
Nature, Social, Culture Conservation	C1	Long Term Orientation	3,94	4,78	Good	Very Important
	C2	Harmonization of Community Life	4,42	4,96	Very Good	Very Important
	C3	The contribution of tourism to socio-culture	3,98	4,70	Good	Very Important
	C4	Tourism's contribution to nature	4,18	4,56	Good	Very Important
	C5	Environmental hygiene and sanitation	3,96	4,76	Good	Very Important
	C6	Waste and waste management	3,78	4,72	Good	Very Important
	C7	Maintaining clean water sources	4,44	4,88	Very Good	Very Important
	C8	Maintaining community sources of livelihood	4,18	4,82	Good	Very Important
	C9	Safety and security in the rural tourism	4,26	4,88	Very Good	Very Important
	Average		4,13	4,78	Good	Very Important
Positive Interaction Between Community and Tourist	D1	Quality of relationship between host and guest	4,16	4,82	Good	Very Important
	D2	Tourists stay in homestay	3,54	4,78	Good	Very Important
	D3	People feel comfortable with tourist arrivals	4,00	4,94	Good	Very Important
	D4	Tourists respect customs in rural tourism	4,14	4,90	Good	Very Important
	D5	Communities benefit from tourist arrivals	4,32	4,90	Very Good	Very Important
	Average		4,03	4,87	Good	Very Important
Reasonable Development	E1	Complementing existing facilities	3,82	4,58	Good	Very Important
	E2	Using local materials in the construction of tourism facilities	4,04	4,86	Good	Very Important
	E3	Building with local labour and simple equipment	4,20	4,80	Good	Very Important
	E4	The development carried out through planning process	4,24	4,84	Very Good	Very Important

Variables	Indicators		Rural Tourism Performance	Importance	Performance Category	Importance Category
	E5	The development carried out is socialized to the community	4,22	4,80	Very Good	Very Important
	E6	The development carried out is beneficial to the community	4,44	4,84	Very Good	Very Important
	E7	The development carried out does not damage nature and the environment	4,30	4,88	Very Good	Very Important
	Average		4,18	4,80	Good	Very Important
Meaning and Experience	F1	Tourists are considered as friends and relatives	4,08	4,60	Good	Very Important
	F2	Tourists are introduced to the local life of the community	4,06	4,46	Good	Very Important
	F3	Local tourism activities offered to tourists	4,02	4,48	Good	Very Important
	F4	Local menu offered to tourists	4,22	4,48	Very Good	Very Important
	Average		4,10	4,51	Good	Very Important
	Overall Average		4,10	4,72	Good	Very Important

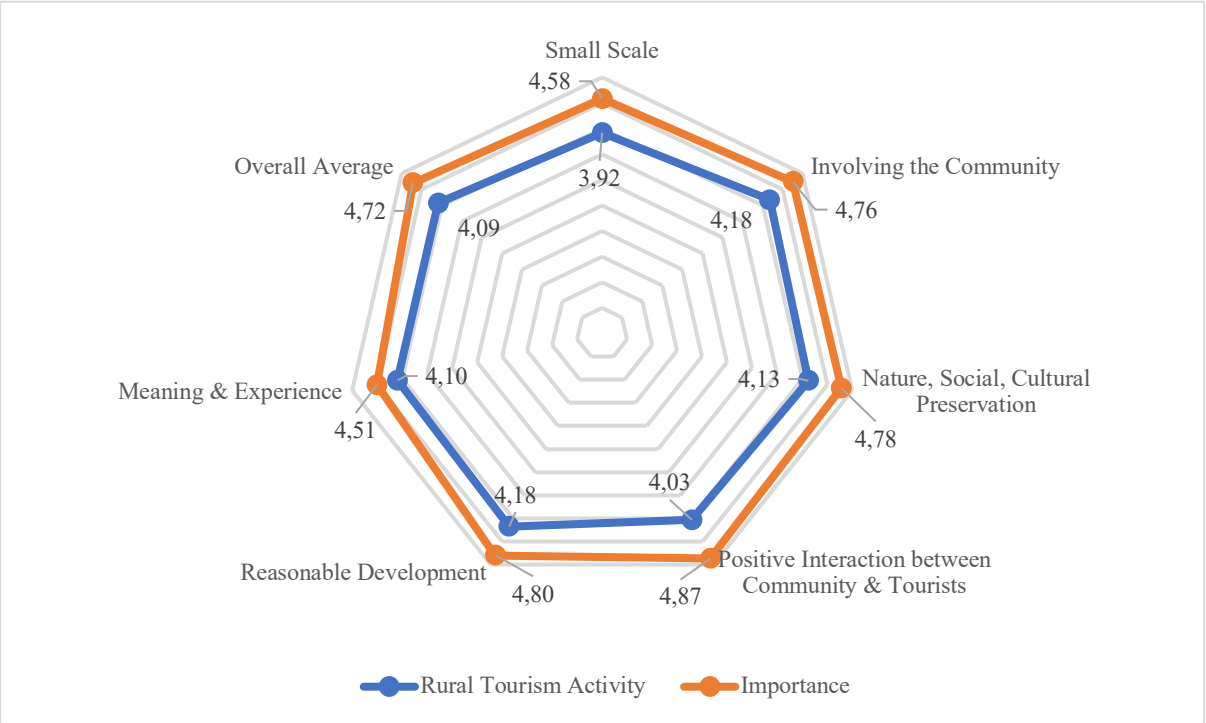
Source: Research Analysis Results (2022)

2.2.1. Gap Analysis of Tista Rural Tourism as Alternative Tourism in Tabanan Regency

This analysis is used to see the gap between the level of importance and performance on the six variables of Tista Rural Tourism as alternative tourism in Tabanan Regency. The smaller the gap between interest and performance, the better the application of alternative tourism in the Tista Rural Tourism, Tabanan Regency. Looking at the results of the average gap of Tista Rural Tourism as alternative tourism in Tabanan Regency, it was found that there were 3 (three) variables whose average Importance Performance Analysis (IPA) value was higher than the average value of importance and performance. These variables are community involvement, nature, social, culture preservation, and natural development. It means that those are the variables with the highest value compared to other variables.

In more detail regarding the gap between the importance and performance of the Tista Rural Tourism as alternative tourism in Tabanan Regency seen from the overall average value of the importance level is 4.72 which is categorized as very important and the overall average value of the performance level is 4.10 which is categorized as good, namely: 1) Involving the Community with importance level value 4.76 which is a very important category and the performance level value 4.18 which is a good category; 2) Preservation of Nature, Social and Culture with level of importance value 4.78 which is a very important category and performance level value 4.13 which is a good category; and 3) Reasonable Development with an importance level value 4.80 which is a very important category and a performance level value 4.18 which is a good category.

Figure 1: Gap Analysis in Tista Rural Tourism



Tista Rural Tourism as alternative tourism in Tabanan Regency is strongly supported by the community with active community involvement in its management and development. This is clearly seen at the importance level as an alternative tourism category that is very important and is supported by performance as alternative tourism with good category. Through the implementation, it proves that Tista Rural Tourism applies alternative tourism concepts in its development. It was mentioned earlier that there are 3 (three) important variables that are highly emphasized by the people of Tista Village in the development of Tista Rural Tourism as alternative tourism. Those are community involvement, nature, social and cultural preservation, and reasonable development. These three variables are also above the overall average value of the importance level and above the overall average value of the performance level.

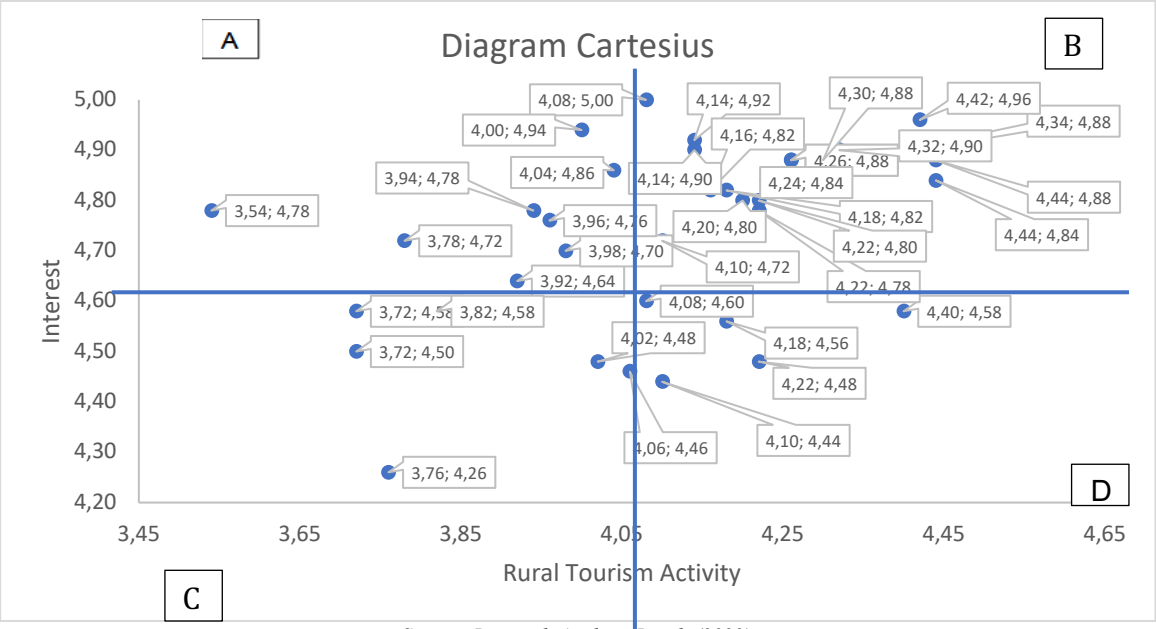
This indicates that the Tista Rural Tourism community cares about the sustainability of their village in the development of rural tourism by playing an active role in the management and development as well as being a control towards a quality and sustainable rural tourism and improving community welfare based on a harmonious life full of kinship and mutual cooperation in Tista Rural Tourism Tabanan Regency.

2.3 Importance Performance Analysis (IPA) Tista Rural Tourism as Alternative Tourism in Tabanan Regency

The next analysis regarding Tista Rural Tourism as an alternative tourism in Tabanan Regency will be explained in relation to the results of the Importance Performance Analysis (IPA). IPA analysis is used to analyse how much expectations have been met and how much performance to meet these expectations has been implemented. Related to Tista Rural Tourism as alternative tourism in Tabanan Regency, IPA analysis will group 36 indicators to identify alternative tourism in Tista Rural Tourism, Tabanan Regency into a Cartesian Diagram.

Identification using IPA analysis in Tista Rural Tourism is grouped into 4 (four) Quadrants (A/I), (B/II), (C/III), and (D/IV). Each quadrant has a different meaning. Quadrant A is the main priority, Quadrant B is superiority, Quadrant C is a low priority, and Quadrant D is an excess resources.

Figure 2: Importance Performance Analysis (IPA) Tista Rural Tourism as Alternative Tourism in Tabanan Regency



Source: Research Analysis Result (2022)

The results of grouping all variables found an average importance level of 4.72 (very important) as the Y Axis and an average performance level of 4.10 (good) as the X Axis. The grouping also found the position of each indicator in each quadrant. In Quadrant A, which is Main Priority, there are 7 indicators, Quadrant B as Superiority has 16 indicators, Quadrant C is low priority with 9 indicators, and Quadrant D as excess of resources quadrant has 4 indicators. The explanation of each quadrant for all indicator groupings in the image above is as follows:

2.3.1. Main Priority

The main priority is the area or quadrant that includes alternative tourism indicators that are considered important by the community in Tista Rural Tourism, Tabanan Regency. However, the performance results have not been in line with the expectations of the community. In other words, the main priority quadrant shows that the average value of each indicator of importance is higher than the overall factor value of the level of importance. Meanwhile, the average value of each performance indicator is lower than the average value of the overall factor of importance level.

Performance aspects on alternative tourism indicators need to be improved, so that these indicators are in the superiority quadrant which is often referred to as the maintain achievement quadrant. To realize alternative tourism in Tista Rural Tourism, Tabanan Regency, the indicators of the main priority should be given an adequate allocation of resources.

The results of the calculation of the questionnaire and the output results of the Cartesian diagram on the main priority there are 7 indicators. When examined the distribution of the 7 indicators, it can be seen that the factors that become the main priority to be improved in an effort to increase alternative tourism in the Tista Rural Tourism, Tabanan Regency depend on the indicators of the group. For more details, the main priorities of Tista Rural Tourism as alternative tourism in Tabanan Regency are described as follows.

1. A5 : Understanding of the area visited
2. C1 : Long Term Orientation
3. C5 : Environmental Hygiene and Sanitation
4. C6 : Waste Management
5. D2 : Tourist stay in homestay
6. D3 : The community feel comfortable with tourist arrivals
7. E2 : Using local materials in the construction of tourism facilities

2.3.2. Superiority

The superiority quadrant is quadrant that includes alternative tourism indicators in Tista Rural Tourism, Tabanan Regency which are considered important and expected by the community, simply this superiority quadrant means that the average value of each importance indicator is higher than the value of overall factor of importance level and the average value of each performance indicator is also higher than the average value of the overall factor of importance level.

All indicators in the superiority quadrant should be maintained because in this quadrant, there are accomplishments that have been achieved and need to be maintained to alternative tourism in Tista Rural Tourism, Tabanan Regency. There are 16 indicators for alternative tourism in the superiority quadrant. For more details, indicators including the superiority of Tista Rural Tourism as alternative tourism in Tabanan Regency can be seen as follows.

1. B2 : Community Training
2. B3 : Socialization to the community
3. B4 : The community is involved in the management of the rural tourism
4. B6 : The community concern about rural tourism
5. C2 : Harmonization of Community Life
6. C7 : Maintaining clean water sources
7. C8 : Maintaining community sources of livelihood
8. C9 : Safety and security in the rural tourism
9. D1 : Quality of Relationship between host and guest
10. D4 : Tourists respect customs in rural tourism
11. D5 : Community benefit from tourist arrivals
12. E3 : Building with local labor and simple equipment
13. E4 : The development is carried out through planning process
14. E5 : The development carried out is socialized to the community
15. E6 : The development carried out is beneficial to the community
16. E7 : The development carried out does not damage nature and the environment

2.3.3. Low Priority

In this quadrant, the community considers that alternative tourism indicators in Tista Rural Tourism, Tabanan Regency are considered less important, including their performance also receives less attention. This means that the quality of alternative tourism performance is low and the aspect of its importance to the community is low. This low priority quadrant shows that the average value of each importance indicator of is lower than the value of the overall factor of importance level and the average value of each performance indicator is also lower than the average value of the overall factor of importance level.

Indicators that are in the low priority quadrant have little influence on the community because they are not too important, so that the implementation of activities to realize alternative tourism in Tista Rural Tourism, Tabanan Regency on this indicator is not urgently pursued. However, vigilance and professionalism in the management of rural tourism require evaluation and control of the indicators in this quadrant.

Based on the results of the Cartesian diagram analysis, there are 9 indicators that are classified as low priority. For more details, the low priority of Tista Rural Tourism as alternative tourism in Tabanan Regency is as follows.

1. A1 : Limited number of tourists
2. A3 : Type of attraction set
3. A4 : Time duration set
4. B5 : The community prepare homestay
5. C3 : The contribution of tourism to socio-culture
6. E1 : Complementing existing facilities
7. F1 : Tourists are considered as friends and relatives
8. F2 : Tourists are introduced to the local life of the community

9. F3 : Local tourism activities offered to tourists

2.3.4. Excess Resources

This quadrant is considered less important by the community in Tista Rural Tourism, Tabanan Regency, but the resulting performance is very good. Therefore, the importance level is small and the activity is very good, so this quadrant is considered as group that is redundant in terms of resources. This excess of resources quadrant shows that the average value of each indicator of importance is lower than the overall factor value of the importance level and the average value of each performance indicator is higher than the average value of the overall factor of the performance level.

The results of the Cartesian diagram analysis in the excess of resources quadrant is the quadrant with the fewest indicators compared to the other quadrants, namely: only 4 indicators. For more details, those which is included in the excess of resources of Tista Rural Tourism as alternative tourism in Tabanan Regency are as follows.

1. A2 : Specific area settings
2. B1 : Provided local guide
3. C4 : Tourism's contribution to nature
4. F4 : Local menu offered to tourists

3. Conclusions

Based on the data collected and through analytical calculations, it was found that the average of the importance level of Tista Rural Tourism as alternative tourism in Tabanan Regency was 4.72 which can be categorized as very important. In details, in the average results are four factors that are above the highest average related to the level of importance. Those are: Positive interaction between the community and tourists (4.87; very important), Reasonable development (4.80; very important), Nature, social, culture conservation (4.78; very important), Involving the community (4.76; very important).

From the results of the analysis related to community responses, in general, the average performance of Tista Rural Tourism as alternative tourism in Tabanan Regency is 4.10 which can be categorized as good. It means that this is lower than the results of the level of importance. Generally, it can be seen that four factors scored above the average overall level of performance, such as: Involvement of the community (4.18; good), Reasonable development (4.18; good), Nature, social and culture conservation (4 ,13; good), Meaning and experience (4,10; good).

Identification of IPA analysis in Tista Rural Tourism is grouped into four quadrants (A/I), (B/II), (C/III), and (D/IV). It is found in the results of grouping all variables that the average importance level is 4.72 (very important) as the Y Axis and the average performance level is 4.10 (good) as the X Axis. In Quadrant A which is the main priority, there are 7 indicators (A5, C1, C5, C6, D2, D3, E2); Quadrant B as an superiority has 16 indicators (B2, B3, B4, B6, C2, C7, C8, C9, D1, D4, D5, E3, E4, E5, E6, E7); In Quadrant C is a low priority, there are 9 indicators (A1, A3, A4, B5, C3, E1, F1, F2, F3); and Quadrant D as the quadrant of excess resources has 4 indicators (A2, B1, C4, F4).

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The Dynamics of Self-determination in the Context of Statehood and Sovereignty in International Law

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Abstract
The dynamics of self-determination have increasingly demanded the attention of academics, policymakers, and the international community in general. This can be attributed to the new age of the communications revolution; peoples are increasingly aware of state systems and how they can be recognized and respected within a state system. These people, largely with peculiarities, whether to be recognized within a state or internationally, are now pushing to exercise what they perceive as their right to self-determination, which in their calculation includes the right to independent statehood; in international law, do these groups have this right? Is this new call a result of the dissolution of imperial powers, neo-decolonization or just increased international consciousness on the subject matter? How should the intelligentsia and the international community approach this issue in our modern-day? History has shown that self-determination movements often resort to violence to achieve targeted aims and objectives. The origins of these movements have continued to be a subject of debate within international relations and international law as well; however, the outside world continues to pay little attention to this thorny matter until conflict breaks out, leaving similarly ambitious groups with the mindset that violence is the only practical course of action. The issue of self-determination is often assessed from a formal, legalistic viewpoint. While most knowledgeable actors continue to address the issue mildly, it should be known that in practicality, the issue is far trickier than it looks on paper. Self-determination encompasses so many issues—including individual and minority rights, autonomy, state repression, territorial integrity, state sovereignty, and claims to independence, to name but a few—the intelligentsia and the international community should see this issue as one that cannot be treated lightly, at least for the sake of protecting lives and property. This paper extensively discusses the concept of statehood in international law, including the issue of state-building and the criteria for the rise of a state established in law. It further examines and interrogates the Montevideo Convention; also, this work explores the recognition of statehood in its classical and modern understanding as it relates to prevailing legal theories.

Keywords: International Law, People, Self-Determination, Sovereignty, Statehood, Territorial Integrity

1. Introduction

Modern legal scholarships suggest that there is a close correlation between the widespread understanding of the right to self-determination and the legal principles and concepts that explain statehood and state rebuilding. The right and legal concepts here fortify each other; the idea of attaining self-determination cannot be reached with a critical alteration to the form and shape of the state. But despite that, there is usually a clash when the

fundamentals of international law attempt to deal with these issues independently. For instance, the principle of state sovereignty and territorial integrity in international law is always linked with the tenet of statehood, while the right of self-determination among the intelligentsia has to do mainly with the protection of human rights, rule of law and equity; however, international organizations constantly tackle these principles in ways they deem convenient.

Therefore, when a people seek political self-determination within an established state, the issue of rebuilding that state takes center-stage; rebuilding state apparatuses and transforming the governing system usually see the emergence of a new state, particularly in its internal structure.

It becomes necessary to discuss what the state would look like if the right of political self-determination is pushed harder to shake the sovereignty of a state. The internal and external forms of the state come into focus and the legal criteria that make either internal or external self-determination succeed to become a serious issue for actors in the international legal system.

For the sake of the maintenance of world peace and security, modern and traditional legal scholarships have been concerned with the sovereignty of the state. At the same time, international law wants to protect the people and ensure that their political aspirations and whims are respected. These days, the sovereignty of most states has been threatened by globalization and various trade agreements, but most fundamentally, the core of the changes experienced in the sovereignty of a state has to do with the responsibility of the international community to preserve human rights and the rule of law within the acceptable legal parameters.

Under international law, the prevailing concepts in regards to statehood and state sovereignty go in contrast to the criteria for the right of self-determination. The worrying issue here, therefore, is whether the legal concept of statehood and the perseverance of state sovereignty contrast the contemporary notion among countries of the world of the understanding of international law and its capacity to embrace and promote the right of the people to self-determination.

In this paper, attempts are made to provide answers to these teething problems by examining the legal concepts and principles attached to the debate of statehood and state rebuilding and how the self-determination of a people can be impactful to this debate, particularly when we discuss their right to political self-determination which takes a greater form of agitation and persistence.

The concept of statehood in international law is discussed extensively in this work; the issue of state-building and the criteria for the rise of a state established in law, specifically, the Montevideo Convention, will be elaborated. The recognition of statehood in its classical and modern understanding will be explored in the context of prevailing legal theories. Lastly, attention will be drawn to the issue of popular demand for the right to self-determination and its effect on the political and legal tenets as they relate to state rebuilding.

2. The Notion of Statehood in International Law

What we describe today as the “principle of doctrine” is a new phenomenon that was made universal in the 20th century. Before this time, international lawyers and international treaties and documents did not include in their content the process of determination of an enclave’s statehood. Observers only argued that international law devoid of systematic set of principles about the determination of a people to form an entity was lacking in something critical. This issue has long been discussed for many years by international legal luminaries but not until the 20th century that a solution was reached. Despite the truism, the subject itself continues to draw legal attention to its loopholes and the need for an improved consensus lingers.

One unique trait of a state in our modern day and age is its territorial integrity. The state holds the highest power within its confinement. Outside of its bounds, the state is expected to abide by the internationally agreed principle of non-interference in the domestic affairs of other states.

Furthermore, the legal notion of a state describes a people that are aligned and arranged in unison based on their homogeneity and share common political, social, economic, religious, linguistic characteristics. This state has a military for protection and other institutions and apparatuses of government for its daily upkeep. All units are harmonized for the single purpose of advancing the cause of the people and better their lives. The state promotes social cohesion within a single mechanism and within limits of defined legal bounds. The state is a social construct that explains the lifestyle and expectations of a people while promoting their growth and quality of life.

Therefore, the notion of a state is one that has the attributes of complexities that are interconnected and integrated with each other. The state has elements that are designed to power its supremacy, to define its operational composition and to share powers to various organs within it. The state has a governmental framework with the powers to exercise its authority within the law and to uphold the doctrine of statehood as recognized by the international community.

Under a state structure, a government is a huge project which entails the procedures and modus operandi of not only administering its powers but by duly sharing it to all relevant organs within the law for the smooth running of the state. For a state to be recognized, its power must be derived within the confines of the law and not outside of that. Its power is described as what it generally accepted by the people of the state. The political power of the government distinguishes it from just being a nation. The essence of political power within the government is to enable it establish and run the state, while political power is not a pre-requisite for the existence of a nation.
The way the state is designed is such that the existence of an individual within it is different from the existence of a government that is organized by political parties as the legal organizations to manage its affairs. These parties have the power to make decisions on behalf of the people within and outside the state. The state being an independent unit has the traits of stability and enhances stability through democratic and proper representation of the people.

The architecture and systems of the state are dynamic and this is due to the fact that we have different political philosophies that individual states have decided to adopt and live by. Today, classic ideologies like capitalism and socialism are still being discussed and adopted by countries on the basis of what they think works for their people. There are countries that are “democratic’ and support the rule of law and others that are “less democratic” and keen to meet the yearnings of the people and work for their betterment and cohesion.

The political ideology of state administration surfaces in the course of its existence and growth, the criteria for state building or re-building varies and political scholars share different opinions on them. In the next sub-chapter of this thesis, I will be unpacking the various academic ideas to enable us understand the legal framework of state building and re-building as supported by the right of self-determination.

2.1. The Criteria for Statehood in International Law

The notion of state and its role in international law and international law, it is clear that only international law recognizes it and determines which territory is qualified to be labeled a state. Since the end of WWII, several attempts have been made to interpret and codify the word “statehood”. In the course of the deliberation over the legal draft on the Declaration on the Rights and Duties of States in 1949, the Vienna Convention on the Law of Treaties in 1956 and 1966 and the articles on Succession of States in respect of Treaties drafted in 1974, moves were taken to explain the concept of the State. However, none of these attempts paid the required dividend in regards to the definition as the debate continues.

In the context of international law, the make-up of a state on the basis of internal self-determination which allows the citizens the power to actively participate in the day-to-day policy making of the state is not far-fetched from the legitimacy on the grounds of the external form of self-determination. This work previously discussed the importance of the right to self-determination and its relations to international law and the doctrine of democracy and human rights. These evolutions have emerged as pivotal factors in the transformation of contemporary international law which is concerned with equality, social justice and human rights as contained in international legal instruments.

The criteria for the creation of the state are different and equally grown in accordance to the academic and ideological philosophies existing under international law. From historical perspective of the creation of "states" has demonstrated that the people or group which is part of the state is the sole reasons why the state is needed in the first place. Nationalism has been pivotal to the emergence of states with the citizens pushing for recognition on the basis on their peculiarities viz: ethnicity, language, culture, religion etc.

There is a nexus between the people, groups and political power under any form of government. The operational method of the state in carrying its people along in legislative, judicial and executive duties is signs of active nationalistic groups. In 1648 at the treaty of Westphalia, nationalism pulled European entities together into agreeing to allow peace reign and to unilaterally promote and sustain peaceful co-existence among the different people. At this time, entities agreed to demarcation of borders through legal regulations which was hinged on customary law.

Nationalism that brought about peace and demarcation of borders at Westphalia did not automatically create states but helped in building international relations and peaceful co-existence. This event s were instrumental in the building of international law because nationalism pushed the people towards greater goals and one of them later became the international legal system being practiced today.

The emergence and development of international law did not slow down the advancement of nationalistic states, international law has embraced many modern criteria that are in sync with modern legal ideology and developed gradually in consistence with the principles of international law. The new wave was actively noticed during colonialism and the process of decolonization and has persevered in contemporary legal teachings which advocates for the right to self-determination as the right of the people under international jurisprudence.

1933 witnessed a huge change in the evolution of state building and re-building under international law with the Montevideo Conference of that year. This Convention helped in decolonization and was instrument in settling debates surrounding the criteria of a state. This Convention emerged with four criteria for what makes a state and these are:

1. A permanent population
2. A defined territory
3. A government
4. The capacity to enter into relations with other states

Population is very vital if a state is to be recognized in international law and serves as one of the criteria in the orthodox international law. However, in traditional law, the role of nationalism was crucial and constituted important legal criteria for state building.

At Montevideo, the issue of nationalism was not in the cards and was therefore made an open debate; however, the issues of formation of multi-ethnic and multi-cultural states were encouraged. This theory shows the modern trend in the creation of states which aims at encouraging mutual respect among all people resident within a "state" or enclave. The emergence of states under legal framework promoted the possession of community members in securing a territorial boundary which leads to the standards for citizenship.

One of the criteria of a state is population and this element essential takes center stage when discussing what makes a state. If the population is made up of diverse ethnicity, culture, race, religion, linguistics, the borders of that enclave become the basis for combining that population within a state; borders are very necessary to be able to define the population and call them a state. This concept played an important role in the creation of the principle of territorial integrity as an essential part of contemporary international law. The relationship between population and borders is that they need to go hand-in hand to meet the legal criteria for state building and international recognition. Well defined borders are quintessential for a state to establish healthy relations with its neighbours.

The existence of a government is the third requirement for recognition of statehood. In some textbooks, it has been argued that this is the most important criterion required as stated by the Montevideo Convention; this is so because it builds the mandate upon which state building is emerges. A state without the functional apparatuses like the legislature, judiciary and executive branches cannot function in serving the people. So, it is essential that the state has a running government to meet with the aspirations of the people, as the state cannot gain international rights to relate with others without a functional government, and the role of this government is to serve the people and respect international laws which govern the relationship among states.

Furthermore, at the Montevideo Convention, international relations were a major issue raised and made pivotal as a buttress to the characteristics of a state as an entity that has a specific population, definite borders and a functional government. The international law that set up this this legal criterion emphasized international recognition as a prerequisite for the advancement of a state. State is seen as a member of the international community which avails it the required international legal position.

Some questions have been raised concerning the provisions made at the Montevideo Convention, and some of them are: Does the criteria for state formation as reached at the Convention serve as a matric in international jurisprudence for the formation of a state? Can a state only be formed through the recognition of the international community and its ability to gain rights and obligations derived only under international law?

Diagnosing the Montevideo Convention, shows that peace, security, human rights and the rule of law are essential features in state formation. The Convention was created to basically meet with these conditions, that notwithstanding, the basic criteria are also in sync with the intellectual philosophy of world peace and security.
The ability of the state to enter into relations with other states shows that it is designed to respect the international laws monitoring the activities arising from such relations. But, without the existence of a functional government, the state is weak and cannot carry out its functions, resist external aggression and create its own internal laws.

The events of WWI, WWII, colonialism and the Cold War changed the dynamism of the Montevideo Convention in terms of its international practices and these events have had various influences on the outcome of the Convention. These activates did not completely erode the practices agreed at the Convention in regards to formation of states. What happened was that additional international standards were added to the practices and modern legal ideologies, international organizations, non-state actors; both regional and international have since risen.

It can therefore we argued that the Montevideo Convention criteria were based on dynamism and these practices do not prove the reality of legal transformations. Looking at the various activities between states in terms of their relations, the Montevideo Convention criteria did not reflect futuristic changes.

The requirement of a state to possess a government is very fundamental in international law, but we have seen cases where countries exist without a government, at least for some time. The case of Somalia from the early 1990s is one and currently, Libya is in a very similar situation, with many warlords claiming control of the state. In international law, there is no strict requirement for a country to possess absolute power through various government apparatuses, but it is crucial that is has an effective government to oversee its internal and territorial activities and ensure the safety of the citizens.

Decolonization and the Cold War weakened the principle of states particularly in regards to their relations with other members of the wider world. With countries gaining independence, they were thrown into a world where they had to make a decision on which side of the fence to belong – the West or the East. These new states were not allowed to enjoy the true luxury of international relations and their affairs were reduced to largely the camp they chose to align with.

In his work, Defining Statehood: The Montevideo Convention and its Discontents Thomas Grantd submitted that the Montevideo Convention only thought of the situation on the ground at a particularly period in time and

did not apply a futuristic approach, particularly on the subject of statehood and state-building. The result of the Convention did not envisage a long time solution, rather it met with the conditions at the time for state formation, but some experts have argued that there is the need for a new Convention to address the matter. The criteria reached at Montevideo have come under scrutiny in recent years and the apprehension now is how the people being the source of government can defend their human rights and dictate their own political future without external interference.

At the moment, there is a rift between the criteria reached at Montevideo which are still prevalent in international law and the contemporary thoughts in today's international jurisprudence. One of the downsides of the Convention according to legal scholars is its failure to mitigate on the duties of a people vis-à-vis that of their government. The fact that there is a population and government does not automatically equate to a state, the lack of consistency in standards and the population does not represent the ideal state; these inconsistencies mean that a state may struggle to protect the rights of the people and ensure their security.

Another noticeable oversight from the Convention which later became contentious was that of military or coercive force. It did clearly forbid the use of force in state building, but did not make the required clarification when it comes to international relations. In today's world, the use of force is seen as a threat to global peace and security. The Convention did mention in Article 11 that states should not recognize any state acquired through military force such as foreign occupation of a land, but failed to highlight the criteria that must be met to legalize such an action. The question then arises – Do states in modern day and age abide by this standard under international law and when forced is used to attain statehood, what has been done about it as a way of correction or recognition?

The issue of recognition forms part of the debate but does not affect the standard of state-building. It does not mean that recognition is not important but on the contrary to prove that it is needed and be included in the criteria for statehood. International recognition implies that the new state has met with the other criteria as contained in the Montevideo Convention as agreed in international customary law.

In other words, if a newly formed state meets the other standards – a population, a government and a defined territory but lacks relations with other states due to a lack of international recognition, then it could be said that it does not meet the criteria agreed in international customary law. The new state however can enter into relations with other existing states on the basis of interests or sympathy, their recognition at that point lacks the ideal international relations and cannot be said to have completed the circle for statehood. So, for such a state to be admitted into international organizations, their recognition becomes a prerequisite, for such a state to be fully said to be a member of the international community those standards must be completely met.

The use of military force in state formation has been a common event in modern times and it is expected that states should be created based on international legal standards. Otherwise, states will be formed contrary to the norms stipulated in international law. The population requirement not equate to acceptance of military force in state-building. States play important roles in international law, therefore, the formation of state, or any form of changes that might occur to an existing state must meet with the standards outlined in international law because lack of consistency leads to lawlessness and anarchy.

In international relations, the standard of international law is an acceptable framework, it also the model on which the doctrines and ideologies of international human rights and obligations are supported. Be that as it may, the standards agreed at the Montevideo Convention on statehood in the context of international law have diminished. More emphases are being laid now on breach of international law in the formation of states, which means the acceptance of states to the principles of international law.

By this metric, states respect and abide by the principles of international law and maintain its international relations within the parameters of the international legal system. With acceptance and compliance to the principles, global peace and security can be assured, and public international law could be said to be effective.

Compliance to these criteria assures peace, security and economic cooperation, protection of human rights and the prohibition on the use of military force bar exceptions where such measures are defined and agreed in

international law. The Montevideo Convention was more theoretical than practical, the standards set might grant a state recognition based on fulfillment of the laid down criteria but might not gain it the expected legitimacy.

Legitimacy of a state rather could come through effective governance, harmony with the people and guarantee of the protection of the rule of law. The international community under these terms must accept the state as a member and accord it all respect required. Public international law works to organize public relations and how states can co-exist in the most peaceful way possible. A state that breaches the principles of international law has made itself illegal and unwanted in the international community.
The Montevideo Convention is believed to be incomplete or at best, a work in progress, the formation of states and state-building depends largely on realistic factors beyond the standards reached in Montevideo. In contemporary legal science, it is argued that the principles should be more harmonious and flexible to accommodation new developments. The criteria should include strict compliance to international law and that creation of new states is in line with public international law, which ultimately leads to global peace, security and cooperation.

International legal scholars are of the opinion that international customary law is larger and more thorough than the provisions reached at the Montevideo Convention because it operates on the practicality of international practices. International customary law has contributed substantially to the development to the doctrines and ambitions of international jurisprudence. It is therefore safe to conclude that the standards set at the Montevideo Convention are defective and laced with exigencies that needs addressing in the twenty first century based on the dynamism in legal science and theory that are in sync with modern legal forethought.

3. The principle of the right to self-determination in the context of statehood

International law was developed for the sake of governing states and the way they relate with one another within the global space. In recent years, we have witnessed changes to this pattern with individuals and groups making legal claims under international law as well. These groups and individuals have taken up important roles in the international space and have in one way or the other altered the arrangement of international law. Some have argued that this new position might clash with the orthodox notion of states and why it is supreme and might supreme any idea of initiating the right to self-determination in international law.

This orthodox perception was clear in the Montevideo Convention where the ultimate power rests on the government as against the people that it derives it, therefore, making the government stronger than the people it governs, which is an aberration.

Most areas of debate surrounding the right of self-determination and the existence of a state have mostly dwelled on the external form of self-determination and secession from parent state. This practice became common international practice during the decolonization process and post-colonization; groups not recognized international or merged with existing groups were forced to push for independence under what they felt was their right. The outcome of this aided decolonization particularly in Africa and pushed for some international agreements as witnessed earlier before colonialism, like the Asia Minor Agreement of 1916 that saw the dismemberment of the old Ottoman empire.

A new matrix on the international front has evolved with new practices on the right of self-determination which is also engineered by popular voice of the people in determining their political destiny. It could be correct, therefore, to say that gradually changes have occurred in international law in regards to state building and nationalistic alliances. This change has given rise to the modern states that respects the rule of law, protects human rights and promotes social justice and equality; it has also allowed the people more involvement in policy making on state affairs.

The modern system in the international legal system no longer dwells on the external form of self-determination like it did during colonialism. The new world order now takes into account the rights of the people on the basis of their constitutional and human rights more than the right to form a new state which has multiple implications

under international law. The issue of human rights has been an international discourse and continues to form the core of many international conferences on state, self-determination and a people. The states are now very conscious of this phenomenon and take serious policy decisions to protect human rights and engage the people more in the political activities of the state which they belong to. Public international law does not only impose legal principles that demand full protection for human rights but, more importantly, compelling states to provide rules that act as safeguards against the breach of these rights.

For state building to be complete, it must provide the environment that protects human rights. These provisions must be in consistency with international law and in sync with the desires of the people for the sake of global peace and security. Under the advocacy of the UN Charter, legal scholar and proponents of public international law have come up with principles built on three main factors: peaceful coexistence, the maintenance of international peace and the avoidance of the use or threat of military force or coercion

These three main factors are critical but most critical of them is the principle of international peace and security, which does not hinder in any way the right of the people to self-determine their political future. Adhering to this particular principle improves peace and most possibly eliminates internal strife and insensitive governments that work against the whims of the people.

Therefore, the right to self-determination has a direct effect on the formation of state, state building and state rebuilding through the aid of legal textbooks, traditional international law and international treaties and conventions as this thesis has highlighted in previous chapters.

The push for the respect of the right of self-determination in international law can gain momentum and become a force in state building and state rebuilding by actively participating in international political practices that will force the hands of the makers of contemporary international law. A state should therefore not be considered to be legitimate if it does not respect this right in international law. This can be enhanced through a compatible government –people state. The government should not be designed in such a way that it will impose itself on the people and disregard the political whims and caprices of the people.

As contained in legal texts and enshrined as legal standards, the process of state building under the concept of nationalism and claim to legitimacy by any government comes through the possession of a population (the people) that are pivotal for any state to stand. With colonialism and decolonization, new concepts have developed that have led to the creation of new standards for state building and state rebuilding.

The Montevideo Convention gave the legal impetus to these concepts and other formal standards of international law also added to it; such as the acceptance and fulfillment of principles and frameworks under international law for the recognition of a state in the international arena. The advent of the Cold War, witnessed a new wave of the right to political self-determination through legislations in international law. At the end of the Cold War, the right to self-determination has become a phenomenon globally acknowledged as a part of human rights and as presented by groups and international organizations.

The recent discourses have not implied that the right to political self-determination and the place of the people in political processes has not existence previously in the legal science. This trend with no doubt got a boast during the fight for colonial independence which was started after WWII. This later metamorphosed and became something bigger in international law with the end of the Cold War. One amply example is the membership of the European Union (EU) which was born post-Cold War, members must pledge to protect human rights and guarantee the exercise of the right to self-determination by allowing the people participate in the political processes of their states. The experience of the French Revolution and the overthrow of the Czar in Russia in the early 1900s aided the decision of the EU to arrive at the point where political participation is non-negotiable.

The idea of the state from inception was the outcome of the struggles of the people, the concept of state building materialized when the people a collective came together to build a legal entity called “State” to represent their interests and oversee the daily running of their activities; and most importantly, protect their rights domestically

and on the international arena. This struggle by the people has historical underpinning and developed when colonies were built and later when people demanded self-rule or independence and power to run the affairs of their newly acquired independent entities.

After the defeat of colonialism, this struggle was advanced by groups within existing states who demanded for an improved protection of their rights and participation in policy making within the state. Colonialism might have ended, but the quest for active participation in government affairs and protection of human rights continue to linger with the people asking various questions at various times regarding these issues. Historical, colonialism played a crucial role in state building under international law, today that cause is advancing with groups demanding to take charge of their political destiny.

The struggle for independence came with the emergence of political freedom fighters who pushed the colonists to relinquish authority and allow them run their affairs; these fighters in many countries were successful and handed the reins of affairs of their independence entities. The downside however, came when these freedom fighters took over power and refused to carry the people along in the running of the affairs of the state; suppressing their fundamental rights and placing them under dire socio-political conditions.

These self-acclaimed freedom fighters contributed to the collapse of the rule of law and social justice in newly independence states and supported a contentious regime. These activities led to the clamour by the people for the right to self-determination to be respected, this right today has been embedded into the system of state rebuilding and state formation through legal principles that promotes human rights and justice. Therefore, it is safe to submit that post colonialism and post-Cold War gave a new dimension to the right to political self-determination and standards for state building and rebuilding.

3.1. Examining the Legal Criteria for Statehood Post-Cold War

The Cold War era was a setback for the evolution of public international law by rendering invalid many of the principles set by the law. International interests and ideological politics added to the pressure witnessed at the time. Colonized people during this period were divided along two major lines of East and West blocs and were persuaded to form political parties along these ideals of these blocs. Each side wanted to win new states to its camp and solidify on its global goals. The former Soviet Union supported countries that leaned more towards Communism while the US and its allies pushed for capitalism and encouraged political parties to be formed along that ideology.

The collapse of the former Soviet Union and Yugoslavia in the early 1990s witnessed the dismemberment of states under the countries; these events opened up a new international practice that saw the rebuilding of states. During this time, the other members of the international community were more concerned about the protection of human rights and the exercise of the right to self-determination. The events of that period were a boast to groups and individuals who desired to engage in the politics of their states and subsequently went into forming new political parties. The republics under the former Soviet Union sought for independence and the people unanimously supported the action as was the trend at the time.

Various republics that later became independent states had referenda across the board and overwhelmingly the people asked to be separated from the parent state. The then Soviet Union did not oppose these actions and the international community also welcomed it as progressive and in line with the principle of right to self-determination. The new states met the traditional standards for state building but most importantly, had the support of the people and derived legitimacy from that support. The acceptance of the new state by the people was important or it will disintegrate in no time.

The evolution of the principle of the right to self-determination got into a critical stage globally when the whims and caprices of the people towards forming political parties and participating in politics began to gain greater international attention. At this point, international law began to frown at resistance of government towards groups exercising the right to self-determination.

State building as witnessed in East Europe supports this evolution as some communist states in that region were able to agitate for more political participation and change in the running of the affairs of the state; they particularly forced the states to prioritize human rights and the right of the people to self-determination. The fallout of these events have developed and been entered in various international legal texts and conventions, such as the Commission on Human Rights Resolution No. 2000/47 (2000)284 and No. 2002/47.285. The UN in recent times has encouraged state rebuilding as witnessed in Haiti in 1994, Somalia in 2014 and the Arab Spring of 2011 in line with the principle of self-determination.

It is innate in humans to fight for their freedom and sometimes lose their lives in the cause of it. History has demonstrated this on several occasions. Therefore, it is expected that a people should not be subjected to a government that does not represent them in the ways they like. One of the duties of a state is to defend itself against any foreign invasion, militarily or diplomatically, but at the same time, it is the responsibility of that state to defend the right of the citizens and avoid internal conflicts as a result of bad policies towards the people.

In the case of an internal conflict, contemporary legal submissions tend to be sympathetic to the principle of the right of self-determination and do not agree that an unpopular government should have its way or impose itself on the people. The right to self-determination in this context enjoys support under international law and encourages it to push for state building or rebuilding as the case may be.

The long line of events that led to the creation of the principle of the right to self-determination and its effect on state building and rebuilding cannot be overemphasized. Legal texts and events such as the International Covenant on Civil and Political Rights and the Declaration of Helsinki have also given credence to this right and opposed unconventional governments as witnessed in South Africa before 1990.

The Cold War era no doubt witnessed several clashes by the two political blocs and stagnated the evolution of the right to self-determination and state building, but the years following the end of the Cold War saw a more stable international community that supported the right to self-determination and the protection of human rights. The trend post-Cold War reflected the creation of a new set of criteria in the international space, that of harmony between a government and the people, where they agree to run the affairs of the state as equal partners and not one imposing its will on the other. The whims of the people were paramount and protected by the constitution. The government must prioritize the people and engage them actively in the management of the state so that as a team they can attain their goals and achieve social justice which sustains peace and security.

In Robert Delahunty views, states in modern days are accepted based on antecedents of the past, he argued that if a state has a government that is not harmonious with its people, then there is a major conflict there and that implies that the state is no longer perceived as one before the other members of the international community.

The people as understood in international law are well protected; however, they are still subjected to domestic laws and institutions of their various countries. Be that as it may, the government cannot neglect the rights of the people and the need to uphold the rule of law all the time. There should not be any places for segregation and minorities should always be protected. There must be an independent law system that consciously protect the rights of the people and encourage their participation in politics.

Events after the Cold War have continued to the growth of the new criteria for statehood and the right to self-determination, among other issues such as social justice and human rights. Political thoughts have since been more sensitive to the issues of racial, religious and social discrimination. The role of non-state actors has also boasted the importance of this right and encouraged the discourse around state building and rebuilding in international law for the sake of peace, security and economic cohesion.

4. Recognition of Non-State Actors in Relation to the Criteria for Statehood

The end of WWII the world has seen the rise of various international legal organizational, some of these organizations are setup regionally with legal frameworks regulating activities within that space while are set up just for a defined objective and adopting a particular problem as the core of its operation. These regional organizations have influenced international law to a large degree. The EU, AU, Arab League are some of these organizations that have made human rights the hallmark of their campaign. The EU's Charter on Fundamental Rights is one example that is now an internationally adopted.

Subsequently, we have also witnessed the impact of non-regional organizations in the uplifting of public international law. These organizations have helped designed some of the rights legal experts discuss today in international law, particularly, human rights and the right to self-determination. The International Labour Organization (ILO) and the UN High Commissioner for Human Rights are some of the examples of these organizations; the Human Rights Watch as a non-state actor can also be mentioned.

In spite the presence of these regional and non-regional organizations, the most crucial non-state actor dominates within the confines of a state and worries international observers is the opposition group or party. The international community often finds itself in serious dialogue with these oppositions which in itself means that they are recognized and seen as important members of the state. Furthermore, this recognition in some cases imply that the legal agitation of these opposition groups are legitimate and stems from the way the government has managed their affairs, particularly in issues relating to political participation and protection of human rights. The international community is of the opinion, that the earlier the issue is resolved, the better it is for global peace and security.
The non-state actors cannot achieve their goals if they lack recognition from the international community, their actions must be in line with the doctrines of peace and security as preached by members of the international community, and their request for international organizations and states to take actions on their behalf must be consistent with international law. Their issues therefore accounts for some of the rules adopted in modern international law and enshrined in some international legal texts.

Non-state actors within an existing state cannot work effectively without the firm support of the general population and assurance of the protection of their rights. What this implies is that the people have to mobilize and push the non-state actors to act on their behalf in the event that government has derailed and no more a representation of the general will of the people. In other words, non-state actors need the people solidly behind them as legitimacy to push forward their aspirations. Non-state actors under international law are protected and have rights and obligations and the people behind them are subjected to the rules of international law.

Article 9 of the Draft Articles on the Responsibility of States for Internationally Wrongful Acts, supports this argument and states in clear terms that 'the conduct of a person or group of persons shall be considered an act of a State under international law if the person or group of persons is in fact exercising elements of the governmental authority in the absence or default of the official authorities and in circumstances such as to call for the exercise of those elements of authority'. This principle gives non-state actors within an existing state the legal backing to operate and carry out their assignments and not to fall foul of international law.

The role of non-state actors is not underplayed in any way when it comes to the protection of human rights, nor does it relegate the nexus that exists between human rights and self-determination. The formation of a state should take into proper account the existence of non-state action particularly as it relates to political participation and self-determination under international law. All non -state actors have a place in international law and this cannot be negated in any way; be it regional, domestic or legal organizations. One vivid example is the recognition of opposition group in Syria and the approval of the state for them to participate in the management of the state under domestic legal mechanisms.

Non-states actors have polarized the academia when it comes to the issue of how important they are in the international space in regards to state building and rebuilding, nonetheless, these organizations have altered the

international legal system, one way or the other through essential legal ideologies. The role of non-state actors cannot be underplayed since they are responsible for several successes achieved in the international arena in regards to human rights and respect for the rule of law. The need for harmony between the government and the people is essential and the presence of non-state actors has indeed encouraged this relationship in so many ways.
The presence of non-state actors does not only make states take the issue of human rights seriously, but it also plays an important role in determining the legitimacy of a government and the degree to which it can partake in international relations; violation of certain rules if put forward by non-state actors can lead to the expulsion of a member of a legal international organization. The AU's Article 30 of the Constitutive Act stipulates as follows: any 'governments which shall come to power through unconstitutional means shall not be allowed to participate in the activities of the Union'. Recognition of a state is critical and its relationship with non-state actors helps it before the international community, since international law respects the role of these actors.
Therefore, by invoking international legal criteria for state building and state rebuilding, the issue of recognition and acceptance come to the fore. It is no gain saying then that international recognition demonstrates that an entity has met all legal criteria for statehood and agreed to abide by international law and form a harmonious relationship with the people.

5. International Recognition of the Right to Self-determination and State Recognition

Emerich de Vattel (1714-1767) asserted in his *Le droit des gens, ou principles de la loi naturelle, appliqués à la conduite et aux affaires des nations et des souverains* that a State needs but be independent and sovereign to benefit from equal status with all other sovereign States in the natural scheme of things.

State recognition is very fundamental in international law and some legal scholars have described recognition as the free will by which one or more states accepts the existence of a defined boundary with human population and organized under an effective government and also capable of complying with the obligations of international relations and international law. There, there is a relationship between what constitutes a state and the legal recognition that acts as evidence to buttress this recognition by members of the international community.

The presence of international organizations has encouraged state recognition to evolve in its role in the formation of states and state rebuilding. The birth of the UN in 1945 gave the legal right for international organizations and non-state actors to emerge; these players took up the critical assignment of the recognition of states in consistency with rules in international law.

State recognition in the early years was not too significant in the law of nations which could be said to be the same with international law of today. What made a state at the time were largely de-facto independence, the recognition of the state on the basis of the criteria set out today was not required then. Gradually, legal scholars became to assert that recognition by a state for the creation of another and its participation in international relations was necessary for its engagement on a practical ground.

Before the advent of international organizations, we had recognition, but in more subtle form; the emergence of these organizations solidified the argument and gave concrete backing to the legal standards for state recognition, state building and state rebuilding. Before then, most recognition was based on leverage and political interests; these organizations therefore have made the legal system of international relations closer in relations with modem legal ideology. Unilateral or self-recognition is usually based on partisan thought or ethnic interests while collective recognition ensures the fulfillment of all international criteria for statehood under international law.
International organization under the principles of international law has become active players in assessing and sanctioning the right of a people to form a state and exercise legal duties. Prospective states to belong to any international organization have to meet with the legal and political attributes of other states before they could be granted membership. The UN Charter is clear on this and on its admission of new members. The state must appreciate peace and security and agree to abide by the obligations of the UN as enshrined in the Charter.

The UN therefore admits only members willing to meet with these obligations at all times. Internal conflict does not excuse a state from performing these obligations as those conflicts could be as a result of the government to meet with the demands of the people. This as to do with an already existing state, but the rebuilding of a state is different and falls under different conditionality. The question would be: what are these criteria for state rebuilding?
To answer this question, one has to take a look at the UN Charter. Article 1 stipulates the purposes of the organization and paragraph two of that Article explains the purpose further by outlining that members should be respectful of the principle that equality and social justice were key; and that the people have the right to exercise self-determination.

Article IV clearly highlights that all members should abide by the rules as enshrined in the Charter. Any state that does not meet the rules and the yearnings of its people are in breach of the principle working against the right to self-determination. Organizations such as the UN do not agree to state rebuilding without proper attention paid to the right to self-determination.

The government that fails to meet the needs and aspirations of the people might be prone to internal strife and this would threaten the peace and security of that country and by extension the peace of the world. A situation like that is against the ideals of the UN and the whole essence of international law, which is all about global peace, security and cooperation. Therefore, it is compelling of the state to promote peace and security and be committed to the principle of the right to self-determination which stems from the people. International law is very concerned about the rights of the people and the obligations of the state towards the people.

Therefore, for a state to gain recognition, internationally, it must be ready to fulfill the obligations set by international law and one of them is that of the right to self-determination of the people and also to provide internal mechanisms to protect their human rights. There must be a correlation between the recognition of a state and its recognition of its duties and obligations towards its people.

Recognition of a state in international under the Montevideo Convention states in clear terms that the ability of a state to engage with another means it has met with all the criteria enshrined in the Convention. The Convention respects the right to political self-determination but did not give clear details on the mechanism; this responsibility has been taken up by various other organizations in explaining how and what self-determination entails.

Many legal scholars have come up with various explanations of what state recognition is or should be under international law, however, attempts have been made to build a consensus among divergent views on what should be commonly acceptable through practice use. These efforts have seen some positives results in international practices as adopted by contemporary legal organizations in concord with the Montevideo Convention.

State recognition is not limited to the standard of a state to participate or relate with other states but on some other well laid out standards; but recognition is the origin of the existence of a state and evidence that it has met the required criteria as stated in international law. The UN is very emphatic on this and stresses that for any recognition, the state in question must respect international law. Progressively, the nexus between state recognition and consistency in international law would be discussed as it relates to the right of a people to self-determination which is one of the core issues of this thesis.

Various legal texts have discussed the legal frameworks of state recognition and how it helps in state building on the international arena and how the other members of the international community receive such a state. The interesting ones for this research are the constitutive theory and the declaratory theory.
These theories have been scrutinized in many ways by many legal experts who have spent quality time trying to understand them, dissect how they operate and analyze their strengths and weaknesses. We will be extending these researches by further exploring the roles they play in the right to self-determination, and the need to have a standardized theory workable internationally. This work will dig deeper to find out if there are areas where

common grounds have been found and how homogeneity can be introduced to recognition under contemporary international law.

5.1. Constitutive Theory of State Recognition

It could be correct to say that state recognition was at the beginning founded on the basis of Constitutive Theory of Statehood and this argument has its history at the Peace Congress of Vienna in 1815 where the act arrived at this congressed gave recognition to only 39 states at that time; these were only European states. This congress concluded that state building or rebuilding and recognition was subject to acceptance by existing states only. The argument according to the states was that the theory of statehood should have its "longevity" with those that established the act.

The Constitutive Theory deems a state to be a legal person in international law only when its recognized as fulfilling all standards of statehood by existing states. In his comment, Oppenheim submitted that "International Law does not say that a State is not in existence as long as it is not recognized, but it takes no notice of it before its recognition. Through recognition only and exclusively a State become an International Person and a subject of International Law".

This legal thought matched with the postulation of Hegel who asserted that a state is sovereign and independent against other states and having the full rights in the first instance but admitting that the recognition of other states was equally critical in that new state becoming a member of the international community.

The Constitutive Theory is aware that states might exist without recognition but such a state cannot attain full international legal recognition without the acceptance of its neighbours and how they are perform in international relations. There for state building or rebuilding is at the mercy of the existing states. This theory however has its flaws and could lead to new states acting in certain political way to please other states, thereby lacking its own true political ideology.

The core weakness identified in this theory is its inconsistency in recognition, a situation where a state is recognized by some and not by the others. By strict implementation of this theory, a state that does not have the unanimous recognition of other excising states would not be seen as a legal person in international law and cannot carry out obligations related to international relations. The new state therefore needs an overwhelming acceptance to be welcomed to the international community.

The absence of a standardized rule or a regulatory body to declare that a state is recognized or not will continue to make this matter a subject of academic debate; the new states should be able to abide by international law without necessarily being at the mercy of existing states and in some cases, subjected to the political will of an older state.

5.2. Declaratory Theory of State Recognition

The Constitutive Theory of Statehood was dominated from 1815 until it new international legal thoughts disrupted it. The shift in political thinking of the 20th century ushered in a new theory that brought about a theory some scholars have considered more realistic. The century before WWI saw the creation of some states in Europe like Germany, Italy, Russia, Romania etc., post-WWI saw the creation of even more states in that region like Poland, Yugoslavia, Czechoslovakia etc.; we also witnessed the creation of mandates in the hands of Britain and France in some regions after the demarcation of huge empires like the Austria-Hungary Empire and the Ottoman Empire. Most notably around this time was the political rhetoric of President Woodrow Wilson of the United States on his Fourteen Points advanced the doctrine of self-determination which in the long run at huge outcomes for the international order.

The fallout of this new paradigm led to the Constitutive Theory losing its place in the international legal space in favour of a more accepted concept which was termed the Declaratory Theory of Statehood. The proponents of

the Constitutive Theory still hold the view that recognition was an essential requirement for statehood; the apostles of the new theory which was birthed at the Montevideo Convention in 1933 dismissed such thoughts with their own matrix enshrined in Article 3 of the treaty reached at the Convention; arguing that statehood is not contingent of recognition by other states that a state does not need to get international legal backing from others to perform its roles and obligations in international law. In other words, the recognition of a state simply means the admission of a true situation.

Some legal theorists have argued that the prevailing practice among states is torn between these two theories, the odds in this age tilts more to the Declarative doctrine. The rules arrived at in Montevideo in 1933 still prevail among members of the international community and has been repeated by the Badinter Commission (for the former Yugoslavia).

5.3. The Contrasts between the Constitutive and the Declaratory Theories in Recognition

The declaratory theory is torn between the principle of recognition by diplomacy or recognition by existence. For example, the Principality of Sealand has no official international recognition part from the recognition of existence granted it by Germany, but the Royal Bates family that owns the state has vehemently argued that the recognition of Germany was enough. The declaratory theory of state recognition stipulates that a state is seen as one when it complies with the minimum standards for statehood, in other words, the recognition granted by other states becomes mere "declaratory"

None of the two theories of state recognition meets with modern practice of state building. The declaratory theory asserts that territories can easily by the fact of their existence be labeled as having a legal standing, which in itself confuses fact with international law or principle. If the theory dwells on effectiveness as its core doctrine, it is still important that it is a legal doctrine. A state is not a mere fact, but a reality that is based on laid down legal procedures which every other state is ready to abide by. Therefore, the rule should not only be based on fact but on fundamental principles as agreed by the international community.

On the other hand, the constitutive theory, although it draws attention to the need for cognition, or identification, of the subjects of international law, and leaves open the possibility of taking into account relevant legal principles not based on 'fact', incorrectly identifies that cognition with diplomatic recognition, and fails to consider the possibility that identification of new subjects may be achieved in accordance with general rules or principles rather than on an ad hoc, discretionary basis.
The beauty of the declaratory theory is that it does not create an artificial class among members of the international community and does not allow a group of people impose themselves on the others or their state; the simple objective of international law is to ensure that the people form the government that is best suited for them. They are given the power to dictate and run their own internal affairs provided that the government meets the legal standards agreed in international treaties and international law in general.

Some scholars are of the opinion that declaratory theory unites the states more than constitutive and gives them a sense of belonging in the international community. Constitutive theory contrasts that by allowing some states feel isolated and unwelcome in the international community. Northern Cyprus and its people is one example. Only Turkey recognizes it just as we cited with the Principality of Sealand, earlier.

Declaratory theory gives more room to a state and how it organizes itself within the international community, which has to do with its politics, economy and general well-being of its citizens. The state above every other thing has the obligation of obeying international law and respects its neighbours. Some texts have argued that declaratory theory supports de-facto or unconstitutional government which gets to power through arms or the annexation of a state by another, but this school of thought has its flaws because declaratory theory does not advocate for an unconstitutional government and does not accept a state that has not met with the international criteria for recognition.

This claim is buttressed by the criteria by which statehood is attained through the books as contained in the UN Charter which states in Article 4 paragraph 4 that the UN membership is open to all countries that 'are able and willing to carry out these obligations'.

The responsibility of states in the international community is not only written in the UN Charter but in some other regional treaties and legal instruments. Another argument can emerge from one phenomenon that all new states are a products of an old state through secession of some kind; this new state will require recognition from its mother state which then implies that the constitutive theory is in synch with this situation. Some of the submissions to back this claim are the Bangladesh experience in 1971 when it seceded from Pakistan with its consent; Eritrea from Ethiopia in 1994 and more recently, South Sudan from Sudan in 2011.

One would argue that the new states mentioned above did not completely meet the legal criteria set for state building or rebuilding, this argument interestingly has polarized the legal community with opinions divergent. Since these secessions occurred under international supervisions and the new states have been able to join both regional organizations of their region and the UN is a vindication of their recognition. It therefore means that they complied with the international legal standards and ticked all the boxes as stipulated in the Montevideo Convention of 1933. Most importantly, these secessions give credence to the claim of the right to self-determination and the power of the choice of the people that voted in the various referenda.

Legal scholars that are of the opinion that the consent by a parent state is a prerequisite for statehood align more to the constitutive theory but this theory and conviction falls contrary to the right of self-determination; this is so because this right stems from the people and their desire to manage their own political affairs within the framework of international law. The danger here is that when the people are refused the space to exercise their right of self-determination, they might resort to armed skirmishes and disrupt the peace and security of the parent state and by pushing this agenda militarily would constitute a threat to international peace and security as well.

Eritrea before 1994 and South Sudan before 2011 are two clear examples of armed conflicts that would have been avoided if the parent state had agreed to secession by the dissatisfied group. In South Sudan, the world witnessed a protracted armed conflict that took so many lives and disrupted peace and security not only in the country but in the region in general. The government of Sudan eventually allowed for a referendum with an overwhelming outcome that allowed South Sudan to be independent. Eritrea had a long stretched conflict from 1961 up until 1993 when the government of Ethiopia agreed for the people to conduct an election and be independent as well.
Another case in question is Kosovo where the UNSC Resolution 1244 of 1999 granted the people's wish of independence after a bloody war waged against the Federal Republic of Yugoslavia which is the parent state. The UNSC decision was aimed at bringing peace and security to the country and region and by extension granting the people's right to self-determination; but hitherto, Yugoslavia has not supported the right of the people of Kosovo to self-determine their political destiny outside the borders of Yugoslavia, rather granted them autonomy within the bigger state. In 2008, Kosovo went ahead to declare independence and has since been an official member of the UN and the IMF; it has also gained recognition from over 100 countries around the world.

From the above thesis, it is evident that the declaratory theory perceives state recognition as a political activity embedded in the ability of the state to perform and its diligence before the international community when it comes to the respect of the rules of international law. Constitutive theory on the other hand opposes this concept of statehood and does not think it is enough for the recognition of a state.

The contrast established so far does not imply that declaratory theory does not take into account the place of recognition in state building, rather what it does is to sync recognition with the legal criteria set at the Montevideo Convention and sees recognition as what every responsible state should do when a new states has met those criteria. In other words, it's the responsibility of the other states to do the rightful thing of recognizing a new member that has just met all international legal standards.

This concept ensures that a new state is not subjected to the caprices of an old state because it granted it recognition. Be that as it may, it is still unclear and not as explicit as one would have thought when we talk about statehood and recognition due to the paucity of legal documents on the subject-matter under international law, at least since the Montevideo Convention. Even when we accept the rules reached in Montevideo, there are still no clear evidence that every state has met with them. Declaratory theory faces more conundrums than the constitutive theory when we apply the Montevideo Convention, but the argument that supports it will be the ability of the new state to meet the rules and obligations of international law.

The ability of the new state to meet these rules and obligations will give it leverage before the international community and supporters of public international law. That affirmation will be made known when such a state is admitted into the UN and/or regional organizations like the EU and AU. The UN and other regional organizations have in common the enthusiasm of international law and when a state is recognized by either or both organizations, then it can be said to have attained statehood. Therefore, it is difficult to have other concepts that will go against this one since it appears to be more realistic in the day and age we live in.
The rules set in customary international law and international treaties have been constant for a long time and once a new state is able to accept the rules of international law and meet with its international obligations as well as that of its people then it is a member of the international community. These criteria can be found in the legal texts of international like the UN Charter that compelled all member states to fulfill their obligations at all times. Regional organizations also have these rules and its compliance makes a state recognizable.

The Montevideo Convention criteria on state recognition to some legal scholars are not broad enough in scope coupled with the debate surrounding the interpretation of the criteria as a whole. There have been arguments on widening the scope and infusing more conditions for statehood and some of these suggestions have been – that a new state have the characteristic of democracy, popular support, respect for rights of the minorities and willingness to comply with international law. The need for what has been described as “Revised Montevideo Criteria” calls for the infusion of statehood with considerations that better reflect changing normative standards; the need to eliminate ambiguity also becomes pertinent to allow for lesser dispute when issue of self-determination arises.

The revision of the declaratory theory stresses the argument among legal scholars that the only practicable theory at the moment is that of declaratory. It is seen as being compatible with international legal practices that encourages the right to self-determination and seek to advance global peace, security and cooperation among states.

6. How Can a State be Recognized under International Law?

The recognition of an entity as a state implies that it has met with all the criteria of statehood as stipulated by international law. These criteria were clearly written in the Montevideo Convention of 1933; in this day and age, not all political communities that claim to have attained statehood or met with the requirements of Montevideo are recognized by the international community. This then begs the questions: What community is entitled to state recognition? Which legal body determines this state recognition? These are questions that keep coming up in legal debates when the right to self-determination takes center stage. Around the world, we have issues that epitomize this conundrum and they have refused to be resolved or disappear. The Kurds in the Middle East are still battling for recognition via the right of self-determination over what they claim to be their homeland. There are also cases of Nagorno Karabakh (Azerbaijan), Abkhazia and South Ossetia (Georgia), Northern Cyprus (Cyprus) or Transnistria (Moldova), that see themselves as independent yet lack recognition by the international community.
WWII saw global transformation in state building and the collapse of the old Soviet Union even elaborated this phenomenon. Conflicts, fall of empires, diplomatic secessions, decolonization all led to the formation of new states at one point or the other in our history. Most of these states were products of the right to self-determination. Did the new states meet the international legal criteria for statehood? This has also been a question that has polarized scholars of international law.

The case of the US in 1776 and its declaration of independence shows a different dimension to recognition, which again goes to say that the process is not easy or simple as written in the books. Recognition in summary is the ability of a state to function effectively within the international community under the rules and obligation of international law. Self-rule by secession, armed conflicts or any other means, show the desire of a people to determine their political future without external intervention. It is then the desire of the people that does not seem measurable through the lens of legal norms and doctrines.

The Montevideo Convention was explicit on the conditions for statehood and these have been a guide for statehood since 1933. The question therefore is: if a political entity is not recognized and allowed the freedom to engage in international relations under the norms of international law, what then is the nexus between recognition and sovereignty of a people?

7. Criterion for Homogeneity and Integration in the Context of State Recognition

The repeat of many international legal practices have led to its normalization and acceptance, looking at the criteria of homogeneity and integration in international jurisprudence shows a variation of cases in which the UN has been firm on with results proving to be popular and decisive. The case that readily comes to mind is that of Southern Rhodesia, at this time, the UN was firm and issued a Resolution tagged Resolution No. 288 (1970)406 which made it clear that the new government was not recognized. The UNGA Resolution No. 2946 (1972)407 equally encouraged its members to abstain from any form of relationship with the apartheid regime then in Rhodesia.
Why would the UN issue such a statement and what were the factors that necessitated it? The answer might not be far-fetched. The lack of harmony between the government and the people was clear and enough reason for the UN to step in. The people saw the government has high-handed and not representative of their interests. South Africa is another case where the same Resolution was reached. The UN and the international community did not support the government of the country which did not meet with the yearnings of the majority of the people of the land. Thus, there was no homogeneity between the apartheid regime of South Africa and the people.

The UNGA in pushing its actions further in South Africa emerged with Resolution No. 554 (1985), which nullified the new constitution of South Africa on the grounds that it was not representative of the people of the land. The period also witnessed the enactment of Resolution (A/RES/S_16/1), of 1999 which asked the apartheid regime of South Africa to establish an all-encompassing democratic system which will carry the people along. In 1994, the UNSC doled out another Resolution tagged Resolution 919 which indicated that the organization was pleased with the democratic elections in the country, which saw Nelson Mandela as the first black president of the country.

The above cases are clear indications that under international law, governments that do not conform to the aspirations of the people, particularly when they are racist like the case of South Africa are not welcomed. Therefore, that position under international simplifies the role of homogeneity and integration and how they lead to state recognition on the international arena.
State recognition does not hinge solely on the orthodox standards of recognition like the Montevideo Convention for state building but defends largely on the will of the people and their role in the policy making of the state. The ability of the people to be carried along and consulted when decisions are to be made is critical and makes this standard important. The EU is also keen in observing this standard among its members and calls for exercise of rights and mechanism to protect the people particularly minorities. The EU designed the Guidelines on the Recognition of New States in Eastern Europe and in the Soviet Union in 1991 to help bring about peace and security in the region. These norms hugely promoted the criteria for homogeneity and integration for forming of new states and rebuilding of old ones.

The preamble of this text clearly sided with the principle of the right to self-determination and this was reiterated in the Helsinki Final Act with emphasize on the rule of law and protection of human rights. These principles became legal prerequisites for new states coming out from the old unions to gain recognition, in these texts; the

compliance with the right of self-determination depicts the criterion of homogeneity and integration in two legal dimensions.

Further to the legal texts which covers the protection of human rights, particularly, as it relates to the right to self-determination, the Helsinki Convention posits that the right of the people to determine their own political destiny must be respected and he people have the freewill to select the form of government that best meets their aspirations, internally and at the international arena. Democracy that best works for the people should also be adopted as the people are the essence of the government and state and homogeneity is vital in their co-existence. In the same vein, the EU appreciates the importance of homogeneity and integration through two key lenses – democracy and self-determination. According to the EU, this method is effective as it was experimented in the case of Kosovo when it announced its secession intentions from Serbia. The EU subsequently, announced on 30 May 2008 that the state of Kosovo would be recognized and accepted in the ranks of the EU as a legal entity.

The advisory opinion of the ICJ No. A/RES/63/3 which ruled that the independence declaration of Kosovo did not violate general international law made it easier for the EU to recognize it as a member; also having fulfilled all legal obligations under the rules of the union, particularly as they relate to human rights and the rule of law; therefore the EU agrees that the new state met the criteria for statehood and should become their newest member.

Legal scholars also argue in defense of Kosovo that the new state was constructed on the basis of popular will and gave a voice and freedom to the people which was previously lacking under the parent state. The way the government is being run shows that the entirety of the people) races and religions) are carried along and there is harmony between the government and the citizens. The constitution of the country clearly supports human rights and need for the people to be actively involved in the decision-making process of the state. Although, no scholar has claimed that Kosovo is a fully independent state, however, the legal working apparatuses in Kosovo are being supervised by the UN which technically grants Kosovo the required recognition. The EU in abiding to the norms of international law has recognized Kosovo and wishes to consent to the wishes of the people of the land.

The place of an unpopular government should not be accepted by the members of the international community and in the event that they do as against the will of the people then the standard of homogeneity and integration has not been legally fulfilled. But, if independent states encourages popular actions for independence and strengthens the principle of the right to self-determination then it would be right to say that the standard of homogeneity and integration is indeed necessary for peaceful co-existence of a government and its people within a state.

It could therefore be said that this standard encourages popular government which supports the recognition of a state in international law. The engagement of the people in the decision-making of the state and the respect of the rule of law are clear indications that the state has complied with the standard of homogeneity and integration which should always exist between the government and the citizens; which legal scholars believe is essential for state building and rebuilding.

7.1. Popular Government and the Creation of new States

Popular government entails the process of collective decision-making in the running of the affairs of a state. This simply means there is the respect of the rule of law and protection of human rights; thus, all members of the state have equal rights and deserve to be treated as important as everyone else; this concept helps a government to remain healthy and popular; this right to equality and participation in policies that distinguishes a popular government from any other type in international law.

If popular government is the essence of the principle of the right to self-determination, then it has a strong place in the creation of a new state or rebuilding of an old one, particularly as it relates to homogeneity and integration

of the government and the citizens. To know an accepted government, one can only see it through the lens of the people and how they engage with their government in the day-to-day running of affairs.

Therefore, a popular government is a reflection of its work in the management of the state in accordance with the aspirations of the people. Some states are democratic in nature but without a popular government which is ironic and often leads to internal conflicts. Many examples can be seen from the length and breadth of the world.

The standards for state creation must be met with popular support of the government by its people for the sake of not only internal peace and security but equally global peace and security. When a new state is form and recognized, the first element that is crystallized is that of popular support from the people which then propels the international community to indeed engage the state and welcome it in its ranks. The case of South Sudan in 2011 is one that epitomizes this school of thought.

The quest for a popular government or what some scholars described as democracy is increasing and many legal international texts have made it a part and parcel of human rights as contained in the chapter one of this thesis. Democracy has become a base on which many states build and run their affairs; it is seen as a basic requirement for the admission of any new state in the EU and many other regional organizations. Thus, the need for a people and government harmony becomes imperative as it helps a government become popular and in effect make the state accepted in the international arena. So, the concept of popular government can be connected to the legitimacy and acceptance of a state in contemporary international law.

In practice, popular government is a means to an end and ultimately serves the purpose of a harmonious and integrated system between the people and the government. Morally, the realization of homogeneity and integration open up new opportunities for growth for a state and shows good governance devoid of any form of imposition or arbitral laws on the people.

It would be safe to then conclude that the relationship between the government and the people should be harmonious to support the concept of inclusivity in state creation. The presence of a government that is popular guaranteed peace and security not only on paper but in reality and many countries across the world can bear witness to this claim.

In conclusion, popular government reinforces the concepts of self-determination and the rule of law within a state. It acts as the base for homogeneity and integration needed for the sustainability of a state. For state creation and recreation, therefore, the place of a popular government is critical and cannot be underplayed. This concept in other words fortifies the argument for self-determination and recognition of a state and serves as a proof verifying the standards for statehood.

8. Conclusion

The bid by a people to actualize their ambition of political self-determination and recognition of their state in compliance with the rules and obligations under international have been a process that has not been hindered by the criteria for state creation or recreation. The right to self-determination has helped shape and reshapes the criteria in international law for state-building and rebuilding.

This impact can be clearly seen in the application of the standard for homogeneity and integration between the people and the government that represent them, which in the international space has shown to be indicative of legitimacy and recognition of a new state. This theory can then be among the newly created criteria at the base of contemporary international law. Therefore, one can say that there is a confluence between the principle of the right of self-determination and the international legal norms that transacts the business of state-building and rebuilding.

Indeed, democracy is an acceptable means to ensure the implementation of the right to political self-determination. However, the standard of homogeneity and integration is tangible evidence of the realization of this right because it makes sure that the government is widespread and not one that imposes its laws on the

people. Therefore, popular government and the standard of homogeneity and co-existence augment one another in making an accepted government that respects the rule of law and protects the human rights of its populace; ultimately, one that guarantees social justice and equity following the benchmarks of international law.

This paper, therefore, has highlighted that the right to self-determination in contemporary international law did not emerge from international law itself but rather helped in the advancement and strengthening of the law as it relates to the theory of statehood and state recognition and upholding of the objectives of the UN in keeping peace and security around the world.

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Indonesian Property Law in Global Competition

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Abstract
Investment in Indonesia is a necessity, in the field of direct investment property by foreigners experiencing obstacles when dealing with the land legal system in Indonesia. Property in this case includes land and buildings or houses attached to one another, on the other hand there are restrictions on the purchase of property for foreigners, where they can only purchase Usage Right of land that has limited period of time and the Building Rights on that, which also is limited time, but foreigners unwillingly to buy property above the Usage Rights. The situation is a result of the unequal treatment between Indonesian and foreign citizens with the intention of protecting the rights of citizens. In the Land Law System of Indonesia, the government regulates land use, ownership, and land transaction through the right to control state by the government. This paper aims to avoid the practice of legal smuggling that has happened so far, and at the same time open up opportunities for foreigners to purchase property in Indonesia legally, which has an impact on increasing the passion for property investment in Indonesia. The research method used is empirical normative, which refers to several cases those are the object of research with a case study approach, a conceptual approach, and a statutory approach. Out of the box thinking is needed from common sense practices that have been carried out by the government in exercising the right to control state.

Keywords: Law, Property, Foreigner, Investment

1. Background

Globalization is interpreted by economic actors as a borderless area (Diener, A.C. Hagen, J., 2009) or no national borders, even stateless (Anthony, 1999), the point is not having citizenship, but citizenship status is not required in financial transactions that are recognized by the world. Today, the use of credit cards or ATMs can be done over the countries by all any citizens, even without a place and time limit. (Hancock, D. and Humphrey, D.B., 1997) When in Saudi, America, or Indonesia in the global economy is considered the same time in which any transactions are carried out at anytime, anywhere, and by anyone, it seems that *Lex Locus Contractus* (Campbell, 1910) Theory as regulated in article 16 *Algemene Bepalingen Van Wetgeving* (Nawi, S., Syarif, M., Hambali, A. R., & Salle, S., 2019) as if it is no longer valid, because all transactions at their respective places when the "deal" has been deemed "done," then the global players have agreed not to question the law of what applies to the financial transaction again.

Moreover, transactions conducted through stock exchanges such as the Jakarta Stock Exchange (JSX) or even Wall Street in New York, or the Nikkei in Tokyo are not a problem for stock brokers, for example. Thus, the

development of law and globalization in the field of financial transactions that are increasingly advancing, moreover supported by information technology between countries, citizenship does not seem to be a problem.

Unlike the investment in property, the property sector in Indonesia does not seem ready to face global competition, because it is still in the inner-box mindset, not out of the box (Attanasio, 2002), the intention is confined to several principles in Indonesian Land Law, such as the principle of nationality (Anggriani, 2012), nationality principle (Sucahya, I.M.D.P. and Wisanjaya, I.G.P.E., 2013), and the principle of attachment (Sutiana, 2014). Property investment in Indonesia becomes unattractive for the investors, because the restriction of rights granted by law to foreign investors makes Indonesia's investment competitiveness becoming weak. This is proven that property supply in Indonesia is only absorbed by 65% (Nuryasman and Yessica, 2017).

The question is, doesn't Indonesian Law also adhere to natural law understanding or thought developed by Grotius (Kusniati, 2011), Why not apply the principles that apply in natural law? In the theory of natural law that affects international law International Treatment Measures (UPI) must not conflict with National Treatment Measures (UPN) (Hall, 2001). But on the other hand, in line with global developments, the UPN must see the development of global business transactions to be able to adjust to UPI, as adopted by Natural Law (Anggriani, 2012).

Continuation of Natural Law, is the recognition of the principle of Equality Before the Law (Johnson Jr., 2010). The treatment of international law should be able to regulate global development and game or global development and global playing. Global development is a rapid development in business transaction activities, now it has reached the digital world of global transactions (Wiwoho, 2014), example; someone who has an ATM Bank BNI in the interior of North Sumatra when going to England can take Pound Sterling as long as the funds are there, then move to Saudi in the form of Riyals, even to Israel can use transactions that are opened in his hometown for example on the island of Samosir, thus developing financial transactions resulting in Indonesia having come into play in the global activities of each of the business development activities called Global Development (McMichael, 2005) growing now there is a "*Go-pay*", there is another *Gojek* feature (Muttaqin, 2020), various delivery companies including companies that can open business opportunities in Indonesia such as *Alibaba* (Qing, 2008), *Traveloka* (Harita, F. M., Sadono, T. P., Sya, M., Fernando, J., & Goswami, J. K., 2020), or *Bukalapak* (Rohandi, 2017), which is now increasingly crowded and growing and encouraging Indonesia's competitiveness in the field of non-cash business is related to various feature transactions (Yudhanti, 2018).

In the case of property in Indonesia, the role of Land Law is still very strong due to the treatment of the principle of nationality, where property in Indonesia is related to the prevailing legal system, almost all property investment uses land owned by developers with the status of building rights. Rights that can only be owned by Indonesian citizens or legal entities that are subject to the laws in force in Indonesia, thus properties that are simple flats, commercial flats, and also specifically for business areas such as non-residential office flats, cannot be owned by foreigners, because there are restrictions by the Basic Agrarian Law.

There is legal smuggling in foreigner personal property ownership or also foreign legal entities which have been known as dummy, nominee, and strawman; where foreign nationals buy property through the hands of Indonesian citizens, transactions are carried out in various ways, including: by marrying a local citizen, granting power to a foreigner for an unlimited time or conducting a lease transaction for an indefinite period of time followed by a letter selling power from citizens to foreigners (Dewi, O.R. and Putu, N.L, 2019). In addition, there are also more risky legal practices, for example the purchase of property by Indonesian citizens followed by a letter of acknowledgment in the form of a "notarial deed" that purchases and ownership of the property by foreigners. These practices not only have occurred irregularities and smuggling of the law, but also harm to foreign parties and citizens, such as risks to taxation, criminal acts, the emergence of disputes if one party (married couple) dies. If the law opens opportunities for foreigners to own property, basically it can encourage state revenues such as income tax, luxury tax, or tax on the acquisition of land and building rights (BPHTB) which can be applied to foreign nationals in larger amounts, for example 10 % of what has been valid so far is 5%.

A foreign citizen to own a property in Indonesia must establish an Indonesian legal entity, Indonesian investment law disclosure can be utilized by foreigners, but for activities that are property investment in Indonesia is still

relatively low, because Indonesia's property competitiveness is weak, exemplified The Right to Build in Indonesia is no more than 30 years compared to Singapore for 95 years (Hampden-Turner, 2009), Malaysia for 125 years (Ali, 2009), how passionate the neighboring countries open up new opportunities for investors to own property, the property business in Singapore which is much more expensive in Indonesia as well as Malaysia as well as the quality of the mud and surrounding areas, from the explanation above can be outlined the question is What is the best way to open the market globally of the property business in Indonesia by developing Indonesian Property Law without violating the applicable legal system?

2. Research Method

The research method is empirical normative, which refers to several cases those are the object of research with a case study approach, a conceptual approach, and a statutory approach (Budiartha, 2019). To struggle with the conflict between the international need to obtain legal ownership of property in Indonesia and the practice of legal smuggling due to different treatment from the legal system in Indonesia, case studies in several areas by applying a horizontal separation system can answer the legal impasse between land and property law (Roestamy, 2017).

The community's need for alternative solutions to obtain certainty for ownership of property separated from land can encourage the independence of property law in Indonesia and at the same time open up opportunities for foreigners to own property separate from land. Sources of data those primary, secondary, and tertiary (Suherman, & Retnaningsih, S., 2022) are done by analyzing the laws and regulations and some views of experts, which are summarized from literature sources. The case studies were obtained by referring to legal documents at the notary and banking offices that have made guarantee contracts from buildings separated from land in three cities in Indonesia, including Jakarta, Surabaya, and Medan.

3. Results and Discussions

3.1 Overview of Property Law and Globalization

Understanding of Property Law in the legal literature in Indonesia is still not widely known, the definition of Property Law requires a legal basis to be recognized before the judiciary. There are several scopes of law relating to Property Law, namely; Land Law that is subject to the Basic Agrarian Law (UUPA) (McCarthy, 2016), Building Law which is subject to the Building Law (UUBG) (Pamuji, K., Nasihuddin, A. A., Ardanariswari, R., Supriyanto, S., & Rosyadi, S., 2019) and the Apartment Law (UURS) (Rachmawati, F., Soemitro, R. A. A., Adi, T. J. W., & Susilawati, C., 2018), Underwriting Rights as stipulated in the Mortgage Rights Act (UUHT) (Kusumastuti, D., 2016), including the derivation of legislation as implementing regulations and their derivatives. Understanding of Property Law cannot be released also with the concept of Building Use Rights (HGB) regulated in Basic Agrarian Law in article 35 and the concept of Use Rights in Basic Agrarian Law in articles 41 - 43.

From this explanation, the writer draws a line that some elements of Property Law include rights to property which in this case is limited to land and buildings and the rights in it, and is related to guarantee law in it, of course, the involvement of elements of building management buildings and flats become an important part.

It is known that according to Basic Agrarian Law articles 37-39 that the Right to Build can only be owned by Indonesian citizens or Indonesian legal entities, the question is whether the article includes protecting the Indonesian people or has treated Indonesia's non-international Land Law system? It must be remembered that the Basic Agrarian Law was formalized in 1960 when Indonesia's struggle against the Netherlands was still felt, therefore the closure of the land system in Indonesia was intended to make the Indonesian people host their own country because land was a sacred, religious, including self-esteem, family, the future of life and death for citizens. Many land disputes cannot be resolved and cause casualties to the people.

In Indonesia, land management is regulated in Basic Agrarian Law article 2 through the right to control state by the government (Bakri, 2011), where the state has the right to regulate the designation, use, maintenance and provision of land; including regulating legal relations between legal subjects and land, and regulating legal

relations between legal subjects regarding land. Indonesia does not adhere to the domain of the state, but adheres to the domain of the nation in terms of land ownership according to the land legal system, that the state does not have rights to land, but controls through the system of right to control state by the government (Kusumadara, 2015). In Singapore land is not owned by its people, but is owned by the state, so the state domain applies (Hwang, B., Ming Shan, and Supa'at, N.B.S., 2017). Meanwhile, in Malaysia, the domain of land is king, because the king is the holder of sovereignty over land (Jenkins, G. and Victor T., 2003). Whereas in Thailand, there was a development of land tenure where some were controlled by the king, while others were owned by the people. In Malaysia the king can release the land either by purchase or gift by and to the people, because with the power he has the king can release the rights to land to the community, for example in the public interest, even in the interests of building affordable housing for the people. The rights of the people are given in the form of leases or usage rights, known as leasehold (for 75 years to 90 years) and freehold (for a period of more than 100 years) (Hamman, 2019).

Unlike in Indonesia, if the community has flats or apartments, both residential and non-residential, it is still overshadowed by the expiration of the Right to Building, considering the flats are built on Building Right with a maximum term of 30 years, and in practice, National Land Agency could grant a lower time period.

3.2 Global Competition and the future of Property Law in Indonesia

The thought of developing Indonesian Property Law cannot be released with reform efforts regarding land rights, specifically relating to ownership of property in this case the Building Rights (HGB) and the Right to Use. Both of these rights become obstacles in the development of Property Law in Indonesia, bearing in mind that there is a limited period of time, namely the HGB for 30 years (in practice it is also often granted only 20 years), then the use rights as rights that open up opportunities for foreign ownership of property for a period of 10 year is a very short time for long-term investments such as property.

The perspective of the development of Property Law in Indonesia in the context of facing global competition by looking at the practice of customary law in force in Indonesia that applies the principle of horizontal separation, namely the separation of ownership between buildings and land (Roestamy, Konsep Kepemilikan Rumah Bagi Warga Negara Asing dalam Rangka Percepatan Peningkatan Investasi di Indonesia, 2016). So far, there has not been any dispute over ownership of property, in this case a house or place of business built on common property, or communal ownership (a customary community association) (Hopkins, 2016).

Ter Haar (1948), states that ownership rights to houses and plantations are basically separate from the rights to the land on which the objects are located. Thus, the principle of horizontal separation can be interpreted as a doctrine that separates land ownership from objects attached to it, including in the case of land transactions, such as in buying and selling.

The principle of horizontal separation is adhered to in the Customary Law (Diala, 2017), as adheres to the separating land right from everything that exists on it, which places land objects so high compared to other objects (Hasan, 1996). Some examples of the adoption of these principles in Customary Law are seen from the practice of inhabiting and owning a house on someone else's yard that the right to own and inhabit one's own house in the yard of another person (that right can be revoked) next to the house of the owner of his own yard, is called the right to hitch a ride (*recht als bijwoner*); while the right to own and inhabit one's own home in the yard of another person who is not inhabited by the owner, is called a right ride a house (*recht als opwoner*). Home or yard passengers, such as ovaries, protectors, magersari, passengers as illustrated by Iman Sudiyat (1981).

With the application of the principle of horizontal separation hereditary and followed by indigenous peoples, basically it becomes one of the sources of the Basic Agrarian Law where customary law is the source of National Agrarian Law from the formal meaning. Therefore, in the research of this paper in line with the dissertation topic that the author will compile, the principle of horizontal separation becomes one of the analysis blades to see the development of Property Law in Indonesia.

If Indonesia wants to develop a solid Property Law system, then the building legal position must be ordered as an independent law, which is liberated from the Land Law regime, because of a misunderstanding in the drafting of apartment laws, especially regarding the understanding of flats with overlapping between building rights and land rights.

Indonesian apartment law which is one of the pillars of Property Law becomes rigid, indeed the law of objects is rigid law, but building law basically does not recognize the principle of nationality, the building legal system recognizes the principle of internationality as explained in the Law Building articles 8-12 which states that everyone can have the right to building, so not every citizen of Indonesia as the right to building. In contrast to the Right to Ownership, Business Permit, and Right to Build, which can only be owned by Indonesian citizens or legal entities that are subject to applicable law in Indonesia.

If Indonesia does not want to be said to have discriminated in granting rights, the author would like to say the limitation of the granting of rights as such is the principle of different treatment, where the principle is not in line with natural law as mentioned above, namely a conflict between International Treatment Measures and National Treatment Measures.

Judging from the UUBG legislation theory, the natural law or natural law theory developed by Grotius, namely the phrase "everyone" means that UUBG has made a legal breakthrough in the legal system of things in Indonesia. The legal system of objects has a rigid nature, where a material right cannot be said to be an object before there is a law that regulates and determines it as an object in the civil law system (Meliala, 2014). The apartment system in Indonesia is still influenced by the principle of vertical attachment (*Verticale Accessie Beginsel*) (Utomo, 2019) with the understanding that wants to enforce Civil Code article 571 which states: "that ownership rights to a piece of land include ownership rights to everything that is on it and in the land." This article also affects Law No. 4 of 1996 concerning Mortgage Rights (UUHT) which then affected the registration system of ownership of flats units (HMSRS), which until now still has not seen laws and regulations governing the existence of separate rights from apartment units, namely shared land, buildings together, and shared objects.

That in the legal system of objects there is not one object that can be said that objects subject to the legal system of objects or the Indonesian legal system are not expressly stated in the law, the interpretation carried out by Government Regulation No. 24 of 1997 concerning Land Registration has closed the opportunity of developing Property Law by applying the principle of vertical attachment.

Unlike the treaty law which adheres to the principle of *consensualism* (Sewu, 2019) as regulated in the Civil Code article 1320 and the principle of freedom of contract as stipulated in article 1338, where the parties can freely make agreements and act as laws and bind both parties to make the agreement as long as it does not conflict with statutory regulations, customs and decency as regulated in the Civil Code article 1339.

The practice of objects apart from land as described above, in the customary legal system in Minangkabau has been accepted by the community and has legal force (Nurdin, Z. and Tegnan, H., 2019), in Yogyakarta the practice is known as "*Magersar,"* where land in the Sultanate area of Yogyakarta belongs to the king. Building owners who try or reside on land owned by the sultan (*sultan ground*) must obey the *Magersari Principle* or Land Law that applies in the sultanate of Yogyakarta (Agustina, I.H. and Hindersah, H., 2019).

In Jakarta, buildings are now available in the basement and under the highway as a development of the Mass Rapid Transportation (MRT), many businesses and even the infrastructure such as railroad stations and carriages are among the property of others on it (buildings and public facilities). In many buildings and malls in the business district (Said, L.B. and Syafey, I., 2019), many buildings are built on highways such as Harco Mangga Dua, then crossing the road from Pondok Indah Mall 1 (PIM-1) to PIM-2, many available stalls and modern shops of value expensive (Kocur-Bera, 2019). Basically, the practice of the principle of horizontal separation is well known in cities such as Jakarta, in Surabaya there is what is known as a green letter namely the ownership of a shop on a local government land, in Medan, a Chinese businessman named Chong Afie got a grand from the sultan of land in the Kesawan Medan golden triangle area, by issuing Grand Chong Afie he built the Business Complex in the

Kesawan area with a land lease system (Asari, 2019), but his shop was owned by an individual person and could be transferred securely to the parties others as building owners. So basically, the practices of the principle of horizontal separation already exist but the Indonesian Property Law system has not been accepted even though the Building Law and Apartment Law are well known.

The classic problem in Indonesia is to apply the registration of buildings to a big question, where is the authority? The struggle between the Ministry of Public Works and the Ministry of Land which have registered ownership rights of flats (HMSRS) under their authority based on Government Regulation (PP) 24/1997, is a mistake and caused Property Law to stagnate and have no competitiveness. As a result, property deals can only be given to local residents or Indonesian citizens. Indonesian property does not have global competitiveness, because it is not attractive.

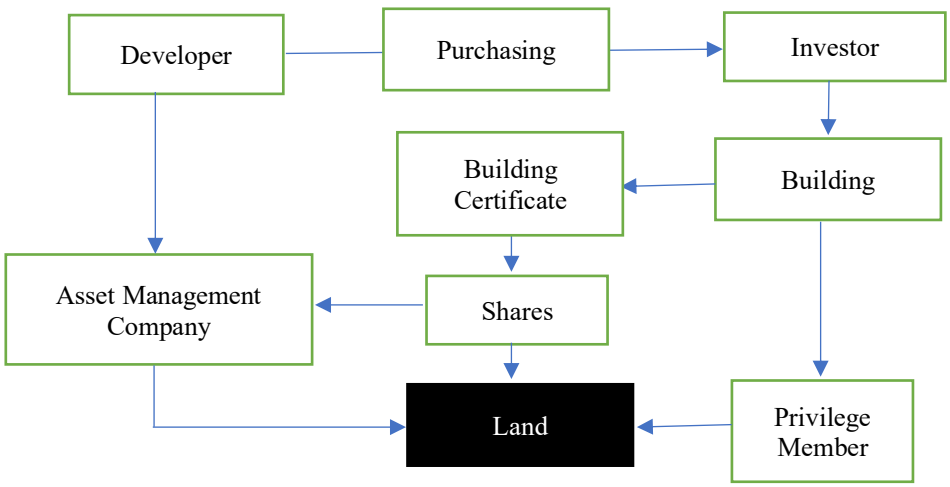
The debate has caused Indonesia's Property Law to be very slow to develop, because the current system has weak competitiveness. Aside from being foreign, the ownership of Indonesian citizens only over the property still has a question mark with the application of the principle of attachment to the shared land having an impact on the ownership rights of flats.

Legal experts must contribute input to the government that the signals given by regulations must be formulated immediately, and in the opinion of the author can be in the form of government regulations if they see the Apartment Law (UURS) No. 20/2011 Article 49 is the newest one, while the Building Law (UUBG) No. 28/2002 article 8 jo. PPBG No. 36/2005 article 12 paragraph (4) which mandates registration of ownership of buildings in the form of a President Decree. The difference between these two laws seems to raise doubts from the government itself, so that until now both Government Regulation (PP) and President Decree (PERPRES) that will sustain the development of Property Law as intended have not yet been realized.

One aspect of strengthening building law both residential and commercial apartment buildings is one of the pillars of Indonesian Property Law that must be strengthened and provide legal certainty in entering global competition. Land Law, building law, and apartment law are the golden triangle of the development of Indonesian Property Law.

Image of civil relations for the construction of foreign clusters in real estate by applying the principle of horizontal separation. An alternative for granting access to foreigners can be given a landed house with a foreign cluster model, meaning that the developer builds a special cluster that will be inhabited by foreigners who are interested in buying property in Indonesia. By granting rights to the landed house building, the developer forms one asset management property company that owns the foreign cluster referred to, then the government issues a building certificate as proof of ownership of the landed house, then, when the property sale transaction is made, a proportional system of landed house prices can be given by companies in the form of shares of the asset management company that owns and manages the foreign cluster as shown in the figure 1 as below:

Figure 1: Foreign Cluster Landed House Model



In this case, the buyer at the same time gets a membership card to get access to social services and public facilities. The sale of these foreign clusters ultimately provides three pieces of evidence; 1). Building ownership, 2). Ownership of shares of the company, and 3). Membership to get facility access. These three pieces of evidence, civil law can be traded to foreign fellow foreign parties. There are several benefits to be gained here.

First, the existence of legal certainty of ownership of landed house property for foreigners in Indonesia, so they do not need to use dummy or nominee to gain access to property in Indonesia, secondly, specifically for foreign clusters, the government can set a foreign property tax for ownership as well as any transfer transactions from one owner to another, for example by providing sales tax and land and building tax as well as land and building tax on double the charge applicable to Indonesian citizens. In this case the government will get foreign exchange earnings and taxes from the property as mentioned. Third, with this foreign cluster system, it will encourage the passion of Indonesian property which has been for the upper middle cluster, its market is limited to big cities, such as Jakarta, Surabaya, Medan, Bandung and Denpasar, developing into the opening of the markets of Singapore, Malaysia, Australia, Japan and other eastern countries, even penetrated European and American markets, because the market so far, the market provided by the government is the usage rights which have a limited period of time which is usually 10 years to a maximum of 20 years, it is also rare.

3. Conclusions and Suggestions

The development of Land Law by reviewing the expiration period of rights, especially Building Rights and Right to Use is the key to Land Law reform in Indonesia which is part of agrarian reform, because global competition sees limited land tenure as unattractive and unable to compete with neighboring ASEAN countries that have first reformed the rights to property, especially ownership of flats with a much longer period and better than what is held by Indonesia.

To provide stronger competitiveness, from investment property openness for foreigners to own property in Indonesia, has an impact on investment competitiveness, because property ownership is related to the livelihood of people, so they can live in a safe and comfortable place to live. Development of building law that has internationality characteristics can be done by providing legal certainty over building ownership, one of which is how building registration is realized in the legal system of objects by applying the principle of horizontal separation so that ownership of objects on land is not dependent on land rights.

Therefore, in accordance with the high demand from foreigners to own property in Indonesia in line with the increase in foreign investment, it is necessary to develop a model for foreign property ownership with a landed housing cluster model on property companies by registering buildings as a base for building ownership rights that are indeed not legally prohibited by proportional ownership of land over cluster land through indirect investments, namely ownership of shares of property companies that own and control the land area of each cluster. This can be done, for example, in the Jakarta reclamation project or high-middle housing projects in major cities in Indonesia, so that Indonesia's competitiveness can play in the global sphere.

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Freedom of Religion for Non-Muslims in Islam: A Pakistani Affair

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Abstract
Pakistan has long claimed itself to be Shariah compliant, as particularly enshrined in the preamble of its Constitution to be an Islamist State. However, the religious minority, which makes up about 2-4% of the total population, especially the Hindus, have always been the target of persecution, denied religious freedom and even forced to convert to Islam. It is an irony that a state making such a constitutional claim of abiding by the Quran and Sunnah has turned a deaf ear to the freedom of religion and the rights that Islam guarantees to the non-Muslims of a Muslim state. The Quran and the teachings of the Prophet are not only clear on this subject but also vigilant in upholding the rights of non-Muslims. Although religious minorities in Pakistan comprise of not only Hindus but Christians, Sikhs, Ahmadiyyas and other ethnic minorities, this paper intends to focus solely on the plight of the Hindus in Pakistan, in light of the freedom of religion guaranteed by Islam. The study shall focus on the persecution of the Hindu minorities by way of forced conversions, refusal of the right of practicing their own religion and the recent halt of the construction of a temple in Islamabad. The research further engages in the historical perspective of freedom of religion in Pakistan and its relationship with the Islamic ideology it possesses, as opposed to the true teachings of the Quran and Sunnah which is evidential of the harmonious relationship among people of all religions, cultures and ideology.

Keywords: Freedom of Religion, Islam, Shariah, Sunnah, Hindus, Rights of Non-Muslims

1. Introduction

Pakistan's debate of whether it is an Islamic or a secular state and its hidden control by Islamic activists of propagating Pakistan as an Islamic state thereby finding ways to persecute the Hindu minorities have reached a new peak in the recent times. These so-called *mullas* have misused and misinterpreted the concept of justice and freedom of religion as ordained by Allah in the Quran and as practiced by the Prophet Muhammad to only create anarchy and intolerance in the state, forcing the Hindus to flee to nearby India (Svanidze, 2020) and also to convert to Islam to upgrade their status in Pakistan. The concept of globalization has led to diversity and almost every Muslim state has a diverse population emerging from different ethnic, cultural and religious background and so do the non-Muslim states (Wani et al., 2015). When Islam itself does not support such homogeneity (Syed Abul 'ala Maudoodi et al., 2016, 49:13), arbitrary adherence to converting a state to a homogenous Muslim state with little protection to the non-Muslim citizens is not only unfair, but also against the teachings of Islam which strongly uphold the concept of diversity, a natural phenomenon laid by Allah Himself.

2. History Pertaining to Hindu Persecution in Pakistan

The colonization of the Indian Subcontinent by the British and subsequent communal riots between Muslims and Hindus led to partition of India and Pakistan in 1947 (Singh Bhalla, 2019). History saw the largest migration of people between the two states through this partition and one of the greatest bloodbaths between the people of both states where hundreds and thousands were killed and made homeless (Rehman, 2001). The main purpose of this partition was to create separate religion-based states for the Muslims as Pakistan and Hindus as India (Rehman, 2001). The partition and scars of communal riot are still reflective in the India-Pakistan relation and an apparent reason for the hatred towards minority Hindus in Pakistan.

3. Constitutional Dilemma: A Secular State or Islamist State?

After the birth of Pakistan, there was an increased tension as to whether Pakistan would be a secular society being safe haven for all religions or a purely Muslim state heavily reliant on Shariah law. However, although emanating from communal riot, Pakistan's founder Mohammad Ali Jinnah had envisioned constructing a diversified nation where religion shall not be an issue. Jinnah's goal was to build a democratic and tolerant society even though Pakistan was created to be a state based on Islam, keeping in mind the freedom of religion and rights of minorities entailed in Islam. In a legendary speech (Curtis, 2016) in August 1947, Jinnah said "*You may belong to any religion or caste or creed – that has nothing to do with the business of the state … We are starting with this fundamental principle that we are all citizens and equal citizens of one state"*.

With the death of Jinnah, what seemed to be a ray of hope towards a progressive society was halted by the introduction of Objectives Resolution in the Constituent Assembly of Pakistan (*Objectives Resolution (1949)*, 2012). This was a list of resolutions serving as a guide to a comprehensive Constitution and paving the way for construction of a state based on Islamic values. However in reality this laid the foundation of a country based on partly authentic and partly human-invented Islamic injunctions, leading to unfortunate Islamic extremism and violence towards non-Muslims in Pakistan which is heavily reliant on distorted Islamic beliefs.

Some of the main features (*Objectives Resolution (1949)*, 2012) of the Objectives Resolution contained provisions where sovereignty was acknowledged to Allah and principles of freedom, democracy, equality, tolerance and social justice also needed to be adhered to as per Islam. These later distilled down to the Constitution of Pakistan but took an unfortunate turn by making it increasingly difficult for the religious minorities, who were albeit recognised by the Constitution, to live freely in the society.

Over the time, legislations were formulated keeping in mind the Shariah laws which later turned out to be discriminatory towards the religious minorities like the Hindus. This is mainly due to the obvious contradiction to the principles of freedom of non-Muslims as ordained by Allah and the long-standing hate between the two communities. A careful example would be the Pakistani blasphemy laws which arbitrarily frame and punish non-Muslims.

4. Status and Plight of the Hindus

To highlight the unfortunate situation of the plight of the Hindus in the name of upholding Islam will be a mountainous task. According to the Pakistan Bureau of Statistics (*POPULATION by RELIGION*, n.d.), Hindus represent approximately 2% of the total population of Pakistan. As seen historically through the violence of communal riot between the Hindus and Muslims that spread like wildfire, till date Pakistani Muslims comprising almost 96% of the population has not been able to reach a stage of peaceful and harmonious relationship with the Hindu minorities. As a result, Hindu persecution still makes headlines in the news.

According to a report (Singh, n.d.) by Ranbir Singh, Chairman of the Hindu Human Rights Group, although Hindus and Sikhs have been given equal citizenship in the Constitution, they are politically the most oppressed and discriminated minorities because of their religion in Pakistan. His report enumerates that children are taught

negatively against Hindus since childhood by means of school education vide distorted history in the textbooks. There is a clear attempt of brainwashing the state with hatred against the Hindus since an early age converting the state with a rigid ideology that eventually spread among the masses. Every year thousands are persecuted, kidnapped, killed, children and women are often raped, and their properties are vandalized. According to Singh, almost 85% of the Hindus live a low life doing low grade jobs. Some are sweepers, scavengers and many are farmers deprived of a land of their own and all other fundamental human rights meant for a rightful citizen.

One of the major tactics and weapons of the Islamic clerics (*mullahs*) and other extremist groups despising the Hindus is to falsely accuse the Hindus of committing blasphemy. In Pakistan, blasphemy laws or "offences related to religion" (Refugees, n.d.) are enshrined in Chapter XV of Penal Code (*Pakistan Penal Code (Act XLV of 1860)*, 2012) of Pakistan where punishments range from fines to death penalty for offences such as injuring or defiling places of worship, the holy Quran and in extreme cases making of derogatory remarks to Prophet Mohammad. In September 2019, several international media such as BBC ("Pakistan Blasphemy Riots: Dozens Arrested after Hindu Teacher Accused," 2019) and Reuters ("Blasphemy Accusation in Pakistan Sparks Ransacking of Hindu Temple, School," 2019) reported the news of false blasphemy accusations whereby a Pakistani teenager accused his Hindu teacher of blasphemy, resulting in violent riots. The teacher was accused of making comments about Prophet Muhammad. Thereafter an angry mob found it prudent to ransack Hindu properties including a temple, shops and a school belonging to the Hindu community in the province of Ghotki, Sindh. Such false accusations are one of the many countless incidents found in Pakistan against the Hindus, who are later oppressed in masses and the accused given penalty as strict as death without credible evidence from the authorities. What is evident is that such false blasphemy incidents have become an excuse for such unruly mobs to cause unrest and communal riots against the Hindus, who have always been the target of marginalization and persecution in Pakistan.

In 2006, a report (*Pakistan*, n.d.) published by the US Department of State on International Religious Freedom documented widespread atrocities towards the Pakistani Hindus where they were forcibly converted to Muslims. One of the many incidents from the report depicted the situation of one Hindu couple, Sanno Amra and Champa from Karachi who went out for some chores and in return, found out that their daughters had been missing from their home. Later they were informed by the local police station that the daughters have been kidnapped to forcefully convert them to Muslims. These daughters were also refrained from making unsupervised communication with their parents who remained Hindu.

Recently, a lot of Hindus amidst the brittle economy due to Covid-19 have converted to Islam as reported by the New York Times (Abi-Habib & ur-Rehman, 2020) on 4th August 2020. Extreme poverty and desperation to lead a better life equaling to the Muslim majorities led a lot of Hindus to convert to Muslims voluntarily but reluctantly. The most recent news making up the headlines (*Islamic Activists Halt Construction of First Hindu Temple in Islamabad*, 2020) is the halt of temple construction in the Pakistan capital of Islamabad by some regressive Islamists. Several petitions have been filed in the High Court to deter the construction of the Hindu religious site, which was a long-standing right and demand of the Hindus. Now with the petitions hanging, the fate of the temple is hanging too.

5. Freedom Guaranteed by Allah and Practised by Prophet

In response to the attitude of a Muslim State such as Pakistan towards its religious minorities, what does Islam say? What rights are given to the non-Muslims of a Muslim State and how should they be treated? Are they accorded freedom of religion and the right to practice in a Muslim State?

In lay man's terms, freedom is the ability of a person to be free and frank in terms of speaking or thinking or leading a life without any restrictions. As per Professor Hashim Kamali (Kamali, 1992), freedom in Islamic sense as well as any other sense refers to not only defence but also protection of the dignity of a human being which may not be interfered by any other person or the state itself. When it comes to religious freedom (Mondal, 2016), it is the ability of a person to engage in any religion or faith freely, without having to think about discrimination or abuse for practicing a different religion than the majority in the society. Islam being a peaceful religion supports

freedom of religion especially when it comes to Non-Muslims as is heavily evidenced in the teachings of the Quran and the Sunnah of the Prophet Muhammad.

The Quranic rule (Mohd Nor et al., 2018) of freedom of religion came to the Prophet during his stay in Makkah when a group of idolaters came to the Prophet with the proposal that if he worshipped their gods in the form of idols that year, in return they would worship Allah the next year. To this, Surah Kafirun with the following verses was revealed by Allah as a chapter in the Quran: "*I do not worship what you worship, nor you worship that which I worship. And I will not worship that which you worship, nor will you that which I worship. For you your religion, and for me mine*" (Syed Abul 'ala Maudoodi et al., 2016, 109:1-6). Such a revelation in Quran on the Prophet and his ummah is an indication by Allah regarding the freedom of religion to be granted to the Non-Muslims who have different faith than the Muslims and that everybody should be free to choose and practise their religion as they like. The Prophet was so mindful of the freedom to be accorded to Non-Muslims that he never prevented an idolater from embracing any other religions and hence never barred a Jew from becoming a Christian or vice versa (al-Wafa, 2001).

Even, Allah dislikes forcing a Non-Muslim to practise Islam if they do not want to. Allah does not allow a Non-Muslim to be forced to embrace Islam and therefore has revealed the following verses:
"There shall be no compulsion in religion. The right way is, indeed, clear from the wrong" (Syed Abul 'ala Maudoodi et al., 2016, 2:256).

"And say, the truth is from your Lord, so let him believe who wills and let him disbelieve who wills" (Syed Abul 'ala Maudoodi et al., 2016, 18:29).

"*If it had been the Lord's will, they would all have believed – all who are on earth! Will you then compel mankind, against their will, to believe! (99) No soul can believe, except by the will of Allah, and He will place doubt (or obscurity) on those who will not understand*. (100)" (Syed Abul 'ala Maudoodi et al., 2016, 10:99-100).

This clarifies that Allah has shown the right way and humans have the right to choose and receive guidance from what Allah has ordained. If they choose not to and deny at their own risk, the Prophet or Allah shall not compel them to abide by it. Islam is a free religion and Allah's verses carry the proof that when it comes to religious practices of a Non-Muslim, nobody can be forced or coerced to practise a particular religion. Allah has revealed further beautiful verses on this : "*Invite (all) to the Way of thy Lord with wisdom and beautiful preaching; and argue with them in ways that are best and most gracious: for thy Lord knoweth best, who have strayed from His Path, and who receive guidance"* (Syed Abul 'ala Maudoodi et al., 2016, 16:125). This denotes imposition of the religion on an individual is strictly against the teaching of Islam and therefore forceful conversion is a major forbiddance by Allah. Islam is a beautiful religion which not only acknowledges that there may be Non-Muslims in the society but also upholds that their rights must be ensured. Allah's intention was not to make everyone a believer whereas he could have made every individual a Muslim. Allah has not promoted homogeneity and has beautifully opted for diversity among the mankind. The following verses support the same view: "*If Allah willed, all human beings would believe. So will you force them to believe?*" (Syed Abul 'ala Maudoodi et al., 2016, 10:99). Allah also states in the Quran "*If Allah willed He would make you one community*" (Syed Abul 'ala Maudoodi et al., 2016, 5:48). Thus, instead of forcing Non-Muslims to come to the way of Islam, it is pertinent for the Muslims to acknowledge Allah's will first and foremost. Thereafter, Non-Muslims may be invited to the way of Allah with grace and wisdom and beautiful preaching of the Quran but never by force or ill-treatment.

Non-Muslims have the freedom to choose which religion to practise and the right to construct their places of worships, pray, propagate their religion, teach their children their own religion (Mohd Nor et al., 2018). They have the right to wear their religious symbols and do all such required to practise their religion as long as it does not interfere with the prayers of any other religion. For example, it is advisable to deter from ringing bells during the five daily prayers of Muslims. Commander Khalid bin Al-Walid was a well-known companion of the Prophet Mohammed, who had granted freedom to the people of 'Anat, the Christians to ring their bells at any time of the day except during the time of Muslim prayers (Mohd Nor et al., 2018).

Also as per our Prophet's practice, he greatly admired and respected the freedom of religion of a Non-Muslim as seen during his rule at Madinah. His rule is said to be ideal for the Muslim States when it comes to ruling the Non-Muslim citizens of the Muslim State. He established the first modern constitution to rule the people of Madinah known as the Madinah Charter, consisting of not only Muslims but also Jews, polytheists and other ethnic minority groups (Ahmet Kurucan & Mustafa Kasim Erol, 2012). The Charter was mediated between all the religious groups in Madinah to ensure the fundamental rights of all the groups to live in peace and harmony with freedom of religion and access to justice irrespective of their religion and tribes (Ahmet Kurucan & Mustafa Kasim Erol, 2012).

The responsibility of the Muslims towards their fellow Non-Muslim neighbours does not end with granting them freedom of religion only. Muslims must be mindful that Allah has created human beings as one mankind and Allah has sent them to this earth so that they may know each other (Syed Abul 'ala Maudoodi et al., 2016, 49:13). Therefore, one of the most important duties of the Muslim States is to treat the Non- Muslims well and ensure justice and fairness for all. Allah has mentioned in the Quran in Surah Maidah (5:8) the following verse in this regard: "*O you who believe! Stand out firmly for Allah, as witnesses to fair dealing, and let not the hatred for others to you make you swerve to wrong and depart from justice. Be just: that is next to piety; and fear Allah. For Allah is well acquainted with all that you do*." Therefore, accusing fellow Non-Muslims without sufficient evidence of the wrong-doing is also a great sin as revealed by Allah and also followed by the Prophet. The Prophet always maintained the position that only if there is evidence then only an accused may be tried. Once, Hilal ibn Umayyah came to the Prophet and accused his wife of committing adultery and the Prophet said to Hilal, "*Either you bring forth proof (i.e. 4 witnesses) or hadd punishment (of 80 lashes) will be inflicted on your back*." (Akram, 2006).

When it came to being just and fair to the Non-Muslims, the Prophet said "*Whosoever persecuted a non-Muslim or usurped rights or took work from him beyond his or her capacity, or took something from him or her with ill intentions, I shall be a complainant against him or her on the Day of Resurrection."* (Berween, 2006). He also mentioned *'Whosoever hurts a non-Muslim, I shall be a complainant, and for whosoever I am a complainant, I shall ask for his right on the Day of Resurrection*. (Berween, 2006).

The words of the Prophet Muhammad reflect the stance of Islam and the teachings of Allah in regards to oppressing Non-Muslims because of their religion and the conviction with which Allah protects his Creation, be it Muslims or Non-Muslims. Non-Muslims should be treated with kindness, respect and honour and given equal rights as a Muslim citizen of a State as practiced by the Prophet. There is no reward (Wani et al., 2015) for a Muslim who does not acknowledge the co-existence of Non-Muslims in the society and does not demonstrate tolerance towards the group.

In this regard, Muslims can gather profound knowledge from the attitude and treatment of the Prophet towards Non-Muslims and even his enemies. The Prophet was seen standing for paying due respect to the body of a deceased Jew when he saw the funeral procession pass by (*Reflections on the Life of Prophet Muhammad S.A.W*, 2020). In another incident (*Thumama Bin Uthal (R.a.)» Questions on Islam*, n.d.) as narrated in Sahih Al-Bukhari, Thumama Bin Uthal, the leader of the Yamama tribe and a polytheist, came to the Prophet with the intention of killing him and subsequently attacked him. He ran away and the Prophet ordered to kill him whenever he was to be seen. After many days when Thumama was passing near Madinah, he was captured and taken to the Prophet without the knowledge of the guards that a decree has already been issued against Thumama. The Prophet recognized him immediately but did not kill him on the spot. Instead, the Prophet showed his kindness and mercy and ordered that he be treated like a good captive. The Prophet had also fed him food brought from his home. Thumama was moved by the kindness and compassion shown by the Prophet despite being a polytheist who wanted to kill the Prophet and thereafter embraced Islam.

It is also the duty of the Muslims to protect the places of Non-Muslims in a Muslim State and refrain from destroying churches, temples, synagogues, monasteries and all other places of rituals belonging to Non-Muslims. Allah has mentioned in the Quran that Jihad must be carried out not only to protect Muslim places of worship but also Non-Muslim places of worship in the following two verses of Surah Al-Hajj:

"To those against whom war is made, permission is given (to fight), because they are wronged - and verily, Allah is Most Powerful for their aid. (39) (They are) those who have been expelled from their homes in defiance of right - (for no other cause) except that they say, "Our Lord is Allah." Did not Allah check one set of people by means of another, there would surely have been pulled down monasteries, churches, synagogues, and mosques, in which the name of Allah is commemorated in abundant measure. Allah will certainly aid those who aid His (cause) – for verily Allah is Full of Strength, Exalted in Might, (Able to enforce His Will). (40)".

Further, there are also instances where Caliph 'Umar ibn al-Khattab, promised to the people of Iliya security in their persons, possessions, churches, crucifixes, and everyone within**,** whether sick or in good health, as well as everyone in their community. He guaranteed that their churches will not be occupied or demolished, nor will anything be taken from them which include furnishings, crucifixes or even money. Moreover, they will not be forced away from their religion, or harmed because of it (Al-Ayed & Bin Hussain, 2002).

The vastness of Allah's bounty towards His creations including the Non-Muslims is evidenced by Islam repeatedly by the verses of the Quran and teachings of the Prophet as a reflection of His generosity in granting maximum freedom and protection to the Non-Muslims, which at times surpass that of the Muslims too.

6. Conclusion

Today, Pakistan is an Islamic Republic state with Islam as the State religion and it is a requirement by its Constitution that the laws are in compatibility with Islam. The Preamble (Mahajan, 1965) also states "….*adequate provision shall be made for the minorities freely to profess and practise their religions and develop their cultures*" and *adequate provision shall be made to safeguard the legitimate interests of minorities and backward and depressed classes."* However, ironically, there is no sign from the State itself to be just and fair and ensure religious freedom to the persecuted Hindus of the country, who only consist of 2% of the total population.

Islam is a complete religion and code of life and Allah, the Creator Himself does not differentiate between His own creation. However, sadly Muslims possess an ideology that Islam only belongs to them and most arbitrarily, wants to coherently maintain what has been ordained for their sole benefit. Little do the Muslim States of the modern era want to follow the way in which Allah instructed the Prophet to rule the Non-Muslims and the rights and freedom to be enjoyed by them despite being from a different religion.

The solution to the problem is the understanding that Islam is not a religion of radicalism and extremism but of peace and harmony and is a complete guidance. It is of utmost necessity that the true teachings of Islam are adhered to, which should start from the State level. Since the Constitution speaks of compatibility with Islam, it is highly advised that draconian laws that render Non-Muslims criminals of a crime they have not committed must be abolished.

Since it is a daunting task to teach and preach people love, compassion and humanity in a society where Non-Muslims have been hated and victimized since time immemorial, hence, on part of the State, it is essential that interreligious dialogues are held and more policies and frameworks related to protection of the fundamental rights of Hindus and other religious minorities are promoted in the State. In this regard, Islamic organizations can play a major role by educating the masses with the teachings of Islam in relation to treatment of Non-Muslims. Government should be vigilant of extremist groups and radical *mullahs* spreading false propaganda against the Non-Muslims and ensure exemplary punishment for persecution and discrimination of the Non-Muslims in the State. More autonomy and freedom should be given to the Non-Muslims to lead a humane and dignified life as guaranteed by Islam as well as the Constitution of Pakistan which is only possible through intervention of the State. The temple which is yet to be constructed in Islamabad must be allowed to be constructed as a first step in demonstrating Pakistan government's quest to grant constitutional rights to the citizens as per Islam. After all it is the State which is responsible to protect the fundamental rights of its citizens and when it claims its foundation to be on Islam, it should be more diligent in abiding by the rules and regulations ordained by Allah, which is equal for all irrespective of religion and status.

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