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Legal Receipts and Reforms in Civil Procedure Law of Mongolia

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Abstract
Problem and Purpose: The brief introduction to Mongolian Civil Procedure Law (=CPL) in this article aims to evaluate pros and contras of the main reforms in the CPL since enacting the Constitution of 1992, the Civil Code and the CPL itself in 2002. The researchers held the transition from socialist law system into continental law tradition based on liberalism and social state successfully accomplished. But a fundamental reorganization of the legal system has not reached yet, especially the development of civil procedure rules and principles shows that the structure, style, ideological model and transitional regulations of the previous laws interacted with the new norms, methods and mechanisms of the reform, thereby influencing the formation of a mixed model in the legal environment. Methods: So, the main reforms and the further need for reforms will be discussed here under the spotlight of mixture of those legal methods which are persistent in the CPL of Mongolia from a comparative view to the old system. In comparison to the western countries, Mongolia faces many difficulties in the procedural law field caused by transition and rapid development of the environment. Results: The reform process did not stop at reforming the legal environment, but rather changed the regulatory structures of received norms, which led to a mixed structure that combined old and new in Mongolia. Generally, the judicial reform in Mongolia from 2021 has reached its goals and ended with new definition of Supreme court power. The digitalization of the justice is a continuous process, which arises the problems of digital evidence etc. In order to simplify the judiciary, the inclusion of low-cost case resolution procedure in CPL instead of dunning procedure shows that model procedures or class action models will come to good to the willingness of the Mongolian legislator to reform. Conclusion: Civil procedural law must not remain as resistant to reform as substantive law in order to be in line with new developments of technology and the economy so that participants in economic transactions can exercise their procedural rights in a timely manner. In this regard, new expected reforms are welcome, even institutes from different legal families can be transformed into domestic law, especially since the two major legal families have developed closely together.

Keywords: Legal Receipts, Legal Reforms, Civil Procedure Law, Mongolia

1. Development of Civil Procedure Regulations in Mongolia

The Civil Procedure Code in Mongolia developed in three stages: firstly, before Mongolia accepted socialist laws according to the example of the Soviet Union; further while the Mongolian National Republic was a socialist state after the UdSSR; and after Mongolia transformed into democracy and into a market economy. Over time, the Mongolian legal system as a whole has grown very closely related to the continental legal system (Amarsanaa, 2000).

1.1. Brief introduction

Mongolia is a central state and the tradition of governmental organization goes back to the 209 b.C. to the Hunnen Empire, which was the first established state power in Central Asia with a king as a ruler and legislator in person and with well-organized executive powers. From this time, despite the rulers being changed the state tradition was going further. Since the 13th century Mongolia has become an unitary state under the Chinggis Khan's regime. He was the only ruler in the history of the theory of state, whose state power stretched independent from the existing territory. Besides, he was a big administrative and legal reformer. He has regulated many branches of life and appointed the highest judge in the Empire. The most famous regulation of him was the "Great Governance Law" (Gomec, 2013), which included the Administration, Military, Criminal Law and the Hygiene and Discipline. He proclaimed the equality of religions. That was one of the reasons why the Mongolian people have the born tolerance to other religions. The Laws, which have been enacted through him, became later, during the Middle Ages, the inseparable part of the tradition of the Mongolian ethnic groups, and they characterized the whole culture. So, they could be very good prevention tools against the crimes. It had big influences on the development of the formal Justice system. As a result, the legal tradition, also the Justice, was much formalized; legal consciousness was shaped through and despite the nomadic way of life. As the Chinese and Mandgurian state was strengthened during the 18th century the Laws of the both countries grew closer through the consolidation of the Chinese Interests.

After the achieving of Independence 1921 the first measures in the legal field were the abolishing the cruel sanctions of the Middle Ages like banishing or neck blocking and the death penalty was at times suspended. And then, in 1926 the first modern Civil Code was enacted, but the Independence of the justice was abolished to facilitate the repressive measures in the meaning of the Soviet Union. The role of representatives of citizens, also laymans, was predominant in legal procedures. That was not an alternative to the formal justice system, not at all, but the method for realization of the party interest. The abolishing of the decisions of the courts through the judges of the higher instance according to the own or common sense of justice had as result the disciplinar or even criminal sanctions from the communist party system.

After Mongolia transformed into a democracy the need appeared to build a new state and market system; to reform the existing legal system in accordance towards the new goals. The main challenges for the state were to reject the inappropriate dogmas of Soviet law and to establish the foundations and elements of a market economy with its characteristic legal relationships. The promulgation of new legislation began with the adaptation of relevant norms, with the adoption of normative acts in those fields that had not been regulated by previous legislation, and with the development of comprehensive codifications embracing all areas of the law.

Although, by the first democratic reforms most members of Parliament were in favor of retaining the normative core and structure of the former civil code and civil procedure law, so they consequently voted in favor of retaining the old legal culture (Buyankhishig, 2000). So, the regulations of nowadays can be understood in whole context with the structures and models of former laws.

1.2. Civil procedural law of Mongolia in the socialist era

1.2.1. Reform of the legal system and revision of contracts

Mongolia has adopted Civil Procedure Law of Mongolia (=CPL) (State Information Bulletin, 2002) of its own in 1926 and again in 1967. When designing and adopting those Codes, their authors were instructed by the Central committee of communist party. The CPL of Mongolian People's Republic /MPR/ practically did not differ from the Civil Procedure Codes of the other Soviet Republics. The civil procedure was considered as the process of execution of socialist justice as established by the Soviet State in civil cases. Courts did not play any substantial role in this society. In all legal relations the legal entities did not have the liberty of choice and in particular could not invoke the principle of liberty of agreement, instead, they were regulated by state acts only. That was why all their disputes were resolved according to the special procedure before the State Arbitration courts.

1.2.2. State domination in the civil procedure during the period of socialism

It can be said that the dialogue about human rights, personal freedom and liberty was of great importance even during socialism, but civil proceedings, like material laws, were conditioned by ideology. In the socialist legal system, the same legal principles and institutions as in the capitalist countries were inevitably applied, and fundamental rights and freedoms were understood and interpreted in different contexts in these two systems. In this sense, the dispositive principle was included in the previous legislation on civil procedure. But this did not mean that the state would consistently support the freedom of individuals and the right to freely participate in legal relations and exercise their rights. Art. 4 of the CPL (Law on Civil Procedure, 1967) of the Mongolian People's Republic states that an individual may file a claim to initiate a civil process in order to protect his own interests, and if the prosecutor or the representative of a government organization believes that the interests of the state have been violated (State Committee for Law, 1967). It was a manifestation of this principle and has almost the same wordings as nowadays.

But it was normal for the socialist state to limit the freedom of the participants in the civil process, and the tendency to expand the state's rights in the resolution of private legal disputes, to give more authority to its organs, and to represent public interests is common. At the beginning of the establishment of socialism, after the revolution, the majority of the population did not have public education, so the practical requirement that the state actively supported people's participation, believing that they lacked the ability to defend their interests in court, became the basis for legalizing the role of the state's advisory function and the auxiliary role of the state organization (Buyankhishig, 2021). In modern times, this situation has become the basis for limiting the dispositive principle of the civil process to a very broad scope, and as social relations are modernized, the previous practice was influenced by ideology, and thus becomes legally inappropriate. According to the traditional concept of civil law, the civil process is a manifestation of the conflict of interests of the parties hereto. In socialist system on contrary was held, that the social conflicts were already destroyed, private and social interests were balanced, and the state was the highest form of justice, justifying the dominance of state regulation in social, political and economic relations. It became a common phenomenon to deny the individual's independence and include him in the social system. The goal of building a communist society allowed the state to penetrate deeply into private life and created a stereotype that did not recognize other ways of life (Kurzynsky-Singer, 2019).

Thus, while limiting the operation of the dispositive principle, the view that finding material truth was the priority has spread, and the practice of court decisions having a common effect on public in addition to the parties to the dispute has been established. Pursuant to Art. 12 of the CPL /1967/ of MPR all state-owned companies, authorized organizations, cooperatives, other cooperatives, their associations, other social organizations, government employees, and citizens are obliged to comply with court decisions (State Committee for Law, 1967). This provision has remained in Art. 11 of the CPL of 2002 (Civil Procedure Law, 2002) the same. In order to facilitate the functioning of the courts in socialist civil proceedings, CPL has severely limited the rights of the parties to determine the content of the proceedings. Other ways of restricting this right were starting civil proceedings by the court on its own initiative, regulating the official maxim in the CPL, so that the principle of mandatory investigation was applied in civil litigations (Khuyag, 2013), not being limited to the parties' statements and facts presented the courts were obliged to determine the truth by itself, and took measures to fully investigate and clarify the events that happened. The obligation to obtain or demand evidences was in the power of courts. In addition, in order to protect the rights and interests of the plaintiffs by the law, the court may file a decision that goes beyond the content of the claim and by the exercising of fundamental rights to reject the claim, entering into a settlement agreement, ending the civil dispute has required consent of the court, which could be beheld if these proceedings are prohibited by law or if public or private interests were involved. These interests were somewhere ideological nature. The refusal of the permission could show to the fact that the dispositive principle was not properly implemented in the CPL of 1967. However, in the current legislation of civil procedure the above norms have remained in a slightly modified form.

Another mechanism of the state to control private legal disputes was to give prosecutors the power to participate in civil proceedings and to give them the function of "supervising the implementation of socialist legislation" (Buyankhishig, 2021). If it is deemed necessary to protect the state, public interest or the interests of citizens

protected by law, the state prosecutor has had the right to initiate the civil litigation at any time, as well as the right to participate in the proceedings, so the Art. 45 of the CPL /1967/ of MPR which was similar to Art. 4.2 and Art. 41 of the CPC of the former Soviet Union[1]. These regulations granted unlimited full authority to conduct the process and to initiate a civil case to protect the interests of the citizens without requiring their consent. The termination was also fully dependent on courts approval. In fact, the person whose interests are in question could participate in "own" process, only when they are informed about the initiation of the process or when they held as a plaintiff. In addition, several mechanisms for social control of private legal disputes were used in socialist civil proceedings. For example, the Art. 46 of the CPL (State Committee for Law, 1967) /1967/ of MPR stipulated that citizens of state administration, cooperatives, and public organizations can file lawsuits to protect the rights and interests of others protected by law, which is a way of restricting personal freedom.

2. Judicial System and Legislation on Civil Procedure of Mongolia

Normative acts regulating different aspects of civil proceedings stand in a certain hierarchy. The basic act that defines the court system of Mongolia and contains the main principles for ensuring justice is found in the Constitution of Mongolia of 1992 (Constitution of Mongolia, 2019), Section 4, named "Judicial Power" (Art. 47-56). This section contains provisions on the principle of the independence and immunity of judges. In addition to forming the legal basis for civil litigation, there is also a catalog of fundamental rights that are important for the interpretation of private law legislation. First of all, it includes the fundamental rights and freedom to protect one's rights in court Art.16.14[2] and Art.14.1[3] of the Constitution, that everyone is equal before the court. Next in importance comes the Law on the Judiciary[4]/=LOJ/, which defines the legal grounds for the organization of the court power and the execution of justice, the system of courts of general jurisdiction, the main requirements for the formation of the professional judges and the procedures for accomplishing self-regulation of judges. Besides this, it sets general rules for the performance of court activities and regulates other issues of the court system.

After the legal reform 2002, the main normative act in the field of civil proceedings is the Civil Procedure Law /=CPL/ of 2002 (Civil Procedure Law, 2002), which defines the subjects of the civil proceedings; accountability and judicial jurisdiction; evidence and the procedure for consideration of evidence; filing of applications; consideration at the court of the first instance and at the appellate and cassation levels and some aspects of enforcement proceedings. It should also be noted that the Law on Enforcement Proceedings of 2017 covers the procedure for enforcement of court verdicts (Law on Enforcement Proceedings, 2017). But not all issues of civil proceedings are regulated by the above-mentioned Codes. It is a continuation and detailed legislation of the procedure for the execution of court decisions stipulated in §§183-188 of the CPL. Other important legislation includes the Laws on the Courts, on Prosecution, on Judicial Examination, etc. Besides, there are a number of by-laws, usually adopted at the level of the ministry of Justice etc. Although the documents issued by courts are not sources of law, they should be applied and followed and courts actively use them in their day-to-day

[1] CPC of UdSSR/Art. 4. Jurisdiction of civil cases to courts
(1) … (2) In cases provided for by law, civil cases may be considered by friendly courts or arbitration courts. The procedure for the activities of friendly and arbitration courts is established by the legislation of the Soviet republics.
CPC of UdSSR/Art.41. Termination of proceedings. The court terminates the proceedings:
1) if the case is not subject to consideration in the courts;
2) if the interested person who applied to the court did not comply with the procedure for preliminary out-of-court resolution of the dispute established for this category of cases and the possibility of applying this procedure was lost;
3) if there is a court decision or a court ruling on the acceptance of the plaintiff's waiver of the claim or on the approval of a settlement agreement between the parties that has entered into legal force, made on a dispute between the same parties, on the same subject and on the same grounds;
4) if the plaintiff abandoned the claim and the refusal was accepted by the court;
5) if the parties have entered into a settlement agreement and it is approved by the court;
6) if a decision has been made by a comrades' court, adopted within its competence, on a dispute between the same parties, on the same subject and on the same grounds.

[2] Art. 16 Nu.14. Constitution of Mongolia: The right to appeal to the court for protection if one considers the rights or freedoms spelt out by the Mongolian law or an international treaty to have been violated; to be compensated for the damage illegally caused by others; not to testify against oneself, one's family, parents, or children; to defense;
to receive legal assistance; to have evidence examined; to fair trial; to be tried in one's presence; to appeal against a court decision; to seek pardon. Compelling to testify against oneself is prohibited. Every person is presumed innocent until proven guilty by a court by due process of law. The penalties imposed on the convicted may not be applicable to his or her family members and relatives.

[3] Constitution of Mongolia. Chapter Two. Human Rights and Freedoms. Article 14 [Equality, Right to Personality]
(1) All persons lawfully residing within Mongolia are equal before the law and the courts.

[4] The LOJ dated March 7, 2012 shall be considered void as of March 1, 2021.

activities (Hanns-Seidel, 2009). Namely, the Plenum of the Supreme Court has the right to issue explanations, and right to issue resolutions that sum up legal practices.

2.1. Judicial system of Mongolia under the CPL of 2002

The Judicial System may be divided, depending on the kind of procedure or the form of justice under Art.48 of the Constitution of Mongolia and Art. 10(1) of the LOJ. The Judicial System of Mongolia shall consist of the Supreme Court (the court of cassation or review), aimag and capital city courts (the court of appeals), soum or intersoum and district courts (courts of first instance). It is based on the continental legal system as practiced in Russia and Germany (Constitution of Mongolia, 1992; Batzaya & Peter, 2012).

In compliance with the legislative provisions quoted above, court power is executed through the enforcement of justice in the form of civil, administrative, criminal and constitutional court procedures. Court procedures are carried out by the Constitutional Court of Mongolia and by courts of general jurisdiction. Organization, powers and procedures of the Constitutional Court are defined by the Law on the Constitutional Court of Mongolia as of 1992.

Courts of general jurisdiction constitute the unified court system. Under this system, general and specialized courts of certain jurisdictions have been established. The specialized courts are defined as administrative and "other" courts. Currently, there are only administrative specialized courts in Mongolia but in the future, some others may be established. Particularly, specialized courts to resolve disputes in the area of some economic and family matters are needed.

In compliance with the Constitution, the general jurisdiction courts system is established according to geographical needs and specialization. This system consists of: 1. local courts; 2. appellate courts; 3. higher specialized courts; and 4. the Supreme Court of Mongolia (Constitution of Mongolia, 1992). Soum, intersoum and district courts are the local courts, which have jurisdiction only at first instance. Aimag courts, found in the aimag capitals, deal with appeals from the lower-level courts. The Supreme Court of Mongolia is the highest court which deals with any matters at first instance that are not specifically within the jurisdiction of the other courts and appeals from decisions of the Aimag courts and the Capital City Court (Hanns-Seidel, 2009).

The Judicial System in Mongolia may also be divided depending on the formation method of the courts. The criterion is whether the court is established by the state or upon the agreement of the parties. As indicated above, the courts of general jurisdiction constitute the state court system. Non-governmental courts encompass the mediation centers and the National Arbitration Court at the Chamber of Commerce in Mongolia.

The Law on Arbitration of 2003 and its' revised version of 2017 (Law of Mongolia, 2017) regulates the establishment and activities of the arbitration courts in Mongolia and the requirements for arbitration proceedings for the protection of property and non-property rights and the legally protected interests of the citizens and of legal entities (Dolhin, 2017). Any civil or economic dispute can be filed with arbitration courts upon the agreement of the parties except for cases stipulated by law (e.g., cases to plead certain legal documents invalid; disputes related to conclusion, alteration, termination and execution of economic agreements in the area of meeting state demands etc.). Mongolian and foreign citizens, stateless persons, legal entities and physical persons who are subjects of entrepreneurial activities may file suits with arbitration courts, if there is an arbitration clause in the agreement (Art.8 Arbitration Law[5]). Both permanent and ad hoc arbitration courts may be established. This procedure for dispute resolution is recognized mainly in commercial disputes (Dugerjav, 2017; Dolhin 2017).

2.2. Civil procedure in Mongolia

[5] Art. 8. of Arbitration Law: Arbitration agreement and its form:
8.1."Arbitration agreement" shall mean an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not.

The CPL of MPR of 1967 was replaced by a new code (CPL of Mongolia, 2002). The drafting of the new Code (the CPL of 2002) took several years. The working group was established at the end of 1990s, more than 5 years before the Code was adopted (Joahimski, 2004). If we compare the CPL of 2002 and the 1952 CPC of the MNR, we find that the CPL of 2002 is much better structured although it beheld some regulations in Soviet traditions. It is designed in a way that takes into account: 1/. international experience; 2. the provisions of the Constitution of Mongolia of 1992; and 3. domestic legal and court experience. It should also be mentioned that Mongolian civil procedure law, despite some regulations in Soviet tradition, belonged to the continental legal system and is rather closely related to German law (Joahimski, 2004).

The CPL of Mongolia consists of 7 sections that are divided into 20 chapters, and 195 articles. The CPL can be divided into two parts: General and Special. The General Part incorporates provisions that regulate the subjects of the civil lawsuit, jurisdiction of civil courts, evidence, measures of judicial compulsion, court fees etc. The Special Part covers all kinds and phases of court proceedings, their procedural timeframes, deadlines; mandatory, actional, and special proceedings; court hearings by upper instances (appellate, cassational, etc.) and court hearings involving foreign elements.

The new law on civil procedure is where substantive innovations are being made, in particular to strengthen the rule of law, speed up procedures and improve party rule over the procedure, some of which may be considered exemplary beyond Mongolia (Law Reform and National Legal System in Mongolia, 2000). The Civil Procedural Code aims at just and timely consideration and settlement of civil cases in the courts for the protection of the rights, freedoms or interests of natural persons, the rights and interests of legal entities and of the state. Foreigners, stateless persons, foreign legal entities, foreign states (their bodies and officials) and international organizations have procedural rights and duties that are equal to those of the Mongolian natural persons and legal entities.

The role of the judge in Mongolian civil procedure has changed since then: the judge has a positive responsibility to conduct the case as presented by the parties in a manner to reach a prompt, economical and just resolution of the dispute. Although the proceedings lay in parties' disposition, the judge is responsible for the procedure order (Buyankhishig, 2021). In comparison to earlier CPL of 1967, which gave the state a domination in civil procedure, it lay now on party disposition; although it is still recognized the leading position of the judge (Supreme Court of Mongolia, 2014).

The CPL states that parties to civil proceedings shall be a plaintiff and a defendant. These may be natural persons, legal entities or the state. An attorney or another person who is at least 18 years old and has capacity to conduct civil proceedings and properly certified authorities to be a representative in court may represent the parties. The result of any procedure shall be the passing of a decision. All other cases that must be settled under civil proceedings are considered as falling under the claim procedure. In order to start court proceedings an interested party shall file a written brief of complaint that has a content stipulated by the CPL with a court. The required contents of the application are defined in Art. 62 CPL. According to the rules, cases must be considered at the court of the first instance within two months starting from the beginning of the court proceedings. Court decisions may be re-considered under appeal or classification procedure and in case of exceptional or newly revealed circumstances. The CPL also defines the procedure for recognition and enforcement of decisions of foreign courts in Art.51.

The courts consider cases on the protection of violated, non-recognized or disputed rights, freedoms or interests, which arise from civil, housing, land, family, labor relations, as well as from other legal relations. As regards the composition of the courts, civil cases must be considered in the courts of first instance by one judge or in some cases by one judge and two representatives of citizens (Khuyag, 2013), in the court of appeal - by three judges and in the court of cassation - by five judges.

According to Art. 52 of the Constitution[6], the role of representatives of citizens changed in comparison to the Constitution of 1960, in which they had the power to judge and decision-making into a democratic control function of the public.

If the participants of the proceedings (parties, third parties) are not satisfied with the court verdict, they may contest the verdict in accordance with the appellate procedure at the appellate court. They must file an appeal within 14 days after the verdict is issued. The appellate level generally reviews the case with 5 judges. As stated before, three judges consider a case at the appellate level. The verdict on appeal may be contested in accordance with the cassation procedure at the Supreme Court. Grounds for cassation proceedings may be incorrect application of the norms of the material law or violation of the norms of procedural law, §167.1 CPL. Since the last reforms in 2021 the Appellate court is last factual instance, so that the power and responsibility of appeal courts are immense nowadays.

In certain situations, under cassation procedure, the participants of the civil proceedings have the right to contest court verdicts in civil lawsuits due to exceptional circumstances after a lawsuit was considered. The list of exceptional circumstances is limited and includes different application of the same legal provision by cassation level courts etc.[7]. A final court verdict or court decision that has come into effect may also be reviewed due to newly discovered circumstances. These are circumstances which either substantiate assertions or objections of parties or have any other substantial influence on the proper trial of the case and which already existed at the moment of the decision or verdict but were not known to the participants (e.g., fraudulent testimony of a witness; incorrect conclusion of an expert; unconstitutional nature of a law established by the Constitutional Court of Mongolia, etc.). The list of newly revealed circumstances is limited and set forth by the CPL.

2.3. Duration of Civil Procedure as specific problem in Mongolia

Total duration of civil process is the one of the most problematic issues ever since the CPL of 2002 was enacted. According to §71.1 of the CPL, the total period of civil proceedings shall be 60 days. Within this period, the civil case will be settled, including the process of dismissing the case or making a decision satisfying the claim. However, in practice, the number of cases that are resolved within this period of the law is very small, and the majority of cases are overdue (Open Society Forum, 2020). The main reason for the delay in proceedings lays in repeated postponements of court hearings, and in some cases the court hearings have been postponed 30 or more times.

To start proceedings before the court of first instance, an interested party files a written application with the court. At the courts of first instance one judge considers the case: in 14 days he or she decides whether to start court proceedings. If there is no ground to dismiss the case (there is an exhaustive list of such grounds in Art. 65 CPL), the judge issues an order and schedules court hearings. The preliminary hearing is not mandatory, but it can be held within 1 month from the starting date of proceedings to provide a correct and speedy resolution of the case. The first instance court verdict must be passed within 60 days from the starting date of proceedings. But in practice these deadlines are often broken (Open Society Forum, 2020).

The parties to the procedure must submit all reasons of claims and reasons of defenses before a certain stage of the procedure. If they cannot do that, principally they shall not be able to submit them. This principle must be applied very carefully because if the procedure takes too long there is a significant risk factor that the parties may bring all relevant or irrelevant materials related to the case. Otherwise, parties risk not being able to bring them to the hearing any more.

[6] Art. 52 of the Mongolian Constitution [Collective Decisions]. https://www.conscourt.gov.mn.
(1) Courts of all instances consider and make judgement on cases and disputes on the basis of collective decision-making.
(2) In passing a collective decision on cases and disputes, the courts of first instance allow representatives of citizens to participate in the proceedings in accordance with the procedures prescribed by law.
(3) A judge alone may take decision on some cases which are specifically singled out by law.

[7] Detailed about it: in section V of this article, under Essential amendments on CPL.

Many surveys came to conclusion (Open Society Forum, 2020; Tserendolgor & Amgalanbaatar, 2023), that the wording and application of §105.1 CPL[8] are the main cause for the delay or termination of the process. It allows the termination of the oral hearing only one time, if the party can sufficiently excuse the delay. The purpose of this rule is that the procedure should not take too long. But the legal practice turns over the rule and uses the regulation above in very extended way: for example, courts terminate legal disputes for each reasons which the parties bring up one more time, so that terminations for one dispute can be more than 2 (Open Society Forum, 2020). Actually, the parties are able to amend their case only one time during the procedure and the parties may not abuse this right. §105.1 of the CPL is an expression of the principle of continuity or concentration of proceedings, which is recognized even though it is not explicitly stated in the general part of the CPL. However, if there is no valid reason specified in §105.2 of the CPL for delaying the explanation or request that can be made within the specified time, the court has the right to make a decision without delaying the hearing.

§105.2 of the CPL is a regulation equivalent to §296 of the German Civil Procedural Code (German, 2005), and the relative theory that takes into account the risk of prolongation of the entire process in the internal preliminary conditions of the regulation can be used to interpret §105.2 of the CPL. In civil proceedings in Germany, the relevant party is guilty of delaying any procedural action, or the objections and explanations made beyond the set time limit without reasonable cause will be refused. The decision to postpone the court session or extend the proceedings is directly dependent on the appropriate time, guilt or good reason if the process is implemented. In addition, it is of major importance here whether there is a risk of prolongation of the process. The extreme concept of a risk of protracted proceedings covers cases where a late explanation or counter-objection would require more time to be considered by the court than if it were returned without acceptance.

Although the CPL regulates individual procedural actions such as providing additional explanations and evidence, hiring a lawyer, and changing claims, but the general requirements for procedural actions are not clear as in continental legal systems[9], it has not been theoretically evaluated as to whether these are appropriate conditions for delaying the proceedings. The absence of a regulation that treats procedural acts separately makes it impossible to check the validity of these acts and to control the delays related to them. Therefore, in order to properly prepare and resolve civil cases in a centralized procedure, it is appropriate to support the approach of delaying only once according to §105.1 of CPL, unless it is necessary to co-ordinate, use or suspend evidence with explanations and counter-explanations in accordance with court practice and procedural law.

Within the framework of the civil process, the parties are obliged to provide their own explanations and evidence, so it is fair and constitutional to limit the right to make such explanations and objections for a certain period of time. If any procedural action is taken, the appropriate period of time is stipulated by the law or if the judge has set the time, the action shall be taken within this period, and refusing to accept the request in late conditions is in accordance with the principle of fair trial. If we examine the reasons, the comparative study has shown that the issue of well-prepared and centralized settlement of civil cases is insufficiently regulated in civil procedure laws of Mongolia, and it is not customary to coordinate and use evidence with explanations and counter-explanations in court practice and procedural law. Therefore, limiting the use of §38.9 of the CPL, and amending §105.2 of the CPL in such a way as to support the party disposition in the process, and to improve the conscious participation in the proper exercise of their rights.

Before the judicial reform of 2021, the criticism of CPL adjusted at the role of the Supreme Court, which was considered as another factual authority like a cassation court, so that the procedure in total took a very long time. Therefore, the practice called for a renewal of the competence of the highest authority[10].

[8] Article 105. Of CPL of Mongolia. Resolution of the termination request made by the party
105.1. Requests made by a party in the case regarding the production of new evidence and other issues related to the proceedings shall be decided by the court panel or judge immediately upon hearing the opinions of the other participants.
105.2. Additional explanations and evidences that are important for the proceedings may be submitted or offered earlier, but if the court deems that there is a valid reason for presenting them during the trial, the trial may be postponed once.

[9] For example, in German CPC: §233. Restoration of former status. If a party was prevented, without its fault, from complying with a statutory time limit or the time limit allowed for filing the grounds for the first appeal, the second appeal, a miscellaneous appeal against the refusal to grant leave to second appeal, a miscellaneous appeal on a point of law or a miscellaneous appeal pursuant to §§ 621 e, 629a (2) or the time limit provided in §234 (1), the party shall, upon its motion, be granted a restoration of its former status.

[10] More detailed below in part V of this Article.

3. Application of Legal Principles in Civil Procedure

In the general part of the Civil Procedure Law of Mongolia, the principles and principles of civil procedure are listed. Nevertheless, it is questionable whether these norms are fundamental legal principles in the sense of the codification theory (Buyankhishig, 2018). The legal principles are generally applicable principles that emerge from the logical systematization of law, a codification. The enumeration of legal principles and principles in the general part of the law is common in the socialist legal tradition and no in-depth research is required here. This simplification technique goes hand in hand with *optimistic normativism*, but leads the application of law to theoretical and methodological poverty and increasingly increases the conflict between the principles that should actually be in balance [11]. The investigation of the procedural maxims in civil law revealed that the principles of civil procedure applicable to Western European or German law still exist in the CPL of Mongolia, but the legal technology of the legislature and methods of applying the law in practice with regard to the procedural maxims look significantly different. According to comparative law, the legislator who uses *legal transplants would have to* adopt the theory and method of applying the law (Buyankhishig, 2018), which are important components of legal culture. However, the legal application of procedural maxims remains in Mongolia, just as it was established before the reforms. If one evaluates the legal reforms from the perspective of the theory of *legal transplants,* the interaction between the old legal system and the new legal norms is intense and one of the evidences that the reception process leads to different results than expected is the inadequate implementation of the principles of civil procedure, especially the dispositional maxim.

3.1. Main principles of civil procedure

After Mongolia has transformed into democracy, civil procedure is governed by basic principles like adversary proceedings, equal protection under the law (§4 CPL), publicity (§8 CPL) and principle of the right to be heard and right to a fair trial (14.1 Constitution, §3 CPL). Some basic principles are enumerated in Art.3-12 CPL from 2002: dispositive principle (§12 CPL), principle of binding court decisions (§11 CPL), principle of conducting oral hearings (§88.1, 90.2 CPL), principle of conducting a trial in Mongolian language (§7 CPL), principle of Concentration of court proceedings (§9 CPL), negotiation principle as outcome of adversary proceedings (§6 CPL) and the principle of judicial independence (§5 CPL).

The principle that the parties have control over the nature and scope of civil litigation is a fundamental guiding principle of civil justice and finds expression in some statutes and court rulings. Therefore, it is the basic principle of Mongolian civil procedure law. Although the validity of the disposition maxim is not included in the enumeration of the CPL, it can be derived from the systematization of the law (Joahimski, 2014). The procedure should be initiated only on the initiative of the parties, at their request. In other words, the proceedings are at the disposition of the parties; they can settle or acknowledge claims, make or withdraw applications. However, the judge bears the responsibility for properly deciding the issues of fact or law.

A party has the responsibility to describe to the court the factual proof for each contested factual allegation of its claim or defense and to identify the source of that proof. The responsibility for fact development between parties and court is referred to as the principle of party control of fact and means of proof. The principle of immediacy of proof is not set forth in a single statutory provision, but it is in the contents of the CPL (Buyankhishig, 2018). Therefore, it is for the parties to proceedings to introduce facts and applications; the opposition to this principle is the so-called examination maxim which applies, for example, in criminal and administrative proceedings. Although the §6.1 CPL uses the word "negotiate" or "debate", it points out at adversarial process (Supreme Court of Mongolia, 2014). Although the proceedings lay in parties' disposition, the judge is responsible for the procedure order, only in this respect it can be the leading role of judges described.

3.2. Private autonomy and disposition maxim

[11] Also, there.

As a result of the reforms of the 1990s, the disposition principle (Khuyag, 2013) was reflected in the current CPL. It was an important event that reinforced the values of individualism, the independence of the individual and the ability to determine and implement one's own interests. Discussions about human rights, personal freedom and freedom were also very important under socialism. In a socialist legal system, it was inevitable that certain legal principles and institutions would be applied in the same way as in capitalist countries. However, fundamental rights and freedoms were understood and interpreted differently in these two systems (Kurzynsky-Singer, 2019). Although the disposition maxim was regulated literally in the old laws on civil procedure, this does not mean that the state consistently supported the freedom of the individual and the right to freely participate in legal transactions and exercise one's rights. For example, Art. 4 CPL of the MPR stipulated that private individuals, in order to protect their own interests and when the prosecutor and the representative of the authorities consider that the interests of the state have been violated, file a lawsuit and initiate civil procedure. So, this represented the manifestation of this principle. But under the judicial system of the MPR, which was based on relations between the judicial hierarchy and the principle of hierarchy of control, higher instance courts have the power to pull out the cases, even if the participants have not appealed, and change and withdraw the cases (Tsogt & Tserendolgor, 2023).

After 2002, this situation has changed to the court of higher instance only entitled to review cases when participants appealed to such courts. The new CPL limits the possibility for the prosecutor to intervene in disputes between the parties to cases where the public interest is seriously affected. This change is reflected in §12.1.1 CPL of Mongolia. However, according to §12.1 Nu. 2 and §31 CPL, the public prosecutor's office still has the opportunity to participate in the proceedings if the interests of the general public are affected in connection with the activities of the state and local authorities. Administrative authorities acting in the public interest take part in civil proceedings for the purpose of protecting public interests. This idea is based on the same principles as above. In German practice, the involvement of public authorities in the process is subject to the jurisdiction of the administrative courts. According to the legislation of the Russian Federation, most of these cases fell within the jurisdiction of commercial courts. According to Art. 52.1.1 of the Commercial Procedure Code of the Russian Federation[12], it was permissible to initiate abstract control of sub-legal norms only to protect the legally protected rights and interests of citizens and organizations. In the area of private law, prosecutors are excluded from enforcing the rights of third parties in civil proceedings.

However, the regulation of the participation of the public prosecutor in civil proceedings raises some doubts as to the consistent application of the dispositive principle by the legislature when determining the jurisdiction of ordinary courts. In addition, §26 of the CPL of Mongolia states that participation in civil proceedings is possible to protect own interests, but to protect the rights of others. In the procedural law of the Russia, the form of participation is the prosecutor as representative of the injured party. In order to protect the legally protected rights, freedoms and interests of the individual due to damage to health, lack of age, incapacity or other reasons, the public prosecutor may participate in the process (Ulsbold, 2020). In addition, there is the possibility of participating in the civil process if there is a claim for damages under civil law because of a crime against human life or health. So the public prosecutor's office can engage in private litigation, but its powers are limited compared to previous law during the socialism.

Another change concerns the change of defendant; according to §28.1 CPL of Mongolia, the defendant can be replaced during the proceedings. Then the negotiation must be started again. The court may recommend a change of defendant, but this requires the plaintiff's consent. If this permission is refused, the court is obliged to decide the action and end the proceedings. This represents an outgrowth of the party principle and the disposition maxim (Buyankhishig, 2021). In the socialist civil proceedings, according to §41.4 CPL of MPR, the court was allowed to replace the original defendant directly or add him as a co-defendant (Compilation of the Civil Procedure Code, 1967). The departure from the principle of investigation and the transition to party

[12] Commercial Procedure Code of the Russian Federation, in https://www.wto.org/english/thewto_e/acc_e/rus_e/wtaccrus58_leg_61.pdf.
Article 52. Participation of the Prosecutor in a Case
1. The prosecutor shall be entitled to file with an arbitration court the following: applications for disputing normative legal acts, non-normative legal acts of state power bodies of the Russian Federation, state power bodies of the subjects of the Russian Federation and bodies of local self-government which concern the rights and legitimate interests of organizations and citizens in the area of business and other economic activities;

disposition is considered a significant change in civil proceedings of fundamental importance. According to the current CPL, the court is not allowed to search, collect or compile evidence on its own initiative, but is obliged to initiate the evidentiary procedure at the request of the parties (Buyankhishig, 2021). In exceptional cases, the court's involvement in the collection and presentation of evidence and the appointment of experts may predominate, but it is generally based on the request of affected parties.

3.3. Restriction of the disposition maxim through legal force of the decision

The disposition maxim is recognized as a basic principle in modern civil proceedings, but there are still some fundamental restrictions, such as the principle of the general validity of the court decision contained in §11 CPL of Mongolia. Such principle in §11, left over from the socialist tradition, represents a factor that weakens legal reform. §11 CPL stipulates that authorities, local self-government organizations, public associations, civil servants and citizens must comply with court decisions. The legal force of a court decision according to §122 CPL can include not only the tenor, but also the reasons for the decision, which determine what and how exactly must be followed (Buyankhishig, 2021). §11 CPL is similar in content to the provisions of Art. 13 of the CPC of the Russian Federation (Civil Procedure Code of the Russian Federation, n.d.) and Art. 16 of the Commercial Procedure Code (Commercial Procedure Code of the Russian Federation, n.d.), which contains the principle of public validity of judicial decisions. These regulations in the civil procedure of the Russian Federation are even considered *odre public of the RF* from the perspective of private international law, and this principle is one of the foundations of the legal system of the RF and Mongolia. Retaining this principle, which originates from Soviet procedural law, has the potential to restrict private autonomy and individual freedom.

In Western European countries, the legal force of a judgment has *subjective* restriction: it applies only to the contracting parties and their legal successors. From ***an objective*** point of view it only affects the subject matter of the claim. In principle, findings of fact and rights and legal relationships do not constitute precedents, but the overall value given to procedural laws is very broad. In emphasizing the mandatory character of the court decision at the level of procedural maxims through §11 CPL, it must be examined whether this obligation only affects the parties or whether it includes other third parties not involved in the case, including the state authorities. A legal interpretation must be undertaken in this regard. The Supreme Court of Mongolia's interpretation of §11 of the CPL states: "Citizens and officials are obliged to comply with final judgments, orders and other procedural decisions of judges without exception"; However, this does not exclude effective legal protection if you feel that your legal rights and interests have been compromised (Supreme Court of Mongolia, 2014). From this commentary one can clearly see that the Supreme Court of Mongolia has a position on the generality of the judgment similar to that stated in the relevant norms of the former CPL.

On the one hand, if the complex legal questions in a procedure are generally established and followed by the public, from the point of view of procedural economy it is advantageous to assume the general validity of the determination in similar cases and to shorten the evidentiary procedure and limit it to the subject of the claim. On the other hand, the economic analysis of the law shows that the generally valid decisions require more effort than the normal party process because of their breadth of decision-making (Buyankhishig, 2021). For example, if the plaintiff's determination as the owner of a particular property should be general, other litigation related to the ownership of the property will be spared.

The juxtaposition of the dispositional maxim and the general validity of court decisions in civil proceedings indicates a conflict between the old and the new concept. On the one hand, it is clear that the parties' legal enforcement under the CPL cannot apply or be binding to the rights of third parties. On the other hand, the fact that the action to be taken or findings to be made in the decision should generally be followed represents a contradiction and shows the interplay of contradictory principles in civil procedure law. The strengthening of the disposition maxim by the legislature with several regulations in the CPL serves the goal of abolishing the socialist legal system. However, this is called into question by the continued application of the principle of the general validity of court decisions. It can even significantly hinder the implementation of the maxim.

The disposition maxim represents an outgrowth of the constitutionally enshrined principles like adversary proceedings stated in Art.16 section 14 Constitution (Supreme Court of Mongolia, 2014), which provides a necessary impulse for the further development of the socialist legal system. Currently, the burden of proof is imposed only on the party concerned and not on the general public, and the court has to make its decision only within the framework of the requests made and on the basis of the demands of the parties. Due to the limitation of judicial investigations, it is impossible to comprehensively examine the case with regard to the rights and interests of third parties. Within this conceptual framework, private legal disputes between citizens in civil matters remain effectively private (Buyankhishig, 2021). In proceedings involving settlements, acknowledgment of the claim or waiver of action, it can only be checked whether the decisions made through a simplified procedure clearly affect the rights and interests of third parties.

The legal technique that the legislature did not include the disposition maxim literally in the lists of legal principles, but rather it can be found in many rules, is in line with the codification theory. However, the use of the enumeration method in other principles is not typical of Western codifications, but rather to preserve the previous socialist legal structure. This simplification technique will lead to theoretical and methodological deficiencies in the application of law and will increase the conflict between the principles of mutual balance. In particular, the fact that the principles of civil procedure are enumerated in the same way as the CPL of 1967 and the majority of them have been preserved is a factor that negatively affects the dispositive principle of protecting individual freedom. Since the disposition maxim is the basic principle of the new civil procedure law and is intended to protect private autonomy, such negative effects on its implementation must be eliminated through minor changes to the CPL, for example Article 11 (Buyankhishig, 2021).

4. Essential Amendments to the CPL of Mongolia

Since 2002 have been more than 33 amendments introduced to the current CPL. Among these, the most important changes in principle are:

4.1. Judicial Reform and Role of the Supreme Court, Comparison

Within the scope of legislative reform in 2002, the role of the supreme court was mainly considered through amendments to the Constitution (Constitution of Mongolia, 2000, 2019) made in 2019, the revised version of the Law on Judiciary (Law on Judiciary, 2021) (LOJ) in 2021, along with the amendments made to the procedural laws for improving the system of judicial review. The process of reviewing cases by the Supreme Court significantly changed with the amendments in 2021. Former regulation of §172.2 of CPL (Civil Procedure Law, 2002) allowed the Supreme Court to control the complaints on the following grounds: 1/. if the court did not apply the appropriate law, if it applied laws that should not be applied, it interprets the law incorrectly, or the law regulating similar relationships is applied incorrectly; 2/. the court violated the procedures of the proceedings established by law.

After reform of 2021, the Art. 25.7.5 of the revised version of the LOJ of Mongolia states that in order to ensure uniform application of the law, the Supreme Court shall adjudicate rulings of appellate instance courts as cassation instances for eliminating differences at the primary and appellate instance courts on application of law[13]. The Amendment of January 15th of 2021 let the control of the highest level in following cases: 1/. the first and appellate courts applied the law inconsistently; 2/. committing a serious violation of the procedure affected the court's decision; 3/. the court interpreted and applied the law differently from the official interpretation of the Supreme Court (Amendment to the CPL, 2021).

It is obvious that general conditions for reviewing cases by the Supreme Court are aimed to review legal disputes that are fundamentally important for further developing laws, establishing unity of law. The primary purpose of establishing a unified application of the law through the Supreme Court is ranked in first place. Short after the

[13] Art. 172.2 of Civil Procedure law, Art. 123.2 of Administrative Procedure law, Art. 40.1 of the Criminal Procedure law had the same wordings.

reform the Supreme Court stopped accepting review appeals and began to focus on differences in the application of the law by lower courts, which appeared to some of the appellants to be vulnerable. The Constitution Court of Mongolia had to clarify whether the Art. 172.2. of the CPL, which defined the scope of the Supreme Court narrowly to former version of it, complies with the Constitution.

a). Art. 172.2.1 CPL was concentrated only on eliminating differences at the primary and appellate instance courts on application of the law. Therefore, the accusation was that Art. 172.2.1 CPL would not achieve the goal of unifying the application of law. The appellate court has the competence to apply the law differently as it was applied in the decision of the first instance court when legally justified. According to Art. 48 [14] of the Constitution combined with Art.29.5.1 [15] LOJ of Mongolia, the appellate court has to supervise law application of first instance courts under it. The power of an appellate court includes the correction of court decisions in first instance (Joachimski, n.d.), but worsening the position of rights (*reformatio in peius*) should be prohibited (Supreme Court of Mongolia, 2014).

In the situation where the application of the law of the first instance and the appellate court are different, there will not be a "difference in the application of the law" in the true sense. Because the powers and functions of the appellate courts granted by the Constitution are to review the decisions of the courts of first instance under its jurisdiction at the legal and factual level. Art. 29.1 of the LOJ states that the appellate instance court consists of provincial and capital city courts and the appellate instance administrative court. Provincial and capital city courts and the appellate instance administrative court ensure unity of law in the territory under its jurisdiction. Hence, applying laws different from the courts of the first instance is a power provided them by the law, but the application of the law should be clearly understood by the participants of the cases when resolving the same legal disputes. Therefore, the fact that the first and appellate court decisions differ from each other does not undermine the unity of law application, like when the appellate court applied the law differently than previously applied or deviated from the law application practice of another higher court (Hefller, n.d.).

Art.172.2.1 of CPL led to a negative effect of reviewing every appellate court ruling that deviates from the decision of the court of first instance, regardless of whether it complies with the law or not. On the other hand, it is not possible to review cases in a situation if there is no different application of the law but has a conflict in the fact or there has no difference in the decisions of the first instance and appellate courts, but the law was applied differently from the decisions of other courts that resolved similar disputes (Tsogt & Tserendolgor, 2023). Thus, appellate court decisions that are different from the practice of other courts or its previous practice, create the risk of mislaying the uniform application of the law. It may create interest in clarifying law application by appealing to the Supreme Court for participants of the case when the appellate court applied a different law from the court of the first instance. But the difference in the application of the law is often considered as an element of public interest that is discussed in the horizontal axis. There is no precise regulation in Art.172.2 of CPL in this regard. These are embodiments of the policy of limiting the scope of the jurisdiction of the Supreme Court to review disputes by law.

These amendments are considered as the phenomenon related to the Anglo-American law system, which is a filter system of judicial precedents that officially entered the legal soil of Mongolia since the reform of 2021 (Tserendolgor, 2021). It is concluded that the scope of the jurisdiction of the Supreme Court to review disputes by law and the purpose of resolving cases by way of review procedures of the Supreme Court stipulated in the revised version of the LOJ of Mongolia. So, the purpose of "ensuring uniform application of the law" in revised version of Art. 172.2.1 of CPL is the proper method to reach this goal (Tsogt &Tserendolgor, 2023).

Compared to initial version of Art. 172.2.1 CPL, cases reviewed by the Supreme Court are drastically mitigated under this regulation; as a result, the load on the Supreme Court will decrease significantly. In the scope of a former law, the court's activities which were operating on a larger scale based on the ground of "failure of a

[14] Article 48 [Court Organization] https://www.conscourt.gov.mn/?page_id=842&lang=en.
(1) The judicial system consists of the Supreme Court, provincial and capital city courts, Region, inter-region, and district courts. ...
[15] Art. 29 of LOJ: Court of Appeal and its powers: https://legalinfo.mn/mn/detail?lawId=16106892006021.
29.5.1. review the decision of the court of first instance by appeal procedure according to the law;

court to apply the applicable law, application of law that should not be applied", were temporarily suspended, but only a small amount of complaints were acceptable even though there were many complaints against the decisions of appellate courts. So, some researchers started to consider reviewing filters which represent the filtered system and mechanism of judicial precedent, as inappropriate. For instance, a regulation of the court that has not conducted regular *stare decisis* will review the case only on the ground of the "difference between the decisions of the first court and the appellate court" and not reviewing other cases, is a legal element of common law system that countries applying judge made legal norms (Tsogt, Tserendolgor, 2023). And it indicates that these differences between the decisions of the above two courts are considered as "legislation".

Since domestic legal system adopted many abstract general laws following the continental legal system tradition, the main role of the Supreme Court has always been to review the legality of the decisions of the appellate courts. So, the Art. 172.2.1 of CPL before the reform abstractly determined as "failure of a court to apply the applicable law, application of law that should not be applied" (Supreme Court of Mongolia, 2014). The Supreme Court interpreted these provisions by focusing on the law. "Applicable law" is interpreted as laws regulating the disputes between participants of the case, "law that should not be applied" is interpreted as laws irrelevant to the disputes between participants of the case, "applied incorrect interpretation of a law" is interpreted as the relevant provision was understood and applied in a different context and meaning than that prescribed by the law (Supreme Court of Mongolia, 2014). It is apparent that there is ground for rendering two-level decisions unreasonable since reviewing the main source was legislation (Kaut, 2015). Thus, the Art. 176.2.4/5 of CPL states the consequence of annulling both the decision and rulings. But Art. 176.2 of the CPL has remained on a larger scale than the filter of the precedent law. In other words, accepting the cases with "discrepancy" and annulling both decisions that should be removing differences. Nevertheless, the stare decisis doctrine of case law declares only one of these two decisions as the applicable norm (Tsogt, Tserendolgor, 2023). Thus, in our system, which is the core of the problem is the written legislation and the basic principle of the court's operation is the rule of law principle, it is questionable that limiting the powers of the Supreme Court as eliminating the difference in the law application between the two lower courts. There is no option "whether to respect the law" or "not" in case of wrongly applied law in two-level courts. In addition, the lack of review in many other cases is evident from the comparison of old and new regulations. The issue of lowering the overload of the Supreme Court may be an important aspect of the revised versions of these regulations. This is caused by Art. 172.2 of the former CPL and other equal regulations that had wide application. For instance, the participant in the case may easily have the opportunity to appeal to the Supreme Court, based on his or his lawyer's "legal" point of view regarding the misinterpretation of the law when there is a lack of official interpretation. However, it is implemented by transferring TSC to stare decisis operation of case law which cannot be a sufficient guarantee of "enforcement of the law" in a country with a large number of written laws. And it is proven by the circumstances that many cases are not acceptable to the Supreme Court.

On the contrary, it is appropriate to provide the power to review disputes that principally have fundamental significance which are becoming issues in a large number of cases understanding that review is conditioned by public interest, along with the replenishing Art. 172.2 CPL with the vague terms with necessary goals and objectives of the Supreme Court, such as "developing the law" and "ensuring the uniform application of the law". The public interest in developing law as unified is understood to be that it aims to prevent different decisions of appellate courts by reviewing commonly concluded contracts at model and process levels at once, expressing a unified position on numerous similar cases.

After the Amendment of the 2021, the Art.172.2.1 of the CPL was only aimed at eliminating differences in the decisions of courts with mutual supervision at courts of a lower level, and not at keeping the whole legal practice as unified. Thus, it can't be a method for ensuring uniform application of the law. It should have been in compliance with the principle of ensuring unified application of law stated in Article 25.1 of LOJ, and this regulation should not have the function of granting discretionary solution of the Supreme Court case by case.

The Constitutional Court of Mongolia decided On May 3, 2023 that some provisions of the LOJ of Mongolia, the Law on Administrative Litigation, the Law on Criminal Procedure, and the Law on Civil Litigation violated the relevant provisions of the Constitution of Mongolia. Hereunder fall the sub-clauses 25.7.5.a and 25.7.5.b of

the LOJ of Mongolia and 172.2.1 and 172.2.3 of the CPL among others, because according to the Constitutional Court, they did not comply with Art. 14 and Art. 16 of the Constitution of Mongolia and their application was suspended till December 15, 2023 (Constitutional court of Mongolia, n.d.). In conclusion, it is noted that there is a need to improve the regulations and remove the loopholes in the context of providing the right of citizens to be tried by a fair court in order to properly ensure the coordination between LOJ of Mongolia and the criminal, civil, and administrative process laws.

The Great Khural, the parliament of Mongolia, reviewed the Art. §172.2.1 of CPL and replaces the regulation with the meaning of ensuring uniform application of law following article 25.1 of LOJ. The last amendment of the CPL on 16. June of 2023 states only that the Supreme Court should according to 172.2.1. of the CPL "eliminate differences in the application of court law" (The Amendment to the CPL, 2023).

b). In the same proceeding was the Art. 25 of LOJ and Art. §172.2.3 (The Amendment to the CPL, 2021) of the CPL considered as non-compliant with the Constitution, which referred to cases, when the courts applied the law by interpreting it differently than the *official interpretation* of the Supreme court. Art. 25 of LOJ and Art. 172.2.3 CPL mentioned that the ground of the court applied the law by interpreting differently than the "official interpretation" of the Supreme Court. In the Amendment to the CPL on 16. June of 2023 the Art. §172.2.3 CPL corrected as "the law was applied differently from the ruling and interpretation of the Supreme Court".

The article 172.2.3 of the CPL in the former or current version can be accepted if the criteria applies only to submitting a complaint for review to the Supreme Court, but the review after initiating proceedings should be done according to ordinary law. Within the scope of Art. 172.2.3 of CPL, if it is explained as to review decisions deviating from the interpretation that complied with the law, and if there is an interpretation that does not comply with the law, a mechanism for the the Supreme Court is to review its interpretation compared to the law, creates the conditions that correctly determine the application of new regulations (Kaut, 2015).

Thus, it should be refined whether it leads to the application of interpretations that are inconsistent with the law, thereby contradicting the principle of enforcement of the law. Even though the above-mentioned ground is one criterion of the Supreme Court accepting cases, this does not mean that the court's decision will be only compared to the official interpretation of the Supreme Court when it is reviewed. According to the above-mentioned statement, procedural and substantive laws are still applied in cassation instances. Though, it is a factor to review whether the interpretation of the appellate court complies with the law and whether it needs to be updated when the appellate court rulings deviate from the interpretation of the Supreme Court. In other words, it is an opportunity to double-check the previous method of interpretation when reviewing the legality of a decision that does not comply with the interpretation. Violation of rights expressed by violation of procedural rules or incorrect application of substantive legal regulations (Heßler, n.d.). Different requirements shall be applied to substantive and procedural complaints. The complaint for review is considered reasonable when the procedural error would have affected the appellate court's decision. Since the presumption of law applies in this situation, respondents to the review complaint are obliged to prove that the error did not affect the decision at all. Based on the above, the higher court with the continental legal tradition is conducting a review directed to the legal regulation when reviewing the grounds of the complaint even in situations where it deviates from its own practice.

But within the scope of a revised version of the regulation, it also remains unclear whether the Supreme Court will exercise review directing to the legal regulation or based on the stare decisis doctrine that descends from the previous Supreme Court's decision, which checks rationale if there is a difference that decides whether or not it will be bound by the previous Supreme Court's decision and interpretation like the Anglo-American courts. In the framework of the previous law, the regulation with the content of "...applied incorrect interpretation of a law..." is now replaced by composition in Art. 25.1.3 of LOJ and Article 172.2.3 of CPL. If these conditions are reflected as a criterion at the level of filing a case by complaint in order to reduce the overload of the Supreme Court, and in terms of the content examination, the Supreme Court reviews back its own interpretation of the law, it will be a more clarified provision with no difference in principle from the previous law.

On the other hand, it creates an inefficient mechanism to supervise interpretations that do not have the force of law in a legal system in which abstract general laws applied in the situation of the supervision of the Supreme Court are carried out within the framework of the stare decisis doctrine which does not exercise review directed to law, and the review is carried out only with the content of the decision which deviates from the previous interpretation of the Supreme Court. It was mentioned in Art.172.2.3 of CPL demanded applying the interpretation of the Supreme Court which is inconsistent with the law. If we explain these as only a phenomenon that legalizes the criteria for filing a complaint in the supervisory court and assume that review of ordinary laws will be implemented after the initiation of the proceedings, then there will be less risk of the Supreme Court apply an interpretation that in conformity with the law and not suitable for the legal relationship. However, in the system where judge-made law applies, the interpretation and decision of the Supreme Court are rendered as a legal act, and if it is interpreted that it will be implemented by the review directed to it, then it is considered as regulation is incapable of representation for our legal system.

As comparison hereto can be used the same regulation for reviewing disputes in the Federal Supreme Court of Germany /BGH/, based on the combination of the following indicators, which are 1/. legal disputes contain common fundamental issues; 2/ the decision of the supervisory court is necessary for the further development of law or the establishment of unified court practice (CPC of Germany, 2005). Art. 543.2 of CPC of Germany explains disputes contain common fundamental issues as courts have reached contradictory solutions from each other or deviated from the decision of the higher court. Further, there will be a situation where legal certainty will be lost due to these different decisions (Heßler, n.d.). In this case, the Federal Supreme Court/BGH/ will accept the dispute for review and will review the complaint only if there is a violation of rights according to article §545.1 of CPC of Germany[16]. In this regard has the last amendment to the CPL on 16. June of 2023 added another paragraph. Therein: "Art.172.2.4. it is of general importance to establish a new legal concept or the application of law" (The Amendment to the CPL, 2023).

4.2. Revision of private law regulations on compliance with the Constitution

Revision of private law regulations on compliance with the Constitution is from two different aspects problematic. Generally, they can be revised due to petitions and complaints on the part of citizens, that state regulations or measures violate the Constitution.

The first problematic issue whether the court decisions in civil matters should be further reviewed/revised by the Constitutional Court of Mongolia will be soon decided through a new law on constitutional procedure (Constitutional Law Institute at NUM, 2023). According to the the Mongolian Law on Tsets[17], constitutional complaint against court rulings not possible. The latest amendment of the Constitution and new approval of Law on Constitutional procedure of Mongolia will handle this issue, so that the decisions of the Supreme Court in civil matters will be revised in compliance with the Constitution of Mongolia.

a) Conclusions on the protection of economic rights. On other hand, some surveys show that the regulations of the Constitution itself are not sufficiently to revise all kind of legislations or in future some court decisions in private law field (Buyankhishig, 2016). For example, there are doubts about whether the rights, which are the main driving force of the economy in our country with a market economy, are sufficiently protected by the Constitution. The basic regulation of the economy of any country should be reflected in the regulations of the Constitution, which directly apply to economic life, because economic independence is a guarantee of independence (Chimid, 2008). Despite the lack of a national economic system, production force, and technical development, which defining the economic problems of our country, the rules for determining economic policy to be a fundamental issue that should be established and limited by the Constitution (Sainhishig, 2015) and the regulation of this important sector only at the level of ordinary law is the reason for the economic crisis, public

[16] German CPC: Section 545. Grounds for an appeal on points of law
(1) An appeal on points of law may only be based on the reason that the contested decision is based on a violation of the law.
(2) An appeal on points of law may not be based on the fact that the court of first instance was wrong in assuming that it had or did not have jurisdiction.
German CPC: Section 546. Definition of the term "violation of the law"
The law is violated where a legal norm has not been applied, or has not been applied properly.

[17] The Tsets is referred to as the Mongolian Constitutional Court.

spending, and the excessive amount of public debt. The Constitution enshrines its economic principles in Art. 5, which promises a kind of mixed economy (UNDP, 2015): “Mongolia shall have an economy based on different forms of property and in accordance with both universal trends of world economic development and specific national characteristics.” By affirming property rights in the catalog of fundamental rights in Article 16 of the Constitution, the legislator moved away from the concept of socialist property and acted in line with the liberal concept of property. However, in general, Art.5.2 of the Constitution stipulates that both public and private property systems should be preserved (Buyankhishig, 2021). According to Art.16 section 4 of the Constitution is the basis of economic activity and provides the right to freely choose one's profession, workplace, education and training, and includes the choice to carry out or not carry out certain activities according to the chosen profession (Constitution of Mongolia, 2000, 2019).

In this context, the state will grant this freedom by very little involvement in the professional activities of citizens (Hans-Siedel, 2009). Although, the norms that apply to many types of professional content hinder this goal. In the sense that occupation fulfills the purpose of a person's life and creates a source of existence, having an occupation and creating enough jobs are the main issues of economic policy. Since this fundamental right has the function of job protection, it applies only to the citizens and domestic enterprises enjoy this fundamental right. However, the right of foreign citizens to freely choose and maintain their occupation has no other way than to be granted by general norms.

Art.16 section 3 of the Constitution provides for the granting and confirmation of rights pertaining to property on the territory of Mongolia, and guarantees the payment of compensation or price in case of confiscation or mobilization. The guarantee of inheritance is also a continuation of this right, and it is fulfilled by the right to free will and the continuation of business activities by the heir (Buyankhishig, 2016). The scope of guarantee of ownership rights is very wide, in addition to citizens, foreigners are granted of ownership rights to objects other than land, and in essence, it covers the ownership rights of enterprises. Therefore, foreign investment in Mongolia does not necessarily have an international investment protection agreement, but in practice, the need for investment protection is urgent.

But there are no further regulations on economic rights, like freedom contracts or freedom of competition etc., which are explicitly mentioned in Constitution of Mongolia. Freedom of contract includes the right to enter into and independently determine and terminate contracts for the purchase and sale of products and services[18]. This right as key to realizing the individual's right to freely dispose of the exchange objects can be read out of Art. 16 section 4 of Constitution by interpretation, but there is no such praxis found in the jurisprudence of the Constitutional Court until now. The freedom of contract was declared as a fundamental principle of international economic law. In §1.2 of the Civil law of Mongolia (Civil law of Mongolia, 2000), which is the main codification of private law, is regulated to be the basic principle of civil law relations. Based on this principle, many types of contract terms are established in practice, so the legislator has even added the requirement to be consistent with §202 of the Civil law in terms of content. This principle was declared as a basic principle in the UN International Court of Justice, and it is a broad concept that includes the right to choose courts, arbitrators and other mediators in addition to material legal contracts and agreements.

However, in Art.16 section 3 of the Constitution, it is not enough that the freedom of contract is guaranteed only by the right of an individual to acquire property. For example, for a contract that does not aim to acquire ownership of any property arises the question, if it here the freedom of contract is granted. Transactions aimed at moving and acquiring immovable property are primarily governed by §§242-286 of the Civil law, like contracts of sale and purchase, trade, or credit can fall under the protection of Constitution after the object is acquired. However, it is not clear what will happen to the other 30 contracts included the Civil law. Of course, the basic principle contained in §1.2 of the Civil law is likely to be significant in the context of limiting the freedom of contract, but it is a phenomenon that has not yet been implemented today.

[18] Also, there, page 19.

An example of the fact that it is not possible to check whether other laws are compatible with economic freedom in the conditions where the freedom of contract is not protected by the Constitution is the "Law on the procedure for the non-judicial purchase and sale of mortgage items[19]. By the revision of §27.1/2 of this law the Constitutional court has found that this rule was in violation of Art.16 section 14 of the Constitution, which guarantees the right to file a lawsuit (Resolution of the Constitution court, 2006). §27.1/2 regulates that during the non-judicial sale of mortgage items, the borrower waived his right to appeal to the court in matters related to the relationship of primary obligations, and the law was repealed because the court limited the right to "report to the court provided for in Art.16 section 14 of the Constitution. It is questionable whether the property right is here violated, as the non-contestation sale of mortgaged items is an internationally recognized practice only in terms of the process. The most interesting thing is that when the representatives of the legislator came to participate in this case, "refusing to file a complaint arising from the main obligation (related to the loan agreement) to the court is an exercise of the freedom of contract", so it means that the said law has not been violated[20].

However, the Tsets did not consider the relationship between the freedom of contract and the right to protect one's rights in court, and made a decision based on the right to file a lawsuit. This is one of the consequences of the fact that the freedom of contract is not clearly reflected in the Constitution. In complex economic relations, it becomes difficult for a judge to make an accurate decision based on his inner conviction, so he must apply the theoretical principle of finding a balance between two conflicting fundamental rights. If §27.1/2 of the Tender law infringes on the right to file a lawsuit and determines whether it is compatible with the principle of freedom of contract through a practical concordance method, then it will be concluded that Art.16 section 14 of the Constitution has not been violated. In general, the Supreme Court itself consists of two types of norms: dispositive regulations that are mandatory and can be changed by agreement of the parties. Since dispositive regulations are in harmony with the basic principles of private law that respect freedom of contract, the manifestation of this right is allowed by Art.16 section 4 of the Constitution called limitation.

In another case, the Tsets had to decide that the regulation of §281.3 Civil Law, which prohibited regulations about fee in loan agreement between citizens, violated the property rights of contractors (Conclusion of the Constitutional Law of Mongolia, 2016). Here was the protection area of property right under Art.16 section 4 of the Constitution actually not opened, but the freedom of contract was the right which was violated. Because the freedom of contract is not explicitly mentioned in Constitution, so that the Tsets, the Constitutional court of Mongolia, has invoked a different right than freedom of contract. There are many such examples where the revision of private law norms with regard to the Constitution has failed, because the matching economic right is not properly developed and incorporated into the Constitution (Buyankhishig, 2016). The above regulation does not cover the following rights that are essential in the economic sphere, but providing constitutional protection through interpretation of laws is important for constitutional control of other private law legislation, including price fixing, financial freedom, freedom of competition, advertising liberties, consumer rights, liberties, industrial freedoms, individual freedoms, freedom to travel abroad for professional activities, and freedom to sell.

Although it is clear that the government will protect the competition industry in the form of an objective guarantee of the Constitution, understanding it as one of the basic human rights will open up the possibility for individuals to protect their rights in court, approach the Constitution and check whether the legislation that has an unfair effect on the competition is compatible with the Constitution. Because the main legal function of a country with a market economy is to recognize and protect competition as the highest legal value, and this "invisible hand" of law is the main factor for proper development of the economic sector. Freedom of competition includes the right of individuals to operate freely in the market and to compete with other entrepreneurs and falls under the protection of freedom of profession in western countries (Badura, 2013). Due to the lack of clarity on the protection of some rules in the Mongolian Constitution, it is impossible to check whether some provisions are in accordance with freedom of competition.

[19] abbreviated as Tender law; §27.1/2 of the Law on the procedure for the non-judicial purchase and sale of mortgage items: www.legalinfo.mn.
[20] Also there, conclusions: https://www.conscourt.gov.mn.

Taking further example, in a conclusion of the Constitutional Court (Conclusion of the Constitutional Law of Mongolia, 2006), it has to decide whether §14.2 of the Law on the Purchase of Goods and Services by Citizens with State and Local Property Funds violets the principles stipulated in Art.1.2 like democracy or rule of law, principle of economic diversity in Art.5.1/2/4; international treaty obligations according Art.10.2 of the Constitution; principle of equal treatment in 14.1/2; property rights in Art. 16.3; the right to choose own occupation in Art. 16.4; finally principle of conformity with the Constitution in Art. 70.1. The content of the tender law regulation says that "a legal entity may participate in the tenders announced in the same year in the field of its main activity no more than 6 times, and if the tender is won 3 times, it is prohibited to participate in the tenders again in the same year". From the Tsets, it was concluded that the regulation had not violated the Constitution. However, it is mentioned that the principle of fair competition stipulated in international agreements has been touched[21]. §14.2 of the Law on the Purchase of Goods and Services by Citizens with State and Local Property Funds aims to keep tenders orderly, accessible or inclusive. If the freedom of competition was included in Constitution, which would be the same content and nature as the principle of fair competition stipulated in the international agreements, so the grounds of dismissal would have been based on this issue.

b) Actual possibilities and proposals of constitutional protection of other rights. Economic legislation is a concept that evolves very quickly with socio-economic development, so it is necessary to enrich the interpretation of the norms of the relevant civil society very quickly.

If we consider that the rights mentioned in the previous chapter are not included in the protection of the Constitution, there will be considerable difficulties. It is necessary to determine whether there are basic rights with a general content that can cover and protect the mentioned economic rights. Considering Art.16 section 13[22] of the Constitution guarantees the right to personal liberty and safety, and in the corresponding interpretation of the Constitution, the inviolability of a person is d Art.16 section 13 includes the right to be free; to be physical inviolable; inviolability of the accommodation is inviolable; confidentiality; inviolability of name; and it includes the inviolability of property by interpretation (Hanns-Seidel, 2009).

The primary purpose of this regulation is to prevent the state from arbitrarily encroaching on individual liberties. However, considering the meaning of the wording and the purpose of the law, it is to respect human freedom, and according to this regulation can be considered as a norm containing the general protection of fundamental rights. However, the economic rights are the basis for the realization of human rights and need to be protected by the general norms of the Constitution. The right to freedom and inviolability of the individual is related to economic relations (Banzragch, 2013). Therefore, it can be interpreted to protect other rights, which are manifestations of personal freedom, while keeping the individual inviolable.

The arguments in favor of using Art.16 section 13 as general clause in the Constitution are that 1/. this norm has the main purpose of protecting human freedom, and this broad concept cannot be imagined without economic freedom (the content and purpose of the norm. The consideration of the inviolability of property in the interpretation of Art. 16 section 13 of the Constitution shows that the regulation protects the economic basis of human existence (comparative conclusion); 2/. Art.16 section 18[23] of the Constitution specifically regulates the right to free movement within the territory of Mongolia, which indicates that the inviolability provided for in Article 16 section13 of the Constitution is not only physical nature (*systemic argument*). In this sense, Art.16 section 13 of the Constitution should be interpreted and applied as protecting human freedom, especially economic freedom.

[21] Also, there: in the section for conclusion.

[22] The Constitution of Mongolia: https://www.conscourt.gov.mn/?page_id=842&lang=en. Art. 16 section 13) The right to personal liberty and safety. No one may be searched, arrested, detained, persecuted, or restricted of liberty save in accordance with procedures and on grounds determined by law. No one may be subjected to torture, inhuman, cruel, or degrading treatment. Where a person is arrested his or her family and counsel shall be notified within a period of time established by law of the reasons for the arrest. Privacy of citizens, their families, correspondence, and homes are protected by law.

[23] The Constitution of Mongolia: https://www.conscourt.gov.mn/?page_id=842&lang=en. Art. 16 section 18) The right to freedom of movement and residence within thecountry, to travel and reside abroad, and to return home to the country. The right to travel and reside abroad may be limited exclusively by law for the purpose of ensuring the security of the country and population and protecting public order.

According to the above mentioned, Art.16 section 13 of the Constitution can cover the rights on price fixing, financial freedom, competition freedom, advertising freedom, consumer freedom, industrial freedom, personal freedom, travel abroad for professional activities, since it protects economic rights such as freedom of sale, it is necessary to make it routine to check whether the newly approved laws and regulations are compatible with these regulations by explaining them (Buyankhishig, 2016). Only this way can the private law regulations can be properly revised by the Constitutional Court, so that the civil procedure will succeed in the end effect properly. The court acts, which evolved during the civil procedure can be checked according to economic rights in the Constitution by proper interpretation of it; besides the material law which applied by the civil courts will be more homogeny with the commercial needs of the country.

5. Further Reform Needs

5.1. Commercial litigation procedure

Commercial branch in Mongolia criticizes that the civil dispute regulation under CPL is too long for business matters and too rudimentary for commercial cases (Nyambaatar, 2021). In several studies are the need of establishing of a Commercial Code mentioned (Hanns-Seidel, 2019). So, it cannot be excluded that the economic branch will demand a Commercial or Economic Procedural Code in the future. According to example of some post-socialist countries like Ukraine, such kind of regulation shall give protection of violated or disputed rights and legally protected interests of legal entities (including foreign entities and state bodies); and citizens who are subjects of entrepreneurial activity (Khanyk-Pospolitak, 2008). However, the costs for establishing of parallel court systems is from economic perspective is not possible yet for our country. There are more urgent problems in this field, like establishing a family court, which covers the family matters like child adoption, transactions with minors, approval etc. and some inheritance matters.

Actually, the pre-trial settlement institutions or the Arbitration court are designated for economic matters between legal entities and entrepreneurs. But the arbitration process cannot be initialized, when the parties didn't include arbitration clause in the contract. Besides there is no time frame or limit for arbitration proceedings in the Arbitration Law of Mongolia. In the praxis of arbitration courts: after every interim decision during the process the court terminates the procedure in order to give the parties opportunity to let it revised through state courts. At the end the arbitration process lasts more than one year, sometimes 2-3 years.

The calculating of arbitration fee is usually higher than court fees, which consists mainly stamp duty fees[24]. Core costs of the Arbitration court include arbitration services and arbitrators loan (Doljin, 2012). By the calculating of arbitration fee will be added 2-4 percent of exceeding the sum of dispute from respective scale (Batzaya & Yuen, 2012). Although the Arbitration Law was amended 2017 according to the international standards, rapid development of technology and digitalization of the economic sector require constant further development of procedural law. Above mentioned issues showed need and requirements to improve the law on civil proceedings by facilitating the process of judicial review of commercial disputes, reducing the steps, and creating special regulations for resolving small-value disputes have been conditioned (Nyambaatar, 2021).

5.2. Low-cost case resolution

In order to make commercial dispute resolution process expeditious and accessible, financially efficient a further amendment was submitted on October 19. 2023 as a special proceeding in the seventh chapter of the CPL (Project Nu, n.d.). This project is based on some surveys from current praxis of courts and comparative law studies (Bayarmaa, 2023). The following claims with an amount not less than 20 times the minimum wage for one month[25] should be processed by the court in a special procedure, if the claimant wishes:

[24] For example, it lays by the amount of 13,000,000 MNT by 222,950 MNT, if it is over 13,000,001 MNT there will be added 0.5 percent, Law regarding state stamp fees of Mongolia, revised version of November 25, 2010: https://legalinfo.mn/mn/detail/515.

[25] From the meeting of the tripartite National Committee for Labor and Social Partnership, on May 4, 2022, the issue of resetting the minimum wage was increased from January 1, 2023, to 3,273 MNT 81 per hour or 550,000 MNT per month: https://mlsp.gov.mn/eng/content/detail/1652.

- to withdraw cash and ensure the fulfillment of obligations from collateral in accordance with the loan agreement;
- issuing monetary assets according to all types of contracts except the loan contract specified in Article 75^1.1.1 of this law;
- issue cash according to the contract of the customer who has established a regular payment relationship, such as water, electricity, heat, telephone, cellular communication, and the Internet;
- issue cash according to the duties of a member of the association of apartment owners;
- on the basis of the labor relationship, issue benefits equal to the average salary during the period of unemployment;
- recovery of monetary assets due to damage to other people's property.

Claims arising from a single legal dispute related to this proceeding are prohibited from being made partially by several claims, and counterclaims, increasing the originally filed claims, attracting additional defendants, involving third parties, changing plaintiffs and defendants, and succession proceedings are not permitted (Bayaramaa 2023; Dorjpagma & Khongorzul, 2021). In addition, all types of disputes arising from family relationships are not subject to the special procedures.

The principle of resolving the case in one court session based on paper and electronic evidence shall be applied to the special procedures. Here, it is stated that it is the duty to submit demands, responses, objections and evidence to the court before the court hearing to decide the appropriate case, which prevents the delay of civil case proceedings. Before the court session to resolve the case, the author is obliged to submit to the court the demands, explanations, objections and proof thereof. The regulation about expenses related to obtaining legal assistance goes parallel to the normal civil procedure and should not be considered as damages to the claimant.

If a party submits a request before the start of the court hearing, the case shall be transferred to the normal proceedings. The court shall issue an order to transfer when the claimant filing a claim violated Article 75^1.1; the defendant did not appear at the court hearing due to valid reasons and the case could not be resolved based on paper and electronic evidence; the court held it inappropriate to handle the case in a special procedure.

From the main principle of immediacy of proof makes an exception when the court has analyzed and studied the evidence upon receipt, it may not carry out not the whole procedure specified in Art.108.1[26] CPL, which demands to analyze and study the evidence individually at the court hearing. If the court deems that it is sufficient for the witness to submit the notarized statement to the court stating that he has given an accurate statement based on his understanding of the rights and duties stipulated in Art. 43.3 of this law, it may be evaluated as evidence. If the court deems it sufficient, the testimony of the witness obtained by the witness, the judge, and the author simultaneously with the help of audio and video recording can be evaluated as evidence. The fact that the case has been transferred to the normal processing procedure does not prevent the evaluation of the testimony of the witness in accordance with the clauses §75^5.2 and 75^5.3 of CPL.

If the requirements of the claim are fully or partially met, based on the defendant's financial condition or other necessary reasons, the court may order an additional period for payment based on the defendant's request, or it may be specified in the court decision to pay in installments according to the schedule. The additional period is not more than one year from the date of the decision.If an additional period has been set by the court decision, or a schedule has been established for payment in installments, the court decision may prescribe a one-time fine of not more than 20 percent of the amount of the obligation not fulfilled during the period of breach of the obligation to pay.

If the parties disagree with the court decision processed by special procedure, you can appeal to the appeals court within 7 days after it was handed down in accordance with this provision. Appeal cases shall be resolved within 21 days from the date of receipt by the court (Law Project Nu, n.d.).

[26] CPL §108.1. The court shall determine the order of examination and analysis of written and material documents gathered for obtaining statements from witnesses and experts, and shall conduct these proceedings in accordance with the procedures specified in Articles 110-112 of this law.

5.3. Digitalization of Court system and Civil procedure

With the introduction of a project on the Civil Case Procedure System (CPC) in 2012 among the courts of first instance was taken the first measure to digitalization of court system in Mongolia. It was funded by GIZ and ordered by the Supreme Court of Mongolia, hereby the process of receiving and registering lawsuits and cases in court was facilitated, and the work schedule of judges, assistant judges, and their secretaries, improving information exchange, reducing the time and labor spent on reporting, and reducing technical errors in the process during the proceedings. This system improved the ability to register lawsuits, cases, complaints, and requests, assign judges, initiate and process cases, record necessary information according to workflow, monitor, manage, and report on the judge's case resolution process.

The Corona pandemic has brought the court work to standstill. Gradually, the courts were able to conduct digital hearings, so that a regulation regarding a hearing by means of video and audio transmission was needed. In this case, §128a of German CPC[27] served as example of domestic regulations, which made the examination of witnesses, experts and the parties by video conference. After the corona period, the discussion about digitalization of court system in Mongolia is intensified, which led to the new reform point in the CPL regarding to matters of electronic evidences. The Minister of Justice and Home Affairs of Mongolia plans to approve a draft resolution of the Parliament on the issue of digitalization, and intends to make the court a completely open house of justice that everybody can visit (Nyambaatar, 2021). But the question if digitalization as offspring of the development of artificial intelligence can reshape all areas of our living environments, including the judiciary, can be set aside a while. Before this phenomenon, the problems of digital evidence in the civil procedure is an issue to solve properly.

5.4. Simplification of civil procedural law through model procedures

But civil procedural law must not remain as resistant to reform as substantive law. It must be in line with new developments in technology and the economy so that participants in economic transactions can exercise their procedural rights in a timely manner. In this regard, new expected reforms are welcome, even institutes from different legal families can be transformed into domestic law, especially since the two major legal families have developed closely together. The digitalization of the justice is a continuous process, which will surely solve the problems of digital evidence. Further reforms like introduction of model procedures like in Germany or class actions in USA are needed in near future; in order to simplify the judiciary, the inclusion of dunning procedures in civil procedural law could be considered.

In addition to digitalization of court procedure, it became a new challenge in the economic sector to introduce some model procedure within the framework of standard contracts that have impact to a large number of citizens6 Some surveys consider to implement a procedure similar to the US class action. In order to simplify the operation of the judiciary, the special regulation of the representation process in the same type of cases in the CPL can prevent different decisions of similar cases in some fields like insurance law, credit relations or capital market cases.

Although Mongolia has a population of more than 3 million people and its sparse population density, it is believed that there is little opportunity for acts and conflicts that harm many people at the same time compared to densely populated areas. In this sense, there has been no need yet to implement the model process or class-

[27] Section 128a German CPC: https://www.gesetze-im-internet.de/englisch_zpo/englisch_zpo.html.
§128a. Hearing for oral argument using image and sound transmission
(1) The court may permit the parties, their attorneys-in-fact ,and advisers, upon their filing a corresponding application or ex officio, to stay at another location in the course of a hearing for oral argument, and to take actions in the proceedings from there. In this event, the images and sound of the hearing shall be broadcast in real time to this location and to the courtroom.
(2) The court may permit a witness, an expert, or a party to the dispute, upon a corresponding application having been filed, to stay at another location in the course of an examination. The images and sound of the examination shall be broadcast in real time to this location and to the courtroom. Should permission have been granted, pursuant to subsection (1), first sentence, for parties, attorneys-in-fact and advisers to stay at a different location, the images and sound of the examination shall be broadcast also to that location.
(3) The broadcast images and sound will not be recorded. Decisions given pursuant to subsection (1), first sentence, and subsection (2), first sentence, are incontestable.

action like in Western countries. However, in today's globalized society, the scope of international legal development has expanded, and in accordance with the treaty conventions to which Mongolia is a party[28], the foreign court decisions resulting from this type of model process or class-action must be performed by the domestic authorities in Mongolia In addition, the development of the mining industry will raise the issue of reconsidering environmental protection, dealing with some activities that are harmful to whole environment, and replacing the damage caused. Therefore, 1/. to determine whether it is obliged to execute these type of foreign court decisions, 2/. it is also necessary to consider a model case in which the interests of several parties are affected due to a common violation in the field of domestic economic competition and environment, and to consider the issue of the model process that allowed the addition of many victim-plaintiffs to the dispute in the future.

In continental law, this common mass tort is legislated in a few cases, such as torts in the securities market, while Anglo-American law uses a class-action as a type of civil and criminal procedure combined. From the point of view of a state governed by the rule of law, the process of collecting and summarizing such claims serves the principle of process economy intended by the CPL, but it is questionable whether it is in line with the Constitution of Mongolia as it makes the civil claimant and his lawyer mainly responsible for the investigation and detection of violations by state authorities. In addition, there is a high probability that public pressure will be used against the defendant, and it carries the risk of imposing higher compensation on the market participant than he or she can afford. Public pressure usually ends with amicable negotiations and compensation in that case.

The addition of the provision for compensation for psychological harm[29]/punitive damage to the §497 of Civil Code of the Mongolia can be seen as a manifestation of the tendency to expand the principle of actual damage and accept the regulation of punitive damage in Anglo-American law. However, in continental legal traditions is believed that it is characteristic to initiate a civil case in form of a class-action, to conduct and terminate the civil procedure and to award punitive damages could be much more than the actual damages. Even there were some cases of refusing to fulfill the obligations stipulated in Article 13. 1 of the Hague Convention on the delivery of decisions (Hopt & Jaan, 2007). The principle of the rule of law and the scope of providing legal assistance are limited by the system of CPL and Constitution, and in this context, the gradual implementation of the model procedure used in Western European countries seems more compatible with most of the researchers in this field.

a) Investor model procedure. This type of procedure is mostly used in cases concerning securities, money and insurance markets. Since the investor can be everyone from domestic company shareholders to borrowers, policyholders, and product users, it should not be imagined only as a foreign investor and the solution to simplify the process should not be missed. Investor Model Claims allow you to pool claims of smaller amounts without the risk of incurring exorbitant processing costs. For example, Germany is considered behind the USA in terms of consumer protection, even though it regulates this type of procedure for small and large investors, which aim to refine model claims related to production practices that attract a lot of media attention.

The purpose of a model procedure is to consolidate several claims on behalf of a similar number of claimants, a process with the effect that, at a minimum, the description and counterclaims of those claims are generally binding on the assigning party. In the continental legal tradition, model claims were not recognized, and the strict principle of inter-partes effect of civil law relations and court decisions was used. Accordingly, a court decision can be legally binding only in favor of and against those involved in the process. The only deviation from this is the Model Investor Process Act (KapMuG), where investors exercise performance-oriented claims in model claims, usually for damages or distribution of dividends.

For example, if the securities issuer is held liable for the violation of misrepresentation in the stock market, such as the fact that the prospect of the securities issued to the public is not true, it is stipulated to file a model claim for conducting a special process under appropriate conditions. The reason for the introduction of the procedure is that there were about 16,000 similar claims against the German Telecom company. In other words, it aims to

[28] For example Haag Convention on Civil Procedure.
[29] New wording of 497 of Mongolian Civil code.

ease the work load of the courts. In addition, if at least 10 percent of claims for damages from shareholders have the same legal and fact-finding process, testing of this model was considered reasonable. The judgment can be binding on all registered claimants. Proceedings of the court of first instance on the same claim shall be suspended pending the decision of the higher court. The results of the model process are then used to reconcile related cases.

b) Advantages of the model procedure. Consumer associations have called for the introduction of general model claims in credit commission, competition law and civil law because the process has many advantages for consumers. The main goal is to resolve important disputes in a unified manner, regardless of the amount of the dispute will serve the main goal of the latest reform of CPL in 2021, which aims to building up the uniformity of court decisions.

Consumers avoid litigations when the amount in dispute is small or the evidence is uncertain. But when hundreds of thousands of users are affected, the end result is often an alarming amount of money. Regardless of the small amount of money in dispute, the Supreme Court can clarify fundamental legal questions. After a positive judgment against the company, it applies only to the parties who have joined the proceedings. However, as long as the purpose is to clarify other questions of fact or general questions of law, a model case decision can significantly reduce litigation risk in any case.

The administrative process is also required to include this type of procedure, and the court allows one or more due process procedures to be combined (model process) in advance. In this way, the results of the model case will be used in handling other cases, and cases submitted to other administrative courts will be suspended until a decision is made. After hearing the parties involved in the case, the court will compare the suspended case with the model decision and issue an order in the same conditions as the case based on the actual facts and legal importance.

6. Resume

The changes to the Civil Code and the CPL 2002 which were based on the liberal model, did not lead to a fundamental reorganization of the legal system, but they did require legal reform and brought major changes in the legal system and society. At the end of the reforms, the structure, style, ideological model and transitional regulations of the previous laws interacted with the new norms, methods and mechanisms of the reform, thereby influencing the formation of a completely new introduced model in the legal environment. This process did not stop at reforming the legal environment, but rather changed the regulatory structures of received norms, which led to a mixed structure that combined old and new (Buyankhishig, 2021). During the transition period, conflicts between new and old laws and systems are inevitably expected. In this sense, the CPL also the Civil Code are seen as a reflection of the conflict between two competing social models.

Generally, the judicial reform in Mongolia from 2021 has reached its goals. There is an opportunity to develop the uniform application of the law for the Supreme Court as the supreme judicial body of the Mongolian Judiciary by the Supreme Court only reviewing complaints based on the criteria established by law. In this sense, principally the Supreme Court is able to implement for both private and public purposes in the judicial proceedings. The next step of the Mongolian legislation after creating low-cost dispute resolutions could be also the implementation of some model procedure like mentioned here.

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Equitable and Algorithmic Legal Reasoning: Deconstructive Approach to Human and Artificial Intelligence Judges•

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Abstract
This paper argues that equitable legal reasoning is not an exclusive property of human judges. To investigate whether judges' perceptions can be regarded as a fundamental and special prerequisite for equitable reasoning, I discuss the virtue jurisprudence thesis. Then, using the aporetic logic of deconstructive justice, I outline a framework for the prospective content of equitable reasoning for human judges and future artificial intelligence (AI) judges. However, despite the optimistic and visionary claims about AI judges' ability to make decisions in a similar way to human judges, pervasive skepticism exists. This essay critically analyzes this skepticism by focusing on the possibility of programing algorithmic models to encode values associated with Aristotle's concept of *epikeia*. To demonstrate how algorithmic reasoning can be harmonized with value-based principles, a case-based algorithmic model is presented as a representative example. The goal of this example is to challenge the assumption that human judges have an inherent advantage in (equitable) legal reasoning. To illustrate that the reasoning of human judges is not always equitable, I present an example of an inequitable decision by the Turkish Supreme Court of Appeals. These examples serve to justify my two claims. First, there is no compelling reason to favor the 'virtuous' and 'legal' reasoning of human judges over the 'algorithmic' reasoning of AI judges. Second, the legal responsibility to consider the particular nuances of each case—the central element of equitable reasoning—can be seen as a quality attributed to both human and AI judges.

Keywords: Equity, Virtue, Legal Reasoning, Algorithm, Aporia, Deconstruction, Derrida, Aristotle

1. Introduction

There is a broad range of perspectives on Aristotle's doctrine of equity and justice, especially in the context of contemporary legal issues, such as the gaps in the law, the question of legislative intent, and the role of judges in discerning the legislature's intention while exercising discretion. Some argue that judges should strive for the original intent of the legislature to overcome the shortcomings of the law or to reach the correct interpretation of

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the law when exercising discretion. Others have argued that judges' emotional perceptions should influence decision-making processes.

The initial perspective, which can be considered the foundation of the debate surrounding modern legal theories, primarily focuses on the limitations of judicial discretion and the weaknesses of the legal system. The subsequent perspective, however, follows a distinctive line of argument that proceeds directly from Aristotle's concept of virtue to a commitment to judges' moral character. The aim of virtue jurisprudence is to shed light on the ethical dimensions of decision-making processes. Accordingly, equitable judgments can be archivable through the intervention of virtuous judges.

Virtue jurisprudence seems to be an appropriate starting point for examining the significant interrelationships among equity, Artificial Intelligence (AI), and legal reasoning. The perspective of 'virtuous judges' in virtue jurisprudence can be seen as a critical approach to modern legal theories. Virtue jurisprudence is the basis of my first argument. I argue that the doctrine of virtue is insufficiently grounded to provide a reliable and resilient shield for the defense of human judges against the algorithmic reasoning of AI judges. Furthermore, it does not provide an adequate basis for the adoption of equitable legal reasoning (ELR). It is my conclusion that, in terms of equitable reasoning, the virtue approach is unsatisfactory.

For clarity, the term AI judge here refers to algorithmic legal reasoning (ALR), which deals with the automated level of AI; AI-dominated legal reasoning. While it is still too futuristic to imagine that AI judges will replace humans in decision-making, it is undeniable that AI has been used extensively in recent years, especially in areas where human judges have discretionary powers – e.g., in the amount of compensation and punishment. (Chiao, 2018; Dulka, 2023). Following the advances in natural language processing and machine learning systems, algorithmic reasoning was indeed a crucial milestone in the use of autonomous AI in the judiciary.

There are undoubtedly many legal scholars who place exclusive emphasis on the distinction between human and AI decision-making processes. Many researchers have attempted to substantiate the argument that algorithmic reasoning is incomplete, or more precisely, that AI lacks the capabilities typically attributed to human judges, including wisdom, emotion, intuition, heuristics, analogical reasoning, and adaptability (Postema, 2022; Morison & McInerney, 2024; Hildebrandt, 2020). Nevertheless, many who are critical of AI-centric decision-making and even condemn it as predictable or computable presuppose that the legal reasoning of human judges is 'flawless' in this regard. These critiques highlight the potential risks and limitations of algorithms. However, they also presuppose (*argumentum e contrario*) an idealized figure of the human judge, one who is immune to these shortcomings and possesses a comprehensive understanding of the essential elements of legal reasoning. This naive assumption, whether implicit or explicit, serves as the basis for my second argument: The theoretical counterarguments for algorithmic reasoning are based on the premise that human judges are endowed with practical and analytical intelligence to deliver equitable adjudications in the face of legal ambiguity, and with wisdom, which AI judges are presumed to lack. In contrast to this implicit assumption in favor of human judges, I suggest that we should pay attention to human-made inequitable decisions first.

The methods and arguments used in this paper neither repeat nor incorporate the existing literature on this topic. Instead, a thought-provoking style of writing is employed to propose alternative ways of conceptualizing equitable reasoning. The primary focus of this paper is on the controversial idea that human and AI judges should acknowledge the unique reality of each case and respond through the lens of the aporetic logic of equitable reasoning. My aim is to point to an intellectual bridge between Aristotle's equitable justice and Derrida's deconstructive justice, rather than to 'construct' a bridge between the two. It seems that the most pressing challenge for legal philosophy will be to reinvent functional and fertile grounds for legal reasoning. It is clear that human judges will no longer be as indispensable as they were in the past. Therefore, my attempt is to illuminate this compelling and disturbing idea in a way that expresses dissonant and unsettling considerations.

This essay consists of three main sections: In Section II briefly introduces Aristotle's concept of equitable justice. In Section III, I will explain the basic tenets of virtue jurisprudence with reference to I. Domselaar's arguments and argue that virtue jurisprudence provides an inadequate justification for the invalidation of AI-

based legal reasoning. Then, I attempt to draw a framework for equitable reasoning by referencing J. Derrida's aporetic logic. This sets the stage for the next chapter: In Section IV presents a brief example of algorithmic reasoning. I expose that what is perceived to be a distinctive attribute of human judges is on the verge of becoming an Al-oriented judge skill. Finally, I examine the judgment of the Turkish Supreme Court of Appeals (henceforth referred to as the 'Supreme Court') to illustrate the absence of equitable justice in human-made judgments. In doing so, I aim to demonstrate how, in fact, the legal judgment of human judges can mostly be far from par excellence.

2. Aristotle *Epikeia*: Equitable Justice

Before delving deeper into the subject, let us begin with a well-known passage from Aristotle's *Nicomachean Ethics*, which has influenced virtue doctrine:

"When the law speaks universally, then, and a case arises on it which is not covered by the universal statement, then it is right, where the legislator fails us and has erred by oversimplicity, to correct the omission-to say what the legislator himself would have said had he been present, and would have put into his law if he had known. Hence the equitable is just, and better than one kind of justice-not better than absolute justice but better than the error that arises from the absoluteness of the statement. And this is the nature of the equitable, a correction of law where it is defective owing to its universality. In fact, this is the reason why all things are not determined by law, that about some things it is impossible to lay down a law, so that a decree is needed (…) It is plain, then, what the equitable is, and that it is just and is better than one kind of justice. It is evident also from this who the equitable man is; the man who chooses and does such acts, and is no stickler for his rights in a bad sense but tends to take less than his share though he has the law oft his side, is equitable, and this state of character is equity, which is a sort of justice and not a different state of character" (Aristotle, 2021: 64-65, 5/10). [1]

The concept of equity is identified in the first paragraph as (1) the correction of the law enacted by the legislator, (2) a part of the administration of justice in such a way that the judges subordinate the general formulation of the law or the intention of the legislature to the particularity of the legal case or the uniqueness of the facts, and in the second paragraph as (3) a state of character that is willing to agree to a lesser share than the law allows. The ideas in the first paragraph have been accepted to some extent by modern legal theories. The subsequent context in the second paragraph has been embraced by those who argue for equitable justice in an ethical sense.

For Aristotle, the application of rules in some cases leads to inappropriate and unfair results and therefore requires the intervention of equitable justice in the legal system.[2] The application of *epikeia* ensures good outcomes. This is because the inflexible nature of the legal system does not fully encompass the details of a particular case. When the generality of the rules does not meet the requirements of equitable justice, it is the responsibility of judges to intervene in the name of equitable justice to correct any inequities in the laws (Beneduzi, 2021; Zwalve 2014). Crucially, however, the need to intervene does not prompt judges to change codified rules or to invent 'new' laws. On the contrary, Aristotle stated that equity can only be "adapted to the facts" by judges. Judges illuminate legal facts by departing from the generality of the rules without disregarding them. As Falcón y Tella wrote, "equity does not repeal the law; it exists alongside the law, correcting and complementing it. Equity is not an infraction of the law; it is its fulfillment because the law is not always the law alone" (Tella, 2008: 21). In this sense of *epikeia*, then, it can be said that Aristotle does not recommend judges to follow the law strictly or to be absolutely bound by it, but rather to use appropriate legal instruments to remedy defects in the general rules.

Accordingly, two key issues arise with respect to the equitable reasoning: On the one hand, the broad scope of legal norm statements means that the law is applicable to all potential cases. On the other hand, the same

[1] Aristotle defines the concept of equity as "goes beyond the written law" and points to arbitrators rather than judges to ensure equitable judgments (Aristotle, 2008: 34-35, 1/13).

[2] It is worth noting that "legal justice" and "equitable justice" play different roles in modern law. The former is mainly concerned with the legal and political principles that fall under the umbrella of equality. The central principle of legal justice is that the same cases should be treated equally through equality before the law. The latter, on the other hand, is a matter of singular or particular justice, which concerns the reconciliation of the tension between the injustice of the generality of legal rules and the sui generis of legal facts.

universality of the law requires a certain degree of adaptability or flexibility to rectify any inherent shortcomings. It is not possible to fully accommodate the requirements of justice in the general statement of the law. From this perspective, equitable reasoning can be defined as the incorporation of a single legal fact into the general meaning of a law. The concept of equitable reasoning is founded on fact-based judgment, which considers the subtleties of a given case. In addition, it allows judges to interpret the law in light of all facts relevant to a particular case. It is therefore incumbent upon judges to consider the nuances that distinguish a given legal fact from other precedents and to adjudicate according to the 'equitable principles'[3] in light of these differences.

I propose that equitable justice is the legal instrument that Aristotle calls 'decree' in the above paragraph.[4] By elucidating the term 'decree' in terms of judges' equitable reasoning, many controversial issues can be bypassed, and we can get to the real issue. The most important point is exactly what Aristotle said: "that about some things it is impossible" to enact a law, so there must be other means of settling disputes within the legal framework. Here, according to Aristotle, the concept of decree should take the place of the universal character of the law and manifest itself through judges so that the injustice of the principle of generality in the law can be addressed. Thus, the concept of decree as a legal instrument implies the responsibility of courts[5] to consider the relevant reasons in their judgments to ensure *epikeia*. In other words, a decree can be considered a perfect legal instrument for the legal responsibility of judges in making fair decisions. Judges must go beyond the general and literal meaning of legal norms and apply the requirements of equitable justice by accounting for the particularities of a case that are not fully or adequately addressed by the law.

3. Virtuous Legal Reasoning

This section briefly sketches the perspective of virtue jurisprudence on equitable reasoning. Virtue jurisprudence is essentially based on Aristotle's conception of character virtue and incorporates it into the legal decision-making process. The normative thesis of the virtue-centered theory of judging is, in Solum's words, that "judges should decide cases in accord with the virtues, or judges should render the decisions that would be made by a virtuous judge" (Solum, 2003: 182). According to Solum, legal reasoning depends entirely on a judge's judicial virtue. This involves the natural disposition of the judge's mind or will and includes attributes such as wisdom, justice, and good temper. Such virtues imply deep attachment to equitable justice, which enables judges to apply them in all cases.

A more comprehensive conceptual framework for equitable judgment can be found in A. Amaya's studies and I. Domselaar's arguments. Amaya points out, for example, that the virtue theory of legal reasoning operates in a dual process via virtuous judges: on the one hand "emotion and intuition" and on the other "reflection and deliberation." Thus, "arguments and character are intimately intertwined in contexts of legal decision-making" (Amaya, 2023: 4). On the other hand, Domselaar's thesis that legal reasoning is not only the application of rules and principles but also judges' perception of the particularity of each legal case seems to make much more sense when considered as a distinguishing component of human judges. Domselaar's specific examples and arguments might offer a crucial perspective in the debate about whether or not AI judges can make fair decisions in this respect: if we assume that the quality of legal reasoning is related to judges' perception, we can argue that AI judges will never have this ability, at least not in the near future. In the next section, I discuss whether the concept of "perception" could be a distinctive disposition of equitable reasoning.

[3] 'Equitable principles' correspond to the 'requirements of equitable justice' and the consideration of 'specific nuances' in a given case. Therefore, these terms are used to convey the same meaning.

[4] According to Shanske, Aristotle's focus in this paragraph "is not on using *epikeia* to adjudicate, but to pass specific decrees to correct general laws" (Shanske, 2008: 363, fn. 51).

[5] It should be noted that my perceptual analysis of judges' equitable reasoning somewhat differs from the conventional understanding of Aristotle's concept of decree. For example, according to Aristotle, the decree, as it functioned in ancient Greek, was a "kind of decision the Assembly had to take when facing new challenges, unexpected circumstances, or specific issues of everyday politics" (Kontos, 2023: 54). According to Shanske, "Aristotle is only implicit in recommending *epikeia* to a judge/jury in the context of a legal dispute, but is explicit in recommending *epikeia* to a legislative body, i.e., the Assembly should issue specific decrees to correct defects in its general laws" (Shanske, 2005: 2059). Therefore, a decree as a legal instrument is not enforced by the judge but is issued by the assembly. I merely assign this role of the assembly to each individual judge as legal responsibility.

3.1 The Perceptions of Judges

Contrary to modern legal theories, Domselaar points out in her following articles (Domselaar, 2020a; 2020b) that judicial decision-making is related to the judge's personal, intellectual, and conscious performance. According to Domselaar, judicial perception as ethical perception is a "character-dependent professional skill" that enables judges to make judgments with a special "sensitivity." This sensitivity in judges as a professional skill is not something that suddenly appears with a magic bullet, as Domselaar articulated; it develops naturally in judges, as in the German word "*Bildung,"* personal knowledge gained from a variety of sources, including family, friends and school and professional skills gained from legal education. All these backgrounds of life experience acquired as a 'private person' and legal understanding acquired as a 'professional person' in theory and practice actually play an enormous role and have a huge impact on judges' perceptions.

While Domselaar emphasizes the fact that law as an institution has many values to protect and uphold to ensure the legitimacy of judicial decisions, the ethical perception of judges has also been perpetuated in the understanding of law, although traditional legal theories have tried to overcome the personal implications of legal reasoning. In contrast to the mainstream "rational" legal perspective, Domselaar draws on the theory of Iris Murdoch and uses McEwan's famous novel *The Children Act* as an example. Domselaar attempts to show how the "thick" legal concepts endowed with general, formal, and technical meanings for all legal purposes are, in fact, the true habitus of perceiving judges. Domselaar assumes that thick legal concepts contain some socially constructed values in addition to their heavy legal content, which presents a great opportunity for judges to incorporate the virtue perspective into their judgments (2020a: 84). By using thick value concepts such as culpa and negligence, judges can embed the desired ethical perspective into the evaluative judgment so that a particular case is not sacrificed to the cold heart of 'rational' legal reasoning.

Nevertheless, Domselaar warns us, albeit not clearly, but to some extent, of the possible undesirable side effects of an empathetic judge that may have a negative impact on legal reasoning, such as an overly personal approach to the case or ignoring "stepping back." However, one can say without hesitation to Domselaar's argument that she firmly believes that with training, experience, and practice, judges can improve their "perceptual skills" and naturally use these ethical-personal approaches to apply the concepts of law (2020a: 73-74). Admittedly, Domselaar understands the question of Aristotle's concept of equitable justice only as personal virtue and adapts it to "the morality of adjudication" through the interpretation of legal concepts.

These considerations are open to objection on various grounds. First, the idea of improving judges' moral perception through training and experience to maintain equitable justice is indeed a long-term optimistic expectation, despite the fact that the judges (human or AI) will never fully fulfill such a prospect. Second, evaluating a legal argument on the basis of judges' character traits is a way to expect, but not guarantee, fair and reasonable decisions. Finally, institutional and professional efforts to tame personal traits and make judges aware of the particularities of cases can also be applied to AI judges. In theory, the current concerns and expectations regarding human judges' equitable reasoning decisions are fundamentally the same for future AI judges.

It is significant to note that I am not proposing that judges should suppress or exclude emotional and moral perceptions, which are generally accepted as mental contamination that dismantles the logic of legal reasoning. I do not suggest that judges should be desensitized to making judgments. Rather, my proposal focuses on how we can codify equity-based principles that are responsive to the particularity of a case instead of merely nourishing general principles or personal virtues. It would then be a more objective and effective way to consider virtues not as judges' personal qualities but as an inextricable part of equitable reasoning. Thus, wisdom can be translated into algorithmic code as a set of value-based legal arguments and principles.

3.2 *Equitable Legal Reasoning*

Despite my critical approach, the meaning of ELR in this paper remains unclear. Before proceeding, I briefly describe the concept of equitable reasoning with reference to Derrida's aporetic logic. It can be said that aporetic logic is one of Derrida's deconstructive reading strategies to reveal the meaning of a text. It is well known that

many of the concepts such as justice, hospitality, and forgiveness in Derrida's works function in a process of "double bind"; conditional and unconditional in nature. The aporetic logic is to approach concepts in such a way that they not only contain the opposite of themselves but also transcend the double structure and open up to the other possibilities that are yet to come. While these concepts remain dissonant and heterogeneous with their opposites, they become inseparable in the decision-making process. Their homogeneity—albeit continuous heterogeneity—in a decision makes sense of the moment and the future possible. For example, in *Force of Law*, Derrida articulated the aporia of justice by linking it to deconstruction ("deconstruction is justice"), which goes beyond the calculable limits of legal norms. Yet even deconstructive justice inevitably requires manifestation through the calculability and enforceability of law. Thus, anyone who wants to grasp the concept of justice should approach it in an aporetic way, that is, as a demand for unconditional, incalculable, infinite, undecidable justice within the conditional, coded, and calculable rules of law. As Derrida stated, this is why the aporia of deconstructive justice is precisely "an experience of the impossible" (Derrida, 2002: 244) so that the one who is authorized to decide in law must necessarily go through this impossible experience.

Like the aporetic structure of justice, insofar as it recognizes a deconstructive reconciliation between "two intertwined but mutually exclusive options" (Fritsch, 2011: 443), equitable reasoning has an aporetic logic: the universality of legal norms and the singularity of a legal fact. The aporetic structure of equitable reasoning insists that a judge "simply applies and implements a program of law" because "one can never escape the program" (Derrida, 1992: 41), but the inevitability of the demand for justice in a given situation invites judges to deconstruct that legal program. Given this seemingly impossible reconciliation between legal and equitable justice, a deconstructive portrait of legal reasoning can be drawn: equitable reasoning somehow compels judges to simultaneously assume an aporetic responsibility, following legal justice but also adhering to the demand for equitable justice, which is outside the law but within its horizon. This aporetic logic provides an opportunity to understand, in a deconstructive way, how it is possible to simultaneously approach the necessity of equitable justice in the Aristotelian sense and to deviate from the encoded program of law.

First, equitable reasoning is based on case-by-case evaluation rather than rule interpretation. Second, it is my contention that judges are legally obliged to consider the specific facts of each case in accordance with Aristotle's account of the decree. Third, judges are responsible for meticulously identifying and effectively pursuing the distinctive characteristics of each case. This allows them to deviate from the conventional, static and mechanical interpretation of certain legal concepts. In this regard, it is not only a matter of devising an alternative legal argument for the case in a creative manner; it is also necessary to adopt a critical approach to the tendency to adhere dogmatically to the legislative intent or the literal meaning of the enacted law. In other words, "in every case the law must be *reinvented*" (Chesterman, 1997: 364) by judges.

The practice of equitable reasoning requires a departure from the literal interpretation of written rules. This allows judges to pursue arguments that can effectively eliminate injustices inherent in rigid legal procedures. It should also be noted that judges cannot use equity as an instrument to overrule the law. The aporetic experience of equity is not meant to provide reasons that are sharply outside the legal system or that somewhat contradict the integrity of the law. Derrida's argot, "each time the decision concerns the choice between the relation to an other who is *its* other (…) and the relation to a wholly, non-opposable (…) an other that is no longer *its* other. What is at stake in the first place is therefore not the crossing of a given border" (Derrida, 1993:18). For instance, if it is unfair or disproportionate to adjudicate strictly according to the form of an agent's conduct, a judge is duty-bound to apply one of the principles of equitable justice, specifically, "equity looks to the intent" (Hohfeld, 1913: 550), rather than adhering to the literal meaning of the legal rule. The following pages illustrate this point with reference to an example of an inequitable decision. In addition, this inequitable decision offers insights into the aporetic nature of equitable reasoning for contrasting content.

It is crucial to acknowledge that the application of equitable reasoning is not only possible but also necessary in the context of judicial discretion and the recognition of heterogeneity in legal facts. Siliquini-Cinelli asserted, "legal reasoning has no alternative but to move dialectically between the plane of law (i.e. norms) and facts" (Siliquini-Cinelli, 2024: 12). In this context, equitable reasoning can be defined as the evaluative judgment of a judge who reinvent "the plane of law" regarding the case-based facts. This definition also parallels Samuel's

description of equity as "a third dimension in which conceptual structure of law can function" (Samuel, 2017: 52) to avoid the strict logical consequences of legal interpretation. Iterations and stabilities are incompatible with an aporetic understanding of equitable reasoning. As Derrida pointed out, if a judge "wants to be responsible, to make a decision, has not simply to apply the law, as a coded program, to a given case, but to reinvent in a singular situation a new just relationship" (Derrida, 1997: 16). This is the main reason for judges to evaluate each case individually. In each case, the judge must justify a decision by considering relevant factual factors and reinventing the codified legal program. Preventing an unjust outcome from an uncompromising application of the law requires not only a comprehensive understanding of the facts but also an awareness of and response to the others' quest for justice. Without this aporetic approach, a conventional interpretation of the law would preclude the responsibility of judges to distinguish between cases and to apply equitable justice to each individual case.

The following section explains algorithmic reasoning and demonstrates how equitable reasoning can be applied to algorithmic models guided by value-oriented principles in simple cases. A legal decision that challenges the normative assumption that human judges are infallible in their decision-making processes is then examined in detail.

4. Algorithmic Legal Reasoning

Samuel argues that what we refer to today as 'algorithm' is actually a particular method known as dialectical analysis, based on the interpretation of medieval Roman law by commentators. Accordingly, this algorithmic method, whether applied to a legal problem or a legal text, "is analyzed in terms of an either/or" dichotomy. Samuel emphasized that the main feature of this method is the exclusion of a third option (Samuel, 2016: 10). The term 'algorithmic reasoning' is used to describe artificial intelligence based on data-driven logic. It is also known as a 'computational reasoning' or 'algorithmic decision-making' (Markou & Deakin, 2020; Nachbar, 2021: 517-523). A statistical and data-driven reasoning model is employed to determine the precise legal justification behind the algorithmic reasoning. This logic derives from the fundamental principles of legal rules, precedents, cases, and doctrines. The application of static legal knowledge correlated with the facts of the cases enables the formulation of plausible predictions for trivial cases. However, in complex cases, the integration of value-based principles is essential to ensure the formulation of equitable judgments that are consistent with principles of legal integrity and justice. Even when the scenario is relatively straightforward, modeling vague legal concepts and discretionary legal rules is a highly complex task using a symbolic and formal computer language (Arias *et al.*, 2024).

Nevertheless, experts believe that deep machine learning systems and generative AI technologies will provide greater accountability and explanation in the near future. Let us assume the existence of an advanced and sophisticated AI judge that becomes more intelligent. In such a scenario, it is first necessary to define legal reasoning and examine whether it requires special qualities that can only be invoked by human judges and not AI judges.

4.1 *Value-based Algorithmic Reasoning*

Legal reasoning, as Sunstein points out, is typically regarded as an analogical reasoning. Analogical reasoning relies on the principle that judges evaluate a case at hand by identifying similarities and differences with previous cases. For Sunstein, identifying this principle "is a matter of evaluation, and not of finding or counting something, artificial intelligence is able to engage in analogical reasoning only to the extent that it is capable of making good evaluative judgements" (Sunstein, 2001: 5). Following this line, in his recent book *Law's Rule*, Postema argues that legal reasoning is essentially practical and analogical reasoning, and that this reasoning has some fundamental moral dimensions that AI technologies are not capable of. From the perspective of Postema's critique, the distinctive feature of legal reasoning, as opposed to algorithmic reasoning, is that it "follows the rules in a meaningful, intelligent way (…) and requires judgment (phronēsis, prudence)" (Postema, 2022: 299-300). Postema implicitly placed human judges above AI judges by enumerating the shortcomings of machines: "They do not understand or appreciate the propositions, facts, norms or arguments found in the legal texts fed to

them (…)" (2022: 297). According to Postema's skeptical arguments, to make fair judgments, AI judges must be able to evaluate legal cases not only analytically but also in the light of certain values. The values that will be lost if humans are replaced by AI technology, according to Postema include: "responsive and responsible" decision-making and "exercise mercy or equitable discretion" (2022: 302).

Unsurprisingly, however, one of the current studies illustrated the ability of AI systems to make judgments based on the evaluation of previous cases and principles. In collaboration with legal philosopher Lomfeld, researchers have codified value-based principles and judgments into AI tools. If this is indeed the case, the algorithms can be programed to employ analogical reasoning to generate case-based arguments. In addition, it could pave the way for equitable judgments by future robot judges. In this section, I briefly discuss this algorithmic reasoning, which demonstrates the potential of AI judges to make evaluative judgments similar to human judges.

The research conducted combines the LOGIKEY engineering methodology with Lomfeld's theory of the grammar of discursive justification (Benzmüller *et al.*, 2024). The principal aim is to integrate the logic of legal rules and principles with socio-legal values at a deeper level of reasoning. Adopting this perspective gives rise to the application of a pluralistic set of values for pertaining to each case, as a means of accounting for the nuances and complexities of any given situation. It also enables the logical reconstruction and determination of the legal equilibrium structure between values and rules. In the basic legal value system proposed by Lomfeld, value-based reasoning can be applied to a dialectical matrix. The following matrix illustrates the dialectical relationship between four fundamental values: security, freedom, equality, and utility. Furthermore, these four legal principles encompass eight additional, more concrete values: Equity and reliance, fairness and responsibility, free will and personal gain, stability and efficiency (2024: 35).

To illustrate the dialectical matrix, they used a common law case on the law of property (1805), known as the "wild animal case." The original legal case is described as follows:

Pierson killed and captured a fox that Post had hunted with hounds on public land. The court ruled in Pierson's favor.

The majority members of the court were in favor of Pierson on the notion that free-roaming (hunting wild animals) requires actual physical possession, with reference to the following arguments: "pursuit alone vests no property" (Justinian), and "corporal possession creates legal certainty" (Pufendorf) (2024: 54). Following Lomfeld's theory, the experts interpreted these arguments as preference for values of SAFETY over FREEDOM and STABILITY (legal certainty) over WILL (of Post). They then proved via algorithmic reasoning that the deontic reading of the case automatically favored Pierson.

Nevertheless, from an Aristotelian perspective, we can argue that algorithmic reasoning modeling still has a crucial task to perform. Special cases that the legislator could not foresee are still available for judgment by judges. In other words, although experts may succeed in codifying equality-oriented algorithmic reasoning to some extent, they will inevitably fossilize this legal reasoning in future cases. As a result, a single line of reasoning related to a particular case becomes static for all relevant cases. However, the diversity of circumstances in which it is impossible to anticipate all relevant combinations and dimensions in advance requires a dynamic and intersectional interpretation of legal norms. This leads to the question of what justification criteria can be applied to AI judges in different factual scenarios.

It is not surprising that the experts also codified a fictitious legal case based on the *ratio of the original* case:

Chester, a parrot owned by the ASPCA, escaped and was recaptured by Conti. The ASPCA found this and reclaimed Chester from Conti. Court found for ASPCA (Plaintiff).

According to experts, the court distinguished between 'wild animals' and 'domestic animals' in property claims. More specifically, they inferred from the original case that if the owner of the pet—the parrot—did not willfully abandon or neglect its duties, the owner's rights still remained with the ASPCA. Because the legal issue

concerns a domestic animal, the choice of principle and the relevant rules must again be codified differently in this case. Consequently, the derivative validity of the new legal reasoning rests on this assumption: the ASPCA's continuing responsibility and reliance on its own property rights outweigh Conti's physical possession of the parrot (2024: 56).

Although the decision was programed and petrified in advance by experts, there is no doubt that this new fictitious legal reasoning algorithm is an example of analogical legal reasoning. Recall that Postema introduced the ability to produce evaluative judgments as a distinctive quality of legal reasoning. However, as we have seen, AI (and the experts) can interpret legal cases in the same way as human judges, with the same ability to apply evaluative judgments to reach a legal decision. Can such an algorithmic system be expected to make fair judgments? While a definitive answer is not currently possible, we can conclude this section with an optimistic vision of equity-oriented AI judges, articulated by the virtue theorist Solum: "The crucial question concerns functional capacity: if the artificially intelligent law had the functional capacity to do equity that was as good as the capacity of human regulators (which may not be so great), then the objection would disappear" (Solum, 2019: 62).

5. Inequitable Judgment of Human Judges

Thus far, I proclaimed that judges must adopt a case-by-case approach and treat each legal case as if it was a unique phenomenon. Each case should be examined from all available perspectives. In this regard, any legal reasoning, whether human or artificial, must take into account the distinctive elements of each case that do not fit neatly into the given rules and precedents.

To demonstrate how a legal reasoning can be evaluated in terms of its correspondence with aporetic equitable justice, I present an example of a non-equitable judgment, which will be discussed in detail in subsequent pages (Turkish Supreme Courts of Appeals, 2018). The case concerns the dismissal of a cleaning staff member who took a half-empty chocolate box from a cloakroom. Although the plaintiff employee was legally entitled to receive severance pay for a period of 15 years, majority of the judges ruled that the employee was not entitled to this payment. This is because her act was unlawful and constituted "theft," as defined in the Labor Code. It is important to note that the Labor Code grants a discretion to determine which acts of employees are to be considered valid legal grounds for dismissal without severance pay.[6] As a result, the employee was deprived of her only source of income and was not entitled to receive the 15 years' severance pay.

The decision was made by the majority of the judges. Only a single dissenting opinion was justified in favor of the employee. Notwithstanding the multitude of nuances and details pertaining to the factual reality of the case, the judges demonstrated an inability to properly discern and interpret the three distinguishable components of the case. First, the identity of the individual who left the box in the cloakroom is uncertain. One witness stated that the box was left by the employer, along with the signature sheet. However, this testimony was not based on the witness's own observation but on information received from another source. A few days later, the employer initiated a comprehensive investigation within the office, which included an examination of the surveillance footage. Second, the fact that the employee had not previously been involved in such an 'unlawful' act for 15 years is another relevant factor. Lastly, and perhaps most significantly, the judges have not applied 'the principle of interpretation in favor of the employee', which has been developed through precedent and labor law doctrine.

5.1 Analysis of Inequitable Legal Reasoning

Obviously, the judges interpreted the employee's actions in a direct contradiction to the concept of *epikeia* but precisely compatible with the "calculable" code of law. The judges focused on the conventional interpretation of the legal rule and thereby neglected to consider the particular circumstances of the case. In other words, their interpretation is based on a narrow and literal understanding of the legal rule, rather than a contextual and

[6] Turkish Labor Code, Article 25: "The employer may break the contract (…) in the following cases." A. 25/II-e: "**For immoral, dishonorable or malicious conduct or other similar behavior:** If the employee commits a dishonest act against the employer, such as a breach of trust, theft or disclosure of the employer's trade secrets."

nuanced assessment of the circumstances of the case. In addition, the adjudicative process was based entirely on two pieces of evidence presented by the employer: witness statements and video footage. Consequently, alternative interpretations of the facts and reinvention of the Labor Code that might have led to an equitable outcome were excluded from the legal reasoning.

The judges' undue focus on the employee's conduct may have hindered their ability to perceive the potential malevolent intent of the employer. In all legal contexts, the oldest equitable principle, that of "good faith" (bona fides), should be considered. As Aristotle (2008: 35) said in *Rhetoric*: "Equity bids us (…); to think less about the laws than about the man who framed them, and less about what he said than about what he meant; not to consider the actions of the accused so much as his intentions." However, no judge, from the court of first instance to the Supreme Court, has ever contemplated the possibility that an employer may have sought legal justification for dismissal without severance pay. It seems probable that this same lack of perception also resulted in employee good intentions being disregarded. As the employee explained, the intention behind taking the box was not to steal it but rather to use it as a sewing box, assuming that it would be discarded. As the Supreme Court of Appeals is the final authority to resolve the disagreement between the court of first instance and the Court of Cassation, the employee was ultimately subjected to a double penalty: loss of employment and compensation. Needless to say, the box of chocolates had neither material nor moral value.

To paraphrase Derrida, the judges did not even attempt to go beyond the calculable code of law to ensure the fulfillment of the demand for justice. It is crucial to emphasize that had this deconstruction occurred, the decision would have undoubtedly not corresponded to true and absolute justice. According to Derrida, deconstructive justice transcends the law as an ethical, infinite and unrepresentable demand. However, the deconstructability of legal norms has the potential to render justice a possibility, albeit unattainable. As Derrida emphasized, even if it is impossible to exercise incalculable justice within a decision because "the undecidable haunts," this cannot and should not "serve as an alibi" for judges to "stay out of juridico-political struggles." For "incalculable justice *commands* calculation" (Derrida, 2002: 257). Judges must negotiate with the rules and principles to achieve an infinite, irreducible, incalculable justice. This justice can be achieved through the deconstruction and simultaneous reinvention of the law. This "double bind" is precisely the aporia of equitable reasoning. As Derrida asserts, "it is of duty [devoir] that one must speak-deliver itself over to the impossible decision while taking account of law and rules" (2002: 252). Consequently, it can be inferred that the mere loss of the job would have been regarded as a satisfactory legal outcome for both parties if the Supreme Court had ruled on the basis of equitable reasoning. In essence, the possible deconstructive legal response to an employee's behavior would have been only the loss of employment, accompanied by the provision of severance pay.

From the perspective of virtue jurisprudence, it is evident that these judges lack the virtue of justice. However, it would be an oversimplification to regard this as a lack of intellectual and emotional qualities. Rather, it is because: (a) they lack the ability to make decisions in a manner that is appropriate to the specific circumstances; (b) their legal reasoning is based on grounds that are unfounded, insufficient, and inadequate, rather than on reasonable and equitable arguments; (c) they fail to consider the particularities of the case; and (d) they neglect their legal duties.

The Supreme Court's decision was an example of the strict application and interpretation of a coded program of law. The reasoning process of judges is therefore not 'fair' but 'algorithmic.' Human judges' decisions are inherently unpredictable and potentially biased, and obviously contrary to the aporetic understanding of equitable reasoning. Therefore, it can be said that Postema's claim that human judges, unlike AI judges, think sensibly and intelligently is an optimistic expectation, if not a latent ideal assumption.

6. Conclusion

Following Aristotle and Derrida, I have argued that there is an intrinsic connection between equitable justice and deconstructive justice in terms of legal reasoning. I have also addressed virtue jurisprudence to investigate whether the virtuous perception of judges can be regarded as a distinguishing feature of human judges for equitable reasoning.

This essay sheds light on the necessity of judges who are engaged in equitable reasoning to identify factually distinguishable elements in each case. Virtue jurisprudence cannot be considered a suitable reference guide for the maintenance of equitable judgments because of the unattainable ideals of professionals. It is admirable for a judge to show compassion, remorse, and a commitment to upholding legal and moral standards when confronted with a case. However, these criteria are insufficient to evaluate the fairness of a judge's decision.

It is not my intention to confirm or to defend the algorithmic reasoning and AI judges (Sağlam, 2021; Sağlam, 2023). My aim is merely to identify new equitable reasoning avenues. It is my contention that equitable justice is the most intuitive and characteristic basis for legal reasoning. The most appropriate criteria for distinguishing between human and AI judges is the quality of equitable reasoning. The aporetic structure of equitable justice should be recognized as a fundamental aspect of legal reasoning.

By analyzing a specific example of inequitable legal reasoning, this paper has demonstrated that human judges often fail to achieve justice goals. This decision is neither an isolated case nor an exceptional example of a particular legal interpretation. Rather, it is a representative example of a wider pattern of unfair and unjust decisions in all legal systems.

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Analysis of Immigration Travel Documents: Legal Framework and Practical Challenges

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Abstract
This paper explores the legal frameworks and practical challenges associated with immigration travel documents, including passports, visas, and emergency travel certificates. These documents play a critical role in facilitating international mobility while upholding national security and compliance with immigration laws. The study employs a normative-empirical approach to examine the issuance, use, and management of travel documents in the context of Indonesian immigration regulations and international standards such as the 1951 Refugee Convention and ICAO guidelines. Key findings reveal significant administrative barriers, legal inconsistencies, and human rights concerns, particularly for vulnerable groups like refugees and stateless individuals. The paper concludes with recommendations to enhance global collaboration, streamline administrative processes, and integrate advanced technologies for more effective travel document management.

Keywords: Immigration, Travel Documents, International Law, Refugees, Administrative Challenges

1. Introduction

The ability to travel internationally depends heavily on the proper issuance and use of immigration travel documents, such as passports, visas, and emergency travel certificates. These documents ensure that travelers comply with both national and international laws. However, balancing sovereignty and mobility poses significant challenges for immigration authorities worldwide.

This paper investigates the administrative and legal aspects of travel document issuance and management in Indonesia, focusing on its alignment with international legal standards.

Human mobility between countries has become an integral part of the era of globalization. This phenomenon is not only influenced by developments in transportation and communication technology, but also by the need for individuals to travel for various purposes, such as education, work, tourism and migration. In this context, immigration travel documents, such as passports and visas, become important instruments that enable individuals to cross national borders legally. In addition, this document functions as a national security control tool, assisting the government in monitoring the inflow and outflow of individuals, as well as mitigating risks related to transnational threats, such as human trafficking, illegal immigration and terrorism.

In the midst of the increasing need for international mobility, there are various challenges faced by the immigration system. Regulations related to travel documents are often complex, not uniform between countries, and require adjustments to global dynamics, such as pandemics and geopolitical conflicts. Apart from that, technological advances also give rise to new challenges, such as the threat of cybercrime related to document forgery and identity theft. Based on this background, this research will discuss several main issues including the main role of immigration travel documents in supporting international mobility, how existing regulations regulate the use and management of travel documents, as well as the challenges faced in the immigration travel document system in the era of globalization.

The aim of this research is to identify the strategic role of immigration travel documents in the context of globalization, analyze regulations related to travel documents and their implications for the immigration system, as well as examine the challenges faced and offer recommendations to improve the efficiency and security of immigration travel documents. Through this discussion, it is hoped that it can contribute to the development of immigration policies that are more responsive to global needs, as well as strengthening international cooperation in managing human mobility effectively and safely.

2. Research Methods

This research uses a literature study method, which is carried out by reviewing various relevant reference sources, such as books, scientific journals, statutory regulations, official reports and research articles related to immigration travel documents. This approach aims to understand in depth the role, regulations and challenges faced in managing immigration travel documents in the era of globalization.

The data obtained was analyzed descriptively to identify main concepts, policy patterns and challenges faced in various countries. This analysis is also complemented by a comparative study of immigration practices in several regions, in order to provide comprehensive recommendations. With this method, research is expected to provide a comprehensive picture that can support policy development and improvement of the immigration travel document system.

3. Discussion

3.1. Legal Framework

The issuance of travel documents in Indonesia is regulated under the Immigration Law and supported by Presidential Decree No. 125 of 2016. These laws define procedures for applying for, renewing, and replacing travel documents. However, the legal framework must also adhere to international obligations, such as the principle of *non-refoulement* for asylum seekers.

3.2. Challenges in Document Issuance

Technical Challenges:

- Lack of digital integration between national agencies leads to delays in processing applications.
- Difficulties in verifying documents from countries with weak administrative systems.

Humanitarian Challenges:

- Refugees and asylum seekers often lack valid passports, requiring coordination with UNHCR or IOM for travel documentation.
- Emergency travel documents for stateless persons require innovative policy approaches.

Legal Challenges:

- Discrepancies between national immigration laws and international legal frameworks may hinder compliance with global standards.

3.3. Case Studies

1. Emergency Travel Certificates: An Indonesian citizen abroad lost their passport and was issued an emergency certificate by a consulate. The process was swift but highlighted gaps in communication between consulates and immigration offices in Jakarta.
2. Refugee Travel Documents: A refugee in Indonesia needed to travel to a third country but faced delays due to administrative hurdles and lack of clear procedural guidelines.

3.4. Stateless Individuals and Refugees

Many stateless persons and refugees lack valid passports, making it difficult to secure travel documents. Organizations like UNHCR provide Refugee Travel Documents (RTDs) under the 1951 Refugee Convention to facilitate international travel for recognized refugees.

3.5. Administrative and Technical Barriers

Delays in document issuance due to bureaucratic inefficiencies.□ Difficulties in verifying the authenticity of foreign documents, especially from conflict zones or failed states.

3.6. Human Rights Concerns

Refugees and asylum seekers are often denied travel documents or subjected to restrictive policies, violating the principle of *non-refoulement*. According to the UNHCR Handbook, individuals fleeing persecution must not be returned to a country where they face threats.

3.7. Challenges in Issuance and Use

3.7.1. Stateless Individuals and Refugees

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3.8. Global Frameworks and Best Practices

3.8.1. International Laws and Guidelines

- **The 1951 Refugee Convention and 1967 Protocol**: Require states to issue travel documents to refugees lawfully residing in their territories.
- **ICAO Standards**: Guide the design and security features of travel documents to reduce fraud.

3.8.2. Regional Cooperation

- **EU Blue Card**: Facilitates travel for skilled non-EU workers across member states.
- **ASEAN Travel Facilitation**: Encourages streamlined visa policies and inter-agency cooperation for smoother travel.

3.8.3. National Case Study

Indonesia regulates travel documents under Law No. 6 of 2011 concerning Immigration and Presidential Regulation No. 125 of 2016. These laws address the issuance of passports, visas, and emergency travel documents but face implementation challenges in cases involving stateless individuals and refugees.

4. Recommendations

1. Policy Integration: Strengthen digital systems for faster data sharing between immigration offices and international agencies.
2. Capacity Building: Provide training for immigration officers on handling complex cases, such as stateless individuals and refugees.
3. International Collaboration: Foster partnerships with international organizations to streamline the issuance of travel documents, especially in emergency cases.

5. Result

Immigration travel documents, such as passports and visas, have a central role in supporting international mobility as instruments of legality and individual identification. A passport, as the primary identity document, provides official recognition of a person's citizenship and serves as proof of the authority of the country of origin to facilitate travel abroad. Meanwhile, a visa functions as a permit granted by the destination country to regulate entry access, duration of stay, and the purpose of the individual's visit. The combination of these two documents guarantees that cross-border travel can take place in an orderly, safe and in accordance with international law provisions.

Apart from being an identification instrument, travel documents also play an important role in managing global migration flows. In the era of globalization, human mobility is increasing for various purposes, such as education, work, tourism and family migration. Immigration travel documents help countries monitor and control individual movements, thereby preventing the entry of illegal immigrants, criminals, or individuals who have the potential to threaten national security. Thus, travel documents not only function for individual interests, but also become an important instrument for the state in maintaining social stability and security. Immigration travel documents contribute to strengthening International Relations.

Through bilateral or multilateral visa arrangements, countries can strengthen diplomacy, increase economic cooperation, and promote cultural and educational exchanges. For example, visa-free policies among regional bloc member countries, such as ASEAN or the European Union, show how immigration travel documents can be optimized to support regional integration while facilitating the mobility of their people.

The role of immigration travel documents is not only limited to administrative functions, but also includes broader strategic aspects, both in supporting individual mobility and in managing relations between countries. The existence of this document is key in ensuring that global mobility runs safely, in an orderly manner and contributes positively to economic growth and social stability.

Regulations regarding immigration travel documents, such as passports and visas, are regulated based on the international legal framework and domestic legislation of each country. At the international level, regulations regarding travel documents are largely based on standards set by global organizations, such as the International Civil Aviation Organization (ICAO). This standard covers the design, format and security features of travel documents, including the application of biometrics to increase their validity and security. The adoption of ICAO

standards by member countries aims to ensure the interoperability of travel documents, making them globally acceptable and preventing counterfeiting.

At the national level, countries have their own regulations governing the issuance, use and management of travel documents. These regulations generally include administrative requirements for passport and visa applications, immigration inspection procedures at entry and exit points, as well as provisions for penalties for violations, such as the use of fake documents or misuse of residence permits. In Indonesia, for example, related regulations are regulated in Law Number 6 of 2011 concerning Immigration, which includes provisions regarding the issuance of passports, visa policies and immigration control.

Travel document management also involves the application of technology to increase efficiency and security. The use of electronic passports (epassport) equipped with biometric chips has been adopted by many countries, including Indonesia, as part of efforts to minimize the risk of counterfeiting and speed up the inspection process at the border. The electronic visa system (e-visa) is also an innovation that allows visa applications and issuance to be done online, making things easier for international travelers while increasing supervision of visa applications. Regulations regarding travel documents also face significant challenges. The lack of uniformity in regulations between countries often makes things difficult for travelers, especially in terms of visa requirements and immigration regulations. In addition, protecting personal data in digital-based travel documents is an important issue, considering the risk of cybercrime such as identity theft. Therefore, stronger international collaborative efforts are needed to harmonize regulations, increase security, and facilitate cross-border mobility, while maintaining the sovereignty of each country in managing immigration.

In the era of globalization, the immigration travel document system faces various complex challenges, both from technical, security and policy aspects. One of the main challenges is the increasing threat to travel document security, such as counterfeiting, identity theft and document misuse. Although many countries have adopted electronic passports (e-passports) equipped with biometric features, this technology remains vulnerable to sophisticated cyber-attacks. These threats demand the development and implementation of stronger security technologies to protect data and the integrity of travel documents.

Apart from technical challenges, regulatory incompatibility between countries is also a significant obstacle. Different visa requirements, procedures for issuing travel documents, and immigration policies often confuse international travelers. This condition can hamper human mobility, especially in areas with a low level of economic integration. In this context, efforts to harmonize regulations, both through bilateral agreements and regional cooperation, are important to create a more efficient and integrated immigration system.

The phenomenon of increasing global migration, whether due to conflict, climate change or economic reasons, is adding pressure to the travel document system. Many countries face difficulties in processing documents for refugees or migrants in need of international protection. This situation requires a balanced approach between national security interests and the fulfillment of human rights. In some cases, a lack of documentation among migrant groups complicates the identification and immigration management process, which can ultimately exacerbate humanitarian crises.

On the other hand, digital transformation in travel document management also raises new challenges, especially regarding the protection of personal data. The use of cloud-based technology and electronic systems requires strict data security policies to prevent misuse of information by irresponsible parties. This issue is increasingly relevant considering the increasing demand to speed up the document management process via digital platforms.

These challenges require technological innovation, policy coordination between countries, and a holistic approach to managing immigration travel documents. In this way, this system can remain relevant and effective in supporting international mobility while responding to the challenges of the era of globalization.

6. Conclusion

Immigration travel documents have a strategic role in supporting international mobility in the era of globalization. As instruments of legality and identification, documents such as passports and visas ensure that cross-border travel can take place in an orderly and safe manner. Apart from that, travel documents are also an important tool in managing migration flows, protecting national security, and improving international relations through bilateral and multilateral cooperation.

The immigration travel document system faces significant challenges. Threats to document security, regulatory incompatibility between countries, the complexity of global migration phenomena, and the protection of personal data in the digital era are the main issues that need to be addressed. To face these challenges, technological innovation, policy harmonization, and closer international cooperation are needed.

This entire discussion emphasizes the importance of responsive, safe and efficient management of immigration travel documents to support the ever-growing need for human mobility. By strengthening regulations, improving security technology, and building collaboration between countries, the immigration travel document system can function more optimally, not only in supporting individual interests, but also in maintaining social, economic and global security stability.

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Women's Participation in Entrepreneurship from an Islamic Perspective

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Abstract
Decades-long efforts of the international community have reduced gender disparities in education, health and the labor market, but there still remains substantial gender inequality in many social aspects represented by discriminatory practices and laws based on conventional concepts and rules of fixed gender roles. Specially, the environment surrounding women has become severe in the world due to conflicts, terror attacks, infectious diseases, climate change and natural disasters. Development policy for ensuring gender equality and greater roles of women in development and social innovation is required in response to such changes in the environment and for newly arising challenges in promoting development. Despite some visible achievements in entrepreneurship developments, there are still many challenges ahead for women entrepreneurs' smooth development. On the other hand, Islam emphasis on the establishment of humankind's due rights given by Almighty Allah (s. w. t) in order to enjoy a quality of life for all. The present paper aims to highlights both conventional and Islamic perspectives on women's participation in entrepreneurial sectors. Subsequently, it attempts to study the obstacles that impede women's participation in entrepreneurship sectors. Lastly, the paper discusses the benefits of women's involvement in entrepreneurship and how it contributes to foster the global economy and societal development.

Keywords: Women, Entrepreneurship, Islam

1. Introduction

Man and woman both are the vicegerents of Allah (s. w. t). They both are created for the purpose of worship and full submission to God. Both men and women are also responsible for establishing righteous deeds and stopped evils in their worldly life (Al-Baqarah, 208, Al-Nur, 21). However, women before the advent of Islam were treated as subordinate to men in the family and society. Women were disregarded in every domain of their social life, particularly in business dealings along with men (Haque, 2020; 2022). People still have the normative

perception that for a woman going outside the house is considered a shame for the family and society. Their entire life is confined within the four walls and imposed on piously attending to household chores (Kausar, 2008; Mawdūdī, 1981; Ta'īmah, 2005). In addition, women's position in other religions is terrible either in the family or in society. Church preachers like Tertullian, Origen, Chrysostom, Jerome and Augustine stated that the Old Testament and New Testament consider women's position in the family and society as inferior and subordinate to men (Remedios, 2016). In the 21st century, still, the Muslim community is upholding similar views about women's affairs and their participation in worldly life (Ahmed, 1992).

Furthermore, it is a common phenomenon across the many parts of the Muslim society that a modest and pious woman is bound to follow her father's and elder brother's instructions before marriage and after marriage her husband's (Syed, 2010; Haque, 2020; Syed, 2008a). It is also noticed that in ancient societies, pre-Islamic era and till the middle-age, patriarchal social system did not tolerate women's authority over men in the family and society (Koehler, 2011). Most of the time women were deprived of attaining fundamental human rights, i.e., participating in education, economic, politics, workforce, receiving inheritance wealth, property ownership and other social spheres in compared to their male partner (Othman, 1993; Maxwell, 1988; Haque, Solihin, Ahmad & Jani, 2020). Women until recent decades did not enjoy dignity and equality in the family and society; in some cases, they merely considered as a sex commodity of men's enjoyment (Qutb, 2006). They had not any will regarding their own life (Ali, Solihin & Haque, 2018).

However, it is also a common view in Muslim societies that women are only responsible for child-rearing and taking care of household tasks (Haque, 2020; Ahmad, 2011; Al-Sahmarānī, 1997). On the other hand, men are responsible for earning financial means, holding authority over women in every sphere of their life (Rafiki & Nasution, 2019). This kind of normative thoughts and perception create a negative impact on women's advancement in their life and disregard their potential in every domain of their life. The socio-cultural tradition and patriarchal social system often constrict women's participation in the workforce. However, they have outstanding qualifications and skills related to economic aspects, which could increase and make the strong GDP for the country's economy and their financial steadiness.

Islamic Sharī'ah also ensured men and women's involvement in worldly affairs, i.e., in education, economic, workforce, politics and other social activities (Al-Qasas, 77). Furthermore, it is witnessed from the Islamic history that after the advent of Islam, many women had gotten the chance to participate in entrepreneurship business. And they had made a significant contribution in the field of business sectors which foster the country's economy. Islamic maxim does not disregard women's involvement in business affairs; if it does not violet her religious provision, chastity, dignity, and hamper her household tasks. Islamic Sharī'ah promotes women's active participation in the workforce and business affairs (free enterprise) based on their capabilities (Haque, 2020; Ryandono, Permatasari, & Wijayanti, 2019). Allah (s. w. t) says about women's participation in business affairs (free enterprise).

> *"He it is Who has made the earth subservient to you (i.e. easy for you to walk, to live and to do agriculture on it); so, walk in the paths thereof and eat of His provision. And to him will be the Resurrection"* (Al-Mulk, 15).

Similar view has been reported in the Prophetic tradition about the involvement of men and women in the workforce to earn their substances for their worldly life in a lawful (halāl) manner. And earning livelihood ways and substances in a lawful approach is been considered as the best action ('amal). The Prophet (s. a. w) says in this regard.

> *Prophet Muhammad (peace be upon him) was asked what type of earning was best, and he replied:" A man's work with his hands and every (lawful) business transaction."* (Musnad Ahmad, 17265)

However, the present paper aims to highlights both conventional and Islamic perspectives on women's participation in entrepreneurial (free enterprise or private ventures) sectors. Subsequently, it attempts to study the obstacles that impede women's participation in entrepreneurship sectors. Lastly, the paper discusses the benefits

of women's involvement in entrepreneurship and how it contributes to foster the global economy and societal development.

2. Literature Review

Women's empowerment in the economic sector is one of the vital Agenda of Sustainable Development Goals (SDGs) 2030 (Meunier, Krylova, & Ramalho, 2017; Hoque, Rahman & Razia, 2014). Globally women's participation in entrepreneurship and its importance for economic advancement is widely recognized. Women's active involvement in economic sectors could help to the strong global annual economy by the additional US $12 trillion by 2025 (United Nations, 2018; Yasin, Mahmud, & Diniyya, 2020). Several studies have indicated that female involvement in entrepreneurial brings positive impact on the betterment of economic growth, sustainable development and peace (Meunier et al., 2017; Fetsch, Jackson and Wiens, 2015). Research reveals that development of women-owned enterprises not only contribute to the countries socio-economic growth, social and political establishment but also it leads to women's empowerment and their liberation from dependency to independent in family and society (Roomi & Harrison, 2010).

Based on the Report of the United Nations Secretary- General's High-Level Panel 2016 on women's economic empowerment provides a substantial indication that women's participation in the business sectors, having ownership and their access to the financial sectors are lagging compared to men. Notably, women-owned enterprises are very nominal and deprived in terms of having access to credits, resources and assets (Klugman, & Tyson, 2016). The gender discrepancy in entrepreneurship does not only affect the personal financial steadiness but also obstruct and damages significantly country's economic growth and sustainable development (Fetsch et al, 2015). However, women in elite society have more opportunity to participate in entrepreneurship sectors because they have greater access to education along with their male counterparts. At the same time, their husband and their families tend to be less discouraging to their women's participation in entrepreneurship (Roomi et al., 2010).

Nevertheless, the word 'entrepreneurship' originated from the French word 'entreprendre' and the German word 'Unternehmen'. Both verbs indicate the meaning is to "undertake" (Gümüsay, 2015). In short, the entrepreneur undertakes the activities that others do not. The definition of the entrepreneur as cited by Gümüsay "is at once one of the most intriguing and one of the most elusive in the cast of characters that constitutes the subject of economic analysis" (Gümüsay, 2015; Baumol, 1993). It is witnessed from the world economic growth, that women's participation in entrepreneurship is rising immensely. Women's involvement in the informal economic sector is globally recognized though there are a significant number of women who are engaged in informal businesses sector. According to Bullough (2006), between a third and a quarter of businesses in the formal economic sector run and owned by women globally. In Malaysia, 25 percent of Malaysia's gross domestic product in 2016 is contributed by women's micro-businesses traders. It shows the women's contributions and their significant role being played by them in the nation's economic growth annually (Jabbar, 2017).

2.1 Women's Entrepreneurship in Islam

Islam is a complete code of life. It describes all the necessary provisions that humankind needs for their survival on this earth. Thus, Islamic Shariah does not constrict with specific responsibilities, i. e. praying (*salāt*), fasting (*sawm*); instead, it is more comprehensive, demanding men and women to be involved in socio-economic activities which could help them to gain lawful earnings for their survival on this Earth (Gümüsay, 2015; Baumol, 1993). Islam considered women are also an equal part of society as men, and it stresses equality for women (Ahmed, 1992). After the advent of Islam, women received their due rights and treated like men in every aspect of their life, which they were deprived in the era of Jāhiliyyah (ignorance). Islam ensures women's rights as a member of the society, which includes humanitarian rights, social rights and economic rights (Jawad, 1998).

In human rights, men and women both are entitled to have a dignified life in the family and society. Women have equal rights to express their opinions and thoughts in every aspect of familial and societal issues (Ryandono, Permatasari & Wijayanti, 2019; Haque & Osmani, 2017). In Islamic provisions, women are assigned

to have dowries from their prospective husbands (Al-Nisa, 4). Islamic discourse ensures women's right to earn for a living, to get an education, inheritance, dowry and ask divorce (if the husband could not fulfil his responsibility as guardian in terms of private life and financial needs of the family). It also ensures women's' active participation in other social activities with maintaining their chastity and dignity (Haque, 2020). In economic rights, women have the right to have ownership and management like men.

In Islam, both men and women are equally free to participate in entrepreneurial sectors, management, i.e., sale, purchase, business deals and so forth (Haque, 2020). Women are allowed to participate in all those sectors as like men to develop the society along with their private (household) tasks (Ryandono et al., 2019). Hence, it is understood that Islamic *Sharī'ah* does not confine women's place within the four walls and make them busy with child-rearing, pleasant husband's desires and other household chores. Women were warmly welcomed to attend all kinds of worldly affairs along with men, i.e., in education, politics, economic and other social spheres, particularly in the field of entrepreneurship. Islamic provision of the Qur'an and the Prophetic traditions emphasizes men and women to participate in entrepreneurship sectors. Also, in Islamic provisions in the Qur'an and Prophetic traditions, there is no sacred text that constricts women's advancement and their empowerment in public and social affairs within their capabilities (QarhDāgī, 2011).

2.2 Women's Participation in Entrepreneurship (Evidences from the Qur'an)

Allah (s. w. t) says in numerous verses about the women's active participation in the economic sector either formal or informal way which will raise their quality of life as well as make them financially stable in the family and society.

> *... For men there is a reward for what they have earned, and (likewise) for women there is a reward for what they have earned and ask Allāh of His bounty. Surely, Allāh is ever all-knower of everything.* (Surah al-Nisa, 32)
>
> *And when the prayer has been concluded, then you may disperse through the land, and seek the Bounty of Allah (by working, etc.), and remember Allah much, that you may be successful* (Sūrah al-Jumu'ah, 10).
>
> *And We have certainly established you upon the earth and made for you therein ways of livelihood. Little are you grateful* (Sūrah al-A'rāf, 10).

The Qur'anic verses mentioned above, clearly indicate that the message of the Qur'an is very affirmative on both men and women's participation in the workforce on this earth to earn their sustenance for their survival. According to al-Jamrī (1986), Islam gives the complete right of gaining ownership to women, just like men. Scholars assert that women are allowed like men to be involved in any form of positive business dealing related to leasing, buying, selling, and other forms of financial transactions. In addition, Islamic jurisprudence does not mention any distinction between men and women in spending their means, having ownership and taking part in financial activities. They are eligible to participate in all forms of business dealings and work which extract money for their own self, for instance, sales, leases, gift, waqf and other forms of transactions (Al-Jamrī, 1986; Haque, 2020). Thus, it shows that women can enjoy all the rights under the Islamic law in a manner that accentuates the importance of humanity. Islam also ensures women as an independent economic entity, as owners of wealth who may sell, buy and benefit themselves (Haque, 2020). According to al-Tabari, the word *'iktisabna* (acquire or gained) in verse 32 of Surah al-Nisa gives a clear indication regarding women's participation in the workforce or involvement in the entrepreneurial sector which could boost their financial stability (Al-Tabari, 2000, p. 267).

2.3 Women's Participation in Entrepreneurship (Evidences from the Sunnah)

Sunnah is one of the medium of interpretation to understand the Qur'an and its message. The first interpretation of the Qur'an had done by the Prophet Muhammad (s. a. w). Prophetic traditions contain the evidence that women during the prophetic era had actively participated in the economic sectors based on their capabilities. In Sunnah, there is no such evidence or clause that discourages women's involvement in economic sectors, particularly in the area of entrepreneurship for their self-advancement and societal development in general. In the

Prophetic tradition, it has been emphasized significantly on one's individual involvement in earning means by their own hands and it has been considered the best (*rizk*).

> *Narrated by Al-Miqdām (R.A), the Prophet (s. a. w) said, "Nobody has ever eaten a better meal than' that which one has earned by working with one's own hands. The Prophet of Allāh, Dāwūd (David) used to eat from the earnings of his manual labour."* (Al-Bukhari, 2072)

In another place, the Prophet MuĹammad (s. a. w) has encouraged directly on women's involvement in dealing with economic aspects to develop her financially stable as well as to fulfill the family desired in financial needs.

> *Jābir bin 'Abdullāh said: "My maternal aunt was divorced and she wanted to harvest her date palms. A man rebuked her for going out, so she went to the Prophet (inquiring about going out during 'Iddah) and he said: 'No, go and harvest your date palms, for perhaps you will give charity or do an act of kindness."* (Sahīh Muslim, 3721)

2.4 Prominent Women Entrepruneures During the Prophetic Era

2.4.1. In Agricultural Sector

In the primitive era the main economic tolls for family survival were agriculture. Women were also involved in this sector along with men. For instance, the daughter of Abu Bakar, Asma (R.A) the wife Jabir (R.A) used to go a very long distances from her home in order to look after their date tree farm. She often came back to the house by carrying things on her head. Even though, she was the wife of prominent companions of the Prophet (s. a. w). (Sahīh al-Bukhārī, 5224)

2.4.2. In Trading Sector

Islam does not treat women as subordinate to men. Islamic provisions do not bar women from participating in social affairs particularly in the fields of trading in which leads their financial stability. Islam is always very affirmative on women's advancement in socio-economic activities based on their capabilities and skills. It is proven by the Islamic history and existing literature that a woman could be very successful in the area of trading by utilizing her potential and skills (Ali, et al., 2018). For example, Khadija binti Khuwaylid was the most successful trader of her time. She (khadija) had employed Prophet Muhammad (s. a. w) to run her business and made an outstanding profit (Haque, 2020). In addition, along with Khadija there were many Muslim women who actively participated in trade entrepreneurship. Such as Umm Al-MunzirBint-E-Qais, Asmah binti Makhzemah bin Jandal Khaula, Lakhmia, Thaqafia, and Bint Makhramah traded in oriented oil basis perfumes (Ullah, et al., 2013).

2.4.3. In Manufacturing Sector

It is observed from the Islamic history that women in the Prophetic era used to engage in manufacturing sectors in order to help their family with financial needs. As narrated by Aisha (R. A), Ummul Mumineen Zainab bint Jahash (R.A) used to process leather and produced various stuff from it and then sell them in the market. She was very well-known for her charity activities (Sahīh Muslim, 2452). Moreover, one of the greatest companions of the Prophet (s. a. w) Abdullah ibn Masud's wife (R.A) used to fulfill her expenses by manufacturing and selling handicrafts (Ali, Jabeen, & Naveed, 2011).Another great woman, Saudah (R.A) wife of the Prophet (s. a. w) was an expert in leather tanning skins. She used to sell her tanned goods to trading caravans and local men throughout Madinah (Ghadanfar, 2001; Ullah, et al., 2013).

3. Methods

The present paper written based on a thematic research design. The study has followed the analytical methods to explore the research objectives and its importance to the current context. Under the contextual analytical approach, this study has composed all the relevant searches from the secondary sources, e.g. existing literature,

books, articles, reports, newspapers and relevant websites. The study also analyses the relevant data related to women's participation in entrepreneurship from classical and modern texts of Tafsīr (Qur'anic Exegesis) and Hadith (books of Prophetic Sunnah). Besides, it also analyses some statistical data from Internet to explore participation of women in small, medium, and large firms globally. Finally, this study discussed the obstacles that constrict women's involvement in entrepreneurship and provided possible solutions to solve the challenges.

4. Findings and Discussion

4.1 Women in Global Business Statistics

Only one in three small, medium, and large firms globally are run by women. From a low of 18% in South Asia to a high of 50% in Latin America & the Caribbean, this percentage varies both between and within areas. With only 19% of businesses owned by women, South Korea has the lowest percentage of women company owners in East Asia and the Pacific, while the Federated States of Micronesia has the greatest percentage at 87%. Similar variations exist in the Middle East, where they range from a low of 7% in Tunisia to a high of 49% in the Republic of Yemen. There is a little positive correlation between female company ownership and economic levels of nations. Only one in four enterprises in low-income nations is owned by women. The rates are 36% and 37%, respectively, in nations with middle- and high-income levels (Figure 1).

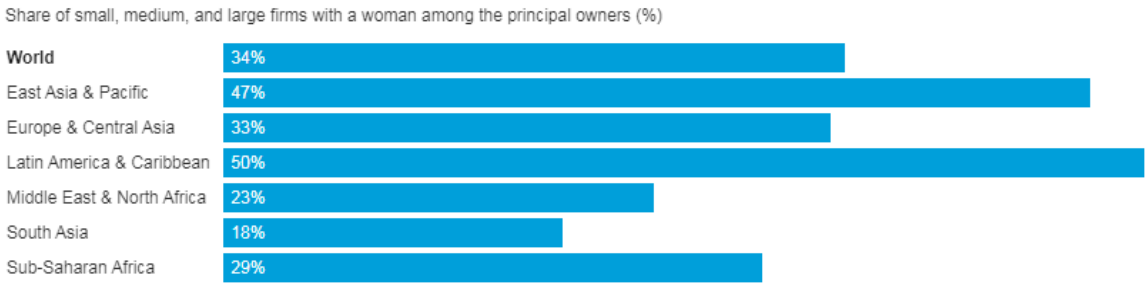

Figure 1: Women participation in small, medium, and large firms globally

Source: Enterprise Surveys. Retrieved from the World Bank Gender Data Portal

There are 12.3 million women-owned firms in the US overall, according to the National Association of Women Business Owners. When you consider that in 1972 there were just 402,000 women-owned enterprises, this statistic is even more amazing (Wbenc Report, 2018). According to the Women's Business Enterprise National Council, companies led by women generate $1.8 trillion in revenue annually. Unfortunately, just 4.3% of the yearly private sector revenue is made up of the $1.8 trillion (Wbenc Report, 2018). Four out of every ten US firms are owned by women, according to another WBENC statistic on women in business (Wbenc Report, 2018). Although this ratio still doesn't match the gender distribution of the US population as a whole, it has improved significantly over the previous ten years. Every day in the past year, women launched a net total of 1,821 new enterprises (Wbenc Report, 2018). Women of colour started 64% of the businesses established by women last year (Wbenc Report, 2018). Therefore, the majority of women of colour founding small enterprises were responsible for the expansion of women-run firms. Over just five years, the number of Latina women entrepreneurs has increased (Forbes Report, 2019). The number of women running enterprises now has increased by almost 114% when compared to the number of women starting businesses 20 years ago (Forbes Report, 2019). These women-owned enterprises tend to be more serious endeavours than simple side jobs. According to a woman in business statistic from Small Business Trends, 62% of female entrepreneurs say their business is their main source of income (Forbes Report, 2019). According to Forbes, women who operate private tech firms have a 35% better return on investment than males do (Forbes Report, 2019). Another Forbes data on women in business shows that the performance of women-created businesses in the firm's portfolio, First Round Capital, was 63% higher than that of firms started by males (Forbes Report, 2019). This shows that female-run companies are more likely to succeed than their male rivals, especially those with venture capital backing. Finally, compared to male business owners, women are less likely to apply for business financing. A third of male business owners seek business funding, compared to just 25% of female business owners. The fact that just 4.3% of the private sector's yearly revenue was generated by women-owned enterprises may suggest stricter

budgets, but it may also provide an explanation. Perhaps the share of female company owners contributing to US revenue will increase if more of them look for and are successful in obtaining business funding for expansion prospects. Half a million employment were created by women-owned firms in the US economy between 1997 and 2007 alone. Women-owned enterprises may create even more employment to boost wealth and advance a strong American economy with the correct tools. Just 7% of venture funds go to women-owned start-ups, which is a dismal percentage given the rise of entrepreneurship in the US and the importance of venture capital to this development (Fundera Report, 2017).

Women in Central and East Asia had relatively low rates of solo entrepreneurship, with the majority of them in each nation reporting 1–5 workers. Of the nations in this area, women entrepreneurs in India appear to have experienced the epidemic's effects the most strongly, with two thirds of women blaming the virus for recent company closures. Notably, compared to a global average of 11%, the percentage of entrepreneurial activity among European women is only 5.7%. Women entrepreneurs in Europe were considerably more evenly distributed over the various industrial sectors, with the Netherlands and Switzerland having some of the highest rates of entrepreneurship in the Internet, Communications, and Technology (ICT) industry sector across all regions. The world's greatest rates of female entrepreneurs are found in the Middle East and Africa area. Ironically, this area has both nations with some of the lowest rates of female-to-male established company ownership (such as Angola) and countries with one of the greatest ratios (Morocco, Saudi Arabia, Oman and UAE). Some of the world's most dynamic, entrepreneurial economies are found in the Latin America and Caribbean (LAC) area. For instance, women in Colombia reported selling innovative offerings twice as frequently as males (45.5% vs. 24.1%). A high degree of volatility and uncertainty in their markets is indicated by the fact that women entrepreneurs in LAC also have the highest business closure rates in the world: 20% higher than men entrepreneurs. In North America, the rate of female entrepreneurship has historically been high. 2020 showed excellent early-stage entrepreneurial activity (TEA) rates for women: 13.6% in the U.S. and 13.9% in Canada, which is much higher than the 11.0% global average. The gender gap still exists, with women participating in TEA at a rate of 80% of men's and having a lower presence in fast-growing industries like ICT.

4.2 Factors Influencing Women's Participation in Entrepreneurship

4.2.1. Normative Perception about Women

Neglecting women's rights in family as well as in society is a common phenomenon across the globe either in Muslim or Western world. In Muslim society, often follows the patriarchal social system to run the society where women's concerns and views are often overlooked and denied to accepting regarding the issues that relevant to the familial and societal development (Haque, 2020). In a conservative Muslim society could not accept the women's attainment in the worldly affairs like men, i.e., business, politics and other social activities (Offenhauer, & Buchalter, 2005). A perception widely practices in the Muslim societies that for a woman going outside the house and involved in the earlier mentioned sectors is considered a shame for her family in the society (Khan, 2012). In addition, even in the 21st century, people follow the patriarchal social system where boys are given more preferences than the girls in terms of receiving education, participation in economics, politics and other social domain in the family or society.

Similar phenomenon exists in Muslim countries, where women are getting less attention in the area of education, freedom of expression, healthcare and nutrition than the boys. (Joya, 2017, p. 97). In addition, women are considered in the socio-cultural system as subordinate to men. Thus, they often discriminated in terms of involvement in the field workforce compared to their male counterpart (Haque, Sarker, Rahman & Rakibuddin, 2020). The female employees considered as less intelligent and less effective in the workplace as a male employee. Thus, they get paid less salary than their male claques (Galligan, McMahon & Millar, 2020).

4.2.2. Misunderstanding the Islamic Provision

History has witnessed that socio-cultural tradition has played a negative role in the advancement of women empowerment in our modern time, in every domain of their lives particularly in gaining ownership of property

(Alaei, 2017). It is noticed that in the West like the United States, in the 17th and 18th centuries, the woman had no property rights to earn or received it. If they aren't in any form of means it automatically becomes her husband's property once the marriage occurred (Haque, et al., 2020). Moreover, the wife had no right to dispose of or utilize her own wealth without getting the permission from her husband (Knaplund, 2008). There is a misconception within Muslim scholars regarding women's involvement in the workforce. They confined women's activities are only to give birth, upbringing children and taking care of husband property (Haque, 2020). It gives easy access to feminist scholars and feminist's institutions to criticise the teachings of Islam and its values in regard to women's rights and their position in family and society. Hence, the ''mainstream'' feminists have the normative perception is to view that Islam and gender discrimination as intertwined, a strong union that led to women's disadvantaged in the workplace (Syed, 2010).

4.2.3. Socio-economic Perception

Islam has emphasized women's participation in the fields of economic sectors after the completion of their household chores. If we have noticed the women's contribution to the economic sectors in the Prophetic era, we would find many examples that women used to take active participation in economic sectors to fulfill the familial financial needs. For example, Hazrat Khadijah (r. a) the wife of the Prophet (s. a. w) was the best entrepreneur of all-time. She had appointed the Prophet (s. a. w) to run her trade and made a good profit (Ullah, Mahmud & Yousuf, 2013; Ali et al., 2018). Women's position in socio-economic sectors in Muslim society is nominal compared to their male counterparts.

Generally, women are not welcomed often to be involved in the fields of economic sectors due to socio-cultural tradition and patriarchal social system. It is a common phenomenon in Muslim societies that the sociocultural tradition conceives the idea that women's basic job is only to give birth and taking care of children and husband's property (Al Faruqi, 1988; Haque, 2020). Even, in developed countries, women's positions in the socio-economic sectors are very low compared to their male colleague. The family, society and government agency do not have the trust to invest financial means on women's entrepreneurship due to the assumption that women will not be able to succeed in their free enterprise business, medium business and other types of trades. Particularly, in Muslim societies, concerning financial transactions women are always under male dominance in which they do not have easy access in financial transactions in any affairs of their lives (Batool et al., 2017).

However, in today's world, women are participating gradually in the workforce for financial contributions to the family, but the employee is discriminating them. Even where women are working along with men, men are getting higher salaries than women. Women often get low paid than men despite of having similar qualifications and doing similar work (Offenhauer et al., 2005). They often offered extra work in the name of overtime and, but they do not receive well payment for their service at the workforce (Haque, Sarker & Rahman, 2019; Hossain, 2013). Moreover, women in the workforce often sexually harassed by their male cliques, supervisors, managers in the name of guiding, promotion, increasing salary and so forth (Schaner & Das, 2016; Gerald, 2000). At the workplace, there is no proper arrangement for women to spend their free time and the employee also does not allocate the proper custody for their infant babies in which they could feed them when necessary.

4.2.4. Less mobilization on Women's Advancement

Negligence of women's advancement is a common phenomenon across the globe. Muslim nations are not free from this notion. Women are often deprived of receiving their basic rights in family and society. Their position in family as subordinate to men and they are bound to be under male authority (Zengenene & Susanti, 2019). Female members in Muslim societies are always receiving less preference than their male counterparts due to narrow socio-cultural practices in family and society (Haque, et al., 2019). It is considered in family that male members are the breadwinners and they are the only members who will bring joy and fame for the family.

On the other hand, girls are considered as shame for the family and investing financial means on female's advancement in education is a total waste. In fact, in developing Muslim countries, it is a common perception within the poor families that the girl's members are the burden in the family (Susanti et al., 2019). Hence,

women generally have a lack of educational skills and technical knowledge in which leads to demoralizing their potentials for their self-development and socio-economic advancement. If we observed the girl's literacy rate within the Muslim countries, we would notice that the ratio of girl's literacy rate is significantly nominal compared to their boys.

According to the UNICEF data on Gender and Education, it shows that the gender gap in the education sector in Muslim Majority countries is very high. For example, Chad and Pakistan consist of the least advancement in girl's education compared to other countries. In Chad and Pakistan, the girl's enrollments in Primary school are 78 and 84 % respectively compared to every 100 boys (UNICEF, 2020). Within the Muslim countries, the youth literacy rate also indicates that the girls comprise the disadvantage and less progress in education. For instance, in Afghanistan 55 (M), 30 (F), Iraq 56 (M), 44 (F), girls are receiving less attention in the advancement of literacy compared to their male counterparts (UNICEF, 2020). However, Islam strongly emphasis women's attainment in religious and social branches of knowledge, i.e., spiritual, social, agriculture, economics, technology and politics. Because, these branches of knowledge are the key dimensions of their self-development as well as societal advancement (Haque, 2020; Maududi, 1981; Malik, 1979).

5. Conclusion

Entrepreneurship today has become an essential profession among women at various societal levels. The developments in women's entrepreneurship are considered a necessary contribution to economic growth of a nation. Therefore, women are started to participate more in entrepreneurial activities in the last couple of decades. The majority of female workers in developing Islamic countries enter the labour market through the sector of SMEs, and most of them are indulged in the service and other small-scale industries. Women empowerment in the entrepreneurship sector would be one of the most significant sectors where women could empower themselves financially and contribute to the country's economic growth, along with men. Women's economic empowerment is not only crucial for Muslim societies' economic development but also their social development in terms of financial stability in the family and community.

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The Confucionist Tradition and Human Rights in China

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Abstract
Human rights hold a central position in contemporary international law, frequently discussed from various perspectives. This article offers a critical analysis of human rights through a decolonial lens, challenging their universalist construction, historically rooted in Western values such as liberalism and individualism, and often employed as a tool of power by hegemonic nations. Using a bibliographic review and a deductive methodology, the study is structured into three parts: first, it explores the historical development of human rights in the West and their limitations as a universal paradigm; second, it revisits Confucianism as a classical Chinese philosophy focused on collective well-being and social harmony; finally, it examines contemporary Chinese public policies, which demonstrate a distinct and contextualized approach to human rights. The article concludes that China's experience exemplifies a viable counter-hegemonic alternative by integrating its traditional philosophy with modern strategies, achieving remarkable outcomes such as the eradication of extreme poverty and sustainable socioeconomic development.

Keywords: Human Rights, Universalism, Decolonialism, China, Confucionism

1. Introduction

Human rights, rooted in a Eurocentric and universalist framework, have often been used by Global North countries as a tool for maintaining hegemony. Western nations frequently assume moral superiority, criticizing the Global South for human rights violations while overlooking their own. This behavior extends the colonial mission under a guise of morality, constraining the independent development of other cultures.

Western criticism of China is often influenced by stigma and Orientalist misconceptions, distorting the country's reality. By blending its philosophical traditions with modernity, China shows that progress can be achieved without abandoning cultural heritage. This study not only critiques the universalist human rights system but also challenges dominant paradigms by examining the Chinese model as a legitimate alternative. It highlights how China's approach questions Western assumptions and offers fresh perspectives on development and human rights.

2. The Western Construction of Human Rights

Human rights are fundamentally a historical construct, shaped by European political struggles and influenced by 17th- and 18th-century liberal thought. The traditional theory of human rights merges individual rights with collective and diffuse rights, rooted in the rationalist tradition of modernity. The concept of natural rights arose from the idea of the inherent superiority of the rational subject, central to the anthropocentric model (Bragato 2014). With the transition to modernity, Western jurists began reconfiguring the law as a set of distinct components governed by the rigid natural laws of individual reason (Capra & Mattei 2018, p. 81). Modernity, as Dussel (2006, p. 24) describes it, marks the period when Europe became the "center" of world history, encompassing its states, armies, economy, philosophy, and others aspects.

Before the process of colonial expansion, which spanned from the Americas to the Far East, global histories followed independent and parallel trajectories to those of European empires and their hegemonic cultural systems (Dussel, 2006, p. 24). With modernity came coloniality, where “America [...] was invented, mapped, appropriated, and exploited under the banner of the Christian mission,” giving it the status of an entity to be discovered (Mignolo, 2016, p. 4). A new global order emerged, where a polycentric world became interconnected by the same type of economy, and all histories converged, turning “the planet into the ‘place’ of ‘one’ global history” (Dussel, 2006, p. 24). The forced modernization brought immense tragedy:

“The massacre of Indigenous peoples, the erasure of the Muslim world, the humiliation of the Chinese for a century, the degradation of the Black world; vast voices silenced forever; lands scattered to the wind; all this poorly executed labor, this waste, with humanity reduced to a monologue" (Cesairé 2010, p. 73-74).

Modernity’s legacy includes a shallow faith in individual human rights (Bragato, 2014), viewed as a top-down concept (Capra & Mattei, 2018, p. 116). It is important to mention that human rights emerged from European political struggles, influenced by classical liberalism and its ideals of individual liberty and formal equality (Bragato, 2014). It is during the transition to modernity that the concept of a singular legal order emerges, one that applies within specific normative boundaries and is influenced by instrumental logical rationalism. In this framework, human rights take shape as a mechanical chain of top-down transmission of orders, to which obedience is required as a matter of respect for legality (Capra & Mattei, 2018, p. 116).

The concept of human rights became sacred in Western society, untouchable in its supposed universal applicability (Mahbubani 1993, p. 81), despite its selective and sectarian application (Muzaffar 2003, p. 31). Sustained by a notion of a civilizing mission, Western countries often position themselves as morally superior when discussing human rights (Mahbubani, 1993, p. 82).

The very history of human rights is deeply connected to the European Enlightenment and the secularization that unfolded over the past 170 years (Muzaffar 2003, p. 25), notably shaped by English parliamentarianism, the French Revolution, and American independence (Bragato 2014). Well, human rights, as envisioned by the Universal Declaration of Human Rights (UDHR) of 1948, presuppose a universally recognized category of "humans" that guarantees justice for all (Mignolo, 2011, p. 157). However, both "rights" and "humans" were European inventions during the construction of modernity, serving colonial interests. During the Renaissance, humanists defined what it meant to be human, grounding it in rationality (Mignolo, 2011, p. 161). Thus, humanity was categorized through epistemological and ontological hierarchies established by colonial structures (Mignolo, 2011, p. 161), leading to a system in which civilized Europeans were sovereign, represented by cisgender/heterosexual white Christian men (Pires, 2018, p. 66-67). This hierarchy dehumanized non-Christians and non-whites, who spoke languages unrelated to Greek or Latin (Mignolo, 2011, p. 161).

Also, the concept of "rights" became a tool for nation-state building and consolidating the interests of the European bourgeoisie, particularly regarding property (Mignolo, 2011, p. 161). It was intellectual justification for exploiting the New World, inhabited by "savages" devoid of Christian divinity, rationality, or a concept of property (Capra & Mattei 2018, p. 109). It was during this period that the most extensive and systematic human rights violations were recorded in history, particularly in Asia, Australasia, Africa, and Latin America (Muzaffar,

2003, p. 26). Ironically, the UDHR was drafted just three years after the U.S. dropped atomic bombs on Hiroshima and Nagasaki in 1945, killing over 140,000 people and leaving many others with lifelong scars (Saghaye-Biria, 2018, p. 59).

The history following the UDHR's creation reveals the West's selective enforcement of human rights, despite unanimously ratifying the declaration and its treaties. While enforcing these norms on others, Western nations themselves frequently violated human rights abroad (Ahmad, 2006, p. 103). Until 1989, human rights were primarily used as tools to monitor violations in communist countries and Global South nations not aligned with the U.S. (Mignolo, 2011, p. 167).

Human rights have been co-opted as instruments of Western foreign policy, serving as a new language of power projection (Saghaye-Biria, 2018, p. 59). Franz Hinkelammert (2004) calls this the "inversion of human rights," where Western countries, particularly the U.S., claim leadership in promoting human rights globally while selectively applying them (Saghaye-Biria, 2018, p. 59). Human rights have even been used to justify humanitarian aggression—violating the rights of those who supposedly violate rights (Hinkelammert, 2004). Through economic sanctions, Western countries exclude peripheral nations from the global economy, worsening socioeconomic conditions for civilians while leaving governments and elites unaffected, further undermining human rights in the region (Peksen, 2009). Western humanitarian interventions also violate self-determination by focusing on "civil and political rights" while suppressing economic, social, and cultural rights through aggression and occupation (Saghaye-Biria, 2018, p. 60).

Western nations are willing to sacrifice the human rights of peripheral countries if it serves their own interests (Mahbubani, 1993). This was evident in the U.S. invasion of Vietnam in 1965, which resulted in the deaths of over a million Vietnamese—100 times the U.S. casualties (Hirschman, Preston & Loi 1995)—or the 1999 NATO attacks on Yugoslavia, which, under the guise of humanitarian intervention, devastated both Kosovo and Serbia (Hinkelammert, 2004). The West invaded, destroyed cultures and civilizations, and committed unprecedented genocides—all supposedly to protect "human rights." Thus, the blood spilled by the West remains unstained, and the West positions itself as the world's ultimate human rights guarantor (Hinkelammert, 2004).

It is crucial to question the so-called universality of human rights, which are often selective and exclusionary. We must move beyond the Western top-down approach to human rights and their universalization. Instead, we should seek an emancipatory concept of human dignity that emphasizes global justice and equity between the Global North and South (Regilme, 2018).

3. The Confucian Philosophical Framework in China

In traditional Chinese history, there has never been an explicit declaration of human rights comparable to those found in Western history. However, this does not mean that China lacked a broad concept of human rights, particularly regarding collective interests. Traces of a human rights-like consciousness can be found as far back as the Shang Dynasty (1560–1066 B.C.) and the Chou Dynasty (1066–771 B.C.), where political awareness influenced governance, justice, and morality (Cheng, 1979). However, no tradition has shaped Chinese society as profoundly as Confucianism, outlining social changes and possibly, offering a potential perspective on human rights in a broader sense (Cheng, 1979). Confucianism, as an ethical system, has played a fundamental role for over two millennia, serving as a guiding philosophy for human interactions at all levels—between individuals, communities, and nations in East Asia. Both in theory and practice, Confucianism has had a significant influence on countries beyond China, especially within the Sinic cultural sphere, shaping governments, societies, educational systems, and family structures (Tu, 1998).[1]

[1] During the Shang dynasty, the Zhou people believed that the Shang ancestors were favored by Heaven (Tí) and, as a result, had received the Mandate of Heaven (*t'ien-ming*) to rule. However, as the ruler became increasingly tyrannical, the Zhou realized that the Mandate of Heaven could be lost or transferred if the kingdom lost its virtue (te). Therefore, rulers were expected to do everything in their power to demonstrate virtue above all else, thereby ensuring the continuation of their reign and the Mandate of Heaven. The virtue of rulers was understood to consist in treating the people in a way that secured their natural support. Consequently, the Mandate of Heaven came to be

Confucianism has often been criticized by Western countries as being incompatible with human rights, which they view as primarily individualistic. In contrast, Confucius argued that an excessive focus on individual autonomy, as is common in the West, could be harmful, leading to extreme behaviors that undermine cultural norms and human relationships—elements he considered crucial for building a harmonious society (Sim 2004, p. 337). Despite the gradual modernization of the state, Confucian philosophy continues to influence contemporary China, shaping the attitudes and behaviors of its people. It stands in opposition to the deficits and excesses produced by Western culture and politics, even though its influence has somewhat diminished over time (Hu, 2007).

Confucian philosophy goes beyond metaphysical approaches, focusing instead on human reason and social relationships (Challaye, 2010). Unlike Western dualistic theory, which views Truth as a set of universal, immutable ideas to be discovered, Confucianism sees *tian* (天)—the Chinese divinity—as part of an ongoing creative process that includes humanity (*tianrenheyi* 天人合一) (Tan, 2018). Confucius promotes a moral logic that encourages individuals to reason and express themselves in ways that lead to a virtuous life. His aim is to "focus on human beings and human affairs," establishing a discipline of language and proper conduct (Challaye, 2010), while emphasizing aesthetic order and the importance of "knowing how" over simply "knowing what," as a path to achieving harmony (*he* 和) (Tan, 2018).

Human relationships are at the core of Confucian philosophy, which emphasizes the role of individuals in society and the basic norms of conduct. According to Confucianism, people deserve respect for their participation in a shared life and for the specific roles they play in sustaining society (Wong 2004). Each person has a vital function in maintaining this communal life and in forming relationships with others. Thus, human value is derived not from individuality, but from interconnection (Ihara, 2004). For Confucius, harmonious human relationships were fundamental to a stable society. Mencius, a Confucian thinker, identified five cardinal relationships known as *wu-lun* (五伦), which serve as the building blocks of a civil society: the relationships between father and son, ruler and subject, husband and wife, older and younger brothers, and friends. Each of these relationships plays an essential role in maintaining social order, and each individual has a specific duty to contribute to the community's well-being (Lau & Young~, 2013). The roles within these relationships are defined by principles such as:

Therefore the ideal ruler is virtuous. The ideal subordinate is loyal. The ideal father is benevolent. The ideal son is filial. The ideal older sibling is thoughtful. The ideal younger sibling is respectful. The ideal husband is righteous. The ideal wife is compliant. The ideal friend is truthful (Lau & Young 2013, p. 581).

In Confucian thought, society is likened to an extended family where each member has a different role and status, yet all work together in harmony for the common good (Liu 2006, p. 16). The five core moral principles in Confucian philosophy, wu chang (五常), are ren (仁), yi (义), li (礼), zhi (智), and xin (信). These guide individuals' behavior and social interactions (Lau & Young, 2013). Among these principles, ren (仁) and li (礼) are particularly significant in the context of human rights. Their importance is reflected in the drafting process of the Universal Declaration of Human Rights (UDHR), where Peng Chun Chang, vice-chairman of the UN Human Rights Commission, emphasized the concepts of ren (仁) and li (礼) (Sun, 2014).

Ren (仁) is considered the supreme moral principle, often translated as benevolence, humanity, love, and kindness (Chang & Young 2011). It advocates for mutual love and respect among all human beings, encapsulated by the principle, "what you do not wish for yourself, do not do to others" (Analects 12:2; 15:24). Ren enables a person to extend the care cultivated within the family to the broader community, promoting the

seen as the Mandate of the People, acknowledging that respect for the populace was essential for political stability. The Zhou revolution, which ousted the tyrant and initiated the Zhou dynasty, exemplified an early form of the collective right of people, as a group, to be treated well by their ruler. This historical event also underscored the collective right of people to participate in the maintenance of political governance. Thus, both rights were established as fundamental moral principles and social necessities for any form of government (Cheng, 1979; Chung-Shu, 1947).

welfare of others while seeking one's own well-being (Sim, 2004). In Confucianism, ren teaches that well-being is achieved by helping others and considering our shared humanity. Without the spirit of ren, society might mechanically follow rules without a humanistic concern, or, at worst, lead to the selfish domination of the strong over the weak. Therefore, ren infuses li with a humanistic ethic of reciprocity and care, making it an essential component of a hierarchical system of social relations (Chan, 2008).

Li (禮), on the other hand, refers to social rituals, norms, and practices (Hoon, 2020). Its origins lie in ancestral worship and reverence for Heaven's order in the natural world. During the Zhou Dynasty, li (禮) became a pillar of governance, evolving from sacred rituals to a code of conduct for nobles and officials, integrating humanity and morality into the social and political order. Confucius expanded this idea, seeing li (禮) as a fundamental framework for ethical conduct, representing the integration of humanity and morality in the social and political structure (Chan & Young, 2011). The concept of Li (禮) is deeply connected to traditional Chinese law, that was expanding itself over time alongside societal development Customs and conventions naturally developed throughout history formed the basis of li zhi (rule of virtue), while fa (rule of law) took on various meanings, including punishment, norms, and regulations. Those connotations reflects the role of fa (法) as a group of rules and laws that governs the society (Zheng & Ma, 2006).

In his rise in ancient China, Confucius led a campaign to revive the normative power of Li (礼), emphasizing its intellectual distance from Fa (法). He believed that legal codes and rules merely produced criminals and failed to rehabilitate offenders. For Confucius, virtue was superior because it reformed people's behavior and addressed the root causes of crimes, while laws only treated the symptoms. Confucius expressed this belief by stating (Chang; Young, 2011):

Guide them by edicts, keep them in line with punishments, and the common people will stay out of trouble but will have no sense of shame. Guide them by virtue, keep them in line with the rites, and they will, besides having a sense of shame, reform themselves" (Analects II 3).

Li is a fundamental principle that governs social interactions, ensuring mutual respect in daily life and social activities. Its broad application seeks to guarantee a dignified and decent social life for all, preventing humiliation and conflict (Xu, 2018). However, ren and li are deeply intertwined in Confucian philosophy, and both are essential for understanding the social order and civility proposed by Confucius (Chang & Young, 2011). In Confucianism, individuals are encouraged to pursue moral perfection by reflecting on their daily actions and using virtues as their behavioral standards. Most importantly, the wu-lun emphasizes obligations centered on relationships, as the individualism central to Western values is incompatible with the Confucian conception of a person who values interactions and responsibilities within social and familial contexts (Lau & Young, 2013).

4. The Confucian Philosophical Framework in China

China is frequently the target of Western criticism, accused of serious human rights violations and portrayed as having a deteriorating internal situation. These differences have been used as a political tool by the West, which, through an Orientalist perspective, constructs a narrative that presents China as despotic and untrustworthy. Accusations of repression, mass surveillance, arbitrary detentions, and forced labor are central to this portrayal (Li, 2022). Although the country is often criticized by the West, this narrative frequently overlooks China's rapid social and economic progress, which in 30 to 40 years has condensed a level of development that took 300 years to occur in Europe. This advancement not only transformed China's infrastructure and economy but also significantly improved the quality of life for its population. Surprisingly, many in the West still believe they know China better than the Chinese themselves, disregarding the positive perception that the population has of its own well-being (Weiwei, 2012). According to a recent survey by the *Institut Public de Sondage d'Opinion Secteur* (IPSOS) for the 2023 World Happiness Report, 91% of Chinese respondents stated that they were satisfied with their lives, a 12% increase compared to the previous decade (IPSOS, 2023).

In the West, first-generation human rights, focused on civil and political rights, are often prioritized. These rights are considered "negative rights" because they emphasize the absence of state interference in individuals' lives (Sun, 2014). In contrast, China's priorities differ due to its distinct history, conditions, and philosophical approach. The country places considerable emphasis on economic development (Chan, 2002), operating under the belief that human rights and economic growth are interdependent. Social and cultural rights, according to this view, can only be realized when there are adequate resources. Thus, China's human rights framework has developed its own distinct characteristics (Yunlong, 2014). From a Western perspective, however, China's millennia of cultural innovation often go unnoticed, overshadowed by Eurocentric biases that distort the broader historical narrative.

China's struggles with foreign intervention, particularly during the Opium Wars and the Japanese occupation, had devastating effects on its economy, politics, and culture (Sheng & Shaw, 2007). The eight years of Japanese occupation nearly collapsed the economy. Agriculture was still recovering, industry faced heavy losses, and the nation's economic foundation became extremely vulnerable (Yong & Zhang, 2021). During this period, there was a prevailing belief that to modernize, China needed to abandon its philosophical traditions in favor of Soviet Marxism or Western liberalism (Bell, 2013). However, after Deng Xiaoping's rise to power, Confucianism experienced a resurgence in China's collective identity (Hu, 2007, p. 140). Deng played a critical role in China's economic transformation (Hongfeng, 2014), positioning the country as the world's second-largest economy (Lee, 2009). In 1978, Deng launched several initiatives under the ideological slogan "seeking truth from facts," establishing that the People's Republic of China would base its development on objective realities. This principle called for the emancipation of the Chinese mind (Weiwei, 2018).

This intellectual independence became a crucial political issue, as historical factors, such as foreign intervention, had stifled China's ability to seek truth through facts (Xiaoping, 1984). In assessing the existing global models, it became clear that both Soviet communism and Western liberal democracy were insufficient for China's needs. As a result, China developed its own system: socialism with Chinese characteristics, with poverty eradication as its main objective and economic growth as the foundation (Weiwei, 2018). Economic development is seen as essential for securing human rights, and China's Five-Year Plans have traditionally focused on economic and social planning. Originally inspired by Soviet models, these plans have guided China's growth, initially prioritizing industrial development and later incorporating market economy elements. Over time, the Five-Year Plans have evolved to include broader social goals, such as poverty reduction, sustainable development, and improving quality of life (Chen, Li, & Xin, 2017)[2].

China's economic growth over the past four decades is remarkable not only for its scale but also for its direct impact on reducing extreme poverty. Since 1980, an estimated 800 million people in China have risen out of extreme poverty, defined as living on less than $1.90 per day. This achievement accounts for about three-quarters of global poverty reduction during the same period, an unprecedented milestone (World Bank, 2021). Poverty is a multifaceted issue that undermines various aspects of human dignity, presenting one of the greatest barriers to the realization of basic human rights. It restricts access to essential social rights, including healthcare, education, and adequate food (Pogge, 2005). In China, overcoming extreme poverty represents not just an economic victory but also a significant step toward realizing multiple human rights.

Historically, rural areas in China have been hardest hit by poverty, prompting the government to implement a series of policies aimed at rural development. Significant investments were made in infrastructure—roads, schools, and hospitals—to improve services and living conditions in rural regions. Additionally, targeted programs provided funds and incentives to boost productivity and encourage business development in the poorest regions (Wei, Wu, & Tan, 2022).

[2] The first five-year plans in China began in the 1950s, during a three-year economic recovery period following the Japanese invasion. Initially, these plans aimed to develop heavy industries. However, the Chinese government's capacity was limited by a lack of statistical data and technical expertise, which were further hampered by the impacts of the Cultural Revolution and the Great Leap Forward. During this time, the five-year plans were predominantly driven by socialist ideologies and focused on political and revolutionary issues rather than promoting economic development. Starting in 1978, with the introduction of economic reforms, the landscape began to change significantly (Chen, Li & Xin, 2017).

During Deng Xiaoping's leadership, education in China underwent significant reform, with a renewed emphasis on Confucian ideals of learning. A pro-science approach was adopted to foster critical and rational thinking, steering the country away from superstition (Lin, 2018). This focus on education empowered scholars and scientists, elevated China's international standing, and drove economic progress (Tisdell, 2019, p. 275). Education has played a central role in poverty reduction and continues to be a key element in China's development strategy (Yong & Zhang, 2021).

Rural areas were the initial focus of public education reforms aimed at closing the educational gap between urban and rural regions (Tan & Zeng, 2022). These reforms enabled the rural population to develop new skills, and alongside industrial growth, they were able to shift into non-agricultural employment. This allowed rural Chinese to achieve more stable and higher incomes, improving their quality of life (Yang & Guo, 2020). At the start of these reforms, China's basic education system was in a dire state, with only 20% of children attending primary school and an illiteracy rate exceeding 80% (Tan & Zeng, 2022). In response, China enacted the Compulsory Education Law, which established:

(1) 9 years of basic education, including primary and lower secondary education, are compulsory nationally; (2) children who reach the age of six shall enroll in school in principal; (3) compulsory education is free of charge; (4) the government and parents or guardians should ensure that school-age children will receive compulsory education, and no organization or individual shall employ school-age children (Yang; Guo, 2020, p. 2).

By 2011, China had achieved its goal of universal education. In 2018, the primary school enrollment rate reached 99.95%, while secondary school enrollment increased to 99.1%, according to data from the National Bureau of Statistics of China (Yang & Guo, 2020). Additionally, illiteracy among youth and adults was nearly eradicated, and the employment rate for graduates from vocational high schools remained above 95% in recent years (Tan & Zeng, 2022).

Similarly, China made significant strides in healthcare over the past few decades, especially following the 2009 reform, which substantially increased subsidies for primary healthcare institutions and implemented universal health insurance coverage. As a result, by 2021, life expectancy at birth in China rose to 78.21 years, surpassing the average for upper-middle-income countries by 3.52 years. The infant mortality rate dropped to 5.1‰, well below the average of 9.6‰ (Qin et al., 2024). These healthcare improvements have contributed to continuous progress in key indicators over the following four decades.

After decades of investment in education, healthcare, and income, China reached a historic milestone in 2021 by declaring the eradication of extreme poverty based on its national threshold. These achievements were reflected in China's rise in the Human Development Index (HDI), climbing from 106th place among 144 countries in 1990 (World Bank; People's Republic of China, 2022) to 75th place among 189 countries in 2022, further reducing inequalities compared to other major developing economies (UNDP, 2024). This outcome highlights the success of policies aimed at human development and reducing disparities, fulfilling the goal of building a "moderately prosperous society in all respects."

4. Conclusion

Poverty represents a significant human rights challenge, undermining the foundations of human dignity and obstructing the realization of fundamental rights. While wealthy countries, which have accumulated riches since the colonial era, continue to impose unequal power dynamics through coloniality, their priority remains the promotion of first-generation rights, often emphasizing negative rights such as freedom from state interference. These nations, which historically exploited the resources and populations of regions that are now impoverished, not only imposed economic and political models that perpetuated global inequalities but also used human rights as a political tool. In many cases, human rights were promoted as part of a civilizing mission, masking neocolonial practices and interventions aimed at maintaining domination and control over developing countries.

In this way, the human rights discourse often serves to justify and perpetuate the hegemony of Western powers, rather than addressing structural inequalities and promoting true global equity.

In contrast, China, with its history of devastating poverty and external oppression, faced immense challenges in combating poverty as a primary objective. Poverty reduction thus became a crucial path toward ensuring basic human rights, which in many parts of the world still face barriers to realization. By integrating classical philosophical traditions, such as Confucianism, with modern innovations, China has forged a unique trajectory based on the Confucian concept of a harmonious and prosperous society, establishing a viable model for achieving sustainable development and social equity. In this context, there is an urgent need to critically reassess human rights and International Law, which have often served the interests of hegemonic powers to the detriment of developing nations (Romina, 2017, p. 269-271). International Law, with its legal categories, still carries the "taint" of elements created to serve the imperialist interests of Western powers, reflecting a history of colonial domination. Therefore, it is essential to decolonize and democratize International Law so that it can genuinely focus on the specific needs and aspirations of each people, promoting an approach that respects and addresses the realities and challenges of all countries.

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Natural Resource Crime: Regulation, Legal Performance, and Environmental Justice Discourses

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Abstract
Environmental justice is a fundamental element in responding to the impacts of exploitation of natural resources, especially on vulnerable groups. However, the norms in Law Number 32 of 2009 concerning Environmental Protection and Management still leave ambiguity, especially in the application of the principles of primum remedium and ultimum remedium, which have an impact on legal uncertainty and the potential for manipulation of justice through alternative resolution mechanisms. This study uses a conceptual approach and theory of justice to analyze the basis of social justice in criminal law enforcement against natural resource crimes. The analysis results indicate that regulatory weaknesses and inconsistent law implementation hinder the effectiveness of environmental protection. Achieving social justice is not only limited to structural issues but must also include ecological concepts in distributive justice. Therefore, a legal policy reconstruction that is more oriented on substantive justice and adopts a holistic approach is needed to ensure legal certainty.

Keywords: Environmental Justice, Natural Resources Crime, Social Justice

1. Introduction

The discourse on justice has been present along with the presence of humans when relations between individuals, and groups, including in institutional bonds called the state. The meaning of law as an instrument of social control and control (Roscoe Pound in Muttaqin, 2021), is the choice of modern countries. The positivistic influence that places the legal framework as a state instrument and sees law not as a matter of good or bad but legitimate or illegitimate (Kelsen, 2024), becomes a conflict in seeing law, especially confronting it with aspects of justice and legal benefits. Although legal certainty is backed up by state power, in an abnormal position, justice should be applied, (Gustav Radbruch trans. Bonnie Litschewski Paulson & Stanley L. Paulson, 2006) in this perspective there is a loss of legal validity (Alexy, 2021). The influence of positivism is quite significant, some even say that justice will be found in legislation, among other things, in mapping out issues of fairness or unfairness, which cannot only be done by studying legislation but also by paying attention to the legal elements that are interconnected with each other (Purwendah, 2019).

In the context of environmental justice (Robert D. Bullard, 2000) it is needed as one of the important elements in enforcing environmental law. Early environmental justice as Early environmental justice as a class issue over the impacts caused by the industrial process (Azhar et al., 2023). However, it is an entry point in the environmental law enforcement process, including the involvement of vulnerable groups in environmental impacts in making decisions regarding environmental management.

There are five strategies for the environmental justice movement, namely identifying the impacts of injustice from environmental degradation due to discrimination (civil rights), distributing benefits and risks fairly and equally (distributive justice and ethics), ensuring fair procedures, and giving voice to all people, especially those who are politically powerless (public participations), addressing the reasons or causes of injustice (social justice), and reducing pollution and risks to society (ecological sustainability) (Muhdar, 2020).

Law enforcement against natural resource crimes often manipulates the perception of justice based on legislation which provides many options for providing solutions, including alternative dispute resolution, and the application of administrative and civil sanctions. (Subarsyah, 2020). Law Number 32 of 2009 concerning Environmental Protection and Management does not explicitly state the principle of primum remedium, although there is no longer a prohibition on separating different, distinct legal events without having to wait for the process as in the application of the principle of subsidiarity (Muhdar, 2020).

The ambiguity of norms and meaning in the law enforcement process is trigger for conflict in environmental problems which comprehensively gives rise to unclear implementation by law enforcers of the ultimum remedium principle and the primum remedium principle. In the enforcement of environmental criminal law. This shows the weakness of the ratio legis in the formation of the rules of Law Number 32 of 2009 concerning Environmental Protection and Management. The legal norms that are formed become irrelevant to the logic that is to be built due to the unclear indicators of its implementation. This causes the law not to work as it should and can lead to environmental injustice.

The Focus of the discussion in this paper is to analysis the basis of social justice in enforcing criminal law in natural resource-based cases which are studied using a conceptual approach and theory of justice.

2. Concept of Social Justice

In legal practice, if the regulator, executor, and influencer who are in one container in the formation and implementation of a norm deviate from the ratio legis, then it can give rise to a distribution of risk from the legal logic that has been regulated so that the basis of justice does not confirm each other.

Social justice in the perception of environmental justice is related to the concept of distributive justice in managing natural resources, including the neglect of protection against risks that the criminal justice system is supposed to guard against. Here, the use of natural resources is brought into the everyday calculus of redistributive justice into considerations of what is distributed, and what costs to the people and natural resources that distribution brings. Staying within the bounds of liberalism, social justice focuses on what each person needs to live the kind of life they value and desire. But beyond just distribution, the concept also introduces sustainability, or at least the full ecological costs of those life choices. Incorporating the concept of ecological space into global distributive justice illustrates a commitment to ecological and environmental justice, in addition to social justice (Schlosberg, 2007).

The concept of sustainable development attempts to provide access to natural resources for underprivileged communities. The idea is equivalent to the assumption that future generations can at least utilize the same natural resources as the present generation (Jacobs, 2014). Justice for future generations cannot be separated from the concept of intra-generational justice. It is difficult to discuss justice in the future if no justice can be felt in the present. There are four derivative elements in the intra-generational principle, including the aspect of environmental justice as social justice.

Social justice in the context of environmental justice is one part of justice that will move humans to try as hard as possible to realize a just social order, especially a social system that can accommodate the demands of society (Jacobs, 2014). Environmental justice is a movement that focuses on land use (Brinkley & Wagner, 2024). Environmental justice encompasses a broader idea of social justice (Lynch et al., 2015). Integrating the concepts of social justice into environmental justice certainly raises the fundamental question of what values should be evaluated. This of course depends on the identification of relevant stakeholder groups in the justice community or affected parties in the context of distributive justice (Mukti & Sobirov, 2023).

Another perspective states that environmental protection and management go hand in hand with poverty reduction efforts (Jacobs, 2014). The affirmative action in question is that poverty alleviation must go hand in hand with environmental conservation, not impoverishment (Gosiita, 1993). Therefore, the importance of a forum to achieve procedural justice as a component of environmental protection for the next generation that is also socially just.

Other non-legal factors that must be considered to follow the rule of law, such as accessibility to community facilities. Because natural resource justice has not been fulfilled, law enforcement cannot deny the existence of restrictions on community access to natural resources in structural cases concerning the environment. This affirmation is only a medium to understand the reciprocal relationship of a problem and is not a justification for anyone to damage the environment. So this condition can be explored further if law enforcers adopt an intra-generational justice perspective.

To avoid injustice in law enforcement, the difference in responsibility for the impact of environmental degradation must be used to take action against major actors. In handling structural cases and major cases, law enforcers must treat them differently. To ensure that actors are held accountable for the environmental damage they have created, affirmative action is targeted not only at structural cases but also at major cases. Therefore, equality in law enforcement for these two situations cannot be fully enforced. Environmental law enforcement needs to be balanced on special treatment instruments or affirmative action from the perspective of sustainable development through the component of intra-generational justice.

Before entering the stage of enforcing the law, stakeholders must be able to make rules with mutual agreement from the community, which throughout the process provides a forum for communication and developing opinions for the community to form a rule through the idea of habeas communication (communication paradigm). This is related to decision-making regarding the environment, including all organizations involved in environmental governance (Blackwatters et al., 2025). Procedural justice begins to be achieved after communication and active involvement. Procedural justice is a key factor in upholding social justice in the environmental law enforcement process (Dudayev, 2020).

To achieve social justice in environmental justice, there are actually three things that must be included in it, first, distribution justice. Second, procedural justice, and third is recognition justice. Recognition justice is crucial in the environmental justice contest, this is because recognition justice is related to respect for the identity, rights, and dignity of individuals or groups.

3. Criminal Law Enforcement in Natural Resource-Based Cases

Humans are the most important component to change and influence the environment around them, but the environment has a limited ability to accept these changes or is called environmental carrying capacity. If it has exceeded the highest capacity limit, then there is a violation of environmental carrying capacity which has an impact on ecosystem imbalance, thus causing problems or issues with natural resources, such as environmental pollution due to the release of emissions or waste, forest fires, mining activities and so on (Akib, 2014). This can be estimated based on environmental quality standards.

The debate among legal experts regarding the terms “environmental criminal law” and “criminal environmental law (strafrechtelijk milieurecht)” is still ongoing today. According to Andi Hamzah, environmental law contains

administrative, civil and criminal sections, depending on the perspective from which the term is used (Hamzah, 2005).

In relation to environmental law enforcement, there are efforts to fulfill regulations in a preventive manner and through the imposition of sanctions or legal action in the event of a violation of the criminal provisions in Law No. 32 of 2009 concerning Environmental Protection and Management or repressively. Thus, to reduce and/or prevent environmental pollution and/or degradation, both systems or approaches are required.

Preventive efforts made in the process of implementing laws and regulations can be carried out through monitoring and direction from state administrative officials (administrative law aspects), while through the enforcement of sanctions or legal action, repressive actions are taken to end violations, rehabilitate the environment, and provide compensation to parties who are harmed by environmental pollution or destruction (administrative, civil, and criminal law aspects). The main effort that can be made to prevent violations of regulations and/or environmental pollution is the arrangement or preparation of environmental regulations. In other words, environmental law enforcement is a process to ensure compliance with environmental laws and regulations, which have a scope of application in the fields of administrative law, criminal law, and civil law (Hamzah, 2005).

The implementation of regulations related to natural resources must be in accordance with the basic values of law enforcement, such as the values of justice, certainty, and benefit (Muhammad Ridwan Hidayat et al., 2024). Conceptually, orders, prohibitions, permits, and exemptions can be used to describe legal norms in laws and regulations. Legal norms are only intended for the people and the government. Although broad in nature, this shows that legal norms do not only apply to certain groups of individuals or are intended for certain people but for “everyone” and that the events or things regulated are not concrete and specific events (IS, 2007).

Regulations that are the main basis for planning and implementing environmental policies, in addition, can be the first step in enforcing the law against environmental violations and crimes. The complete chain of environmental policy regulations (regulatory chain) is described as follows: (R, 2000)

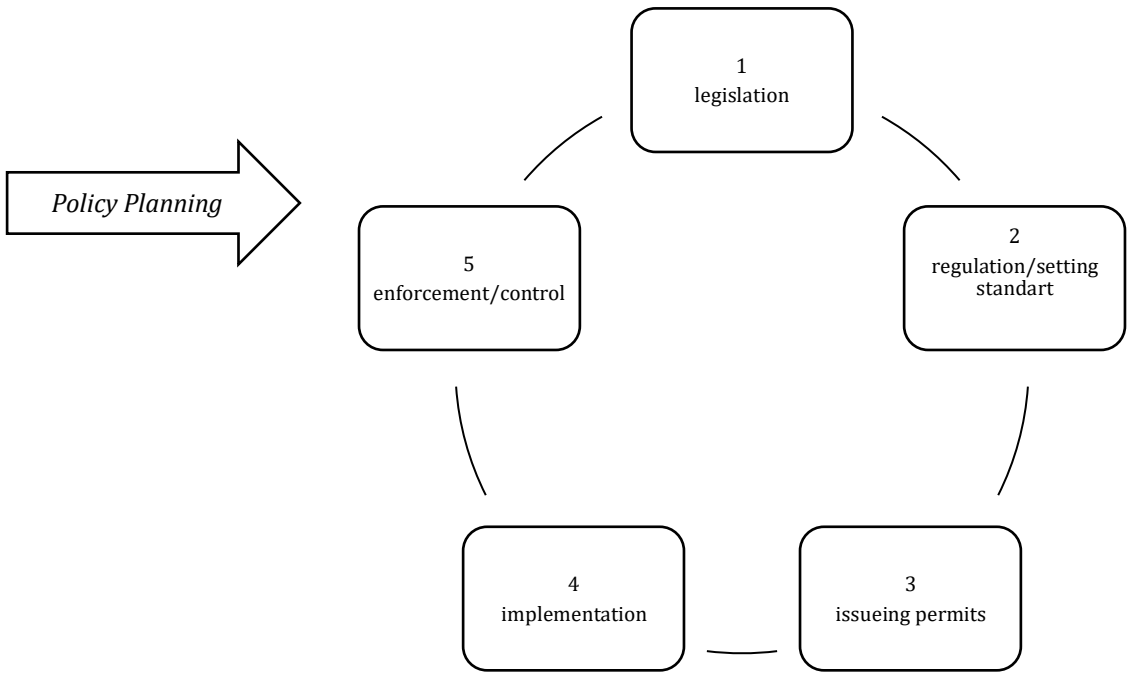

Figure 1: Regulatory Chain Cycle

Based on the graph above, after the regulation is formed, the next step is to determine what the environmental standards are, then grant permits, after that there is the implementation or implementation of laws and regulations and the last is environmental law enforcement.

These laws and regulations serve as instruments or means for the government to achieve policies and objectives for their basic framework, but if weak norms are established, then the rules formed in the implementation and enforcement of environmental law will be difficult to implement and enforce. This certainly has a great impact on society and is the main cause of the issue of injustice. It should be understood that the enforcement of criminal law in natural resource-based cases is an effort to protect natural resources from damage and unsustainable exploitation.

4. Environmental Crime Offense Qualifications

Indonesia applies the principle of legality as the main basis in implementing criminal law, that an act is only declared a crime if it has been regulated by laws and regulations. So to determine whether an event is an environmental crime or not, it is necessary to know the formulation of an environmental crime. The formulation of an environmental crime can be found in the provisions of Law No. 32 of 2009 concerning Environmental Protection and Management or other laws and regulations that regulate environmental crimes or crimes.

Natural resource-based problems or issues are essentially not only administrative and civil issues, but also environmental crimes that are qualified according to the formulation of crimes and their elements. However, at the stage of policy formulation, the ambiguity of the norms regulated in each article can trigger conflict in environmental injustice issues.

The problem is the injustice that exists between humans and the environment. As can be observed, human activities have a significant impact on environmental quality. Among the environmental damages that are currently occurring are deforestation, air pollution, water pollution, decreased soil fertility, ozone layer depletion, and signs of global warming caused by human activities. Therefore, institutional structures, financial resources, and legal mechanisms must all be in place to preserve and maintain environmental quality.

In Law No. 32 of 2009 concerning Environmental Protection and Management which regulates criminal provisions from Article 97 to Article 120. These provisions are then qualified into formal and material crimes. The formulation of material crimes is contained in Article 98, Article 99, and Article 112, while the formulation of formal crimes is contained in Article 100 to Article 111 and Article 113 to Article 115.

It is crucial to distinguish between the criteria for formal and material crimes, because it has implications for the accountability and criminal sanctions imposed on the offender (Hamzani, AI, 2022). The formulation of the crime is considered a material crime, because the “consequence” of the act is what is threatened by law, namely exceeding the required quality standards, causing environmental pollution and/or damage. As a result, it can cause someone to be injured, either seriously or lightly, increase the health risk, and even cause death.

In this situation, the term “any person” refers to a person or business entity, whether incorporated or not. As part of the elements of environmental violations, the phrase “intentionally or negligently” refers to the perpetrator’s intent or state of mind (mens rea). As a result, actual proof requires special knowledge and skills.

That unlawful acts can be reviewed from formal and material aspects (Moeljatno, 2008). From a formal perspective, the unlawful element means that every criminal act requires a legal norm first (the principle of legality). While from a material perspective, an act is categorized as an act if an act is not allowed or should not be done. So that the element is not only reviewed from the perspective of statutory regulations (formal), but can be reviewed from a more concrete perspective (material) (Santosa, 2001).

The element of the act is no longer emphasized that the act is unlawful, because it violates the criminal provisions of Law No. 32 of 2009 concerning Environmental Protection and Management, it is automatically an

unlawful act (Akib, 2014). Cases based on natural resources tend to be quite complicated to prove so that in some cases the judge must show courage and precision to expand the definition of unlawful acts to include moral offenses and also legal offenses. While the qualifications of formal offenses as regulated in the provisions of Articles 100 to 111 and Articles 113 to 120 refer to "acts" that are prohibited and subject to criminal penalties.

When the rule of law is violated, that is where criminal penalties are imposed. In the formulation of environmental crimes, there is ambiguity that often results in the non-application of criminal sanctions due to the unclear indicators of their implementation.

5. Application of the Ultimum Remedy Principle

The legal principle is a fundamental idea of abstract law and underlies a rule and concrete law enforcement (Ajie, 2016). Criminal law recognizes many principles, including the principle of ultimum remedium, which means that criminal law is the last resort (Rangkuti, 2018). The use of criminal sanctions in the principle of ultimum remedium is imposed if other legal sanctions, such as administrative and civil sanctions, are inadequate (Abdurrachman et al., 2021). The presence of the principle of ultimum remedium in Law No. 32 of 2009 concerning Environmental Protection and Management is to correct the failure of the practice of the principle of subsidiary law enforcement previously contained in Law No. 23 of 1997 concerning Environmental Management (Tjahjani, 2015).

The principle of subsidiarity in Law No. 23 of 1997 requires that before the application of criminal provisions, there are two conditions that must be met, namely sanctions given through other legal approaches are not complied with (administrative sanctions) and violations that have been committed more than once (Hapsari, 2020). Thus, criminal law in law enforcement against natural resource-based cases can be avoided and changed using other legal fields or by implementing severe social sanctions, unless administrative sanctions or civil sanctions are carried out efficiently.

The implementation of the principle of subsidiarity in the enforcement of environmental criminal law causes multiple interpretations and the limited capabilities of law enforcers with the intention of intimidating perpetrators who violate the required quality standards (Lisdiyono, Edy, 2018). By prioritizing administrative sanctions, the possibility of environmental damage increases. The application of administrative sanctions will be effective in restoring the damaged environment as long as the perpetrators comply with them, but if the perpetrators do not comply with the sanctions, it will worsen the condition of the environment. If criminal sanctions are used as a last resort, this will cause legal uncertainty for perpetrators who violate the criminal provisions in the environmental management law. Then if the implementation of criminal sanctions can only be carried out when administrative sanctions are not implemented, it will take longer to determine whether administrative sanctions have been imposed or not, this causes injustice to the community.

Several obstacles in the implementation of the subsidiary principle finally in Law No. 32 of 2009 concerning Environmental Protection and Management experienced a conceptual change to the ultimum remedium principle. The two principles have similarities regarding not directly applying criminal sanctions in environmental law enforcement, but the ultimum remedium principle can be directly applied if more than once against wastewater quality standards, quality standards, emissions, or disturbance quality standards (Mulkan & Aprita, 2022).

General explanation of number 6 of Law No. 32 of 2009 concerning Environmental Protection and Management states that "Enforcement of environmental criminal law still pays attention to the principle of ultimum remedium which requires the application of criminal law enforcement as a last resort after the application of administrative law enforcement is deemed unsuccessful. The application of this ultimum remedium principle only applies to certain formal crimes, namely criminalization of violations of wastewater quality standards, emissions and disturbances". Based on this general explanation, the principle of ultimum remedium is a last resort after administrative steps are unsuccessful and is intended for certain formal crimes.

When writing laws, legislators consider the concept of ultimum remedium when deciding whether behavior will be classified as a criminal act rather than just an administrative offense. According to the concept of ultimum remedium, not all perpetrators will be made a criminal offense. The application of criminal law to an act can be justified if it has been determined by the legal system as an unlawful act.

Only certain criminal acts such as violations of water quality requirements, waste quality standards, and emission quality standards are subject to the ultimum remedium principle (Imam Budi Santoso, 2018). Therefore, administrative sanctions should not immediately free violators from criminal guilt for violating these rules. Likewise, when someone is subject to criminal punishment, they are not immediately free from administrative sanctions considering that criminal law and administrative law are two different fields of law (Anwar, 2020).

There is a change in the concept of the principles contained in Law No. 32 of 2009 concerning Environmental Protection and Management, the principle of ultimum remedium is present to replace the principle of subsidiarity. In its application to natural resource-based cases, not all environmental crimes can be subject to the principle of ultimum remedium, it only applies to certain formal criminal acts by the provisions of Law No. 32 of 2009 concerning Environmental Protection and Management.

6. Application of the Primum Remedium Principle

In addition to the ultimum remedium principle, Law No. 32 of 2009 concerning Environmental Protection and Management has indicated another principle, namely the primum remedium principle. Unlike the ultimum remedium principle which is the last resort for the application of criminal law, the primum remedium principle prioritizes criminal law enforcement in resolving natural resource-based cases. The primum remedium principle approach in the criminal provisions of Law No. 32 of 2009 concerning Environmental Protection and Management is a solution to the suppression of environmental law (Havinanda, 2020) .

This is in accordance with the principle of legality, that anyone who violates a policy that regulates criminal law can be subject to criminal sanctions (Imam Budi Santoso, 2018). The legal problem is that the judge did not use primium remedium as a basis or reference in making decisions. Judges still use the principle of ultimum remedium even though criminal sanctions are the main choice or primum remedium in cases where the action is considered to be very detrimental to the interests of the state and society.

That in the law enforcement process, the judge's lack of understanding of the grouping of elements of environmental crimes in applying the principle of primium remedium for perpetrators of pollution through the release of waste and environmental damage can have an impact on the wider community and the environment (Pratiwi et al., 2021) . If it is difficult to prove, the judge must consider whether the incident has fulfilled the elements of evil contained in the rules so that it can be declared guilty even though it is not bound by a specific punishment. In other words, the formal elements of a formulation have almost determined that someone has committed a crime, which in its construction the nature of the formal crime is the component of knowledge or suspicion from within the perpetrator.

The presence of these elements, a person is declared to have violated the law against a norm when it is known or has strong reasons to believe that their actions can have a negative impact. The important thing about a crime is not whether the violation has consequences or not. A formal crime whose burden of proof is not on the prosecutor to show that the environment has been damaged or polluted, but on the prosecution to show that the defendant or suspect has violated the licensing requirements according to administrative law, criminal law provisions based on administrative law provisions, or statutory regulations.

A legal provision that stipulates that an act is prohibited and subject to criminal penalties must be established before a person can be held accountable for the act he/she committed. Criminal law is regulated to be implemented, so that it can be defended and justified from all legal needs that are protected and guaranteed peace and order.

On the other hand, it is said to be a crime if it violates the rules contained in the law. Criminal acts in environmental protection and management are any acts that are punished as crimes or violations in accordance with the provisions of criminal laws and regulations governing environmental protection and management.

Application of the principle of primium remedium becomes the basis for enforcing environmental law in situations or cases where environmental pollution and damage are clear and do not require evidence to provide a deterrent effect for those who commit environmental crimes. The criminal provisions of Law No. 32 of 2009 concerning Environmental Protection and Management do not directly regulate the formulation of this classification which respects the principle of primum remedium.

7. A New Approach to Environmental Law Enforcement Using a Holistic Paradigm

Currently, in environmental law enforcement, a new paradigm is known that prioritizes the values of justice compared to procedural provisions, this paradigm is considered to be able to meet the needs and aspirations of the community while still paying attention to the facts that occur in the community environment (Budiono & Izziyana, 2018). There are three principles used by law enforcement officers, namely: (Akib, 2012)

1. Comprehensive use of other areas of law;
2. Prioritize the ecosystem approach by setting aside economic, legal and political legal approaches;
3. Building values of justice and values of truth.

The holistic paradigm is closely related to social justice. This is supported by Jejen Musfah's opinion regarding the holistic paradigm in terms of education which provides an understanding of global problems or issues in the form of human rights, religious issues, social justice, multiculturalism, and global warming (Musfah, 2008).

According to this paradigm, sanctions in other legal fields can be implemented simultaneously, meaning that each of these legal fields is not an option or alternative punishment, but can be implemented simultaneously (Kim, 2013). This is because perpetrators of crimes who violate criminal provisions in Law No. 32 of 2009 concerning Environmental Protection and Management cannot be directly subject to criminal sanctions but must be given administrative sanctions first. The regulation regarding the application of these sanctions is in contrast to the holistic paradigm approach which wants the implementation of three legal fields at once, namely administrative law, civil law and criminal law side by side.

Environmental law enforcement based on this paradigm requires synergy from all parties, especially law enforcers as implementers in the law enforcement process to achieve justice. Currently, the provisions of Law No. 32 of 2009 concerning Environmental Protection and Management still require the interests of ruling groups including influencers because in determining policies, of course, they cannot be separated from the influence of legal politics and have not prioritized the achievement of justice.

Criminal law that is limited in its application can lead to increased environmental damage. Administrative law in its application functions to restore the environment, but cannot scare perpetrators of environmental crimes. Therefore, in the interests of ecological sustainability, environmental law enforcement is required to take place by prioritizing a holistic approach, namely by utilizing all areas of law, both administrative law, civil law and criminal law simultaneously (Valini, 2019). Utilizing all areas of law is not only aimed at protecting the environment, but it must be remembered that the environment also needs to be managed properly. So that by prioritizing a holistic approach, environmental protection and management can go hand in hand with adhering to the principles of equality and justice (Ansar, Bakri, R., Asriyani, Abdurrahim, & Bakhtiar, 2023) .

That the current norm ambiguity raises the issue of justice for society to become increasingly complicated. Legislators and executors should be able to harmonize and formulate regulations related to the protection and management of life so that they are in line with legal principles and use holistic approaches to realize the values of justice and legal certainty for ecological sustainability.

Ecological sustainability is not only intended for future generations, it is necessary to see the fact that more than 70 million indigenous people live throughout the Indonesian archipelago, representing twenty percent of the total population, most of whom depend on nature for their livelihoods (Tamano, 2023). To maintain ecological sustainability, a holistic approach to realizing social justice in enforcing environmental law is needed. This includes imposing strict sanctions on perpetrators of environmental crimes, and using administrative, civil, and criminal law, especially if they come from large corporations. Furthermore, restoration efforts must be made to restore environmental damage, and preventive efforts must continue to be made to prevent environmental crimes in the future. And most importantly, the community must also be involved in the decision-making process and supervision of environmental crimes. Thus, a balance between economic, social, and environmental interests can be achieved.

8. Conclusion

The basis of social justice in enforcing criminal law against natural resource-based cases is still difficult to implement and enforce because it is constrained by weak legal norms in laws and regulations, which have an impact on environmental injustice for the community. Regulations on the application of the ultimum remedium principle and the primum remidium principle are not explicitly contained in the environmental protection and management law. The achievement of social justice is not only limited to structural issues but must include the concept of ecology in distributive justice. Regulations faced by law enforcement against environmental violations and crimes are the basis for implementing a policy concerning natural resources that must meet the values of justice. A holistic approach to environmental law enforcement requires the simultaneous application of administrative, civil, and criminal sanctions. This approach allows for the application of ambiguous legal principles, enabling law enforcers to use them as indicators to support the imposition of sanctions on environmental crimes that meet the necessary legal criteria. Perpetrators should not be able to evade criminal sanctions, and enforcement efforts must also consider environmental restoration while prioritizing social justice within society.

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Greenwashing by Companies: Consumers Preference for Certain Products Based on Sustainability Perspective

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Abstract
The development of community capacity in information provides consumers with environmental concerns with preferences for certain products, consumers prefer products that contribute to environmental protection, this causes companies to create products that have claims such as environmentally friendly (Go Green), sustainable finance (Sustainable Economy), then some products that adopt several environmentally friendly management systems, such as green branding and green marketing. Behind the products that have these claims, it turns out that they have a background that is irrelevant to the facts in the field, claims of environmentally friendly and "green" movements issued by a company are suspected of being only a form of advertising, promotion, or event as a form of good image built by the company in handling the "green" environment, which causes green consumer confusion, namely the position of consumer ignorance in making decisions to purchase environmentally friendly products, and this gives rise to greenwashing practices.

Keywords: Greenwashing, Go Green, Sustainable Finance

1. Introduction

The phenomenon of environmentally friendly living is currently a social issue that looks good, after the establishment of the Sustainable Development Goals (SDG) on September 25, 2015, SDG was then included as one of the goals included in the Sustainable Development Goals (SDGs) (Alisjahbana & Murniningtyas, 2018). SDGs themselves aim to realize development that maintains and pays attention to improving the economic welfare of the community in a sustainable manner, the sustainability of the community's social life, the quality of the environment, and ensures justice and the implementation of governance that is able to maintain an increase in the quality of life from one generation to the next. The support of companies that make claims of an environmentally friendly living movement is easily spread. This issue that looks good, turns out to have a background that is not in accordance with the movement that contains claims of an environmentally friendly and "green" movement issued

by a company is suspected of being only a form of advertising, promotion, or event as a form of good image built by the company in handling the environment that is "green" (Litelnoni, 2019).

Greenwashing is a marketing and communication strategy of a company to provide an environmentally friendly image, both in terms of products, values, and goals of a company without actually carrying out activities that have an impact on environmental sustainability. This strategy is a way for large companies to attract product buyers, with claims of being environmentally friendly, and "green" in product promotions (Valencia et al., 2021). The current problem is that there is a contradiction between advertisements, promotions and events issued by a company with facts that influence consumer perceptions. This incident can be considered to ignore moral aspects and obscure public access to environmental justice. Industry should not distribute the risk of injustice by creating a good image and hiding the negative impacts of the production process and even the end result of industrial activities.

Greenwashing practices cause green consumer confusion, placing consumer ignorance in making decisions to purchase environmentally friendly products (Jandrianto & Kurniawati, 2024). Consumer ignorance is claimed by companies as information and benefits that can be obtained from a product, but this is not entirely true. Consumers with environmental concerns have certain product preferences that contribute to environmental protection (Wulandari, 2021).

This article describes three crucial issues in the practice of industry that carries out greenwashing by companies from the perspective of risk distribution and risk described in the second part, and greenwashing in the context of sustainable finance in the third part. In the final part, the authors will describe the responsibilities of companies that carry out greenwashing from the ecological sustainability perspective.

2. Greenwashing Practices by Companies from The Perspective of Risk and Benefit Distribution

Since the worsening of environmental pollution, many companies around the world pay more attention to environmental issues, in order to achieve the integration of social and environmental issues in business operations, companies must carry out sustainable and socially responsible missions. Indirectly, companies provide methods to attract consumers, capital markets, products, services, and firms to develop further using advertisements containing Go Green elements (environmentally friendly), with the increase in Green Branding (green market) and Green Marketing (green marketing) which results in the presence of the greenwashing phenomenon. *(de Freitas Netto et al., 2020).*

The term greenwashing emerged in the 1980s and gained widespread recognition by describing the practice of making offensive or exaggerated sustainability claims in an attempt to gain market share (Richard Dahl, 2010). Greenwashing is a marketing and communication strategy of a company to present an environmentally friendly image, either in terms of products, values, or goals of a company without actually carrying out activities that have an impact on environmental sustainability, in other words poor environmental performance and positive communication about environmental performance are contradictory (Richard Dahl, 2010). This has actually implied the existence of "sins" between half-truths and lies. Examples include "hidden sins" (when only one or a few behaviors are truly green), "irrelevant sins" (when green behaviors do not actually make significant improvements), and "lesser of two evils" (when green behaviors only reflect a comparison with previous behaviors that were truly bad); "lying sins" refer to lies. Regarding communicative features, it mentions the “sins of no evidence” (when claims are unfounded), the “sin of vagueness” (when claims cannot be verified), and the “sin of worshipping false labels” (when fake or questionable certification icons are used) (TerraChoice Environmental Marketing, 2007).

Greenwashing has no positive effect on the overall performance indicators of the organization. because some studies focus on the effects of unsubstantiated green claims, without making potential customers aware that they have been affected by greenwashing (De Jong et al., 2018). Consumer awareness of environmental issues encourages consumers to adopt a healthy lifestyle by consuming organic products, namely products that contain

safe, non-toxic, recyclable components, and use environmentally friendly packaging.(Putra I Putu Agus Surya Setiawan & Suryani Alit, 2015).

Increasing consumer awareness of the environment has caused companies to implement environmental issues as one of their marketing strategies (Feriandy, 2021). This is where consumers prefer environmentally friendly products and ultimately companies use marketing strategies to attract the attention of potential consumers by providing advertising claims that contain elements of Go Green (environmentally friendly). Companies use the term "sustainable" or "green" in their marketing without providing concrete evidence, and it can be said that this greenwashing marketing technique can mislead potential consumers towards products that use the term Go Green (environmentally friendly) (Yildirim, 2023) .

The world is making concerted moves to achieve the goals set out in the Paris Climate Agreement. The past few years have seen a massive increase in regulatory, corporate and investment activities around climate change, environment, social and corporate governance, and sustainability. The current state of the environment has increased awareness among the global community regarding the environmental damage caused by industrial activities. This is easily found on the internet which allows consumers especially in developing countries to be aware of sustainable marketing (Qayyum et al., 2023). Nowadays, people as consumers are more likely to choose environmentally friendly products or services. A significant increase in corporate activities is seen in the creation of the Green Economy movement, Green Economy, (Go Green) Environmentally Friendly, which adopts several environmentally friendly management systems, such as Green Branding and Green Marketing(Berrone et al., 2017).

Green development here means maintaining product quality while making it environmentally friendly, while sustainable refers to the company's obligation to realize the Sustainable Development Goals (SDGs) (Kisworo et al., 2022). Companies realize SDGs by conducting campaigns or issuing advertisements with an environmentally friendly theme. Sustainable Development Goals (SDGs) are international actions that have been agreed upon by world leaders, including Indonesia, with the aim of ending poverty, reducing inequality and providing environmental protection. The SDGs contain seventeen goals and one hundred and sixty-nine targets that are expected to be achieved by 2030 (*Sustainable Development Goals*, n.d.).

Before the SDGs were launched, the Millennium Development Goals (MDGs) were its predecessors, but in 2015 with specific goals and targets, the SDGs were finally born as an update of the MDGs. The SDGs are a global action plan from leaders of developing and developed countries, with the aim of ending various challenges to end poverty, reduce inequality and protect the environment. The image of companies that use products with claims of "sustainability" or "green" to attract people to buy products, this is done by companies to attract younger consumers. The development of information and more aware consumers will have a significant impact when the advertised product has a claim of "sustainability" or "green". By acknowledging the environmental impact of their services, companies can look like 'good guys' who represent the progressive attitudes of millennials and Gen Z (Coombs, 2010). The emergence of trends from this marketing strategy brings up a reality that is not in line with what is in the field, through these advertisements, companies try to look 'greener'.

Figure 1. Sustainable Development Goals Programs

As seen in the image above, SDG has several sustainability programs, but these sustainability programs do not necessarily receive attention from companies that claim to be carrying out the Green Movement. With the desire to gain greater profitability, some companies may hesitate whether to keep their image untainted or fall into the temptation of practicing greenwashing, that is, deliberately deceiving consumers with false propaganda about their environmental practices (Terrachoice, 2010). Many companies also try to show that they do not practice greenwashing, and they show it transparently and clearly in their Corporate Social Responsibility (Porter & Kramer, 2006). This causes a distribution of risk due to the greenwashing practices implemented by the company, greenwashing leads consumers to think that they have made environmentally friendly movements but in reality no action has occurred according to the Company's promotional advertisements (Rake & Repman, 2021). The benefit of greenwashing to society is to help society change over time by making sustainable environmental friendliness a normal thing. The benefit of greenwashing to companies is that when consumers walk around the supermarket, constantly seeing advertisements for environmentally friendly products, it normalizes the purchase of these products. Consumers get a sense of pride when a company tells them that their product helps something or someone, and are more likely to buy from that company again when they need the product. Gradually surrounded by campaigns related to environmentally friendly society, and the more we are immersed in it, the more likely we are to make it a habit (Maushart & Snaije, 2017).The image of a company that provides sustainable and green "claims" as a marketing strategy can "mislead" consumers into choosing products, because consumers think that they have made environmentally friendly movements but in reality they have not.

3. Greenwashing in the Framework of Sustainable Finance

Nowadays, the key to success in the current era is a business or industry that is related to green and sustainable things (Singh & El-Kassar, 2019). The business industry is a sector involved in the emergence of environmental problems. Many industries emerge to meet the needs of society, but this fulfillment does not pay attention to environmental problems. This causes many industries to prioritize profits over preserving the environment (Leonard Silalahi et al., 2024). A better understanding of the implications of environmental justice first requires an integrative and systematic assessment of various predecessor conceptions such as environmental sustainability and sustainable development, one of which is sustainable finance, which is a new pattern that must be achieved in economic development at the national and international levels by claiming that the current global economic growth is not sustainable and needs to be revised (Ehresman & Okereke, 2015).

Greenwashing can be linked to the realm of *sustainable finance* which refers to financial practices that in decision making consider several factors, namely environmental, social, and corporate governance factors. This concept is used as a measurement tool to evaluate the social and sustainability impacts of investments made by the company. Companies that comply with this standard will integrate these three criteria in their business operations and in their investment decision making (Kisworo et al., 2022). *Sustainable finance* aims to promote sustainable economic growth, reduce negative impacts on the environment and society, and support inclusive and sustainable development.

Greenwashing can be connected to *sustainable finance* because basically *sustainable finance* can occur when a corporate entity uses the label "sustainable" or "green" under the pretext of attracting investors or consumers without knowing in the field whether it has met the appropriate standards for the claim. This can be seen in the form of "misleading marketing" practices where companies use the terms "sustainable" or "green" in their marketing without providing concrete evidence or transparency about how their investments or products are in line with sustainable goals, this can mislead investors and consumers of companies that claim to be "sustainable" (Marciniak, 2009).

The relationship between *sustainable finance* and ensuring people's well-being is explored in the long-term perspective (Stukalo & Simakhova, 2018). This implication is seen from the discourse and practice of global environmental sustainability is still unclear especially regarding *sustainable finance*. The term remains subject to different interpretations in different places, and is used for very different policy goals and objectives. Therefore, rather than resolving the old controversy of the relationship between business as an economic connector and sustainability as an environmental connector, the green economy has only revived the existing debate about the vision, actors, and policies that are most suitable for securing a sustainable future for all. The main controversy surrounding the green economy is about how the concept relates to the idea of social and environmental justice. The systematization of the sustainable economy provides a context for future re-analysis because the idea of a sustainable economy is essentially connected to various conceptions of justice, especially environmental justice.

4. Dynamics of Greenwashing Regulations from Sustainability Perspective

So far, companies are increasingly interested in presenting themselves as sustainable. This will improve their image and, in turn, increase their profits. But companies do not always practice what they claim and rely heavily on publicity stunts where environmental responsibility is just a façade. Consumers are increasingly paying attention to environmental issues and pushing companies to achieve and, as a result, not only relate to economic, but also environmental and social results. However, some companies, considering the economic and social benefits obtained from corporate policies that pay attention to environmental issues, define their products as "environmentally friendly." One of the social responsibilities of companies is usually called Corporate Social Responsibility (CSR) and today it is normal, as an obligation carried out as a company's actions are considered to care about the environment and its surroundings. The author summarizes that there are several large companies in Indonesia that make environmentally friendly claims, such as Unilever, Mayora, Indofood, Wings, and PT Santos Jaya Abadi. Four of the five companies even provide social responsibility statements on the Company's website.

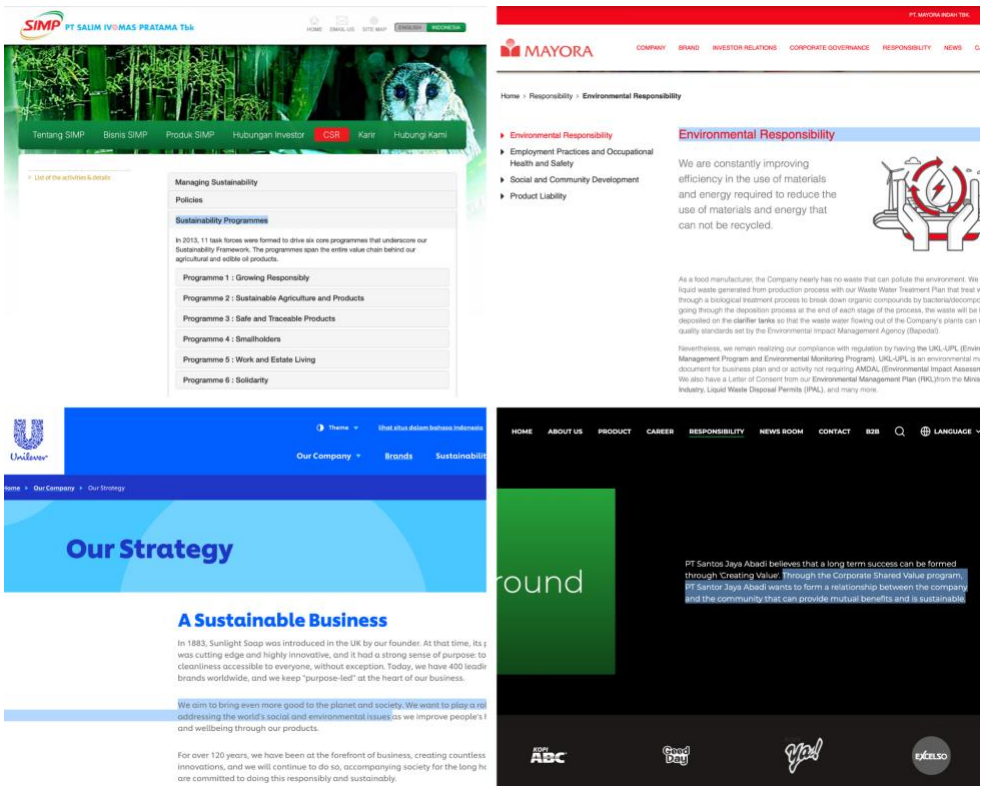

Figure 2. Website appearance of several companies in Indonesia

Figure 3. Indonesia's Companies Plastic Waste Production, data based on Green Peace Indonesia

Figure 2 shows four large company websites in Indonesia that provide "Corporate Social Responsibility" especially for the environment. The four companies are Salim Group, Mayora Indah, Unilever, and Santos Jaya Abadi.

Figure 3 Greenpeace Indonesia through its official website stated that the four big companies above released products that cause marine pollution, most of which is plastic waste. Through a civil society network consisting of Greenpeace Indonesia, Ecoton, Walhi, Trash Hero Indonesia, and Yaksa Pelestari Bumi Berkelanjutan (YPBB) conducted brand audits at 34 audit locations with 9,698 sachets collected. The results showed that there were 5

producers of the most sachet pollutants, namely Wings (1251), Salim Group (672), Mayora Indah (629), Unilever (603), Santos Jaya Abadi (454) (Indonesia, 2014). These companies provide evidence that they are promoting Go Green in an environmentally friendly way, but behind all that there is a reality that still contradicts these claims. The data above is only from large companies in Indonesia, which have hurt the environment, while several of the large companies above have subsidiaries throughout the world.

On the surface it may seem that companies have an environmentally friendly sustainable movement, but in most cases, corporate claims about being environmentally friendly and saving the environment are all unfounded (Smyth, 2017). Companies will be seen to treat the environment with more care, pay attention to their consumer behavior, and stand out as companies that reflect sustainable values, this leads to a situation where companies feel motivated to adjust their business models where they can attract consumers with less capital.

The Green Business Bureau in its article entitled The Seven Sins of Greenwashing: Identifying False Eco Claims states that there are 7 (seven) greenwashing concepts, namely (Green Business Benchmark, 2021):

1. The Sin of the Hidden Trade Off, advertising "green" products, even though the product has other features or uses methods that are not environmentally friendly.
2. The Sin of No Proof, "green" environmental claims are not supported by reliable evidence or certification.
3. The Sin of Vagueness, "green" products are unclear and cause misunderstanding by consumers.
4. The Sin of Worshiping False Labels, purchasing "green" label claims obtained from certification bodies to deceive consumers.
5. The Sin of Irrelevance, "green" environmental statements are accurate but only provide a diversion from the core issue.
6. The Sin of Lesser of Two Evils, "green" claims are accurate but serve as a diversion from worse health or environmental issues.
7. The Sin of Fibbing, "green" claims are false.

Companies risk contributing to greenwashing by mobilizing consumer support for their green claims (Partzsch et al., 2019), but in reality companies that present themselves as greener are actually companies that engage in greenwashing (i.e., appear to wear a green hat but are not green at heart) (Just, 2021). False claims about a company's greenness can be dangerous because they risk hindering efforts to address real environmental impacts, and consumers can be tricked into buying products that are not in accordance with the facts.

The use of advertisements and websites with eco-friendly claims has undeniably raised awareness of environmental issues, which strengthens the green movement(Maushart & Snaije, 2017). Those who represent the majority of consumers who like eco-friendly are most likely to use products that are truly eco-friendly, so there is a chance that there will be some left for future generations to live in. One approach to long-term success in eco-friendly marketing is to use an advertising approach. There are various dimensions in eco-friendly advertising, one of which is education-focused which aims to increase consumer understanding of nature and the environment; the other is Commercial-focused which is designed to increase sales of products or services.

In 2021, the Competition and Markets Authority (CMA) published some damning evidence. Up to 40% of green claims found online were found to be unfounded. In response to these dire findings, industry experts began to develop a six-point code, such as:
1. Claims must be honest and accurate.
2. Claims must be clear and unambiguous.
3. Claims must not omit or conceal important relevant information.
4. Comparisons must be fair and meaningful.
5. Claims must consider the full life cycle of the product or service.
6. Claims must be substantiated (CMA's Green Claims Code to Prevent Greenwashing, 2021).

The "green" claim obtained from an international certification body is a strategic step for companies to brand their products. It should be noted that the "green" claim is not a standard in marketing, but only creates public trust that

the products sold are the best goods by paying attention to the sustainability of the surrounding environment and the fulfillment of human rights. However, the “green” claim is misinterpreted with certain goals by companies to increase the demand for the number of target markets.

Several countries implement regulations for greenwashing, This is a step for these countries to protect consumer rights. The Chinese government uses a regulatory approach through the State Administration for Market Regulation (SAMR) or interpreted as a market regulation administration to combat false advertising, although specifically China does not have a law specifically regulating greenwashing, but the Chinese government regulates this action through the Advertising Act where the Chinese government stipulates that advertisements must not contain false content, and must not deceive and mislead consumers (Bey et al., 2023) Click or tap here to enter text., The Canadian government in November 2023 in the Government's Fall Economic introduced a new law that was included in the amendments to Canadian competition law, in the law there is a section on "deceptive marketing practices" as one of the Canadian government's commitments to increasing consumer protection related to greenwashing claims that can be misleading (Segal, 2024). Governments from several countries see that the potential for "misleading" from greenwashing can have an impact on consumers, therefore the countries above regulate regulations related to greenwashing in real terms by providing prohibition of deceptive marketing.

From the perspective of Indonesian legal politics, the regulation on the issue of greenwashing has not been a concern of the authorized institution. This condition places very minimal protection and facilitates the needs of the industry from the market side. The lack of regulation will cause inequality in access to quality life assurance through a protection system that is oriented towards maintaining public safety from environmental damage caused by the exploitative practices of industry players.

Currently, greenwashing may still sound unrecognized, not everyone knows the meaning of greenwashing, it is not wrong if the existing regulations do not specifically explain greenwashing. The context of greenwashing is difficult to apply considering the subjectivity of the industry in the application of marketing techniques. Meanwhile, regulations are also difficult to enforce because greenwashing does not actually violate the rules, it is just unethical. The unethicality of a company can be seen when the company does not carry out its responsibilities when suspected of greenwashing, this responsibility can be categorized as social responsibility which refers to a company's actions to protect or improve the welfare of living things (Renata et al., 2024) So far, the company's responsibility is still limited to implementing CSR, concretely the responsibility of companies suspected of greenwashing still does not exist, either in regulations or in action, although there is no concrete responsibility related to companies suspected of greenwashing, but ethically the business carried out by a company must be based on social and ecological aspects(Haliwela, 2013). The role of the government is needed in regulating greenwashing, because basically companies only create a good image to attract consumers by appealing to claims that the products they produce look sustainable or green and ignore social responsibility and justice towards the environment.

5. Conclusion

Greenwashing practices as a marketing strategy often mislead consumers who want to contribute to environmental preservation. Sustainability and environmentally friendly claims that are not supported by real evidence can create the impression that consumers have taken positive action towards the environment, when in fact they have not. Greenwashing can be connected to sustainable finance because basically sustainable finance can occur when a corporate entity uses the label "sustainable" or "green" on the pretext of attracting investors or consumers without knowing in the field whether it has met the appropriate standards for the claim. Several countries such as China and Canada see that the "misleading" potential of greenwashing can have an impact on consumers, therefore these countries regulate regulations related to greenwashing in real terms by prohibiting deceptive marketing. The role of the government is needed in regulating greenwashing, because basically the company only forms a good image to attract consumers with the appeal of making claims that the products they produce look sustainable or green and ignore social responsibility and justice towards the environment.

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Variations or Commonalities among Countries? A Data-Driven Approach to Diplomacy

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Abstract
This study examines the influence of cultural dimensions on governance and corruption perception, aiming to determine whether nations share more commonalities than differences. Using Hofstede's six cultural dimensions—Masculinity, Power Distance, Individualism, Uncertainty Avoidance, Long-Term Orientation, and Indulgence—alongside the Corruption Perception Index (CPI), it analyzes governance structures across South America, Africa, Asia, and Europe. A quantitative approach employing Pearson's Correlation Coefficient was used to assess cultural influences on corruption perception. Findings reveal that Power Distance increases as corruption worsens, particularly in South America and Europe, while Individualism negatively correlates with Power Distance across all regions. Masculinity and Uncertainty Avoidance show a strong negative correlation in South America, while Africa exhibits a significant negative correlation between Individualism and Power Distance. In Asia, Power Distance and Masculinity display a weak negative correlation, whereas Europe records the strongest correlation between Individualism and Power Distance. The study highlights the need to integrate cultural insights into governance reforms and anti-corruption policies. Countries with high Power Distance should enhance transparency, while collectivist societies should promote independent decision-making. Future research should explore regional governance mechanisms further to enhance global diplomatic and policy strategies.

Keywords: Cultural Dimensions, War, Corruption Perception Index, Governance, Diplomacy, Power Distance, Individualism, International Relations, Israel-Gaza, Russia-Ukraine

1. Introduction

The global landscape is often framed through a lens of division—whether political, economic, cultural, or ideological (Hooker, 2009). However, understanding commonalities among nations can foster diplomatic relations, enhance cross-border cooperation, and reduce conflict (Hofstede, 2011). At the core of this study is the

question: Are nations truly more different than alike? This inquiry gains urgency amid contemporary geopolitical tensions, including the Israel-Gaza and Russia-Ukraine conflicts, where cultural perceptions shape diplomatic strategies and public discourse (Melgar, Rossi, & Smith, 2010). The study draws upon Hofstede's cultural dimensions framework—Power Distance, Individualism versus Collectivism, Masculinity versus Femininity, Uncertainty Avoidance, Long-Term Orientation, and Indulgence versus Restraint—to examine cross-cultural similarities and differences (Kirkman, Lowe, & Gibson, 2006). Hofstede's model, widely applied in international business and policy analysis, provides a structured method for comparing national behaviors and governance models (Beugelsdijk & Welzel, 2018). Additionally, the study incorporates the Corruption Perceptions Index (CPI) as a key indicator of governance quality, recognizing its role in shaping national reputations and international trust (Hamilton & Hammer, 2018).

Empirical research has demonstrated strong correlations between cultural dimensions and governance outcomes (Achim, 2016). Studies by Achim (2016) and Seleim & Bontis (2009) suggest that power distance and collectivism influence corruption levels, while individualism and uncertainty avoidance impact transparency and regulatory effectiveness (Dipierro & Rella, 2024). Furthermore, Hooker (2009) argues that corruption manifests differently across cultural systems—what is seen as nepotism in one nation may be viewed as an acceptable relational practice in another (Chandler & Graham, 2010). These findings underscore the complexity of cultural interactions and their implications for diplomacy (Zhou & Kwon, 2020). The increasing role of digital communication in international relations further amplifies the need to understand cultural dynamics (Spry, 2018). Social media and digital platforms have transformed diplomacy, enabling civil society actors to influence global narratives, mobilize movements, and shape political outcomes (Alqarni, 2022). In this context, analyzing commonalities among nations can serve as a foundation for strategic diplomatic engagement and conflict resolution (Leonavičienė & Burinskienė, 2022).

This study therefore employs Pearson's Correlation Coefficient methodology to assess relationships between cultural dimensions and CPI rankings across Africa, Asia, North America, South America, and Europe (Hamilton & Hammer, 2018). The research aims to empirically validate whether nations exhibit more similarities than differences in cultural and governance structures (Seleim & Bontis, 2009). By identifying shared cultural traits, the study proposes a potential middle ground for diplomacy, economic partnerships, and global governance reforms (Achim, 2016).

2. Literature Review

Spry (2018) addressed the nexus between social media studies and diplomacy studies using original empirical data on the Facebook pages of 8 nations in 22 host nations to analyze this phenomenon using a multi-stage mixed-methods approach using quantifiable engagement data and qualitative content (Spry, 2018). The analysis varies from previous studies by foregrounding social media as a communication environment and including audiences/users as active participants (Hooker, 2009). The findings suggest Facebook diplomacy is more relevant in smaller, poorer, and closer countries (Hofstede, 2011). Spry (2018) analyzed diplomatic communication strategies using engagement patterns on social media platforms to uncover how different countries utilize digital diplomacy (Melgar, Rossi, & Smith, 2010). Spry (2018) employed a multi-stage mixed-methods approach, combining quantitative analysis of engagement metrics with qualitative content analysis (Kirkman, Lowe, & Gibson, 2006). Spry's (2018) approach contributes to our understanding of international relations by providing insights into the diverse approaches to diplomatic communication in an increasingly interconnected world (Beugelsdijk & Welzel, 2018). Spry (2018) identified variations in how countries embrace social media for political communication, crisis management, and public diplomacy, highlighting differences in cultural norms, government structures, and technological infrastructures (Hamilton & Hammer, 2018). Additionally, the approach acknowledges commonalities among countries in recognizing the potential of social media for shaping global narratives, fostering transnational collaborations, and addressing shared challenges (Achim, 2016). Analyzing data on social media usage, engagement metrics, and diplomatic activities (Spry, 2018) offers insights into the evolving dynamics of international politics in the digital age and informs strategies for effective diplomatic engagement in an interconnected world (Seleim & Bontis, 2009). This perspective aligns with Osiobe et al. (2024), who highlight how cultural dimensions influence global collaboration, and Malallah &

Osiobe (2024), who emphasize the significance of shared attributes in fostering diplomatic relations and international cooperation.

3. Methodology

3.1 Data

The dataset used in the study was mined from the following primary sources: the World Bank, World Health Organization, Hofstede Index, and Transparency International. In the study, our variables include Masculinity, Power Distance, Individualism, Uncertainty Avoidance, Long-Term Orientation, Indulgence, and the Corruption Perception Index (CPI). Each variable applies to every country, and their definitions remain consistent across nations where data is available. A high score in Masculinity indicates that society prioritizes competition, achievement, and success, often defining success by being the "best in the field." Power Distance refers to the degree of power exerted by individuals within a society. Individualism assesses the degree of interdependence maintained among members of a society. Uncertainty Avoidance measures how societies cope with the fact that the future is unpredictable. Long-Term Orientation describes how societies balance their traditions while managing present and future challenges. Indulgence reflects the extent to which people control their desires and impulses. The CPI is the world's most widely used global corruption ranking, measuring how corrupt each country's public sector is perceived to be by experts and business professionals.

Table 1: USMCA Countries

Name Of Country	Power Distance	Individualism	Masculinity	Uncertainty Avoidance	Long-Term Orientation	Indulgence	CPI Rank
United States	40-60	61-74	75-100	40-60	26-39	75-100	75-100
Canada	26-39	61-74	40-60	40-60	26-39	75-100	75-100
Mexico	61-74	26-39	75-100	75-100	0-25	61-74	26-39

Source: Authors' Calculations

Where:
USMCA is
US = The United States
M = Mexico
CA = Canada

Since the USMCA is made up of only three countries, they were excluded from the broader analysis.

Table 2: Non-USMCA Countries Data Categorization Summarization

Region	Excellent	Medium	Not Good	Worst
South America	0-69	70-104	105-128	129-177
Africa	0-96	97-144	145-180	
Asia	0-56	57-96	97-140	144-178
Europe	0-27	37-93	94-152	

Source: Authors' Categorization and Calculation

This discussion relates to the theme of variations and commonalities among countries in diplomacy, as it acknowledges the diverse approaches and perspectives within diplomatic practices, influenced by factors such as historical context, technological advancements, and the evolving role of non-state actors in international relations (Zhou & Kwon, 2020). Understanding these variations is crucial for diplomats seeking to navigate the complexities of modern diplomacy effectively (Alqarni, 2022). The analysis considers how the social movements of individuals intersect with the efforts of civil society organizations and international healthcare initiatives (Leonavičienė & Burinskienė, 2022). The study aims to identify the international network of actors

collaborating to address COVID-19 and to analyze communication patterns on Twitter related to this civil society engagement (Hamilton & Hammer, 2018).

3.2 Data Analysis Methods

The study exploits Pearson's Correlation Coefficient (PCC), which is a statistical measure used to determine the strength and direction of the relationship between two variables (Achim, 2016). This analysis employs PCC to investigate correlations between variables such as masculinity and individualism across different nations (Hofstede, 2011; Seleim & Bontis, 2009). The PCC values determine whether a strong, weak, or no correlation exists between these variables (Beugelsdijk & Welzel, 2018).

Pearson's Correlation Coefficient (PCC)

The Pearson correlation coefficient r is calculated as (Hamilton & Hammer, 2018):

$$r = \frac{n(\sum xy) - (\sum x)(\sum y)}{\sqrt{[n\sum x^2 - (\sum x)^2][n\sum y^2 - (\sum y)^2]}} \quad (1)$$

Alternatively, the base equation for r can be expressed as (Melgar, Rossi, & Smith, 2010):

$$r = \frac{\sum (x_i - \bar{x})(y_i - \bar{y})}{\sqrt{(\sum (x_i - \bar{x})^2)(\sum (y_i - \bar{y})^2)}} \quad (2)$$

Where:

r = Pearson correlation coefficient
x_i = individual sample points of variable x
$\bar{x}$ = mean of variable x
y_i = individual sample points of variable y
$\bar{y}$ = mean of variable y
n = number of data points (Hooker, 2009)

Interpretation of PCC Values

Strong Positive Correlation: $0.5 \leq r \leq 1$
Strong Negative Correlation: $-1 \leq r \leq -0.5$
Weak or No Correlation: $-0.5 < r < 0.5$

Covariance and Standard Deviation Formulation

Pearson's correlation coefficient can also be expressed in terms of covariance and standard deviation (Leonavičienė & Burinskienė, 2022):

$$P_{xy} = \frac{\sigma_{xy}}{\sigma_x \sigma_y} \quad (3)$$

Where:

P_{xy} = correlation between variables x and y
σ_{xy} = sample covariance between x and y
σ_x = standard deviation of x
σ_y = standard deviation of y

The PCC calculations help assess how cultural dimensions influence corruption perception and governance structures across different nations (Chandler & Graham, 2010). By applying these equations, the study quantitatively evaluates the relationships between masculinity, power distance, individualism, uncertainty avoidance, long-term orientation, indulgence, and CPI rankings across the sampled countries (Dipierro & Rella, 2024).

4. Results and Analysis

The following section presents the results from the analysis of cultural dimensions and their relationships with the Corruption Perception Index (CPI) across various regions, including South America, Africa, Asia, and Europe. These results are corroborated or negated based on related studies in the literature

4.1 CPI Analysis

4.1.1. South America

Table 1: presents the averages of cultural dimensions across CPI groups in South America.

CPI Group	Masculinity	Power Distance	Individualism	Uncertainty Avoidance	Long Term	Indulgence
Excellent	29	53	24.67	90	28.5	60.5
Medium	55.33	60.33	33.17	67	22.5	71
Not Good	50.63	74.63	17	79.13	21.17	64.67
Worst	50	85.33	12.67	74.67	16	100

Source: Authors' Calculations

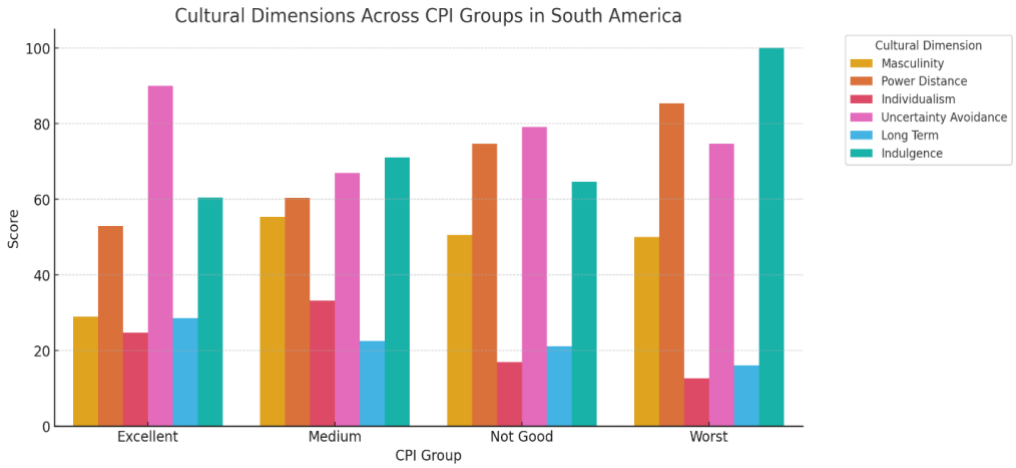

Figure 1: South American Cultural Dimensions Across CPI Groups

The results in Table 1 and Figure 1 indicate that Masculinity is significantly higher in Medium and Not Good CPI countries (55.33 and 50.63, respectively) compared to Excellent CPI countries (29.00), suggesting that societies with stronger competition-driven values tend to experience higher corruption perception, aligning with Hofstede (2011). Power Distance increases as CPI worsens, rising from 53 in Excellent CPI countries to 85.33 in the Worst CPI category, supporting Hofstede (2011) and Seleim & Bontis (2009), who found that more hierarchical societies tend to have higher corruption levels. Individualism is highest in Medium CPI countries (33.17) but drops significantly in the Not Good and Worst CPI groups (17.00 and 12.67, respectively), partially contradicting Spry (2018), who suggested that lower corruption is associated with greater individualism. Uncertainty Avoidance is highest in Excellent CPI countries (90), indicating that these nations are more structured and resistant to unpredictability, aligning with Beugelsdijk & Welzel (2018), who suggested that higher uncertainty avoidance is linked to rigid governance structures. Long-term orientation declines as CPI worsens, dropping from 28.5 in Excellent CPI nations to 16 in the Worst group, suggesting that societies struggling with corruption may prioritize short-term gains over long-term planning. Indulgence is highest in the Worst CPI category (100), showing a strong trend where more corrupt societies have greater tendencies toward gratification and social freedoms, contrasting with findings in Europe where indulgence decreased with higher corruption. These patterns confirm existing cultural frameworks on corruption but highlight regional variations that warrant further research into governance mechanisms and their interactions with cultural values in South America.

4.1.2. Africa

Table 2: presents the averages of cultural dimensions across CPI groups in Africa.

CPI Group	Masculinity	Power Distance	Individualism	Uncertainty Avoidance	Long Term	Indulgence
Excellent	46	42.3	58.4	58.7	20.5	30.3
Medium	41.67	53	49.67	55.83	13.83	19.17
Not Good	53.8	36	73	52.2	16.4	53.8

Source: Authors' Calculations

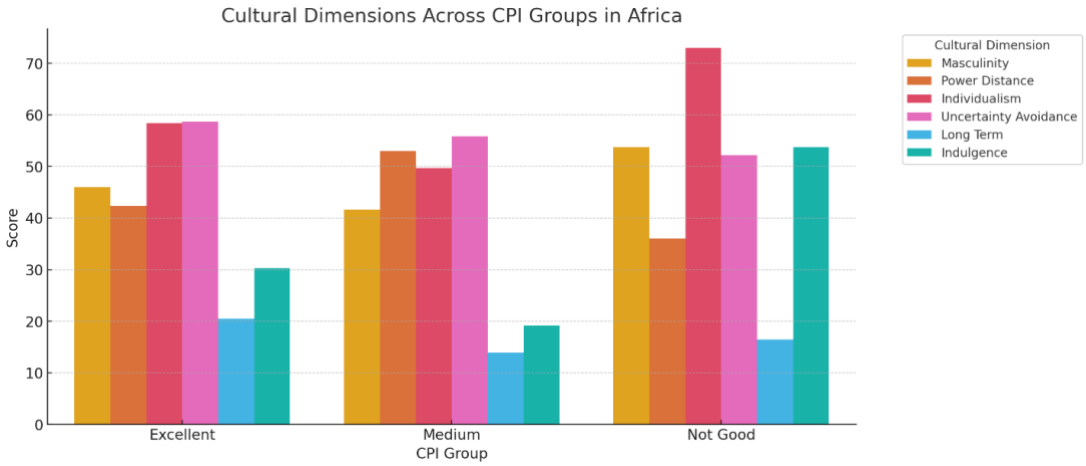

Figure 2: African Cultural Dimensions Across CPI

The results in Table 2 and Figure 2 show that Masculinity is highest in Not Good CPI countries (53.8), compared to 46 in Excellent CPI and 41.67 in Medium CPI countries, suggesting that societies with stronger competition-driven values tend to experience higher corruption perception, aligning with Hofstede (2011). Power Distance is highest in Medium CPI countries (53) but lower in Not Good CPI countries (36), which contradicts findings by Seleim & Bontis (2009) that greater hierarchical structures are usually associated with higher corruption levels. Individualism is highest in Not Good CPI countries (73), diverging from trends in Europe and South America, where greater individualism was typically linked to lower corruption perception. Uncertainty Avoidance remains relatively stable across CPI groups, with only minor variations, suggesting that corruption perception in Africa may not be strongly influenced by a society's tolerance for uncertainty, partially aligning with Beugelsdijk & Welzel (2018). Long-Term Orientation is lowest in Medium CPI countries (13.83), indicating that these nations may focus more on short-term economic and political goals rather than long-term development strategies, which echoes findings from Achim (2016). Indulgence is highest in Not Good CPI countries (53.8), suggesting that societies with more corruption may also have more permissive cultural norms, aligning with Melgar, Rossi, & Smith (2010), who found that indulgence can sometimes be linked to weaker governance structures.

4.1.3. Asia

Table 3: presents the averages of cultural dimensions across CPI groups in Asia.

CPI Group	Masculinity	Power Distance	Individualism	Uncertainty Avoidance	Long Term	Indulgence
Excellent	54.90	67.39	43.85	48.15	44.38	28.51
Medium	48.67	79.56	26.89	55.78	52.63	37.13
Not Good	41.75	78	26.5	69.33	54.5	25.17
Worst	57.17	66	37	63.5	26	23.25

Source: Authors' Calculations

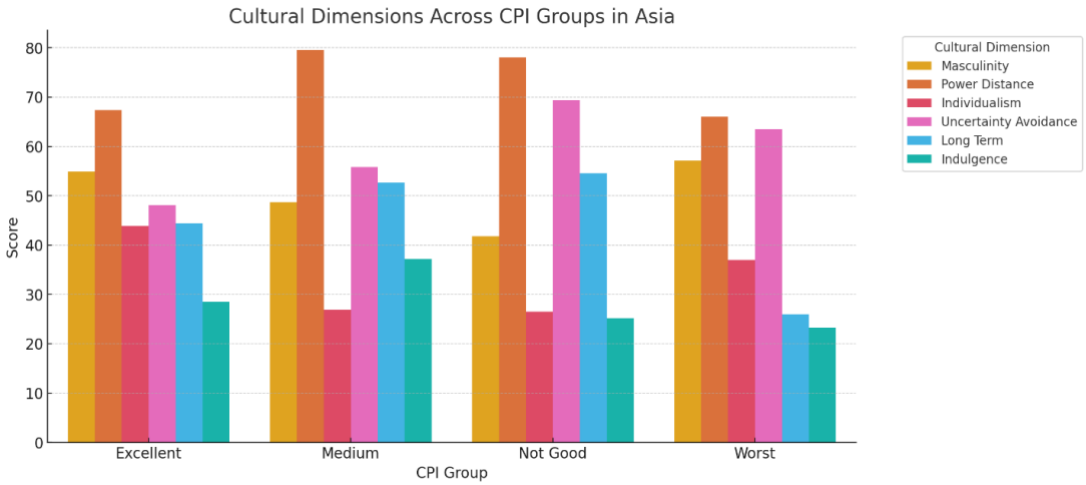

Figure 3: Asian Cultural Dimensions Across CPI

The results in Table 3 and Figure 3 indicate that Masculinity varies across CPI groups, with the highest levels in Worst CPI countries (57.17) and Excellent CPI countries (54.90), while it is lowest in Not Good CPI countries (41.75). This suggests that both highly corrupt and low-corruption societies in Asia tend to have strong competition-driven cultural values, partially aligning with Hofstede (2011) but contradicting the trend observed in South America, where corruption was more strongly associated with high masculinity. Power Distance is highest in Medium and Not Good CPI countries (79.56 and 78.00, respectively), while it is lower in the Worst and Excellent CPI groups (66.00 and 67.39), reinforcing findings from Seleim & Bontis (2009) that hierarchical structures can influence corruption but with variations across corruption levels. Individualism is highest in Excellent CPI countries (43.85) but significantly lower in Medium and Not Good CPI countries (26.89 and 26.50, respectively), suggesting that societies with lower corruption tend to be more individualistic, aligning with Spry (2018) and Achim (2016). Uncertainty Avoidance is highest in Not Good CPI countries (69.33), suggesting that countries with moderate corruption perception may implement more rigid structures to deal with unpredictability, aligning with Beugelsdijk & Welzel (2018), who found that higher uncertainty avoidance is linked to stricter governance systems. Long-Term Orientation is highest in Not Good and Medium CPI countries (54.50 and 52.63, respectively), suggesting that these societies may emphasize future planning despite having higher corruption perception, contrasting with trends observed in Africa. Indulgence is lowest in Worst CPI countries (23.25) and highest in Medium CPI countries (37.13), indicating that more corrupt societies in Asia may have stricter cultural norms regarding gratification and enjoyment, which differs from findings in South America, where indulgence was highest in the most corrupt countries.

4.1.4. Europe

Table 4: presents the averages of cultural dimensions across CPI groups in Europe.

CPI Group	Masculinity	Power Distance	Individualism	Uncertainty Avoidance	Long Term Orientation	Indulgence
Excellent	41.06	36	69.5	55.31	54.69	58.94
Medium	46.63	67.13	46.13	82.25	60	28.44
Not Good	45.38	87.13	27.13	88.25	66.13	28

Source: Authors' Calculations

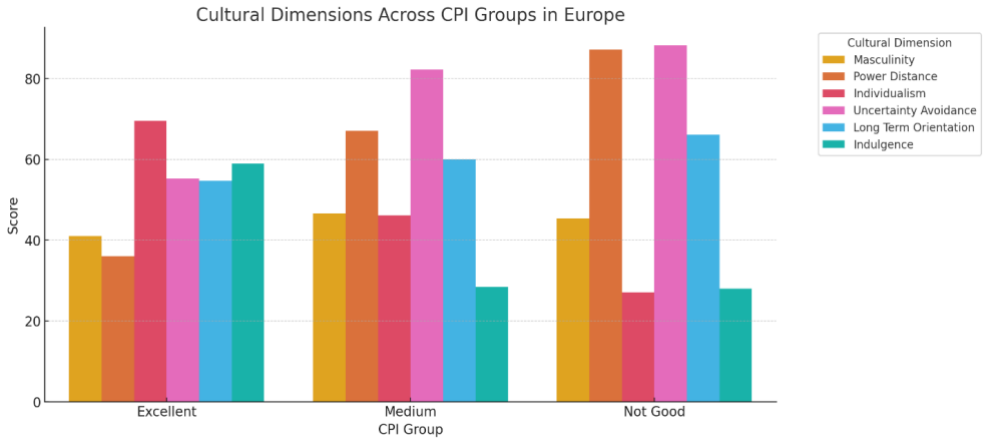

Figure 4: South American Cultural Dimensions Across CPI

The results in Table 4 and Figure 4 reveal a clear trend of Power Distance increasing as CPI worsens, from 36.00 in Excellent CPI countries to 87.13 in Not Good CPI countries, confirming Hofstede (2011) that societies with higher corruption tend to have stronger hierarchical structures. Individualism decreases significantly as corruption perception worsens, with Excellent CPI countries showing 69.50, while Not Good CPI countries drop to 27.13, reinforcing Spry (2018), who suggested that individualistic societies tend to have stronger governance and lower corruption. Uncertainty Avoidance increases as CPI worsens, rising from 55.31 in Excellent CPI countries to 88.25 in Not Good CPI countries, aligning with Beugelsdijk & Welzel (2018), who argued that highly corrupt societies often implement stricter regulations to mitigate uncertainty. Masculinity remains fairly stable across CPI groups, suggesting that competition-driven values do not significantly influence corruption perception in Europe, in contrast to trends observed in South America and Africa, where higher Masculinity was associated with increased corruption perception. Long-Term Orientation increases slightly with worsening CPI, from 54.69 in Excellent CPI countries to 66.13 in Not Good CPI countries, suggesting that more corrupt European countries might still focus on long-term planning, contradicting Achim (2016), who found that short-term focus is more common in high-corruption environments. Indulgence declines sharply from 58.94 in Excellent CPI countries to 28.00 in Not Good CPI countries, indicating that societies with stronger corruption perception tend to have stricter social norms and more restrained lifestyles, aligning with Hamilton & Hammer (2018).

4.2 CPI Correlation Analysis

4.2.1 South America: CPI Analysis

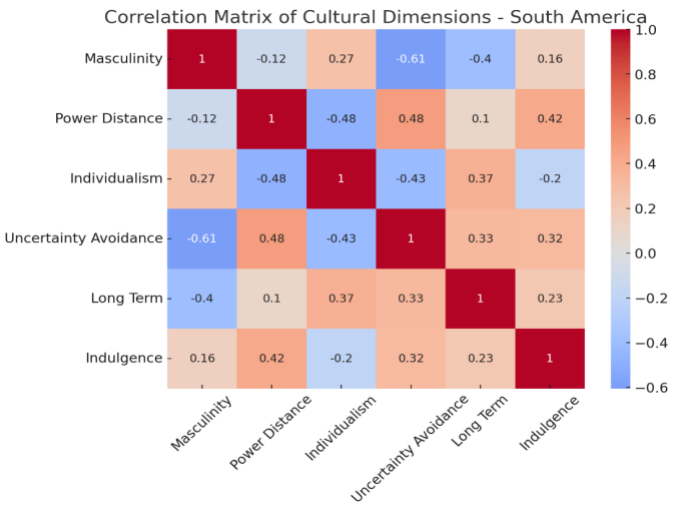

Figure 5: South America: Correlation Matrix

The correlation analysis in Figure 5 shows key relationships between cultural dimensions and corruption perception in South America. Masculinity has a negative correlation with Uncertainty Avoidance (-0.61), suggesting that as societies become more uncertain about the future, they tend to be less competition-driven, which contradicts Beugelsdijk & Welzel (2018), who linked high uncertainty avoidance with rigid governance structures. Power Distance increases with corruption perception, reinforcing Seleim & Bontis (2009) that hierarchical societies are more prone to corruption. Individualism and Power Distance have a negative correlation (-0.48), confirming Zhou & Kwon (2020), who found that more individualistic societies tend to have weaker hierarchical structures, reducing corruption levels. Individualism is significantly higher in Excellent and Medium CPI countries, supporting Achim (2016) that individualistic cultures generally perceive lower corruption. Indulgence shows a positive correlation with Power Distance (0.42) and Uncertainty Avoidance (0.32), suggesting that societies with higher corruption perception also tend to have more indulgent social norms, which contrasts with findings in Europe where indulgence decreased with worsening CPI. These results indicate that while cultural dimensions shape corruption perception in South America, their effects vary by region, warranting further research on governance mechanisms and their role in moderating cultural influences on corruption.

4.2.2 Africa

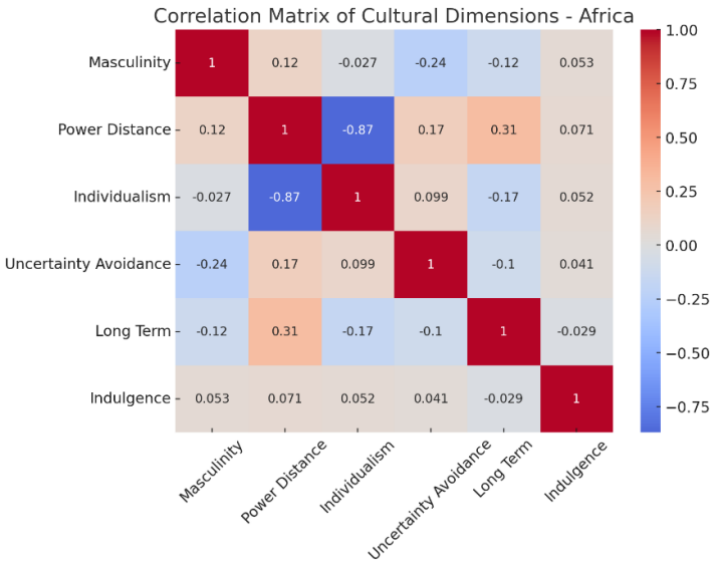

Figure 6: Africa: Correlation Matrix

The correlation analysis in Figure 6 reveals several key relationships between cultural dimensions and corruption perception in Africa. Individualism and Power Distance have a strong negative correlation (-0.87), confirming Zhou & Kwon (2020) that societies with high individualistic tendencies tend to have weaker hierarchical structures, which in turn may reduce corruption perception. Masculinity and Uncertainty Avoidance have a weak negative correlation (-0.24), suggesting that as competitiveness increases, societies become slightly less concerned with uncertainty, which differs from findings in other regions, such as South America, where the correlation was stronger. Power Distance has a weak positive correlation with Uncertainty Avoidance (0.17), indicating that more hierarchical societies in Africa tend to experience slightly higher levels of uncertainty avoidance, which aligns with Hofstede (2011) but contrasts with some global trends where strong hierarchical structures often seek to reduce uncertainty. Long-Term Orientation has weak correlations with other cultural dimensions, suggesting that long-term planning may not be a dominant factor in shaping corruption perception in Africa, partially aligning with Achim (2016). Indulgence has very low correlations with all other dimensions, implying that social norms regarding gratification and restraint do not significantly impact corruption perception in Africa, unlike in South America, where indulgence was strongly correlated with Power Distance and Uncertainty Avoidance. These findings suggest that while some global patterns hold in Africa, there are distinct regional differences in how cultural dimensions interact with corruption perception, warranting further investigation into governance structures and policy implications.

4.2.3 Asia

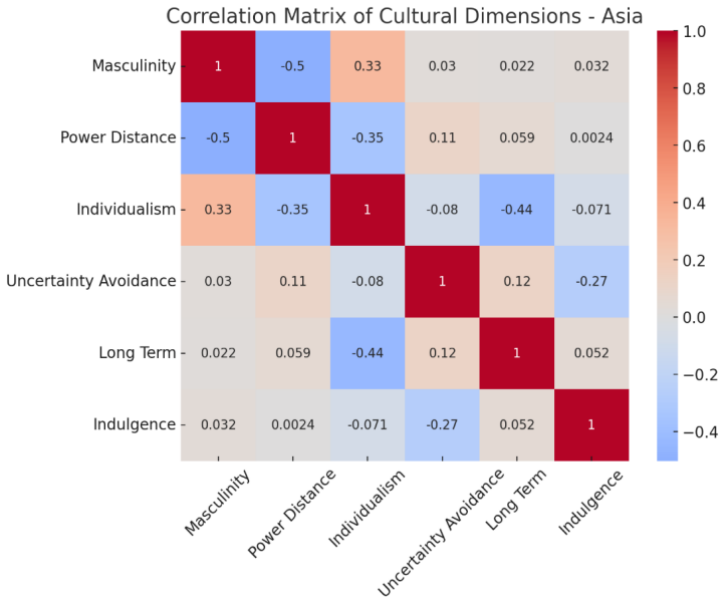

Figure 7: Asia: Correlation Matrix

The correlation analysis in Figure 7 present key relationships between cultural dimensions and corruption perception in Asia. Power Distance and Masculinity have a moderate negative correlation (-0.50), indicating that as hierarchical structures become stronger, competition-driven values tend to decline, which partially aligns with Hofstede (2011) but differs from findings in Europe, where Masculinity and Power Distance were weakly positively correlated. **Individualism and Power Distance are negatively correlated (-0.35), reinforcing findings from Zhou & Kwon (2020) that societies with strong individualistic tendencies tend to have weaker hierarchical structures, reducing corruption perception. Long-Term Orientation and Individualism have a moderate negative correlation (-0.44), indicating that societies with strong future-oriented values tend to be less individualistic, which aligns with Achim (2016) but differs from trends observed in Africa. Uncertainty Avoidance has very weak correlations with other cultural dimensions, suggesting that in Asia, societal responses to uncertainty do not significantly impact hierarchical structures, competition, or social norms, differing from South America, where Uncertainty Avoidance was strongly linked to Masculinity. Indulgence has very weak correlations with all other dimensions, implying that social norms around gratification and restraint may not be a strong determinant of corruption perception in Asia, a trend also observed in Africa. These findings suggest that while some cultural dimensions align with global trends, Asia exhibits unique patterns in the relationship between Power Distance, Individualism, and corruption perception, requiring further investigation into regional governance structures.

4.2.4 Europe

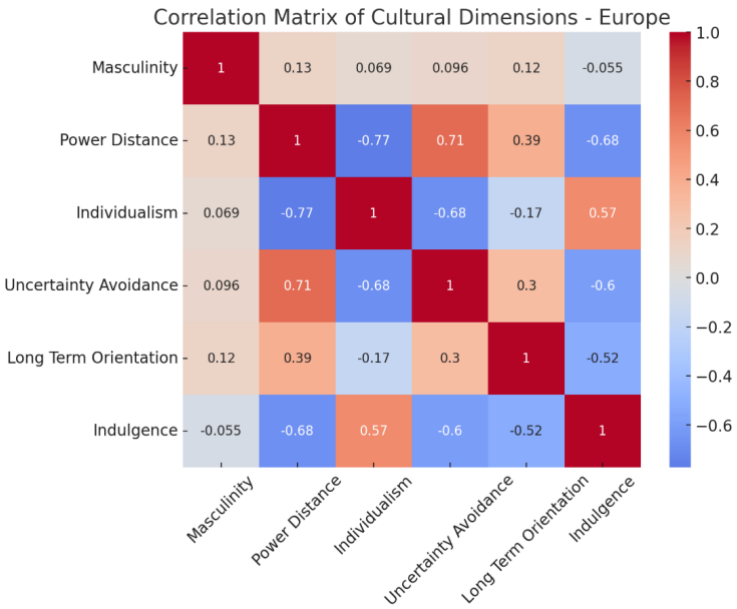

Figure 8: Europe: Correlation Matrix

The correlation analysis in Figure 8 shows deeper insights into the relationships between cultural dimensions and corruption perception in Europe. Power Distance and Individualism have a strong negative correlation (-0.77), confirming Zhou & Kwon (2020) that as individualism increases, hierarchical power structures weaken, leading to lower corruption perception. Uncertainty Avoidance and Individualism also have a strong negative correlation (-0.68), supporting Beugelsdijk & Welzel (2018), who suggested that highly uncertain societies tend to be less individualistic and more reliant on collective governance structures. Indulgence and Power Distance show a strong negative correlation (-0.68), indicating that as societal indulgence increases, hierarchical structures weaken, which aligns with Hofstede (2011) but contrasts with findings in South America, where Indulgence was higher in high-corruption environments. Uncertainty Avoidance and Power Distance have a strong positive correlation (0.71), meaning that societies with greater hierarchical structures also tend to have stricter rules to reduce uncertainty, reinforcing Seleim & Bontis (2009). Indulgence and Individualism have a positive correlation (0.57), suggesting that more individualistic societies tend to be more indulgent, which aligns with Beugelsdijk & Welzel (2018). These findings indicate that Europe has the most structured correlation patterns among regions, reinforcing the role of governance mechanisms in shaping cultural dimensions and their impact on corruption perception.

5. Conclusion

5.1 Summary

This study analyzed the relationship between Hofstede's cultural dimensions and the Corruption Perception Index (CPI) across South America, Africa, Asia, and Europe. The findings highlight significant variations and commonalities in how cultural factors influence corruption perception globally.
Key observations include:

i. *South America:* Higher masculinity and power distance correlate with worsening CPI, confirming governance inefficiencies in hierarchical societies (Hofstede, 2011; Achim, 2016). The negative correlation between Uncertainty Avoidance and Masculinity (-0.6) aligns with Seleim and Bontis (2009).
ii. *Africa:* Lower CPI scores are linked to higher masculinity and collectivism, supporting Beugelsdijk & Welzel (2018). Individualism negatively correlates with power distance (-0.87), reinforcing Dipierro & Rella (2024).

iii. *Asia:* Masculinity and Individualism remain consistent across high- and low-CPI countries, aligning with Hamilton & Hammer (2018). Power Distance and Masculinity have a weak negative correlation (-0.5), supporting Chandler & Graham (2010).
iv. *Europe:* Power Distance increases as CPI worsens, supporting Hofstede (2011). The strong negative correlation (-0.77) between Individualism and Power Distance aligns with Zhou & Kwon (2020). Individualism declines with worsening CPI, reinforcing findings by Spry (2018).

The study confirms that cultural dimensions significantly shape corruption perception, with strong regional variations. Power Distance, Individualism, and Uncertainty Avoidance remain critical factors influencing governance and transparency.

5.2 Recommendations

Based on the findings, the following recommendations are proposed:

1. Nations with high Power Distance should implement transparency measures to reduce hierarchical inefficiencies and mitigate corruption (Hofstede, 2011). Policies fostering institutional accountability can promote good governance.
2. Countries with low CPI rankings and strong collectivist cultures should consider policies that promote independent decision-making and reduce excessive reliance on hierarchical structures (Zhou & Kwon, 2020).
3. Policymakers should consider cultural factors when designing anti-corruption policies. High-masculinity cultures may benefit from shifting competitive success narratives toward ethical leadership and integrity (Achim, 2016).
4. Governments should capitalize on social media and digital platforms to enhance public diplomacy and improve transparency. The role of digital communication in fostering civic engagement and accountability should be explored further (Spry, 2018).
5.

5.3 Future Research

Further studies should examine governance variations within each region to provide deeper insights into how cultural values interact with corruption perception. Additional research on the role of Long-Term Orientation and Indulgence in shaping governance structures is also recommended.

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Appendix 1

Masculinity	A high score (Masculine) on this dimension indicates that society will be driven by competition, achievement, and success, with success being defined by the "winner" or "best in the field."
Power distance	One of the most salient aspects of inequality is the degree of power each person exerts or can exert over others; power is defined as the degree to which a person can influence other people's ideas and behavior.
Individualism	the degree of interdependence a society maintains among its members
Uncertainty Avoidance	has to do with the way that a society deals with the fact that the future can never be known
Long Term	describes how every society must maintain some links with its own past while dealing with the challenges of the present and future, and societies prioritize these two existential goals differently
Indulgence	defined as the extent to which people try to control their desires and impulses
CPI	The Corruption Perceptions Index (CPI) is the world's most widely used global corruption ranking. According to experts and businesspeople, it measures how corrupt each country's public sector is perceived to be.
CPI Rank	A country's rank is its position relative to the other countries in the index. Ranks can change if the number of countries included in the index changes.

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Transformation and Aesthetics of Traditional Grinsing Handwoven textile Textile Motifs as Decorative Elements in Modern Interior Design (A Timeless Beauty of Modern Artistry)

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Abstract
This study explores the transformation of Tenun Grinsing (Hand woven textile), a traditional Balinese textile, into modern interior design elements. Beyond its artistic value, Grinsing Hand Woven textile holds deep cultural and philosophical significance. This research examines preserving its traditional essence while integrating it into contemporary spaces. Using a qualitative-descriptive approach, data is collected through observations, interviews, literature reviews, and visual documentation. The design thinking method guides the process, ensuring transparency and aesthetic focus. Findings show that Grinsing Hand woven textile motifs can be adapted into wall coverings, furniture, and accessories without losing cultural value. These adaptations enhance interior aesthetics, reinforce cultural identity, support sustainability, and boost the local creative economy. This research offers innovative ways to integrate cultural heritage into modern design while ensuring its relevance and preservation.

Keywords: Grinsing, Hand Woven, Textile, Motive Transformation, Modern Interior Design, Cultural Aesthetics, Sustainability

1. Introduction

Grinsing(Hand woven textile) from Tenganan Pegringsingan,(name of village) Bali, is a highly revered intangible cultural heritage, known for its double ikat weaving technique, one of the rarest in the world. Beyond its intricate craftsmanship, this textile carries deep philosophical and symbolic meanings, reflecting traditional Balinese values and spiritual beliefs. However, in the face of globalization and modernization, traditional textiles like *Grinsing* Hand woven textiles risk losing their significance. As contemporary design evolves, there is a growing interest in integrating heritage textiles into modern applications, particularly in interior design, where cultural elements can be preserved while meeting aesthetic and functional demands.

Despite its cultural importance, the transformation of *Grinsing handwoven textile* into modern interior elements remains underexplored. Existing research primarily focuses on textile preservation or fashion applications, leaving a gap in understanding how *Grinsing hand woven textiles* can be effectively adapted into contemporary interior design without compromising their traditional values. Additionally, integrating this fabric with modern techniques such as digital printing and sustainable materials presents both challenges and opportunities, requiring further study on how to maintain authenticity while ensuring accessibility for broader audiences.

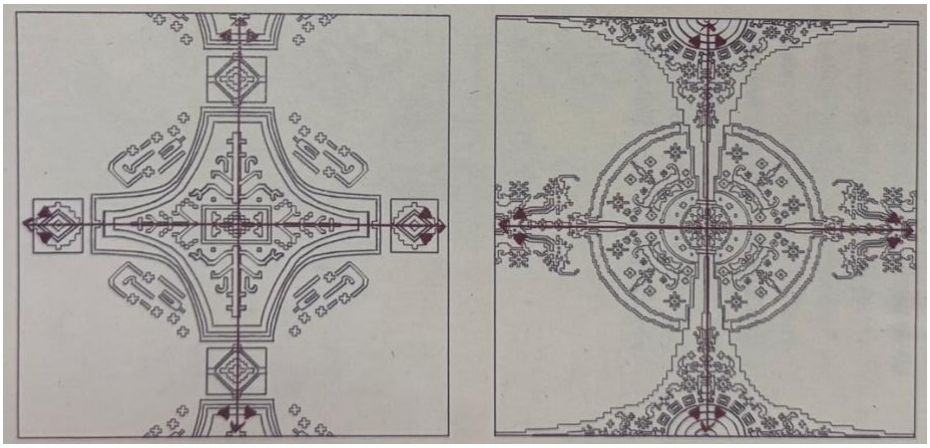
This study aims to analyse Grinsing's hand woven textile transformation process, examining its cultural significance, material characteristics, and integration techniques in modern interior design. By exploring traditional motifs, innovative applications, and sustainability approaches, this research seeks to identify strategies that not only enhance visual appeal but also support cultural preservation and economic sustainability for local artisans. Furthermore, it will assess the challenges and opportunities in bridging heritage textiles with modern design practices.

The findings of this study will contribute to cultural preservation efforts, encourage social awareness of traditional Balinese textiles, and support the creative economy by promoting collaborations between designers and artisans. Additionally, it will provide a valuable reference for future research, offering insights into sustainable design strategies that integrate cultural heritage with modern aesthetics. By highlighting the adaptability of *Grinsing handwoven textile* in contemporary settings, this study aims to inspire new approaches to cultural sustainability in the design industry.

2. Literature Review

The study conducted by Rachmawati, R. (2017), *Grinsing: The Sacred Textile of Bali*, explores *Grinsing* hand woven textile as a sacred textile and an essential part of Bali's cultural heritage. The local community regards *Grinsing handwoven textile* as a fabric with magical and spiritual power, which is why it is exclusively used in religious and traditional ceremonies in Tenganan village. Rachmawati's research (2017) highlights the significance of *Grinsing handwoven textile* as a symbol of Balinese cultural identity, particularly in its role in specific rituals and its integration into the daily lives of the people of Tenganan. Given its cultural and spiritual values, preserving *Grinsing handwoven textile* is crucial, as it represents traditions, meanings, and symbols deeply rooted in the Balinese identity.

Grinsing handwoven textile carries an important message about maintaining the balance of nature through three vital elements: fire, water, and air. These elements play a significant role in sustaining life and preventing diseases and disruptions, not only for living beings but for the universe as a whole. This philosophy is inspired by concepts such as *Tapak Dara (symbolic footprint)*, *Tri Hita Karana (Three Principles of Harmony)*, *Tri Datu (Three Sacred Objects)*, and *Rwa Bhineda (Duality in Harmony)*, which emphasize environmental preservation in Tenganan Pegringsingan and Bali in general. The use of *Grinsing handwoven textile* traditional ceremonies serves as a reminder for its wearers to maintain harmony in all aspects of life.



Picture 2.1: Basic Pattern of *Grinsing handwoven textile and Tapak Dara* (Photo: Rere Woelandari)

The intricate process of creating *Grinsing* handwoven textile highlights the importance of understanding its significance to ensure that it is treated with care and respect. There are a total of 27 recognized motifs in *Grinsing* , hand woven textile fabric is including 17 classic motifs from the 20th century and nine contemporary motifs that date back to the late 19th century. Some of these motifs have well-documented interpretations, while others remain subjects of study, possibly reflecting the artistic expressions of their creators at the time. Motifs designed before the 1980s tend to feature deeper and richer colours, representing the traditional aesthetic preferences of that era.

Incorporating traditional elements such as *Grinsing* hand woven textile into modern interior design creates a unique fusion between local culture and contemporary aesthetics. This transformation allows traditional textiles to function not only as cultural symbols but also as adaptable and functional decorative elements. *Grinsing handwoven textile* can be applied to various interior components, enhancing visual appeal while adding historical and cultural value to a space. The trend of using traditional woven motifs in modern interiors is influenced by several factors, including the growing appreciation for cultural heritage, sustainability considerations, and the desire to create distinctive design elements.

The adaptation of *Grinsing handwoven textile* into contemporary interior design presents both challenges and opportunities. One of the main challenges is ensuring that the textile's symbolic and historical essence is preserved while making it suitable for modern applications. Factors such as material durability, compatibility with modern furniture and décor, and innovative transformation techniques must be carefully considered. At the same time, this adaptation opens opportunities for cultural revitalization, wider market reach, and increased appreciation of Balinese heritage in a global context. By addressing these challenges strategically, designers can ensure that *Grinsing* hand woven textile continues to thrive in contemporary settings without losing its cultural authenticity.

The process of transforming traditional textiles into decorative elements in modern interior design often begins with selecting motifs that are both aesthetically and symbolically relevant. According to Bhatti (2015), digital printing and sublimation techniques can replicate traditional patterns onto new textile materials without diminishing their symbolic or aesthetic value. Additionally, quilting or patchwork methods are frequently used to create decorative pieces such as wall hangings, cushions, or blankets that incorporate various traditional patterns into a harmonious design. Laminating techniques are also employed to create wall or furniture coverings featuring traditional woven motifs, ensuring that the patterns remain protected while standing out as design elements.

Several studies in the field of interior design highlight how traditional textiles like *Grinsing hand woven* can be transformed into functional decorative elements such as cushions, curtains, tablecloths, or wall coverings that enrich the ambiance and add historical value to a space. Vellinga (2007) explains that incorporating materials and patterns from traditional textiles into interior spaces can evoke strong emotional and cultural identities,

creating depth and visual richness that is both aesthetically satisfying and a tribute to cultural heritage. Jencks and Goldschmidt (2020) further argue that integrating traditional elements into modern design is a way to maintain cultural relevance in an era of globalization, allowing local elements to serve as identity markers amid increasingly homogeneous trends.

The study conducted by Rachmawati, R. (2017), *Grinsing: The Sacred Textile of Bali*, focuses on analysing *Grinsing* as a sacred textile and an integral part of Balinese cultural heritage, filled with symbolic meanings. Its usage in various rituals reinforces the idea that *Grinsing hand woven textile* is an essential part of the Balinese identity, particularly in Tenganan village. Rachmawati's research employs a preservation-oriented approach, emphasizing the original form and spiritual value of the textile. In contrast, this study focuses on the transformation of *Grinsing hand woven textile* motifs into decorative elements in modern design. The difference in research objectives marks a significant gap, while Rachmawati (2017) centres on preserving the textile's original form and spiritual essence, this study aims to maintain its sacred value while promoting cultural dissemination through its transformation into decorative interior elements.

Vellinga, M. (2007), in *Traditional Architecture and Sustainable Design*, discusses the relationship between traditional architecture and sustainable design. He emphasizes the importance of cultural values in traditional buildings and how these aspects can be translated into modern design to create environmentally and culturally sustainable structures. While both Vellinga's research and this study share an interest in cultural sustainability, Vellinga's work focuses on applying traditional architectural elements to modern design, whereas this research specifically examines the transformation of *Grinsing* hand woven textile while preserving its aesthetic and cultural significance.

Another relevant study is Rehman et al. (2019), *Sustainable Textile Production: The Role of Handcrafted and Organic Materials in Reducing Carbon Footprint*. Rehman's research highlights the role of traditional textiles using organic materials to reduce carbon footprints. While Rehman's study emphasizes motif transformation for creating applicable modern interior designs, this research focuses on transforming *Grinsing* hand woven textile without compromising its sacred nature.

Further studies address the challenges and opportunities of using *Grinsing handwoven textiles*. Ismail and Prasetya (2022), in *Authenticity and Cultural Narratives in Decorative Products: A Case Study of Traditional Woven Fabrics*, stress the importance of maintaining authenticity and cultural narratives in the application of traditional fabrics. Traditional woven textiles, including *Grinsing handwoven textile*, not only provide aesthetic value but also serve as mediums for introducing cultural values and identities to a broader audience. However, challenges arise when applying *Grinsing handwoven textile* motifs to modern decorative products.

Another relevant study by Suryani, I. (2021), *Challenges and Opportunities of Grinsing hand woven textile in Modern Interior Design*(*Indonesian Arts and Culture Journal*), highlights the major obstacles in *Grinsing hand woven textile* production. The lengthy production process and high costs hinder its efficiency for direct application in interior design. Suryani's research offers solutions to maximize the textile's aesthetic and symbolic potential without sacrificing its intrinsic value. This approach expands the possibilities for integrating *Grinsing handwoven textile* into modern interior designs, making it more adaptable while maintaining its deep-rooted cultural significance.

3. Method and Theory

The research employs two primary design methodologies: Glass Box and Black Box, both of which play a crucial role in understanding the transformation of *Grinsing handwoven textiles* into modern interior design elements. The Glass Box method emphasizes transparency, focusing on visible aspects of the design process while ensuring clarity in the final outcome. On the other hand, the Black Box approach prioritizes the final product without delving deeply into the intricate processes behind its creation. By combining these two methodologies, the study aims to analyze and document the transformation of *Grinsing handwoven textiles* into decorative elements while maintaining a balance between process transparency and outcome evaluation.

The primary objective of this study is to integrate *Grinsing handwoven textiles* into contemporary interior spaces in a way that enhances visual appeal while preserving its cultural essence. This involves exploring how traditional textiles can be adapted and accepted within modern design frameworks. By doing so, the research seeks to create unique and aesthetically rich spaces that not only offer a visually distinct experience but also introduce elements of Balinese cultural heritage to a broader audience.

A significant aspect of this research is the in-depth exploration of the symbolic meanings embedded in *Grinsing handwoven textile* motifs. These motifs, traditionally woven into clothing, carry deep cultural and spiritual significance within Balinese society. The study focuses on how these symbols can be effectively adapted into modern design while retaining their original meanings. Through this approach, interior spaces can serve as both functional environments and cultural narratives, enriching the user experience on multiple levels.

In terms of form exploration, the study examines various ways to translate *Grinsing handwoven textile* motifs into different interior elements such as wall panels, textiles, and decorative furnishings. This process involves experimenting with material applications, pattern modifications, and spatial compositions to ensure that the traditional motifs harmonize with contemporary design aesthetics. By carefully adapting these cultural elements, the study aims to maintain their authenticity while allowing them to evolve within modern interior design contexts.

The integration of *Grinsing handwoven textiles* in modern interior design is guided by various theories that ensure a balance between aesthetics, functionality, and cultural values. The Theory of Transformation in Interior Design highlights how *Grinsing handwoven textile* motifs can be adapted into contemporary decorative elements without losing their symbolic and philosophical significance (Putra et al., 2020). This transformation allows traditional textiles to be used in wall panels, curtains, and furniture, creating a harmonious blend of tradition and modernity. Similarly, The Theory of Symbolism and Meaning emphasizes that motifs such as *Tapak Dara (symbolic footprint)* not only enhance visual appeal but also carry deep spiritual meaning, reinforcing cultural connections within a space.

Aesthetic Functionalism (Chapman, 2005) ensures that traditional elements remain practical and relevant in modern design. By integrating *Grinsing handwoven textiles* into cushions, curtains, or wall coverings, the design maintains both functionality and historical significance. In parallel, The Theory of Modern Ornamentation asserts that local cultural elements should be adapted appropriately to contemporary settings, ensuring their continued relevance. This approach allows designers to preserve the essence of *Grinsing handwoven textile* while making it more accessible for modern interiors.

From a user-centered perspective, Human-Centered Design (IDEO, 2009) stresses that incorporating *Grinsing handwoven textiles* should consider the comfort and needs of the occupants, ensuring that aesthetics do not compromise functionality. Meanwhile, The Psychology of Colour (Birren, 1978) explains how the bold hues of *Grinsing handwoven textiles*, such as red and black, can influence emotions and the ambiance of a space. These colours not only create a striking visual impact but also maintain their cultural significance in modern interiors.

Lastly, Contemporary Design Theory (Jencks & Goldschmidt, 2020) argues that blending traditional elements with modern design adds new layers of relevance while maintaining authenticity. The Theory of Composition and Proportion (Le Corbusier, 1954) further ensures that *Grinsing handwoven textile* motifs are applied in a way that maintains spatial harmony and balance. By aligning traditional aesthetics with modern design principles, *Grinsing handwoven textiles* can serve as both a functional and culturally rich element in contemporary interior spaces, reinforcing the importance of cultural preservation through design.

4. Results and Discussions

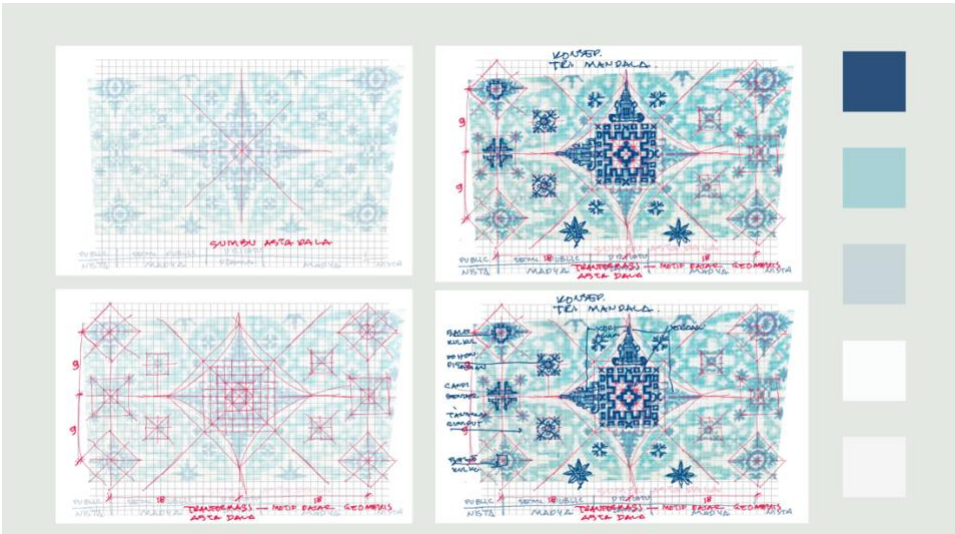
The design process follows the design thinking framework, beginning with the empathize stage, where in-depth observations are conducted to understand user needs and space utilization from both aesthetic and functional

perspectives. This phase also involves exploring the cultural and philosophical values of *Grinsing handwoven textiles*, identifying its key elements that can contribute to interior design. Data collection includes interviews with experts, interior designers, and community members from Tenganan Village, the origin of *Grinsing handwoven textile*, to gain valuable insights into its significance and applications.

Picture 4.1: Observation of the philosophy, values, and manufacturing process of *Grinsing handwoven textile* (Photo: Personal Documentation)

In the define stage, the challenges in integrating *Grinsing handwoven textiles* into modern interiors are identified. The main challenge is how to adapt its motifs and aesthetics into decorative elements without losing their traditional value while ensuring alignment with minimalist and functional modern design principles. This phase involves analysing the patterns, colors, and textures of *Grinsing handwoven textiles* to determine their optimal use in interior spaces. Example design ideas include decorative buffet doors with the *Tapak Dara* motif, symbolizing balance and protection, as well as wall panels featuring the *Tri Datu* motif to enhance cultural character in contemporary interiors. The combination of materials like wood and textiles with *Grinsing handwoven textiles* is also explored to create furniture and decorative accents that blend tradition with modern style.

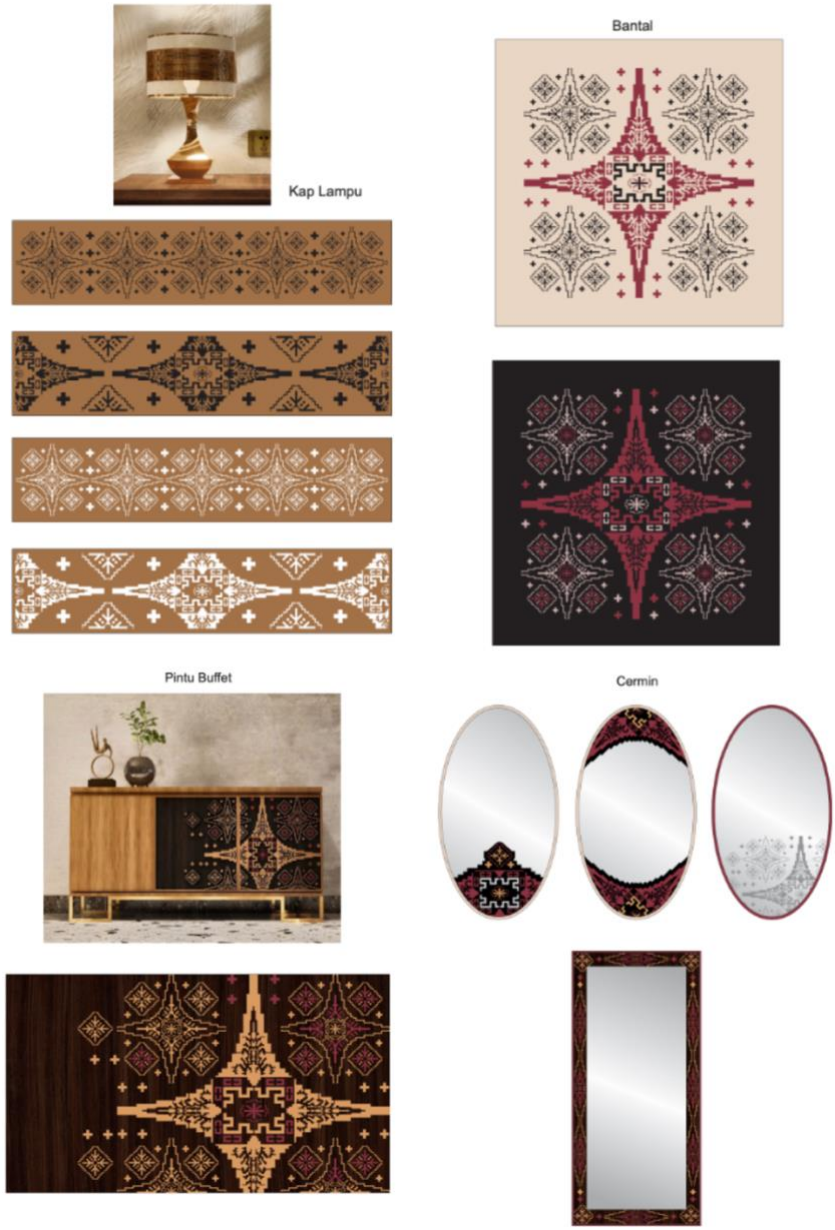
During the ideate phase, various creative concepts are developed to incorporate *Grinsing handwoven textiles* into interior design elements. Brainstorming sessions are conducted to explore possible applications, including wall panels, upholstered furniture, and decorative accessories. Mood boards and initial sketches are created to visualize the combination of colours, patterns, and materials that align with contemporary interior aesthetics. This phase emphasizes innovation and creativity in finding design solutions that maintain cultural authenticity while appealing to modern sensibilities.



Picture 4.2: Brainstorming process for transforming *Grinsing handwoven textile* motifs (Photo: Personal Documentation)

Picture 4.3: Visualisation process for transforming *Grinsing handwoven textile* motifs (Photo: Personal Documentation)

Once a concept is selected, the prototype phase involves creating small-scale models or design samples, such as wall panel segments or upholstery swatches, to assess how *Grinsing handwoven textile* motifs will function in an interior setting. This step enables preliminary evaluations of design feasibility, motif compatibility, and material selection. Finally, the test phase involves implementing and evaluating the prototype in a real environment. User feedback is gathered to assess the aesthetic appeal, functionality, and overall acceptance of *Grinsing handwoven textile*-based decorative elements. Observations and user input help refine and optimize the design before full-scale implementation, ensuring that the final product meets both cultural and modern design expectations.



Picture 4.4: Visualisation process results from transforming *Grinsing handwoven textile* motifs (Photo: Personal Documentation)

The final stage of the design process involves esting and evaluating the prototypes in a real-world setting. This phase aims to assess the aesthetics, functionality, and user acceptance of decorative elements incorporating Grinsing handwoven textiles. Observations and user feedback are collected to identify areas for improvement or necessary adjustments. The insights gained from these evaluations help refine the design before its full implementation in interior spaces, ensuring that the final outcome aligns with both aesthetic and functional expectations.

The execution process begins with material procurement, focusing on selecting Grinsing handwoven textile fabrics that align with the predetermined design specifications. This selection considers the compatibility of motifs, colors, and textile quality with the modern interior design concept. In addition to the primary fabric, supplementary materials such as wood, metal, and glass are also sourced to support the decorative elements. These materials are chosen based on their functionality and aesthetic appeal, ensuring that the final design maintains a harmonious balance between traditional craftsmanship and contemporary interior styles.

5. Conclusion

This study demonstrates how *Grinsing handwoven textiles* can be integrated into modern interior design while preserving its cultural significance. By combining Glass Box and Black Box approaches, the design process balances transparency and artistic expression. Using a design thinking methodology, the transformation follows structured steps which include understanding cultural values, defining challenges, generating ideas, prototyping, and testing, to ensure a harmonious blend of tradition and contemporary aesthetics.

The research highlights how *Grinsing handwoven textile* motifs, such as Tapak Dara and Tri Datu, can be adapted into wall panels, furniture, and decorative elements. Techniques like digitalization, engraving, and material printing allow these motifs to fit seamlessly into modern interiors while maintaining their symbolic meaning. Testing confirms that the designs enhance both visual appeal and functionality.

A key aspect of this study is its emphasis on sustainability. By integrating locally sourced materials, eco-friendly production techniques, and ethical collaborations with artisans, the project ensures that cultural preservation goes hand in hand with environmental responsibility. This approach not only supports the longevity of *Grinsing handwoven textile* craftsmanship but also promotes sustainable design solutions that minimize waste and encourage conscious material selection.

For the future, this research serves as a foundation for further exploration in integrating traditional textiles into contemporary spaces. Expanding its application beyond interior design, such as in fashion, product design, or architectural elements, could enhance global appreciation for Indonesian heritage. Additionally, fostering collaborations between designers, artisans, and sustainability advocates can help create innovative, eco-conscious designs that ensure *Grinsing handwoven textiles* remain relevant and valued in the modern world.

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Jurisprudential Analysis of Maturity from the Islamic Perspective

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Abstract
Puberty is considered one of the most critical jurisprudential issues because it has many effects and consequences. Worship, personal status, financial transactions, inheritance, Limits, Diya, and many other jurisprudential and legal issues are related to puberty. Maturity, obligation, authority, and property are directly connected. Various criteria were considered to determine the age of puberty. Some of these criteria refer to physical symptoms while others refer to old age. Physical symptoms such as ejaculation, menstruation, and pregnancy are considered by all jurisprudents of Islamic religions. However, most jurisprudents accept the growth of pubic hair under the navel although there is also an opposite view. The most significant and fundamental issue in puberty discussion is the age of puberty. Not only do jurisprudential religions differ from one another but different opinions can be seen within the same religion. The origin of multi-divisions in jurisprudential views is rooted in hadiths. The origin of multi-divisions in hadiths is related to the question of the questioner or narration weakness. In general, the results of this study show that for the diagnosis of puberty, signs of puberty, originality, and relevance are obtained. When symptoms are present, it is time to age. Age is acceptable if it is consistent with signs and not contradictory.

Keywords: Puberty, Symptoms of Puberty, Puberty, Age, Jurisprudential Religions, Obligations

1. Introduction

With puberty and the beginning of the youth season, significant changes occur in human life. Sexual talents are awakened and flourish as the physical and psychological powers of the individual grow. As a result, the person is ready to get married. Therefore, puberty in the middle of life is one of the most critical events that causes profound changes in various aspects of adolescents' individual and social lives. Since puberty in jurisprudence and Islamic law has many effects such as religious duties and legal issues, Islamic jurisprudence has discussed it. Muslim jurists disagree about puberty signs, and there are significant differences between puberty ages.

In addition, in Shi'a jurisprudence, differences in girls' puberty age were sporadic in the past and have grown sharply in the contemporary period. Contemporaries have criticized the popular view in jurisprudence that considers a girl's puberty age to be nine years old, while the male's puberty age is 15 years. Meanwhile, some people have not considered age to be a sign of puberty and have relied on other symptoms.

This research analyzes the phenomenon of puberty in jurisprudence and Islamic Sharia. The most significant part of the article is research on the age of puberty. It examines whether age, like Ejaculating semen in sleep and the growth of pubic hair, is one of the true signs of puberty or one of the signs of puberty that has been placed as a metaphorical sign of puberty.

1.1. Research Method

The research method in this work is library-based, which means that the process of collecting data on the topics of this research is through the study of books and articles. In jurisprudential research, which is mainly a library research type, what is most important is the method of processing and analyzing scientific data and then critiquing and reviewing them. This method has been applied with greater importance and precision in the texts of jurisprudence researchers and great scholars in the research section and the subject of evidence criticism. The method of this research is descriptive, comparative, and reasoning with fundamental rules.

1.2. Research background

Research background can be discussed in three areas: the book section, the dissertation section, and the articles section. In the books section, no independent book has been written in Persian, Arabic, or English about puberty. Jurisprudential discussions of puberty have been raised in various chapters, on various occasions, and amid books. In the monograph section, the author, given the research facilities at her disposal, was unable to find a monograph in this field. However, in the articles section, many studies have been written on this topic, each of which addresses the issue from a specific angle. Some from a jurisprudential perspective, some from a legal perspective, and some from a scientific perspective.

Two articles can be mentioned here. The first article, titled "Criticism and Study of Types of Puberty and Their Sharia Effects," by Mohammad Hassan Vakili and Mohammad Danesh-e-Nohad, was published in the scientific journal, Misbah al-Fiqah, issue 4 and issue 7, spring and summer 2022. The second article is titled "Investigating the Age of Puberty and Its Conception, from the Perspective of Imamiyyah Jurisprudence," by Mohammad Nouri and Hossein Ahmari, published in the journal "Jurisprudential and Philosophical Studies," Volume 13, Number 49, 2022, But the most important advantage of my article is that it examines puberty from the perspective of different jurisprudential schools of thought and is not specific to one school of thought. It also uses first-class jurisprudential sources.

2. Result and Discussion

The issue of puberty is considered one of the most important and widely used jurisprudential issues. It plays a fundamental role in many jurisprudential and legal issues. Therefore, this research attempts to achieve the following objectives.

1. Even though it is well known that age is the criterion for puberty and that fatwas are issued accordingly, research into hadiths shows that age is not relevant. How can age be a criterion for maturity, when there is disagreement about it among different Islamic sects? Therefore, a general criterion and rule must be found for maturity.
2. There is a relationship between puberty and physical development. Therefore, religious maturity is achieved when physical maturity is achieved. There are many signs of reaching physical maturity; For example, for boys it is Ejaculation and for girls it is menstruation. Therefore, puberty occurs when these symptoms appear.

2.2. Clarifying the statement

Puberty is the transition from childhood to youth. As sexual changes occur in one's body, there are also changes in one's mind and soul. These changes have many legal consequences that Sharia and the law recognize. The most important one is the individual's competence and authority. Before reaching puberty, a person has no jurisprudential or legal authority of their own. However, after puberty, at least some jurisprudential and judicial

powers are entrusted to them. Many tasks and obligations are left to the adults that were not included in the pre-puberty years.

The main issue in the puberty section is how to recognize maturity. Without a doubt, one of the criteria mentioned in the narrations is age. Regarding age, the main debate is whether age is an independent and authentic subject as one of the methods of puberty diagnosis or whether it is not relevant in itself but among other factors of puberty symptoms.

Age-wise, there are different traditions. For this reason, jurisprudential religions also differ from one another. This is not only between Shi'a and Sunnis, but there are several views among Ja'fari jurisprudence itself. Also, there is no single view among Sunni religions, and there are various views we will discuss below.

2.3. The Necessity and Importance of the Subject

Puberty is considered one of the most challenging jurisprudential issues because it has many jurisprudential, judicial, and legal consequences. Puberty, task, and authority are closely linked. With puberty, another phase in life begins. The person himself will be responsible for his actions, not his guardians. At this stage, he will be obligated to fulfill his religious duties. In this case, the property owner has the right to exchange it directly. Regarding marriage, divorce, and other legal matters, the individual has the right to make decisions.

The necessity of puberty becomes evident when we look at the differences in jurisprudence between Islamic religions and other religions. There may be less jurisprudence that has been affected by divisions and differences in jurisprudence. Puberty discourse begins at eight or nine years old and continues to seventeen or eighteen years old. The origin of these words is narrative. Since puberty traditions are different, jurisprudential statements have also been disputed.

A fundamental question regarding puberty is whether it is authentic and relevant or if it is a measure of maturity. In other words, age, like other signs of puberty such as ejaculation, menstruation, and growth of pubic hair, is merely a sign of the realization that the individual has reached the stage of puberty rather than that age itself is independently valid. Also, another issue that adds to the importance of the issue is the discussion of which puberty signs such as age, ejaculation, menstruation, and hair growth are deemed crucial. If some puberty signs are present and others are not, what is the ruling? And what is the priority? These are the points that increase the importance and necessity of puberty discussion.

2.4. Conceptualization of maturity

The word maturity means "to the end of the goal and to reach or to do something at the end of time and place". (Ragheb, 1412: 144; Ibn Manzur, 1418, vol. 1: 210). The term maturity is the end of the childhood period when this period is over, the legislator or Sharia writes the religious duties on the adult and the person can take possession of his property. (Amīm Ehsan, 1407, vol. 1:210).

2.5. Signs of puberty

2.5.1. Ejaculating semen in sleep

All jurisprudential religions agree that Ejaculating semen in sleep is one of the signs of puberty (Helli, 1418, vol. 2:133; Maverdi, 1999, vol. 6:343) There are many Qur'anic and narration reasons in this regard, and a few of them are mentioned:

3- In the noble hadith about the jurisprudential ruling of ejaculating semen in sleep, it is stated as follows: The duty is taken from three persons: from a child, so that he may see from himself a drop of semen. And from the mad to be sober, and from the one who sleeps to awaken." This noble hadith has come with different phrases in Shiite and Sunni hadith sources. The provisions of all are that the duty and responsibility of the child, the insane

and the sleeping man have been removed. When puberty, childhood, reason, insanity, insanity, and awakening take the place of sleep, the task will be on the human being.

Although the meaning of Ejaculating semen in sleep is the exit of semen from the human being in the world of dreaming, Ejaculating semen in sleep itself is not an issue, it is the ejaculation of the semen from the human being, so the above evidence includes any ejaculation in sleep or wakefulness. In the meantime, however, there are other characteristics and symptoms under the name of menstruation that are reserved for women. According to all jurisprudential religions, ejaculation, and menstruation are considered signs of puberty and all agree on them.

2.5.2. Course hair growing below the navel

The other signs and symptoms are coarse hair growing below the navel. The Shi'a, Hanbali, and Maliki consider the growth of the hair of puberty as one of the signs of puberty (Muhaqqiq, 1408:5; Ibn Qudama 1414, vol.4: 557; Maverdi, 1999, vol. 6:344). Abu Hanifa and his followers do not recognize coarse hair growing below the navel as a sign of puberty (Zilaei, 1420, vol. 6:276). Shaf'iyya (the coarse hair growing below the navel) is one of the signs of puberty for polytheists, but they have two different promises about Muslims (Maverdi, 1999, vol. 6:344).

2.5.3. Age

Most Islamic sects know that age is a sign of puberty, but how exactly do boys and girls reach puberty at the age of puberty? Is age one of the signs of worship of puberty, or is it just like Ejaculating semen in sleep and coarse hair growing below the navel? There is a great difference. Although it is well known among Shi'a jurists that boys and girls differ (Mahrizi 1997: 192-195), the narratives about puberty differ greatly Age.

2.6. Views of Jurisprudential Religions about the Age of Puberty

Considering that Shia and Sunni views about puberty differ in many ways. The reasons they have provided do not match each other, we preferred to evaluate this section separately.

2.6.1. Sunnis Perspective on Puberty

Sunni jurisprudential religions such as Hanafi, Anabelle, Shafi'iyya, and jurisprudential figures such as Uza'i and Abu Yusuf consider age to be a sign of puberty, but there is disagreement about its amount. The main idea of this age is to complete 18 years for boys and 17 for girls. The Birds of the Great Birds of the Awnaf (jurisprudent) write:

Translation: "The attainment of puberty in boys is through ejaculation, growth of pubic hair, and nocturnal emission. If these signs are not present, then puberty is attained at the age of eighteen according to Abu Hanifah. Girls' puberty is due to menstruation, and pregnancy, and if these cases do not materialize, puberty is attained at the age of seventeen according to Abu Hanifah." There is another opinion among the Hanafi that the age of puberty in girls and boys is the completion of fifteen (Ibid.).

There are two quotes from Malik. According to one of the sayings, age was considered a sign of puberty. Still, according to the other narration, it did not consider age as a sign of puberty but emphasized other signs, including Ihtelam and menstruation (Maverdi, 1999, vol. 6: 345). David does not know that he is the only one who is a sinner. In his opinion, if a person reaches the age of 40 and does not get married, he is not an adult (Qortubi, 1993, vol. 5: 35).

There is a difference between the ages of Sunnis as to what age it is to reach adulthood. Hanbalian, Shafi'ian, Ozaei, and Abu Yusuf have considered the age of fifteen years as maturity in boys and girls (Ibn Qudama, 1414,

vol. 4:557; Qortubi, 1993, vol.5:34 34; Asghelani, 2000, vol. 5: 277). The followers of Imam Malik believe that eighteen is the age of puberty.

2.6.2. Examining the evidence

Among Sunni Muslims, those who believe in fifteen years provide the following reasons.

The first reason is a narration by Ibn 'Umar. He said: "I was fourteen years old on the day of the Battle of Uhud, and when I asked permission from the Prophet (s) to take part in the war, he did not allow it, but on the day of the Battle of Khankdak when I was fifteen years old, he allowed me to take part in the war (Qosheiri Nishaburri, Bayta, vol. 3:1490). Ibn 'Umar (a.s.) was allowed to participate in the war because he was fifteen years old, so fifteen is considered the age of puberty.

2- The second reason is that Anas narrated from the Prophet (s) what he said (Ibn Qudama, 1414: 557). Translation: "When a man reaches the age of fifteen, the things which are right and harmful are written down upon him, and the limits are set upon him." Thus both girls and boys reach puberty at the age of 15 and become ready to marry.

- The Prophet Muhammad and the Caliphs testify that during wars, young adults (fifteen years old) participated and received their share of spoils. In addition, Omar ibn Khattab and 'Uthman have been determined to take Sharia limit on those who grow hair on their Zahar's and take Jizyah from them (Qortobi, 1407, vol. 1:118; Nawavi, 2003, vol. 13:12).

2.6.3. Shi'a Views on Puberty

In Shi'a jurisprudence, the view that the age of puberty in boys is 15 years old and in girls nine, is so famous that most Shia jurists in their jurisprudential books only mention this view and have issued fatwas according to it. However, there are also disagreements about this. In particular, some contemporaries today consider the age of puberty as 15 years old and girls thirteen years old (Mahrizi 1997: 192-195). The question now is which of these theories can be accepted and what is the cause of all the contradictions and disagreements? On what basis is each of these perspectives based?

The most important documentary of the famous viewpoint is the narrations that consider the age of puberty of a girl as nine and the age of puberty as 15 years, but the accuracy of the narrations reveals that the narrations related to puberty are divided into several categories, which are briefly discussed.

2.7. Jurisprudential Effects of Puberty

Puberty, like reason, is considered one of the essential conditions for legal accountability. Therefore, as long as a person has not reached the age of puberty, they do not possess the capacity for legal obligation. Consequently, in various branches of jurisprudence, they are neither held responsible nor considered legally accountable.

In the realm of worship, which is considered a divine right with all its spiritual value, it does not constitute an obligation for a non-pubescent individual. Prayer and fasting are not obligatory for a non-pubescent individual, although performing them for a discerning child is considered meritorious. Additionally, and are not obligatory for non-pubescent individuals. (Maverdi, 1999, vol. 4: 8).

In the realm of marriage, a child does not have the independent right to marry. Their marriage depends on the permission of a guardian. A non-pubescent individual also does not have the right to divorce their spouse. Consequently, a minor, whether discerning or not, cannot issue a valid divorce; if they do so, the divorce is considered invalid and ineffective. (Dameshqi Hanafi, 1992 vol. 3: 131).

In financial matters, the lack of puberty is one of the reasons for the prohibition of financial transactions. This means that a child does not have the right to independently dispose of their property. Therefore, until a child reaches the stage of puberty, they are deprived of financial transactions and are prohibited from engaging in significant financial contracts. (Dameshqi Hanafi, 1992, vol. 25:168).

Regarding legal confession, a child's confession is not legally recognized. Sarakhsī, a Hanafi jurist, states: "A child's confession of theft is invalid." (Sarakhsī, 1999 184).

Regarding testimony, the testimony of a non-pubescent individual has no legal or jurisprudential validity. The testimony of a non-discerning child is unanimously considered worthless, and according to the prevailing opinion among Shi'a jurists, even the testimony of a discerning minor is not accepted until they reach the stage of maturity and puberty. (Dameshqi Hanafi, 1992, vol.3:73).

Other jurisprudential effects of puberty in Islamic law include its requirement for:
The establishment of retribution and fixed legal punishments, serving as a judge. These are the most significant distinctions between a pubescent and a non-pubescent individual. Besides these, there are other cases where a non-pubescent individual is not qualified to act. However, the general legal principle is that puberty is one of the fundamental conditions of legal obligation, and until a person reaches the age of puberty, they are not recognized as legally accountable. This principle applies across all branches of jurisprudence, including worship, personal status law, commercial, financial securities law, litigation law, criminal law, and blood-money law.

Right now the jurisprudence information for societies the media, especially TV has replaced parents and teachers in training children via promoting hedonism, leisure, and showing surprising and seductive pictures. Radio and TV had been able to impose aggressive demeanors, meaningless values and humiliation of human essence on family and system of human cultures for each socity (Kohi and Samimi, 2020: 16).

3. Conclusion

During puberty, many factors affect the development of puberty, and in jurisprudence, there are many signs of it. Some of these symptoms, such as Ejaculation in sleep, ejaculation, and menstruation, are mutually agreed upon by all Islamic sects, while others differ. Age as an important criterion for the calculation of puberty is disputed by jurisprudential religions. The difference of opinion is so strong that even among jurisprudents of a religion, there is no consensus. Verse 19 of the Qur'an mentions the Nine Commandments of the Gentiles.

The Qur'an and Sunnah of Prophet Muhammad (pbuh) do not mention the age of puberty. In the traditions of Shi'a infallible, many ages have been proposed for puberty. Researchers have acted in different ways in reviewing and summarizing these narratives. Considering the narrations, it can be concluded that according to these narrations, age is not a sign of puberty because puberty is a natural phenomenon that occurs in a person, and its symptoms should be a natural phenomenon.

On the other hand, how can growth be considered a natural phenomenon but maturation not? Menstruation is the norm for females and males become infected when hormones are released into their bloodstreams. Thus, preparation for reproduction and marriage appears in boys when hormones are released into their bloodstreams and girls are ready when their eggs appear with their menstruation. Verses of the Qur'an and Sunnah also confirm this.

In addition, looking at different regions makes it clear that not everyone at a certain age (such as nine and fifteen years) is ready for this preparation. As narrations suggest, girls and boys of the Arabian Peninsula are more fertile than those in other regions. This is why it is correctly narrated that girls were married at the age of nine and ten.

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